

Amendment to Slovenia's Employment Relationships Act

17 November 2023

On 7 November 2023, the National Assembly of the Republic of Slovenia adopted an amendment to the Employment Relationships Act ("**ERA-1D**") that entered into force on 16 November 2023. The ERA-1D transposes Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union and the Directive (EU) 2019/1158 on work-life balance for parents and carers to Slovenian legislation. In addition, the ERA-1D also introduces other changes, some of which are outlined below.

1 Work-life balance measures

1.1 Carers' leave

The ERA-1D introduces the institution of carers' leave for employees providing care or support to a family member, or to a person who lives in the same household, for medical reasons that do not entitle the employee to use care leave under health insurance rules. This is a form of unpaid absence from work of up to five working days per calendar year. The employee will have to prove to the employer that he or she is entitled to this type of absence by submitting a statement explaining the reasons for the absence, along with the details of the person who is in need of significant care and the relevant supporting documents (medical certificate, certificate from social services, etc.).

1.2 Right to disconnect

The ERA-1D stipulates the employer's obligation to ensure employees' right to disconnect, so that they are not at the employer's disposal during periods of rest or justified absence from work. In this respect, under the ERA-1D, employers are obligated to implement measures by way of amending the collective bargaining agreements or internal acts that are necessary to provide for the right to disconnect, within one year of the entry into force of ERA-1D (i.e. by 16 November 2024). Furthermore, ERA-1D establishes a presumption that, in the event of a dispute where the employee claims that the employer has violated his or her right to disconnect, the burden of proof is on the employer.

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1.3 The right to part-time work for parents and carers

An employee caring for a child under the age of eight will now be able to propose to the employer that they work part-time based on an employment contract for a fixed period, during which the employee's existing employment contract will stay dormant. The same option will be available to carers. The employer will have to respond to such a proposal from the employee and justify their decision within 15 days. An employee who enters into a part-time employment contract on this basis will enjoy the same social security rights as if they worked full-time.

2 Measures for transparent and predictable working conditions

2.1 Predictable and improved working conditions

Employment contracts concluded after the entry into force of ERA-1D will have to include, as mandatory elements, provisions on payment of allowances and provisions on training provided by the employer. The time spent on education and training that are required for the work process is regarded as working time.

An employee who has been employed by the employer for at least six months and whose probationary period has expired, may propose to the employer to change his/her employment contract. Such a change could be in the form of a transition from a fixed-term contract to a contract for an unlimited period or from a part-time to a full-time contract, in order to improve the working conditions. The employer will have to respond to such a proposal and justify their decision in writing within 30 days.

2.2 Higher compensation for agency workers

Agency workers who are temporarily laid off will now receive a higher salary compensation of 80 % of their salaries (instead of the previous 70 % of the minimum wage in the Republic of Slovenia).

2.3 Higher level of protection and security for employees posted to a user

An employer must inform an employee who has been posted to work for a user undertaking, in writing, regarding the user, the working conditions and the employee's obligations and rights during their work for the user, including details related to the remuneration for the work in question.

3 Measures for additional protection of employees

3.1 Employee's defence in the event of a warning before dismissal for culpability

If a warning is given to an employee, the employer will now be required, at the employee's written request, which may be made within three working days of receipt of the written warning, to give the employee the opportunity to make a statement regarding the alleged violations within a reasonable period of no less than three working days and no more than 30 days. The employer will have to give the employee their decision, in writing, on the written warning within eight days following the defence meeting.

The ERA-1D shortens the period during which an employee must not repeat a violation of his or her obligations while employed, in order to avoid being dismissed for culpability, from one year to six months. The maximum period

allowed in collective bargaining agreements will change from two years to 18 months. In practice, it is often difficult to determine whether the reason for a violation is culpability or incompetence. The shorter reference period makes it more difficult for the employer to decide on this matter, while at the same time forcing them to monitor the employee even more closely.

3.2 Rights of employees' representatives

The ERA-1D provides that the suspension of the effect of termination, with respect to an employment contract with employees' representatives, may be extended until the dispute is resolved in a court of first instance, or within a maximum of six months. If the employer prevents said employee from working, the employee will be entitled to a higher compensation of 80 % (instead of the previous 50 %) of the employee's salary. These provisions apply 12 months after the entry into force of the ERA-1D.

3.3 Additional leave and part-time work for victims of violence

The ERA-1D introduces paid absence for employees who are victims of domestic violence so they may manage their personal affairs. Such employees are entitled to five days of paid leave per calendar year to arrange for protection, manage legal matters and other institutional procedures and to deal with the consequences of domestic violence. The employee will be required to provide the employer with a certificate from the social services with an assessment of the risk of domestic violence, proof of having reported the instance or instances of violence to the police and proof of making use of measures to ensure the employee's safety.

An employee who is a victim of violence may also propose to work part-time based on a fixed-term employment contract.

3.4 Longer period to carry over the unused leave

If the employee is absent due to illness, injury, maternity leave or childcare leave, the period for carrying over annual leave shall extend from 31 December of the following year, to 31 March of the year following the year to which the annual leave may be carried over. We recommend examining the case law of the EU Court of Justice in individual cases where the employee will not be able to exercise this right before the end of the extended carry-over period, for example due to long-term illness.

3.5 Expiry of notice in the event of absence due to illness or injury

The ERA-1D makes it clear that, if in the event of termination of an employment contract due to business reasons or incapacity, the employee is absent from work due to illness or injury at the end of the notice period, said period will expire on the last day of the employee's absence and the employee's return to work will no longer be relevant. The objective time limit for the expiry of the notice period remains as six months following the expiry of the notice period.

4 Additional obligations and fines for employers

4.1 Subsidiary liability in construction

In the construction sector, the ERA-1D introduces subsidiary liability of the contractor towards the employees of its direct subcontractor when the latter is unable to provide salaries to its employees.

4.2 New violations and fines for employers

Violations of the right to disconnect, of the obligation to enable the use of carers' leave and parental leave, of the obligation to enable a victim of violence to use additional leave and the obligation to respond to employees' proposals to amend their employment contract are punishable by a fine ranging between EUR 1,500 and EUR 4,000 for the employer and between EUR 450 and EUR 2,000 for the responsible person.

5 How can Wolf Theiss assist you?

Wolf Theiss offers integrated and tailor-made solutions for business compliance with ERA-1D, as well as with other regulations, including:

- (i) Revision of the existing and/or drafting of new internal employer policies;
- (ii) Revision of the existing and/or drafting of new employment contracts;
- (iii) Legal advice by an experienced team of employment lawyers in the event of specific questions or legal representation of employers before inspection authorities or courts.

In addition to our team of employment law experts, **our strength is our extensive international experience and understanding of the organisational structure of corporations within the CEE and SEE region.**

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