

## AMENDMENT TO THE SLOVAK LABOUR CODE EFFECTIVE ON 1 SEPTEMBER 2011

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On 13 July 2011 members of the Slovak Parliament adopted a broad amendment to the Labour Code which affects approximately one third of the Code's provisions. The amendment favours employers by implementing flexible working relations to enable the easier creation of new jobs. On the other hand, the amendment strengthens the protection of pregnant women and parents, in the interests of combining an employee's work and family life. The amendment was promulgated by the President on 27 July 2011, and **takes effect on 1 September 2011.**

In the following article, we provide an overview of the most important changes to the Labour Code, mainly to the probation and notice periods, the distribution of working time (including a completely new institute known as the working time account), prohibition of competition clauses valid after the employment's termination, and collective working relationships. This is not, however, a complete review of all adopted changes, but only of selected amendments that have most significance from the point of view of their importance and impact on working relationships.

### 1. PROBATION PERIOD

The probation period for standard employees stays at three months. The amendment only affects **managing employees** for whom **the probation period can be agreed up to six months.** However, the amendment **enables an employer to agree with trade unions in a collective agreement on an extension of the probation period with both types of employees by three months.** In this case, the maximum probation period for standard employees would be six months and for managing employees nine months. As a practical consequence of this amendment, the period during which an employer or an employee may terminate a working relationship after the employee starts work, with or without grounds, by giving simple notice at least three days ahead, is extended (no notice period applies).

### 2. NOTICE PERIOD

Instead of a general notice period of two months in case of a dismissal by the employer, **a period of one to three months is implemented** according to the following rules. If the employee has worked for less than one year, the notice period is **one month**; if the employee has worked more than one year then the notice period is **two months.** A notice period of **three months** applies only if the employer terminates the employment on economic grounds (such as if the employer is wound up or if there are organisational changes), or if there is a long-term loss of an employee's abilities to do their work on health grounds, both under the condition that the employee who was dismissed has worked for the employer for at least five years.

If dismissal is for economic reasons or follows the long-term loss of the employee's abilities to do their work on health grounds, **the employee's right to compensation is extinguished if they stay at work during the notice period.** A new possibility has been implemented which allows an employee to take part of their notice period and part of their compensation.

### 3. SALARY COMPENSATION WHEN TERMINATING EMPLOYMENT UNLAWFULLY

Under current legislation, if an employer has to provide salary compensation to an employee following a void termination of employment, and the whole time for which the compensation is due exceeds 12 months, the court moderation right applies which means that the court can lower or refuse to grant compensation beyond these 12 months at the employer's request. This option has been repealed by the amendment. Under the amendment, **if the whole time for which an employee is entitled to compensation exceeds nine months, they will receive fixed compensation for nine months.**

### 4. COMPETITION CLAUSE

The amendment implements the express possibility for an employer to agree on a competition clause in an employment contract (which has been questionable up to now), on the basis of which **the employee will not be allowed to do competitive activities for a maximum of one year after the termination of their employment.** The clause is conditional on whether during the employment the employee had the possibility to acquire information and knowledge which are not normally accessible and whose use could cause the employer substantial damage.

The counter-balance of this competitive restriction is the employer's duty to pay an ex-employee **financial compensation of at least 50 percent of the employee's original salary** for the period of the restriction. The amendment allows **a fine to be imposed which will be paid by the employee to the employer if the competition clause is breached.** The fine must not exceed the agreed financial compensation for fulfilling the competition clause.

### 5. OVERTIME AND NIGHT WORK

Compared to the current legislation new flexibility is brought to overtime and night work. Standard employees will still have the maximum extent of overtime of 400 hours. **Managing employees will be able to work up to 150 more hours of overtime, that is, 550 hours,** if they agree to it.

For overtime the employer still has to pay the employee a bonus or give them a substitute day-off. However, the period during which the employer must provide the **day-off** has been extended, if no agreement can be reached with the employee, from three to **twelve months after the overtime was worked.** The employer's option to agree with managing employees and employees performing a special category of activities, such as systemic, creative, methodical or commercial, or supervising complicated processes or devices, that the salary will take into account overtime of maximum 150 hours per year, stays the same.

Under the new legislation on night work **employees will be able to work nights for more than two consecutive weeks** if the nature of the work or the operational conditions require so.

## **6. EMPLOYMENT AGREEMENT FOR A DEFINITE PERIOD**

The maximum period for which an employment agreement for a definite period can be agreed has been extended from two to three years. Such an employment agreement may now be entered into again or extended a maximum of three times in three years (currently it is two times in two years.)

## **7. JOB SHARE**

The implementation of job sharing represents a change in favour of employees who need flexibility to combine their work and family life. **Several employees** on short-term contracts will now be able to divide **between themselves** their working time and their work. An employer will only intervene if the employees cannot reach an agreement. But an employer will only be able to integrate an employee into a job share scheme upon a **written agreement with the employee.**

## **8. FLEXI-ACCOUNT**

The amendment repeals the restrictions on the use of a flexi-account until the end of 2012. Employers will consequently be able to use a flexi-account as a **permanent tool to momentarily solve serious operational problems**, such as a sudden decline in the amount of orders. Flexi-account legislation keeps its original character. If serious operational problems arise an employer can provide employees with days off; the employees will have to compensate these days off by working as soon as the problem is solved but any hours worked will not be classed as overtime. The amendment **limits the period during which an employee will have to perform such work in compensation for 12 months from the date of respective days off.**

**The amendment also changes the condition that flexi-account usage requires agreement between the employer and the trade union body. Negotiations with employee representatives**, such as trade unions, an employee council or an employee agent, will be sufficient.

## **9. WORKING TIME ACCOUNT**

The amendment implements a **completely new concept**, the so-called working time account. This is a special disproportionate distribution of working time that the employer will be able to use when demand for work increases or decreases. In the first case, an employer will be able to request that an employee work more hours than agreed (and which will not be counted as overtime). Conversely, if demand for work decreases, an employee may be required to work less, or not at all. A working time account requires **agreement with the employee representatives**, such as a trade union, an employee council, or an employee agent.

## **10. COLLECTIVE WORKING RELATIONSHIPS**

If both a trade union and an employee council operate at the same employer, the amendment **reduces the authority of the trade union in favour of the employee council**, which acquires co-decision and monitoring rights. **The creation of a trade union will be more difficult if it plans to represent all employees**, as the trade union will have to prove at its creation, at the employer's request, that it represents at least 30 percent of employees.

Regarding employment relationships which can be the subject of a collective agreement, the amendment implements for the first time the **possibility to agree on the working conditions and the conditions of employment differently, that is**, even less favourably than they are dealt with in the Labour Code or in other employment legislation. It can, however, be agreed **only in specific cases**, such as in a probation period (see above) and within the limits of employment law.

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