

Slovakia

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Legislation and agencies

1 What are the main statutes and regulations relating to employment?

Slovak employment law is codified in the Labour Code, Act No.311/2001. Other employment laws include, for example, Act No.125/2006 Coll. on Labour Inspection, the Act on Illegal Work and Illegal Employment and on amendment of certain Acts as amended by Act No.125/2006 Coll., Act No.5/2004 on Employment Services and on amendment of certain Acts (Employment Services Act), Act No.461/2003 on Social Insurance and Act No.2/1991 on Collective Bargaining.

2 Is there any legislation prohibiting discrimination or harassment in employment?

Act No.365/2004, Anti-discrimination Act, defines the forms of discrimination. This Act does not stipulate the rights of the employee and the minimum or maximum amount of indemnity for particular forms of discrimination. If discrimination (eg, harassment) occurs, the employee may claim the appropriate relief as the case may be. Cash settlement for immaterial harm shall not be affected by provisions of this Act.

Furthermore some of the provisions of Act No.5/2004 on Employment Services and on amendment of certain Acts (Employment Services Act) regulate discrimination. Contrary to section 62 of the Employment Services Act, an employer must not publish job advertisements which discriminate on the grounds of race, skin colour, gender, age, language, belief and religion, disability, political or other conviction, trade union activity, national or social origin, national or ethnic group affiliation, property, lineage, marital status and family status.

3 Is there any legislation protecting employee privacy or personnel data? If yes, what are an employer's obligations under the legislation?

A Slovak employee as a data subject has the statutory right to be informed about the personal data collected by his or her employer as a controller according to section 20 of Act No.428/2002, the Data Protection Act. An employee has the right to consult his or her personnel file and to take notes therefrom. Therefore, employees have access to their personnel file upon written request.

An employee as the data subject shall be entitled to request from the employer (controller):

- information about the state of processing of his or her personal data;
- exact information about the source from which the controller obtained the personal data;
- a copy of the personal data;

- rectification of inaccurate, incomplete or out of date information;
- destruction of the personal data, provided that the purpose of its processing was fulfilled; if any official documents containing personal data constitute the subject of the processing, the employee may request their return;
- destruction of personal data, if the law was breached.

4 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The primary government agencies or other entities responsible for the enforcement of employment statutes and regulations include:

- the National Labour Office;
- the Ministry of Labour, Social Affairs and Family;
- the Centre of Labour, Social Affairs and Family;
- the National Labor Inspectorate and its local branches;
- the courts.

Worker representation

5 Is there any legislation mandating the establishment of a works council or workers committee in the workplace?

Participation of employees in labour-law relations and its forms is regulated by the Slovak Labour Code in Part Ten, Collective Labour Law Relations. Employees shall participate in the decision-making of the employer concerning their economic and social interests, either directly or by means of a competent trade union body, a works council or the works trustee; employees' representatives shall cooperate closely.

Background information on applicants

6 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

During the application process, the employer must not request information relating to the applicant's nationality, race or ethnic origin, political conviction, trade union membership, religion, sexual orientation or any information which conflicts with good morals. Further, the employer must not request personal data which is not required to fulfil the employer's duties. The employer has to prove the necessity of requesting the data. The criteria used by the employer during the application process must guarantee equality of opportunities for all applicants. The above principles also apply if the employer hires a third party to conduct the checks.

- 7** Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

Generally, employees do not have to participate in a medical examination. An employment contract with an adolescent, however, may only be concluded upon medical examination of the applicant. Generally, an applicant has to inform the employer of circumstances inhibiting performance or which may otherwise prove detrimental to the employer.

- 8** Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

Section 12 of Act No.124/2006 on Occupational Health and Safety stipulates the employee's duties concerning occupational health and safety. An employee must:

- not consume alcohol, narcotic substances or psychotropic substances during working time;
- not work under the influence of alcohol, narcotic substances or psychotropic substances;
- undergo tests effected by the employer or the relevant state authority to find out whether an employee is under the influence of alcohol, narcotic substances or psychotropic substances. Unless the intended occupation requires such information (eg, drivers), the obligation to undergo tests does not apply to applicants. A potential employer may ask but an applicant may refuse to undergo the test. The employer may then refuse to employ such applicant.

Hiring of employees

- 9** Are there any legal requirements to give preference in hiring to particular people or groups of people?

Under section 158 of the Slovak Labour Code, an employer has to employ a certain number of disabled persons in suitable positions and provide them with training or education to attain the necessary qualification. Disabled persons must represent at least 3.2 per cent of the workforce where an employer employs at least 20 employees.

- 10** Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

According to section 42–44 of the Slovak Labour Code, an employment relationship must be established by a written employment contract. The employer must provide the employee with one written copy of the employment contract. The substantial terms of an employment contract include:

- the type of work and a brief description;
- the place of work;
- the commencement date;
- the salary, unless agreed by collective agreement.

In addition, the employer shall stipulate further working conditions, particularly concerning payment terms, working time, duration of paid holiday and the length of the notice period.

- 11** To what extent are fixed-term employment contracts permissible?

An employment relationship shall be agreed for an indefinite term if the employment duration is not expressly stated in the employment contract or if in the employment contract or in the amendment thereto, the legal conditions for the conclusion of a

fixed-term employment relationship are not met.

A fixed-term employment relationship may lawfully only be agreed for a maximum of three years. If, within six months after termination of such fixed-term employment relationship, a consecutive agreement is concluded, it is considered a prolongation of the first relationship and the overall duration must not exceed the legal maximum. Thereafter, it is admissible to conclude a new fixed-term employment contract.

- 12** What is the maximum probationary period permitted by law?

The maximum probationary period permitted by law is three months and may not be extended at the discretion of the employer. The probationary period shall only be prolonged if the employee was incapable of work due to disease or accident, periods of maternity leave and parental leave, etc. The probationary period must be agreed in writing, otherwise it shall be invalid.

Within the probation period, the employment relationship may be terminated by either party without cause. Usually, the notice of termination shall be delivered at least three days before the end of the probationary period.

- 13** To what extent are covenants not to compete valid and enforceable?

Covenants not to compete may only be validly agreed for the duration of the employment relationship. A non-competition clause, even mutually agreed by the contracting parties, for the period after the termination of an employment contract does not have any support in the Slovak Labour Code and shall therefore be null and void.

- 14** What are the primary factors that distinguish an independent contractor from an employee?

The primary factors that distinguish an independent contractor from an employee are health and social insurance matters. Contributions to individual insurance funds of an employee are made by his or her employer; an independent contractor is obliged to do this him or herself. The same applies to taxes.

Furthermore, the termination of an employment relationship is far more complicated than the termination of a service agreement. An employer may give notice to an employee only for the expressly stated reasons in the Slovak Labour Code.

Within some industries, particularly seasonally-dependent industries, it is more effective to hire independent contractors.

Foreign Workers

- 15** Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity to another-related entity?

Foreigners who intend to work in Slovakia need to apply for a temporary or permanent stay permit as well as a work permit. A foreigner does not need a work permit if he or she holds a permanent residence permit or if he or she is a partner of a commercial partnership or a member of the board of a commercial partnership, performing the activity on behalf of the commercial partnership in the territory of the Slovak Republic or if he or she is a member of a cooperative or a member of the board of a cooperative or of another body of a cooperative, performing the activity on behalf of that cooperative in the territory of the Slovak Republic.

16 Is spousal work authorisation available?

As outlined above, foreigners who intend to work in Slovakia need to apply for a temporary or permanent stay permit and a work permit. A temporary or permanent stay permit granted subject to family reunification does not automatically warrant the issue of a work permit.

17 What are the rules about having a work-authorized workforce and what are the sanctions if you do not?

An employer employing foreigners without work permits shall be subject to administrative fines up to SKK1,000,000. The Labour Inspectorate or other competent authorities shall impose such penalties on an employer for violation of obligations pursuant to the employment laws or for violation of obligations arising from collective agreements.

Terms of employment**18** Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

The regulation of working time, including overtime work and rest periods are defined in section 85 to section 117 of the Slovak Labour Code.

The maximum limits are generally 40 hours of work per week. There are, however, exceptions relating to the working time of employees working on shifts or in harmful working environments as well as to the working time of adolescent employees. If the overall working hours exceed the statutory maximum, the employer and its representatives may incur administrative fines for each violation.

19 What categories of workers are entitled to overtime pay and how is it calculated?

In addition to regular hourly compensation, all employees (blue-collar and white-collar employees) are entitled to an overtime premium which generally amounts to 25 per cent. Collective bargaining agreements often provide for a higher premium for overtime work and for work performed in certain periods (eg, nights and weekends).

Monetary overtime compensation can be substituted by compensatory time off, the terms of which must be agreed between the employer and employee.

Overtime work is sometimes compensated by 'all-in' clauses as part of an employment contract. In such cases it is agreed in advance that regardless of how many overtime hours accrue, the monthly wage shall cover it all. This is permissible as long as the overall overtime work does not exceed 150 hours per year.

20 Is there any legislation establishing the right to annual vacation and holidays?

Mandatory provisions of the Slovak Labour Code provide that all employees (blue-collar and white-collar employees) are entitled to annual leave, the minimum length of which is prescribed by law (section 100 to section 117 of the Slovak Labour Code).

Collective bargaining agreements also provide for additional paid holiday days on particular occasions. Additional paid holiday is generally provided to the employees of state institutions.

An employee who, during the continuous duration of an employment relationship with the same employer, performs work for the employer for at least 60 days in the calendar year

shall be entitled to annual paid holiday or a proportionate part thereof. A day shall be considered a whole working day if the employee worked the major part of his or her shift; parts of the shifts worked over various days shall not be added up for the purposes of annual leave entitlement (section 101 of the Slovak Labour Code).

The proportionate part of paid holiday for each calendar month of continuous duration of the same employment relationship shall be one-twelfth of annual paid holiday (section 102 of the Slovak Labour Code).

Paid holiday shall amount to at least four weeks annually (section 103 of the Slovak Labour Code).

21 Is there any legislation establishing the right to sick leave or sick pay?

In the case of illness or injury, employees are entitled to receive sick pay from their employers for the first 10 days of illness or injury. Thereafter, up to a certain period, the employee will be entitled to sick pay from the Health Insurance System, unless he or she rendered him or herself unable to work intentionally or through gross negligence. The maximum period of compensation in the case of illness or injury is 52 weeks.

22 In what circumstances may an employee have the right to take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

In addition to paid annual leave or paid sick leave, employees are generally entitled to paid leave if they have to fulfil official duties such as being a witness in a court hearing or if they need to schedule a doctor's appointment during working hours. The duration of such leave varies for each category and is regulated in detail by the Slovak Labour Code.

23 What employee benefits are mandated by law?

Paid holiday and the social and health insurance are the most important employee benefits mandated by law.

24 Are there any special rules relating to part-time or fixed-term employees?

An employer may agree with an employee in the employment contract on a reduced weekly working time of less than the regular weekly working time (which is 40 hours). An employment relationship with a reduced working time of less than 20 hours per week may be terminated by notice from either party for any reason or without statement of reason. The notice period shall be 15 days and shall start to expire on the day on which the notice was delivered.

A fixed-term employment relationship may only be extended or agreed anew for a fixed term of a total of three years in the case of, for example:

- replacement of an employee;
- performance of work for which a substantial increase in employees is required only for a transitional period not exceeding eight months in a calendar year;
- agreement in a collective bargaining agreement.

The reason for the extension or the subsequent agreement of another fixed-term employment relationship shall be stated in the employment contract.

A fixed-term employment relationship for a fixed term exceeding three years may also be prolonged or agreed anew in

the absence of reasons stipulated hereinabove with:

- executive employees;
- a creative employee in science, research, development;
- an employee for performance of work for which art education is prescribed;
- an employee performing a nursing care service pursuant to a special regulation;
- an employee who receives an old-age pension based on years of service or an invalidity pension based on years of service;
- an employee of an employer employing a maximum of 20 employees;
- an employee as stipulated by law or by international treaty;
- a university teacher.

Liability of acts of employees

25 In which circumstances may an employer be held legally liable for the acts or conduct of its employees?

Pursuant to section 420a of the Slovak Civil Code, any natural and legal entity is liable for the damages caused by its operation (meaning any organised activity of various kinds usually connected with conducting the business). So, if an employee causes damage to a third party, the employer is held legally liable for such acts.

An employee shall be accountable to the employer for damages which he or she caused the employer by deliberate breach of obligations of performance of work duties or in direct relation to them. The employer shall be obliged to prove the fault of the employee. The compensation for damages asked by the employer caused by negligence of an employee may not exceed an amount equal to three times his or her average monthly salary.

Taxation of employees

26 What employment-related taxes are mandated by law?

Personal income is subject to 19 per cent income tax.

Payments to the Social Insurance Company may be presented as follows:

[Please see figure one at end of chapter]

The following payments have to be rendered for health insurance:

[Please see figure two at end of chapter]

Employee created IP

27 Is there any legislation addressing the parties' rights with respect to employee inventions?

As provided by section 11 of the Patent Act, an invention is owned by the employer if the action which led to the invention is part of the duties of the employee, unless otherwise agreed. The right of the employee being named as inventor shall remain unaffected.

Termination of employment

28 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

According to the Slovak Labour Code, an employer may give notice to an employee only for the following reasons:

- if the business of the employer or part thereof, is given up (eg, termination of some activities of the employer, eg, an employer is selling and renting cars and decides to stop the activities of the rental division) or relocated;
- if an employee becomes redundant by virtue of the employer or competent body issuing a written resolution on changes in duties, technical equipment, reduction in the number of employees with the aim of increasing work efficiency or other organisational changes;
- if, according to an official medical opinion, an employee has lost his or her long-term capacity to perform the work performed hitherto;
- if an employee does not meet the conditions set by legal regulations for the performance of the agreed work;
- if an employee does not fulfil the requirements for the performance of the agreed work or does not satisfactorily fulfil the work tasks and the employer has in the preceding six months challenged him or her in writing to rectify the insufficiencies and the employee failed to do so within a reasonable period of time;
- an employer, due to the breach of conduct or for reasons justifying the immediate termination of the employment relationship, may only give notice to an employee within a period of two months from the day the employer became acquainted with the reason justifying notice and if the breach of conduct occurred abroad, within two months of the employee's return from abroad. Notice must be given within one year from the day the reason justifying the termination occurred;
- if the employer intends to give notice to an employee on the ground of breach of conduct, the employer must inform the employee of the reason and give him or the opportunity to comment on it.

29 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Where notice has been given, the employment relationship shall terminate upon expiration of the notice period. The notice period shall be identical for both employer and employee, this being at least two months. If notice is given to an employee who has worked for the employer for at least five years, the notice period shall be at least three months. A notice period shall commence on the first day of the calendar month following the delivery of notice and shall terminate upon expiry of the final day of the respective calendar month, unless stipulated otherwise.

30 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

An employer may terminate an employment relationship with immediate effect and without payment in lieu of notice if the employee:

- was lawfully sentenced for committing a wilful offence;
- was in serious breach of conduct.

31 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

According to section 76 of the Slovak Labour Code, an employee is entitled to a severance allowance upon termination of employment in the minimum amount of two average monthly earnings if he or she agrees to the termination of the employment relationship before the beginning of the expiry of the notice period. An employee who has worked for the employer for at least five years shall be entitled to a severance allowance in the amount of at least three times his or her average monthly earnings for the notice period. If an employee requests the termination of the employment relationship, the employer shall be obliged to grant this request.

32 Are there any procedural requirements for dismissing an employee?

An employer may only give notice to an employee with disability subject to the prior consent of the National Labour Office, otherwise such notice shall be deemed invalid.

33 In what circumstances are employees protected from dismissal?

There are certain prohibitions of notice stated in section 64 of the Slovak Labor Code. An employer may not give notice to an employee within a protected period, ie:

- within a period, the employee is acknowledged temporarily incapable of work due to disease or accident, unless deliberately induced or caused under the influence of alcohol, narcotic substances or psychotropic substances and within the period from submission of an application for institutional care or from entry into spa treatment up to the day of termination thereof;
- in cases of drafting for service in the armed forces, from the day when the employee was drafted for performance of national service by delivery of conscription notice or was drafted for performance of special service by mobilisation order or mobilisation notice or draft order, until the lapse of two weeks upon his or her release from such service; this shall

Update and trends

There is intense discussion on various levels between government, trade unions and employers' representatives about reforming provisions of the Slovak Labour Code to strengthen the status of employees but until now no new scheme has been agreed.

- equally apply in cases of civilian service;
- within the period of an employee's pregnancy, or when an employee is on maternity leave or a female or a male employee is on parental leave;
- within the period, an employee is fully released for execution of a public function;
- within the period, an employee working at night is acknowledged by medical opinion to be temporarily incapable to perform night work.

34 Are there special rules for mass terminations or collective dismissals?

If an employer terminates the employment of at least 20 employees within a period of 90 days, this shall be a collective redundancy.

With a view to reaching an agreement, the employer shall be obliged, at least one month prior to the commencement of collective redundancies, to negotiate with the employees' representatives measures to avoid or reduce collective redundancies of employees mainly by negotiating the possibility of placing them in other appropriate workplaces of the employer and to discuss measures for mitigating the adverse consequences of collective redundancies of employees. To this end, the employer shall be obliged to provide the employees' representatives with all necessary information and to inform them in writing, in particular as to:

- the reasons for the collective redundancies;
- the number and structure of workforce to be subject to ter-

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- mination of employment;
- the overall number and structure of workforce employed by the employer;
- the period over which collective redundancies shall be effected;
- the criteria for the selection of employees to be subject to termination of employment.

A copy of such written information shall be submitted to the National Labour Office. Subsequent to negotiations on collective redundancies with the employees' representatives, the employer shall be obliged to submit written information on the outcome of these negotiations to:

- the National Labour Office;
- the employees' representatives.

Dispute resolution

35 May the parties agree to private arbitration of employment disputes?

Pursuant to section 14 of the Slovak Labour Code, disputes between an employee and employer about claims deriving from labour-law relations shall be exclusively heard and decided by the courts.

36 May an employee agree to waive statutory and contractual rights to potential employment claims?

Pursuant to section 574 para 2 of the Slovak Civil Code, any agreement in which an individual waives his or her future rights is null and void.

37 What are the limitation periods for bringing employment claims?

Claims resulting from employment matters shall be brought within a general limitation period of three years.

FIGURE ONE

Payment rate (as % of relevant incomes)	Employee	Employer (for its employee)	Self employed person	Voluntary employed person	State (for parents not working but taking care of children)	Social insurance company (for invalids and persons obtaining injury rent)
Retirement insurance	4 %	14 %	18 %	18 %	18 %	18 %
Insurance for invalidity	3 %	3 %	6 %	6 %	6 %	–
Injury insurance	–	0.8 %	–	–	–	–
Unemployment insurance	1 %	1 %	–	2 %	–	–
Guarantee insurance (employers' insolvency)	–	0.25 %	–	–	–	–
Solidarity fund	–	4.75 %	4.75 %	4.75 %	2 %	–
Sick benefit insurance	1.4 %	1.4 %	4.4 %	4.4 %	–	–

FIGURE TWO

Payment rate (as % of relevant incomes)	Employee	Employer (for its employee)
Health insurance	4 %	10 %