

August 2011

Amendment to the Slovak Labour Code

*From 1 September, 2011 several
important changes to the Labour
Code will take effect*

SPEED READ

This Alert highlights the main changes introduced by the latest Amendment¹ (the **Amendment**) to the Slovak Labour Code² (the **Labour Code**). In many respects the Amendment brings greater flexibility into employment relationships, however certain new instruments (including non-compete undertakings and working time account) will need to be handled carefully when used, and may need further clarification, either through case law or additional legislation.

¹ The amendment was published as the Act No. 257/2011 Coll..

² The Act No. 311/2001 Coll. the Labour Code, as amended.

Key changes to selected employment regulations

Probation period

To allow a better assessment of the skills and overall suitability of new **managing employees**¹ for their new positions, employers will be able to increase the standard three-month probation period to **up to six months**. The standard probation period (three months for general employees and six months for managers) may be further extended by an additional three months **in a collective agreement**.

Fixed-term employment

Fixed-term employment contracts can now be entered into for **up to three years** instead of the previous two-year maximum term. Within these three years, a fixed-term employment contract can be extended or renewed a maximum of three times. In accordance with requests from the EU Commission, the reasons allowing the employer to extend fixed-term employments beyond three years or more than three times have been restricted.²

Working time and overtime

With the aim of promoting the employment of parents with young children, students and to help a smooth retirement, the Amendment introduces “**shared working positions**” (in Slovak *delené pracovné miesto*). Part time employees who in fact “share” a full time working position, and who agree (in writing) to exercise a shared working position, will then divide the tasks and working time between themselves independently - it should be noted that priority

is given to the employees to first agree the sharing between themselves. The employer “monitors” the work and the time sharing, and is authorised to determine this if the employees fail to agree the time and/or work distribution. It may be asked why an employer would not simply use part-time positions to meet this need, but the idea seems to be, for example, that there may be greater flexibility in allowing employees to share the time and tasks according to their needs and control the results of their work, rather than to allocate the work and monitor each individual part-timer.

The “**flexi account**” (in Slovak *flexi konto*³) becomes a **standard instrument**, which can be used for serious operational reasons and the related decreased ability of the employer to assign work to the employees (defined as an obstacle to performing the work attributable to the employer). This can be seen as a formalised response to the financial crisis, allowing employers greater flexibility to manage their workforce in response to the difficult conditions, rather than being forced to lay off and re-hire staff on a short term basis. In the relevant circumstances, **the employer is allowed to grant employees paid time off**, which is recorded on the employees’ flexi-account as negative time. Once the obstacle ceases to exist, however, not later than within the next 12 months, the employees are obliged to work more hours without extra payment until the negative time on their flexi account balances. Also, if the employment is subsequently terminated by the employer for defined reasons⁴, or by a termination

¹ This term is redefined, and theoretically may include board members provided their functions are clearly distinguishable from the executive function of a board member (which executive function should be governed by the provisions of the Commercial Code). Otherwise the term is intended to cover employees who report directly to the board or their immediate subordinates.

² Further extensions with employees who are artists, or who exercise nursing activities, are no longer allowed.

³ New section 142a (previously section 252c of the Labour Code).

notice served by the employee, the employer may claim back the salary paid for the unused negative time.

The Amendment further introduces a new concept of disproportionate working time distribution, called the “**working time account**” (in Slovak *konto pracovného času*). **The working time account enables employers to distribute working time in line with the employer’s actual needs.** During periods of increased demand for work, employees will be required to work more (in excess of the prescribed weekly working time) and, accordingly, at times of lower demand the employees can work less or no work will be performed.

The working time account, therefore, in contrast to the flexi-account, is more of a day to day management tool than a crisis measure. One important distinction between these two instruments is that the introduction of the **flexi account** requires its **consultation with the employees’ representatives**; whereas **the working time account** can be introduced only if **so agreed with the employees’ representatives**.

The maximum overtime work that employers can prescribe without the need for the employee’s consent stays unchanged at 150 hours a year. The total amount of overtime work, including both time that the employer can prescribe and that which can be agreed with the employee, remains capped at 400 hours a year for standard employees. Managing employees, however, can agree with the employer to put in overtime of **up to 550 hours annually**. When agreeing overtime with their employees, employers are no longer required to prove the existence of serious justifying reasons.

Non-compete undertakings and confidentiality

The Amendment re-defines the existing regulation of performing other activities during employment and also introduces the possibility to restrict an employee’s exercise of competitive activities post employment.

Compared to the previous regulation, employees must notify and seek their employer’s consent if they wish to pursue other profit making activities during their employment that may, even potentially, be competitive to those of their employer. Previously this restriction applied only in cases of direct competitors.

For the first time under Slovak labour law, **employers can expressly restrict their employees’ competitive activities following the termination of employment.** The restriction prevents ex-employees not only from being employed by a competitor, but also covers competing with the employer as sole traders or executives of another company. As might have been expected, there are severe limitations on the way in which this restriction can be utilised. First, it can only apply to **employees who have access to particularly sensitive and confidential information, the use of which may seriously harm the employer**. Second, the restriction on competitive activities can only be for **up to 12 months**. Third, the employer must compensate the ex-employee, during this restriction to pursue competitive activities, by paying at least 50% of his/her average monthly earnings for each month of the non – compete restriction. A breach of the non-compete obligation may be sanctioned by the ex-employee having to pay a penalty. The maximum amount of this penalty cannot, however, exceed the compensation payable by the employer. On payment of the penalty, the non-compete obligation would cease to exist. This effectively gives employees the right to “buy themselves out” of the non-compete undertaking, though the ex-employee would still be liable for any damages caused to the employer.

Holiday

Previously, employees’ holiday entitlement was either four or five weeks, depending on a set of multiple conditions. The amendment simplifies the conditions by providing that **all employees over the age of 33 shall be entitled to five weeks of holiday per calendar year**. The effectiveness of this change has been delayed till 1 January 2012 in order not to complicate calculating holiday entitlements during 2011.

⁴ By notice due to the employee no longer meeting the criteria for the defined work determined by law/the internal regulation of the employer; the employee being recalled from his/her position; insufficient performance; repeated breach of the work discipline; for reasons justifying immediate employment termination; or the immediate termination of employment occurred.

Termination

Terminating employment undergoes several important changes, most but not all of which make terminating employment more flexible (faster) and less costly for the employer. The main changes include:

- eliminating the employer's duty to consult termination notices and immediate employment termination with employees' representatives;
- when terminating an employment contract for unsatisfactory work, the employer must prove that it previously informed the employee about his/her unsatisfactory work during the previous two months (previously such "second-chance" information might have been given at any time during the previous six months);
- reducing the overall compensation to be provided to the employee in the case of invalid employment termination from 12 to 9 times the employee's average monthly earnings.

Either notice period or severance payment, but not both

As a general rule, an **employee is entitled to severance payment only if his/her employment is terminated by agreement** due to:

- the employer or its part being wound up or relocated;
- the employee's redundancy being triggered by organisational or operational changes;
- the employee being unable to perform the work, given his/her health status (to be proved by submitting the respective medical certificate).

In the case of a termination notice for any of the above reasons, the employment will terminate on the lapse of the notice period and no severance payment will be made. However, according to the Amendment, before the notice period commences the employee has the right to request the employment to be terminated immediately (or on a mutually agreed date) by mutual agreement. The employer

has to accept this request and make a severance payment (or pay the respective part).

The amount of the severance payment is defined as a **multiple of the employee's average monthly earnings and the number of months of the notice period**. If the employment continues through part of the notice period, the amount of the severance payment shall be adjusted accordingly. If the employment is terminated due to the employee's poor health (unless caused by his/her breach of health and safety regulations), the severance payment will be ten average monthly earnings.

Notice period

In accordance with the Amendment, the following notice period applies:

Other criteria	Duration of employment	Applicable notice period
	less than 1 year	1 month
	over 1 year	2 months
- liquidation or relocation of the employer - redundancies - poor health	over 5 years	3 months

Group layoffs

The definition of group layoffs becomes more connected to the actual size of the employing entity. Under the Amendment, a group layoff can take place only in an employer with 20 or more employees and if the employment is within the time period of 30 days terminated by notice or otherwise for reasons not attributable to the employees¹, with:

- at least **10 employees** if the employer's **total number of employees is between 20 and 99**;
- at least **10% of the total work force** if the employer's **total number of employees is between 100 and 299**;
- at least **30 employees** if the employer's **total number of employees exceeds 300**.

Eliminating the employer's duty to consult the measures preventing a group layoff with the National Labour Office (in Slovak *Národný úrad práce*) (the **Office**) and the possibility to request the Office to shorten the statutory one month period between informing the Office of a group layoff and its actual implementation (serving the employees notices or entering into termination agreements) should result in faster and thus less costly group layoffs.

¹ Due to the employer or its part being wound up or relocated, due to the employee's redundancy triggered by the organisational or operational changes or other.

Collective employment relationships

The Amendment attempts to **balance** the unequal **position of the various employees' representatives**. From September, where a works council as well as trade union operates in the employer, joint decisions, consultation, information rights and inspection powers shall be vested with the works council, and the trade unions will be "left with" the right to collective bargaining and defined control and information rights.

New trade union(s), who wish to represent all employees, shall provide the employer, upon its request, with proof that trade union(s) represent(s) **at least 30% of employees**.

All the employment terms that can be further regulated in the collective agreement can be subject to an **agreement negotiated between the employer and the**

works council or the work trustee¹. Most radically, in several instances² collective agreements can now provide for a stricter regime for employees than the general standard defined by the Labour Code.

¹ Such agreement can be negotiated only if a trade union is not present in the employer.

² For example, extending the standard probation period by an additional three months, extending the amount of overtime work that can be prescribed by the employer to 250 hours per year, excluding the employer's duty to offer the employee another suitable position if employment is terminated by notice for reasons attributable to the employer, the length of time off if the employee is suspected of breaching work discipline.

Key contacts

If you require advice on any of the matters raised in this document, please call Martin Magál or Katarína Matulníková or your usual contact at Allen & Overy.

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