

## Amendment to the Employment Services Act

### Effectiveness

Amendment to the Employment Services Act becomes effective on 1.5.2013.

### Recruitment

The agency may require the fee for recruitment only from legal or natural person, for those it mediates the employee. Agencies are no longer able to collect fees from job-seekers, even if it will be recruitment for abroad.

The agency which mediates employment for reward shall conclude with candidate an agreement in writing about employment mediation for a reward. Before effectiveness of an amendment only those agencies were obliged to do so who mediated recruitment for abroad. Pursuant to the new legislation this obligation shall also apply to recruiting performed in Slovakia.

### Presumption of temporary assignment

Compared to current law, the definition of temporary assignment has been extended by a rebuttable legal presumption also on activity of employees of agency, which the agency will perform by its own employees otherwise than through temporary assignment while meeting following 3 conditions:

- if other legal or natural person sets tasks to the agency's employees, manages and controls his/her work and gives him/her instructions to that effect,
- if this activity is performed mainly at the premises of other legal or natural person and with his/her work equipment or on his/her facilities and
- legal or natural person has this activity registered as his/her business activity in the relevant register.

According to the explanatory report to the Amendment the purpose of extension of the definition of temporary assignment is to prevent avoiding the institute of temporary assignment of the employees through provision of services and from "characters and signs of conduct of the parties is evident, that provided service is provision of the employees to work." The purpose of such proceedings is avoidance of obligations about keeping same working and wage conditions as have the employees of user employer as well as taking advantage of an option to perform work by employees employed through agreements performed outside employment relationship.

**Limitation for extension of temporary assignment**

If the user employer repeatedly concluded with the agency or agencies temporary assignment of the same employee more than five times within 24 months, the employment relationship between employee and agency shall terminate and the new employment relationship between the employee and the user employer shall be created for an indefinite period of time.

Repeatedly concluded temporary assignment shall be considered the assignment before expiration of 6 month after termination of previous temporary assignment of the same employee.

From the perspective of the agencies there are several options how to avoid the application of the objective provision on their performance of temporary assignment. In particular they may agree on temporary assignment for a longer period (not necessary over 24 months) knowing that pursuant to the provision of Section 58a par. 2 letter g) of the Labour Code they may negotiate very flexible forms of termination of temporary assignment or negotiate the duration of temporary assignment by a legal occurrence which is linked to the duration of the order by an user employer and thus reduce the need of repeated conclusion of amendments to the agreement on temporary assignment of the employee prolonging the term of temporary assignment.

**Conditions for performing activity of the agency of temporary assignment**

It is required that natural person who is interested in performing activity of the agency has completed master degree. By legal person this requirement shall be met by the person who acts on behalf of the agency.

**Attachments to the application for a license to perform activity of the agency**

The application for a license to perform activity of the agency shall contain also following attachments:

- financial statement for the previous calendar year to demonstrate possession of the equity in the amount of at least 30.000,- EUR for legal person and bank guarantee in the amount of at least 15.000,- EUR for natural person,
- confirmation from tax and customs office, no older than 3 months, of no undercharge,
- confirmation from all health insurance companies and Social insurance company, no older than 3 months, that the applicant has no registered claims on advance payments for compulsory health insurance, advance payments for social insurance and mandatory contributions to the pension funds,
- confirmation from Labour Inspectorate, no older than 3 months, that the applicant did not infringe the prohibition of illegal employment in the past three years and
- evidence that the applicant has no registered unsatisfactory demands of its employees arising from employment relationship.

**The financial statements of the agency**

Together with a report on its activities for the previous year, the agency shall submit to the Central Office of Labour, Social Affairs and Family until 31. March of the

**Cancellation of the license to perform activity of the agency**

following calendar year also the financial statements for the previous year which declares possession of equity in the amount of at least 30.000,- EUR.

The Central Office of Labour, Social Affairs and Family acquires a completely new competence, and this the power to revoke *ex officio* the license to perform activity of the agency if the agency

- did not assign temporary employees within a period of one year,
- failed to submit the Central Office report on its activities and the financial statements or stated false information in the report on its activities,
- infringed the prohibition of illegal employment.

In the event of finding out an infringement of the above mentioned obligations, the Central Office of Labour, Social Affairs and Family will be always obliged to revoke the license and it may not be able to proceed to a more moderate forms of punishment.

Motion for suspension or revocation of the license to perform the activity of the agency may submit also the Social insurance company, if it has found a nonpayment of compulsory contributions to the social insurance or contributions to the pension funds and also worker's representative, when during the inspection activity violation of labor laws has been detected.