

NEWSLETTER #1

SLOVENIA

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NOVELTIES IN SLOVENIAN LEGISLATION

In recent months, Slovenia adopted two new Acts, one concerning employee's rights and the second amending the current Collective Actions Act. The legislator focuses also on the use of Slovene language in public, aiming to update the current Act, extending the use of Slovene language into the digital environment. Below are outlined some of the main highlights and changes to all three Acts.

ACT AMENDING AND SUPPLEMENTING THE EMPLOYMENT

RELATIONSHIPS ACT (ZDR-1D)

On 07 November 2023, the National Assembly of the Republic of Slovenia adopted a new Act Amending and Supplementing the Employment Relationships Act (ZDR-1D) (Official Gazette of Republic of Slovenia, No. 114/2023). Amendments entered into force on 16 November 2023, while some provisions will begin to apply after the transitional period. It brings an upgrade of some provisions to the Slovenian legal system, in accordance with Directive (EU) 2019/1152 of the European Parliament and of the Council, of 20 June 2019, to establish transparent and predictable working conditions and Directive (EU) 2019/1158 of the European Parliament and of the Council, of 20 June 2019, to better reconcile professional and private life. The new Act also repeals the Council Directive 2010/18/EU.

The main purpose of the proposed changes is to improve working conditions, ensure flexibility in the labour market and improve workers' access to information about their working conditions, with stronger emphasis on parents, caregivers and their rights.

Employment contracts must now include **provisions regarding the additional payments and employer-provided training**. In both cases, employment contracts may refer to applicable Acts, collective agreements, or the employer's general acts concerning these matters.

An employee who cares for a child up to the age of eight years or provides care may propose the

conclusion of an employment contract for part-time during the employment relationship **to balance professional and personal** life. Employer will have to explain his decision regarding the proposal within 15 days in writing. If such a contract is concluded with an employee already employed for an indefinite duration, all the rights, obligations and responsibilities from the said contract are suspended during the part-time employment.

One of the main novelties of this amendment is **the right to disconnect**, as outlined in the new Article 142.a. Employers are obligated to provide employees with the right to disconnect, ensuring that the employee will not be available to the employer during the period of exercise of the right to rest or during justified absences from work. For this purpose, the employer must take appropriate measures within one year of the law's enactment.

The time frame for a repeated violation in connection with **written warnings by the employer to the employee before a regular termination of the employment contract** on fault-based grounds has changed. Before a regular termination of the employment contract on fault-based grounds, the employer must, within 60 days of identifying the violation and no later than six months from the occurrence of the violation, issue a written warning to the employee regarding the fulfillment of obligations and the possibility of termination if the employee violates contractual or other obligations arising from the employment relationship within six months (previously one year) after receiving the written warning, unless otherwise specified by a collective agreement at the industry level, but not exceeding 18 months (previously 2 years). Furthermore, the employee now has the right that the employer allows him/her to respond to the alleged violations within three to thirty working days from receiving the written warning, unless there are circumstances that make it unreasonable for the employer to expect the employee to do so. The decision regarding the written warning before a regular termination of the employment contract on fault-based grounds must be issued within eight days after the employee's statement on alleged violations, in written form, explained, and delivered to the employee.

Article 141.a introduces a **subsidiary liability**, within the construction industry. It stipulates that if employer, who is a subcontractor, fails to provide payment to the employee, the contractor whose direct subcontractor is the employer shall be subsidiarily liable for the fulfillment of this obligation.

Special protection is provided to employees who are victims of domestic violence. According to this Act, this is an employee, who has experienced one of the forms of domestic violence defined in the act that regulates domestic violence prevention within the last two years, has reported the violence to the police or social work center, and the proceedings related to violence and its consequences have not yet been completed, as evidenced by a certificate from the social work center assessing the risk due to domestic violence, courts and other institutions. Such an employee is entitled to five paid working days of absence from work in a calendar year for the purpose of arranging protection, legal and other proceedings, and addressing the consequences of domestic violence. Employees who are victims of domestic violence may be assigned work beyond regular working hours, have their working hours unevenly distributed, temporarily have their working hours changed, or be assigned night work, only with their prior written consent.

AMENDMENTS TO THE COLLECTIVE ACTIONS ACT (ZKoliT-A)

An amendment to the Collective Actions Act (ZKoliT-A) (Official Gazette of Republic of Slovenia, No. 133/2023) entered into force on 26 January 2024. The amendment fully implements Directive 2020/1828/EU on representative actions for the protection of the collective interests of consumers in the Slovenian legal order. The most important novelties introduced by the amendment to the ZKoliT-A are presented below.

1. Third-party funding

The amendment introduces a definition of third-party funding of collective actions, which means that the third party provides the claimant with funding for part or all of the costs of the proceedings in return for an agreed fee in the event of success with the claim, usually set as a percentage of the amount to be awarded by the court or as a percentage of the amount agreed in a settlement reached in the proceedings. The amendment allows a party to request, when submitting the source of the funding to the competent authority in the case of third-party funding of a collective action, that the part of the funding agreement containing business secrets be covered. It is expressly provided that it is not permissible for a third-party funder of a collective action to have a decisive influence on the procedural decisions of the claimant insofar as these are detrimental to the collective interests of the consumers who are the subject of the representative action concerned by the claimant's action. The conditions to be met for the admissibility of third-party funding are also expanded, specifically defining the "reasonable amount of the agreed fee". In relation to third-party funding, the remuneration of the lawyer is also newly defined, allowing the lawyer to agree to a remuneration higher than the lawyer's tariff or to receive as a fee a share of up to 15% of the amount to be awarded by the court, provided that such an agreement is reasonable (the criteria are laid down by the Act).

2. Procedural entitlement

The State Attorney's Office of the Republic of Slovenia is newly designated as the person entitled to bring a collective action or to request approval of a collective settlement, instead of the senior State Attorney. A collective action cannot be brought by the State Attorney's Office only in cases where the Republic of Slovenia is the opposing party to the action. In addition, it is newly stipulated that private legal persons, as the persons entitled to bring collective actions, must publish on their websites information on their sources of funding, their organisational and administrative structure, their membership structure, their founding purpose, and their activities.

3. Entitled persons for the collective protection of consumer interests

An important amendment is the extension of the persons entitled to bring collective actions. Thus, a person representing the interests of consumers in another EU Member State who is entered on the list of persons entitled to bring consumer collective actions in that Member State

is also an eligible person, provided that its founding purpose justifies, in a particular case, the bringing of a collective action or an application for the approval of a collective settlement. A new Chapter of the ZKotA regulates the persons entitled to bring consumer collective actions in another Member State, registration on and removal from the list, and the national contact point, whose tasks are carried out by the ministry responsible for consumer protection (the Ministry of Economy, Tourism and Sport). The amendment also provides that if, in the course of proceedings, the court finds that a person entitled to bring consumer collective actions in another Member State has been removed from the list of persons entitled to bring consumer collective actions in that Member State, it shall, on the application of a member of the group or of another person entitled, issue an order replacing the claimant with another person entitled to bring consumer collective actions, provided that the latter is willing to intervene in the proceedings.

The Act provides that if a collective action or a motion for approval of a collective settlement is brought by a private-law legal person, the court shall examine whether it is representative. The amended Act redefines the criterion by which the court determines the representativeness of an eligible person.

4. Limitation period

It is also newly provided that the limitation period for the protection of a claim arising out of the legal relations of persons based on the same cause of action as the subject matter of the injunctive collective action does not run during the pendency of the injunctive collective action.

5. Status of the proceedings

In addition, once the amendment enters into force, the claimant will have to ensure that information on the status of the collective action or the application for approval of a collective settlement and the outcome of the collective action or the collective settlement is published on the claimant's website.

DRAFTS AMENDMENTS TO THE PUBLIC USE OF THE SLOVENE LANGUAGE ACT

In November 2023 the Government has submitted a proposed amendment to the Public Use of the Slovene Language Act to Slovenian National Assembly, which its members determined appropriate for further consideration on 01 February 2024.

The proposed amendment establishes a new definition of the public use of Slovene, which could now also clearly refer to the use of Slovene in electronic communication and digital client devices used by users to access information society services. The first Act was adopted more than 20 years ago, when most of electronic devices and information society services were not yet available. So far, Slovenia has not had an effective way to ensure Slovene language to be present in the new technological environment. The support of the Slovene language depended solely on the decision of the manufacturer.

The proposed amendment provides an obligation under which information society service providers and online intermediary service providers established in the Republic of Slovenia would have to offer their content and services to users in the territory of the Republic of Slovenia in Slovene unless they conduct their business exclusively with users from foreign countries.

The proposed amendment provides that operating systems and graphical and voice user interfaces in electronic devices intended for access to information society services and media services sold in the territory of the Republic of Slovenia or offered to consumers in the territory of the Republic of Slovenia would have to be able to select the Slovene language and use the Slovene spelling in a way that the functionality of the device would be equivalent to the functionality of a device in other languages.

The proposed amendment of the Act will, if adopted, mainly apply to the global providers of electronic products and digital services, who sell their products or services in the territory of the Republic of Slovenia. Providers will, however, have a certain period of time to establish compliance with the obligation of offering content of products and services in the territory of the Republic of Slovenia in Slovene language.

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