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1. **What do the concepts "posting", "assignment", "hiring-out of workers" mean in Hungarian law?**

Contrary to other EU Member States, **there is no independent legislation** in Hungary **for the regulation of posting, assignment and/or the hiring-out of workers only.** The applicable rules are contained in Act XXII of 1992 on the Labour Code (LC).

Posting means that the employer oblige its employee to work temporarily at places other than the normal place of work for economic interests, on condition that the posted employee continues to work under the employer's directions and instructions during this period. (Section 105 of the LC).

Thus the elements of posting are the following:

- the employer's economic interests,
- work other place than the usual workplace,
- a temporary period,
- the employee continues to perform his job under the employer's directions and according to the instructions of the employer during this period.

Posting does not cover cases where the employee usually performs work out of the branch of the employer due to the nature of the work (e.g., payment collectors or newsmen).

Posting does not include cases where a person travels to another Member State on his own to work. Under the Community law, this case is not covered by the free movement of services but that of persons, which is why such cases are governed by the law of the country where the job is performed.

Assignment means that the employer orders the employee to perform work temporarily at another employer under an agreement between employers concerned. It is subject to the employee being assigned without compensation and the employee performing his work at an employer

a. the owner of which is the same person as the owner of the employer, whether in part or in whole, or
b. at least one of the two employers is owner of the other in a certain proportion, or
c. the two employers are connected through their an ownership with a third party entity.

Thus the elements of assignment are the following:

- job performed without compensation (for free) under an agreement,
- a definite period (temporary),
- a pre-defined employer.

Note. Should the employee be assigned for compensation, it does not qualify as assignment but as hiring-out of workers.

It is not considered to be a compensation when, under the agreement of two employers, the wage of the employee and dues and costs arising in connection with the assignment are paid by the employer to which the employee is assigned or when the payment or any other kind of

settlement between the employers is effected due to a service used for a reason other than assignment (Section 106 of the LC).

For example, if the owner entity uses its own means for payroll accounting activities for its subsidiary and, in turn, the subsidiary pays a fee to the owner.

Note. A common feature of posting and assignment is that the employee works at a place other than his usual workplace in both cases but while posting means that such work at a different place is still performed with the original employee, assignment means that the employee performs work for another employer and usually under its control.

In the case of assignment and unless agreed otherwise, the employment rights and obligations are due to and borne by the employer respectively to which the employee is assigned. However, the employment may only be terminated by the employer, who assigns the employee.

Hiring-out of workers means an activity whereby the temporary employment company hires out one of its employees to a user enterprise for work purposes against compensation. So this is a three-party employment arrangement consisting of a temporary employment company, a user enterprise (i.e. the client) and an employee. The employer entity, that is, the temporary employment company is established especially for the purposes of entering into employment with the employee and of hiring-out the employee for another company (client, user enterprise) under a civil law contract. There is no legal relationship between the user enterprise and the employee (Chapter XI of the LC).

The temporary employment company must be a limited liability company, non-profit company or a co-operative registered in Hungary, the latter for employees other than its members, which complies with all statutory requirements and is registered with the Labour Centre.

Thus the elements of hiring-out of workers are the following:

- hiring-out of an employee
- against compensation
- for the user enterprise for work purposes.

Note. Upon entering into employment, the **user enterprise** and the employee have to stipulate in the employment contract that the legal relationship has been established for hiring-out of workers. The contract may not be amended to that effect subsequently in the absence of such provision or if the parties have agreed otherwise. The period of hiring-out of workers is unlimited and may last from some days to several years. The range of jobs to be performed is not limited, either.

No employee may be hired out

- for a job prohibited by law,
- for a job at the user undertakings' workplace or premises where there is a strike, from the date of preliminary negotiations to the date on which the strike is finished or
- if the employee's employment with the user undertaking was terminated no later than six months earlier by ordinary notice for any reason associated with the employer's operation or by immediate termination during probation.

Note. The user undertaking may not sublease the employee for another employer under hiring-out of workers.

In the case of hiring-out of workers, **the employee works for other employer(s) for the whole duration of the employment**. Labour force is hired out *together with a temporary transfer of all management and control rights regarding the employee* deriving from the employment contract. In such cases, the client may instruct the employee directly. This entitles the user undertaking to intervene into any work phase and give new instructions to any employee. Therefore the law provides that the user enterprise must be considered as employer for the work period with regard to the rules on the employee's occupational safety, the employment of protected employee groups, work, the delegation and assumption of the scope of activities, working time, resting time, and the registering thereof, and the prohibition of negative discrimination (for more details see Chapter XI of the LC).

2. Employment conditions in Hungary of foreign persons under posting, assignment, and hiring-out of workers

According to the Community law, **no employee posted, assigned or hired out in Hungary is obliged to obtain a work permit, without regard to his nationality, in line with the principle of the free provision of services, except for** employees employed in certain sectors determined for **Austria and Germany** in the Accession Treaty.

Under Decree 8/1999 (10 November) of the Ministry of Social and Family Affairs on Work Permits Issued to Foreign Nationals in Hungary, **no work permit is required for the employment in Hungary of foreigners**, that is, non-Hungarian citizens, **who are employed by any foreign,** that is, non-Hungarian, **companies registered in a state which is party to the Agreement on the European Economic Area or to the Agreement on the Free Movement of Services concluded with the European Community and its Member States but which is not party to that on the European Economic Area (Switzerland)** if, within the framework of a provision of services, such person is sent by its employer

Megjegyzés: itt rossz a magyar, ez nem convention (tehát egyezmény), hanem agreement eredetiben

ra) to a Hungarian employer under an agreement with the employer to perform the work under the instructions and control of the employer (**posting**), or

rb) to a Hungarian employer, under an agreement with the employer,

1. the owner of which is the same person as the owner of the employer, either in part or in whole, or

2. at least one of the employers concerned is owner of the other in a certain proportion or

3. the two employers concerned are associated with each other under an ownership relationship with a third party entity (**assignment**), or

rc) **to a Hungarian employer as an enterprise engaged in hiring-out of workers** (7. (Section 7(1)r)).

Note. Such cases are fundamentally different from the situation where employees seek employment in another Member State individually at their discretion. In this case the Community legislation on the free movement of workers (together with its transitional restrictions) applies.

States party to the Agreement on the European Economic Area:

Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom

States party to the Agreement on the Free Movement of Services concluded with the European Community and its Member States but not party to that on the European Economic Area:

Swiss Confederation

Note. Exemption from a work permit will not apply to foreign employees of companies which are engaged in sectors as defined in Annex 7 to this Decree, registered in Germany and Austria, whose employment entitlement in Germany and Austria are governed by the national laws of these countries.

Sectors concerned: (Annex 7 to Decree 8/1999 (10 November) of the Ministry of Social and Family Affairss on Work Permits Issued to Foreign Nationals in Hungary)

In Germany:

Sector	NACE(*) code Rev. 1.1 (unless otherwise specified)
Construction including related branches	45.1 to 4; activities listed in the Annex to Directive 96/71/EC
Industrial cleaning	74.70 Industrial cleaning
Other Services	74.87 Only activities of interior decorators

In Austria:

Sector	NACE (*) code Rev. 1.1 (unless otherwise specified)
Horticultural service activities	01.41 Horticultural services only
Cutting, shaping, finishing of stone	26.7 finishing of stone only
Manufacture of metal structures and parts of structures elements	28.11
Construction, including related branches	45.1 to 4; activities listed in the Annex to Directive 96/71/EC
Security activities	74.60 Security activities only
Industrial cleaning	74.70
Home nursing	85.14 Home nursing only
Social work and activities without	85.32

accommodations	

In other words, **employees of enterprises registered in Germany and Austria are subject to a work permit, whatever their nationality, if they wish to work in Hungary in sectors as listed in the table.**

The employer must give a special notification of its intention to employ a *Czech, Estonian, Latvian, Lithuanian, Polish, Slovak, or Slovenian* employee or their relatives under posting, assignment or hiring-out of workers. (For more details, see Government Decree 93/2004 (27 April) on the Rules of Labour Market Reciprocity and Protective Measures to be Applied by Hungary Following the Accession to the European Union).

The notification form must be filed with the labour centre competent at the workplace on the first day of the employment at the latest and on the day following the termination at the latest.

The termination of fixed-term employment should be notified only if the employment is terminated prior to the contractually stipulated date.

The notification must state the employee's nationality and contain a copy of the certificate of his family relationship together with a certified Hungarian translation if the document is drafted in a foreign language (7. (Section 7(1)).

The establishment of employment or the commencement of such activity is not subject to the fulfilment of the notification obligation or its certification (7. (Section 7(4)).

The labour centre confirms the notification and keeps a register on notifications.

The employer is obliged to keep the confirmation for three years after termination of the employment and produce it for inspection (Section 7(3)).

With the introduction of the one-stop administration system, **employers must notify the competent first-instance state tax authority**, instead of the Single Labour Register Database, of the establishment and termination of employment and other data electronically or in a special form **with effect from 1 January 2007**.

3. Employment conditions in EEA Member States of Hungarian persons under posting, assignment, and hiring-out of workers

Posting: The employer may oblige the employee to work temporarily at a places other than the normal place of work, including abroad, for economic interests, on condition that the posted employee continues to work under the employer's directions and instructions during this period (Section 105 of the LC).
Thus the elements of posting are the following:

- the employer's economic interests,
- work outside the usual workplace,
- a temporary period,
- the employee continues to perform his job under the employer's directions and instructions during this period.

Posting does not cover cases where the employee performs work out of the branch of the employer due to the nature of the work. In the case of a changing workplace, the usual workplace is the employer's premises where the employee works according to his position.

Limitations for posting:

- A woman may not be obliged without her consent to work in another town from the date when her pregnancy is diagnosed until her child becomes three years old.
- A man bringing up his child alone may not be obliged without his consent to work in another town until his child becomes three years old.
- Posting may not result in a disproportionate harm for the employee, especially with regard to his position, skills, age, health condition or other circumstances.
- Posting may not exceed 44 working days by calendar year, unless specified otherwise in a collective agreement.

If the duration of the posting exceeds 4 hours within one working day, it should be taken into account as one working day.

Note. If the employer exercised its right for posting several times in a calendar year, the duration of these should be aggregated. Such periods should be aggregated with transfer and assignment cases in the same calendar year and with work with another employer under an agreement concluded between the employers against no compensation since the combined duration of these may not exceed 110 working days. A collective agreement may deviate from this rule. A collective agreement may establish a level beyond or above the statutory level. Thus the 110 working days provision of the LC applies only if this level is not defined in the collective agreement.

The employee should be informed about the prospective duration of the posting.

For posting, the employee **is entitled to a wage as defined in his employment contract** unless agreed otherwise by the parties or provided otherwise by this law. Should the employee perform tasks not included in his job description, either in part or in whole, during the posting, the employee is entitled to his remuneration in line with the actually performed work for the whole duration of the posting but it may not be less than the employee's average wage.

Should the employee perform tasks belonging to other jobs for a determinable part of his working time besides his job tasks, the employee is entitled to remuneration in proportion of the tasks actually performed.

Should the employee perform tasks besides his own which belong to other jobs in a way that the respective durations of the tasks belonging to two jobs may not be separated; the employee is entitled to extra remuneration (substitution fee) besides his usual wage. The amount of the substitution fee should be calculated on the basis of the remuneration relevant for the work performed under posting.

For posting, the employer is obliged to pay the necessary and reasonable extra costs arising during the employee's posting, apart from the statutory **reimbursement of costs.**

The range of costs to be taken into account with regard to foreign posting and foreign service is determined by Act CXVII of 1995 on the Personal Income Tax.

The reimbursement of costs associated with foreign posting is governed by Gov. Decree 168/1995 (27 December) on Recognised Costs Associated with Foreign Posting.

Assignment means that the employer orders the employee to perform work also at another employer abroad under an agreement between employers. It is subject to the employee being assigned without compensation and the employee performing his work with an employer

a. the owner of which is the same person as the owner of the employer, whether in part or in whole, or
b. at least one employer is owner of the other in a certain proportion or
c. the two employers are associated with each other under an ownership relationship with a third party entity.

Thus the elements of assignment are the following:

- a job performed without compensation (for free) under an agreement,
- a definite time (temporary),
- the two employers are associated with each other under an ownership relationship.

The employment rights and obligations are due to and borne, respectively, by the employer to which the employee is assigned. However, the employment may only be terminated by the employer who assigned the employee.

It is not considered to be a compensation when, under the agreement of two employers, the employee's wage, dues and costs arising from the assignment are paid by the employer to which the employee is assigned or when the payment or any other kind of settlement between the employers is effected due to a service used for a reason other than assignment (Section 106 of the LC).

Limitations for assignment:

- A woman may not be obliged without her consent to work in another town from the date when her pregnancy is diagnosed until her child becomes three years old.
- A man bringing up his child alone may not be obliged without his consent to work in another town until his child becomes three years old.
- Assignment may not result in a disproportionate harm for the employee, especially with regard to his position, skills, age, health condition or other circumstances.
- Assignment may not exceed 44 working days in a calendar year, unless specified otherwise in a collective agreement.

The maximum duration of a assignment is 44 working days by calendar year, unless specified otherwise in a collective agreement.

If the duration of the assignment exceeds 4 hours within one working day, it should be taken into account as one working day.

Note. If the employer exercised its right for assignment several times in a calendar year, the duration of these should be aggregated. Such periods should be aggregated with transfer and posting cases in the same calendar year and with work with another employer under an agreement concluded between the employers against no compensation since the combined duration of these may not exceed 110 working days. A collective agreement may deviate from this rule. A collective agreement may establish a level beyond or above the statutory level.

Thus the 110 working days provision of the LC applies only if this level is not defined in the collective agreement.

For assignment, the employee's employment is subject to the provisions on working time and resting time and, when more favourable for the employee, on the remuneration of the work of the collective agreement applicable to the employer of the place of assignment.

The assigned employee's remuneration depends on the agreement between the employee and the employer. Unless agreed otherwise, the employee is **subject to remuneration in line with his employment contract.**

Note. The salary should be determined subject to the remuneration rules of the collective agreement which is applicable to the employer at the place of assignment but only when it is more favourable for the employee.

Should the employee perform tasks not included in his job description, either in part or in whole, during the assignment, the employee is entitled to his remuneration in line with the actually performed work for the whole assignment period but it may not be less than the employee's average wage.

Should the employee perform tasks belonging to other jobs for a determinable part of his working time besides his job tasks, the employee is entitled to the remuneration in proportion of the actually performed tasks.

Should the employee, besides fulfilling his job tasks, perform tasks belonging to other jobs in a way that the respective durations of performing tasks belonging to two jobs may not be separated; the employee is entitled to extra remuneration (substitution fee) besides his usual wage. The amount of the substitution fee should be calculated on the basis of the remuneration relevant for the work performed under assignment.

Hiring-out of workers means an activity whereby the temporary employment company hires out one of its employees for the user undertaking for work purposes against compensation. So this is a three-party employment arrangement consisting of a **temporary employment company**, a **user undertaking** (i.e. the client) and an employee. The employer entity, that is, the **temporary employment company** is established especially for the purposes of entering into employment with the employee and of hiring-out the employee for another company (client, user undertaking) under a civil law contract. There is no legal relationship between the user undertaking and the employee (Chapter XI of the LC).

The temporary employment company must be a **limited liability company, non-profit company or a co-operative registered in Hungary**, the latter for employees other than its members, which complies with all statutory requirements and is registered with the labour centre.

Thus the elements of hiring-out of workers are the following:

- lease of a hiring-out of workers employee
- against compensation
- for the user undertaking for work purposes.

Note. Upon entering into employment, the user undertaking and the employee have to stipulate in the employment contract that the legal relationship has been established for hiring-out of workers only. The contract may not be amended to that effect subsequently in the absence of such provision or if the parties have agreed otherwise. The period of the hiring-out of workers is unlimited and may last from some days to several years. The range of jobs to be performed is not limited, either.

No employee may be leased

- for a job prohibited by law,
- for a job at the user undertaking 's workplace or premises where there is a strike from the date of the preliminary negotiations to the date on which the strike is finished or
- if the employee's employment with the user undertaking was terminated no later than six months earlier by ordinary notice for any reason associated with the employer's operation or by immediate termination during probation.

Note. The user undertaking employer may not hire out the employee for another employer under hiring-out of workers.

In the case of hiring-out of workers, the employee works for other employer(s) for the whole employment period. Labour force is hired out *together with a temporary transfer of all management and control rights regarding the employee* deriving from the employment contract. In such cases, the client may instruct the employee directly. This entitles the user undertaking to intervene into any work phase and give new instructions to any employee. Therefore the law provides that the user undertaking must be considered as employer for the work period with regard to the rules on the employee's occupational safety, the employment of protected employee groups, work, the delegation and assumption of the scope of activities, working time, resting time, and the registering thereof, and the prohibition of negative discrimination (for more details see Chapter XI of the LC).

As a general rule, **the posting, assignment or hiring-out abroad of** a domestic employer's **employee is subject to the statutory provisions and collective agreements applicable at the place of work.**

Unless the following rules are in place in the target country, the Hungarian rules shall apply in this respect. These rules are the following:

- the amount of the maximum working time and the minimum resting time,
- the minimum level of paid annual leave,
- the minimum wage,
- hiring-out of workers conditions,
- conditions of occupational safety,
- recruitment and employment conditions for pregnant women and those caring for infants, as well as for young employees and
- the requirement of equal treatment.

Employers engaged in construction works, such as the building, repair, maintenance, reconstruction or demolishing of buildings, and in particular, digging, earth moving, actual construction works, the assembly and dismantling of prefabricated panels, mounting or installation, transformations, renovation, reconstruction, dismantling, demolishing, servicing, maintenance, decoration and cleaning, repairs are governed by the provisions of the collective

agreement covering the whole sector or subsector, with regard to the above conditions, when more favourable for the given entitlement.

Therefore these provisions do not apply when the posted, assigned or hired out employee is subject to more favourable rules with regard to the above conditions, under the law applicable to the employment or when the parties agree otherwise.

4. Conditions of hiring-out of workers activities

In Hungary, hiring-out of workers activities are subject to prior registration. The temporary employment company is registered by the labour centre of his seat since labour centres keep a special register of temporary employment companies with consecutive serial numbering.

The registration and conditions of hiring-out of workers activities are governed by Gov. Decree 118/2001 (30 June).

The temporary employment company is registered by the labour centre of its seat if

- it is entered into the companies register or, when the operation is subject to registration by another court or official register, into the required register and if its memorandum of association, articles of association, statutes provide for the hiring-out of workers activity,
- the temporary employment company or at least one of its employees has the required professional qualification and experience,
- it has an office suitable for pursuing the activity, and
- it documents the depositing of a financial security, that is, one million HUF.

If the temporary employment company pursues its activity on several premises, with regard to all of its premises,

- the temporary employment company
- or at least one of its employees should have the required professional qualification and experience, and
- it should have an office suitable for pursuing the activity.

The office is suitable if it is furnished in a way as indicated in the request, has a landline telephone, and the applicant is able to support the utilisation right of the office.

The application for registration should be submitted via a pre-determined form with attachment of the following documents:

- a company registry extract issued not earlier than three months or a valid court order on registration,
- the authenticated copy of a diploma certifying the determined qualification or a certificate of the period of experience in a special field as defined by the decree, thus in particular a certificate of operation issued by the employer,
- an original deposit contract concluded with the financial institution.

A financial security is a financial deposit bound and managed separately with a credit institution or a financial company (that is, a financial institution) by the **temporary employment company**.

As a financial security, only such deposit contracts qualify which provide for the following:

- the deposit was provided during the hiring-out of workers only,
- the deposit should be used to satisfy a claim for damages by the employee or the job-seeker,
- the financial institution shall pay compensation to the employee or the job-seeker from the deposit under a valid court decision establishing the obligation to pay damages of the **temporary employment company** or under an the parties' agreement on damages,
- should the deposit be terminated for any reason, the financial institution shall inform in writing the labour centre where the **temporary employment company** is registered and the **temporary employment company** about the amount and the date of payment within three working days of payment.

The **temporary employment company** should make up for the used financial security within thirty days of payment and file a corresponding certificate with the labour centre no later than the deadline set for recovery.

The temporary employment company may start its activity following the entry into force of the registration decision.

The temporary employment company should indicate the number of the registration decision in his business relationships, advertisements, and correspondence, and the registration decision should be displayed in its office at a well visible place.

The temporary employment company is obliged to notify the labour centre where it is registered of any changes and the termination of its activity within eight days.

5. The determination of the law applicable to employment in Hungary

The determination of the law to be applied is problematic to the employer and the employee only when a foreign element is involved in their relationship, that is, the employee is not a Hungarian citizen, the employer's main activity is not performed in Hungary, the employer is not registered in Hungary, etc.

It may be problematic to determine the applicable law in a case where an enterprise resident in another Member State (employer) posts its employee to work in Hungary under a cross-border service provision.

As to the law applicable to the parties, Sections 51 to 53 of Legislative Decree 13 of 1979 on International Private Law apply. Specifically, **the general rule is that parties are entitled to choose the law, that is, employment relationship should be governed by the law chosen by the parties at the conclusion of the employment contract or subsequently.** If the parties did not avail themselves of the option to choose the law, the applicable law is defined by the legislative decree, that is, in the absence of choosing the law, if the governing law is not specified the employment relationship shall be governed by the law of the country where:
a) the employee habitually carries out his/her work, even if temporarily employed in another country; or
b) the business establishment that employs the employee is located, if the employee does not habitually carry out his/her work in any one country,

unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract is to be governed by the law of that country.

Another important rules is that, **when the parties availed themselves of the option to choose the law, it may not result in a situation where the mandatory provisions of the law protecting the employee to be applied in the absence of choosing the law under the legislative decree are harmed.** In other words, the application of the guarantee provisions protecting the employees in the case of choosing the law may be disregarded only when the chosen law provides for more favourable rules with respect to the employee than those of the mandatory rules of the law to be applied without a choice.

E.g., Section 106/A(1), paragraphs a) to g) of the LC has mandatory rules protecting the employees. So when the parties availed themselves of the option to choose the law, e.g., they agreed on the application of the Moldavian law, it means that Hungarian law should apply to employment regarding the minimum annual paid leave if they had not agreed on the applicable law and if the Hungarian law was applicable and the chosen law, that is, the Moldavian one, provided for an annual paid leave for the employee with a shorter duration than that provided for in the Hungarian law.

6. Hungarian labour law provisions to be applied in any case where an employee of a foreign employer is employed in the territory of the Republic of Hungary

These are provided for by Section 106/A of the LC, which requires that in the case of an employee of a foreign employer working in the territory of the Republic of Hungary under an agreement with a third party under posting, assignment or hiring-out of workers, the rules of Hungarian labour law shall apply to the employee with regard to

- the amount of the maximum working time and the minimum resting time,
- the minimum level of paid annual leave,
- the minimum wage,
- hiring-out of workers conditions,
- conditions of occupational safety,
- recruitment and employment conditions for pregnant women and those caring for infants, as well as for young employees and
- the requirement of equal treatment.

Employers engaged in construction works, such as the building, repair, maintenance, reconstruction or demolishing of buildings, and in particular, digging, earth moving, actual construction works, the assembly and dismantling of prefabricated panels, mounting or installation, transformations, renovation, reconstruction, dismantling, demolishing, servicing, maintenance, decoration and cleaning, repairs are governed by the provisions of the collective agreement covering the whole sector or subsector, with regard to the above conditions as laid down by paragraphs a) to g), when more favourable for the given entitlement. /Collective agreements are covered in paragraph 5./

The above provisions do not apply only when the posted, assigned or hired-out employee is **subject to more favourable rules** with regard to the conditions as defined in paragraphs a) to g), under the law otherwise applicable to the employment relationship or when the parties agree otherwise.

For example:

1. If the law governing the employment in question (e.g., the German law in the case of employment in Germany) provides for a higher level of the minimum wage than that provided for in the Hungarian law, then it is not the Hungarian law but the one governing the employment (e.g., the German one) to be taken into account for a foreign employee posted, assigned or hired out in Hungary.

2. If the law governing the employment (e.g., the Bulgarian law in the case of the employment in Hungary of a Bulgarian employee) provides for a lower level of the minimum wage than that provided for in the Hungarian law, then it is the Hungarian law to be applied to the minimum wage, irrespective of the fact that the employment is otherwise governed by the law of another state (e.g., the Bulgarian law).

3. The employee may also be entitled to a minimum wage higher than that provided for in Hungarian law during his employment in Hungary under the agreement of the parties (e.g., English law) and not under the law governing the employment (e.g., the German law in the case of an employment in Germany). In other words, the employee is entitled to an amount defined in the agreement of the parties (English law) instead of the one defined by the law governing the employment (e.g., the German law) or that by the Hungarian law.

For the purposes of Section 106/A, the term *minimum wage* includes the personal basic salary, the compensation for extraordinary work and the remuneration for work performed abroad. The supplementary contribution to the pension fund and the part of the cost reimbursement paid with regard to work performed abroad, especially, travel, accommodation and catering costs, which are not subject to personal income tax should not be included into the minimum wage.

Provisions of Section 106/A mentioned above do not apply to the staff of an employer engaged in commercial shipping employed on a sea-going vessel (Section 106/B of the LC).

Provisions of Section 106/A do not apply to an employee engaged in the first assembly or installation of the product under the shipment contract regarding the minimum annual paid leave and the minimum wage if the duration of posting does not exceed eight days, except when activities as defined in Section 106/A(2), that is, the construction, repair, maintenance, reconstruction or demolishing of buildings are performed.

Hungarian employers should ensure that provisions of Sections 106/A and 106/B be applied to an employee posted to their sites by the foreign employer in line with Section 106/A.

7. Collective agreements

Collective agreements **may govern any employment matter** under the Hungarian law, **but they may only deviate from the statutory provisions,** i.e. Part III of the LC, **if their rules are more favourable for the employee.** So the provisions of collective agreements should be more favourable for the employee than those of the law.

A collective agreement may be concluded by an employer, an employer interest representation organization or several employers, on the one hand, and a trade union or several trade unions, on the other.

The Minister of Social Affairs and Labour may extend the collective agreement, whether in part or in its entirety, to the whole sector (subsector) if the contracting organisations are representative in the given sector (subsector). However, this is subject to the joint request of the parties and the opinions of the national employee and employer interest representation organizations affected by the extension of scope (Section 34 of the LC).

At present, four extended sectoral collective agreements are in force in Hungary:

- Collective Agreement of the Baking Industry
- Wage and Welfare Agreement of the Electricity Industry
- Collective Agreement of Catering and Tourism
- Collective Agreement of Construction Industry

Where the Hungarian law is applied to a given field, both the employer and the employee should know the provisions of the collective agreements and sectoral collective agreements apart from the Labour Code, other legislation and the employment contract to be fully aware of their respective rights and obligations.

8. Social security rules of posting

Social security rules on posting are governed by Regulation (EEC) No 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community and Regulation (EEC) No 574/72 of the Council fixing the procedure for implementing Regulation (EEC) No 1408/71. These regulations apply to the posting of Hungarian employees to EEA countries and Switzerland and to that of employees from EEA countries and Switzerland.

Megjegyzés: mindkettőnél az eredeti angol cím idézve (a 1408/71 magyar címét rosszul idézik)

The Regulation defines posting in the terms of social security. Thus posting is **regular employment in the territories of two or more Member States.**

Should the employer send its employee to the territory of another Member State for work purposes or should an individual entrepreneur be active in another Member State, the employee / individual entrepreneur **continues to be covered by the social security system according to the law of the sending State as if still working in the territory of this State,** despite the work performed in another Member State.

The **duration** of posting **may not exceed 12 months** and may be prolonged once for another 12 months. Posting is certified by the **E 101 form.**

The certificate of posting **(form E101) testifies for the authorities of the target country, i.e. Hungarian authorities that the employee concerned continues to be covered by the social security scheme of the State from which he was posted and that he is exempt from obligations to pay contributions in the target country.** Therefore posted employees should keep the E 101 form by themselves at all times.

If the posted employee fails to be in possession of the E 101 form, **the employee is considered to be covered by the Hungarian social security scheme**.

Employees from EEA Member States and Switzerland **should not be registered with the social security authorities by the employer.**

For more information, visit the website of the National Health Insurance Fund (www.oep.hu).

9. Labour inspection

Labour inspection tasks are performed by the Hungarian Labour Inspectorate (OMMF) in Hungary (see www.ommf.hu). A central public administration body, the OMMF performs its tasks within the statutory framework and applies measures against employers in breach of the law. Remits and powers of the OMMF are determined in Act LXXV of 1996 on Labour Inspection.

The OMMF shall check compliance with the statutory requirements regarding the following, in particular:

- the establishment of the employment,
- mandatory substantial elements of employment contracts,
- working and resting time,
- salary payment, assurance of the minimum wage level,
- special employment conditions (women, young employees, employees with changed working abilities),
- registration of employment,
- posting, assignment, hiring-out of workers, and
- the employment in Hungary of foreigners.

The OMMF performs inspection via the regional supervision authorities. Supervision authorities operate in a total of 7 regions.

The employee may submit a complaint, a request or another filing to the supervisory authorities. The complaint may be submitted in writing, orally or electronically, too. The supervisory authority shall examine the complaint and take measures to terminate the breach (for more details, see www.ommf.hu).

Regarding the elimination of breaches established during the inspection, the regional supervisory authority is responsible for taking measures via an administrative decision. Remedy may be sought with the OMMF centre against the decision of the supervisory authority.

The OMMF centre is also entitled to process complaints due to lack of action or deficient action of the supervisory authorities in the matter. Such complaints may be submitted by the employer and the complainant, too.

The OMMF has a wide range of measures to choose from:

- In minor cases, it warns the employee to follow the law.
- Should the breach persist at the time of the inspection, it will oblige the employer to terminate the breach by an administrative decision. The OMMF monitors implementation of the decision and if it establishes that the employer did not fulfil the obligation of the decision, it enforces it by official means (e.g., a procedural fine of up to one million HUF)
- For a serious breach, the OMMF applies a labour fine against the employer in breach. The amount of the labour fine ranges between 30 thousand HUF and 20 million HUF.

Factors affecting the amount of the fine:

- first or repeated breach,
- number of employees affected,
- type of statutory provision breached
- number of statutory provisions breached,
- duration of the breach, and
- influence on the employees (loss of salary, exclusion of the employee's option to enforce claims, etc.),
- the employee's efforts, if any, to eliminate the breach as soon as possible (e.g., payment of non-paid salaries and benefits to employees, even during the procedure).

- The OMMF may ban the further employment of employees employed in breach of the laws and risking their health,

for instance, the OMMF has a wide discretion to apply this facility for women and young employees, and all employees are covered by this opportunity for exceeding the amount of statutory working time or for not complying with the statutory minimum of the resting period. The employer is obliged to pay the employee a personal basic salary for the duration of the prohibition.

- It may oblige the employee to pay a determined amount to the Labour Market Fund for unauthorised employment of a foreigner. The level of the amount is adjusted to the paid salary (twice the salary) but for the first time it may not be less than eight times the actual minimum wage by foreign employee employed without a permit.

- It may qualify the relationship between the parties. Qualification powers apply

  - if the employer enters into a civil type legal relationship, in line with the contract, but it actually employs its employees realising the statutory elements of the employment relationship (by scheduling working time, obliging the employee to perform the job in person, paying the agreed amount as a salary, regardless of the result), or

  - if the entitlement of the employment is fundamentally different from the agreement concluded by the parties (e.g., the parties agree on posting or assignment but the employment is actually hiring-out of workers) or when the two companies conclude a civil type contract (e.g., a typically entrepreneurial contract, e.g., for lease-work) but perform hiring-out of workers in practice.

The OMMF may decide that the enterprise must fulfil all tax and social security obligations under the employment form (contract) as established in the decision.

- If the hiring-out of workers enterprise hires out employees without an employment contract, the OMMF finds that the employment is established between the user undertaking (actual employer) and the employee. The OMMF is entitled to ask for the supporting documents and contracts.

- It may prohibit the enterprise from the activity if the latter lacks the necessary authorisation and registration.

- For individual minor defaults, it may conduct a minor offence procedure. During the minor offence procedure, the OMMF imposes a fine on the person responsible, contrary to other payment obligations, the maximum limit of the fine being HUF 100,000.

The procedures of the OMMF are governed by Act LXXV of 1996 on Labour Inspections and Act CXL of 2004 on the General Rules of the Public Administration Authority Procedure and Services. In performing inspections, the supervisor is especially entitled to:

- enter to perform an inspection at all workplaces and resort to police contribution when prevented from it.
- inspect registers necessary for the inspection make Xerox copies and to seize these for eight days,
- make sound and image recordings with regard to the inspection,
- ask for information from persons at the workplace and establish their identities,
- use the employee's social security number.

The remit of the OMMF covers the verification of occupational safety, too. **The OMMF is entitled to check any work in the territory of Hungary, regardless of residence and nationality or the title by which the job is being performed in Hungary.**