

# **AGENCY EMPLOYMENT and Temporary Assignment according to Section 43a of Labour Code**



This document is the output of research task V06-S4 Legal regulation of agency employment in comparison with other EU states and assignment of employees according to Section 43a of Labour Code in the context of occupation safety and health addressed by the Occupational Safety Research Institute in the years 2019–2020 with the institutional support from the Ministry of Labour and Social Affairs.

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## Introduction

Job seekers in the Czech Republic, namely those for whom Czech is not the mother tongue, may be disadvantaged in finding information about the employment agency rules and rules on the temporary assignment of employees to perform work for another employer.

This information document is designed for EU citizens as well as for citizens of third countries who wish to find employment in the Czech



labour market and use the services of employment agencies to find jobs, or the employer temporarily assigns them to perform work for another employer. Job seekers or employees will find useful information about agency employment, who its users are and who are agency employees, and their mutual relationships. Further, it describes the types of contracts or agreements that are concluded between the entities, their terms and conditions. Last but not least, it provides information about comparable employment conditions,

ensuring occupational safety and health, occupational medical examination of employees, provision of personal protective equipment, industrial injuries and the basic difference between agency employment and temporary assignment.

## Basic information

Employment intermediation by employment agencies is stipulated in Sections 14 – 16, 58 – 66 of Act No. 435/2004 Coll., Employment Act. The conditions of agency employment as one of the forms of employment intermediation are stipulated namely in Section 307a and Sections 308 – 309 of Act No. 62/2006 Coll., Labour Code. The issues are also covered by Government Decree No. 64/2009 defining the types of employment which the employment agency cannot intermediate by way of temporary assignment for the performance of work for the user, as stipulated in Government Decree No. 374/2017.

## Employment agency

Employment agency is any legal entity or natural person that intermediates employment in forms stipulated in Section 14 (1) of Employment Act<sup>1</sup> on the basis of a relevant authorisation granted by the Labour Office of the Czech Republic - Directorate General (“Labour Office”). According to the above-mentioned provision the employment intermediation means:

- Finding a job for a natural person seeking a job and finding employees for an employer looking for new workforce.
- Employing natural persons for the purpose of carrying out their work for a user, understood as another legal entity or natural person that assigns and supervises the work (agency employment).
- Counselling and information activities in the field of job opportunities.



### **There is a register of agencies with a valid authorisation for employment intermediation**

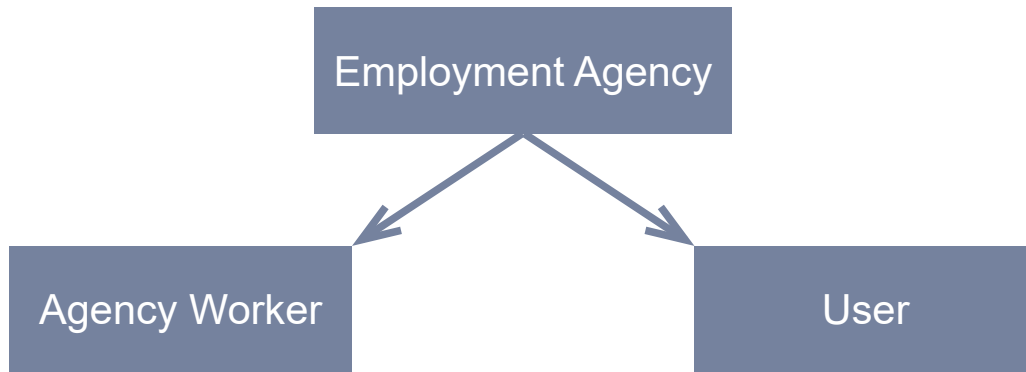
Primarily it is possible to check whether an entity is an employment agency in the relevant public register of employment agencies under the Labour Office ([www.uradprace.cz/web/en/employment-agencies](http://www.uradprace.cz/web/en/employment-agencies)).

### **Agency employment is a form of employment intermediation**

Agency employment (employing natural persons for the purpose of carrying out their work for a user, understood as another legal entity or natural person that assigns and supervises the work) is implemented by way of a specific “trilateral” relationship between the employment agency, user (legal entity or natural person that assigns and supervises the work) and the employee.

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<sup>1</sup> This is a transposition of Article 1 (1) of the International Labour Organisation Convention C 181 on Private Employment Agencies which the Czech Republic ratified in 2000



## **Relationship between employment agency and user**

As regards the relationship between the employment agency and the user, it is a hybrid relationship based on the Labour Code and the Civil Code. The basic document is the agreement on temporary assignment pursuant to Section 308 of Labour Code. According to this provision, the agreement must be concluded in writing and it must contain other conditions of temporary assignment to the user as specified below. The employment agency is obliged to maintain insurance of guarantees for the event of its bankruptcy based on which the assigned employee is entitled to remuneration in the event that the employment agency fails to pay its wages due to bankruptcy.

## **Agreement on temporary assignment**

The agency assigns its employee temporarily to perform work for the user based on an agreement on the temporary assignment concluded between the agency and the user. The agreement must be concluded in writing. The content of the agreement on temporary assignment is specified in Section 308 (1) of Labour Code:

- The name (or names), surname, if relevant also maiden surname, citizenship, the date and place of birth and a certain employee who is assigned to work for the user for a temporary period;
- the type of work to be carried out by such employee, including any specific professional qualifications required, or particular health condition necessary for the type of work;
- the determination of a period for which the employee will be assigned to work for the user;
- the place of performance of work;
- the date when the assigned employee will start to work for the user;



- information on the working conditions and remuneration (wage or salary) conditions of the user's employee who carries out or would carry out the same work ("comparable employee");
- the conditions under which the assigned employee or the user may terminate the temporary assignment before the expiry of the period for which the temporary assignment has been agreed;
- the number and date of the ruling by which the employment agency has been granted a licence to act as an employment intermediary.



The employment agency and the user are obliged to make sure that the agency employee is not temporarily assigned to work for a user with which the employee is in a labour relationship, or performed or performs work for the user on the basis of an assignment by another employment agency in the same calendar month.

## **Relationship between employment agency and agency employee**

The agency concludes a work contract or agreement with the natural person (usually for a limited period of time).

## **Temporary assignment on the basis of a written instruction**

The employment agency assigns employees to carry out temporary work for a certain user on the basis of a written instruction pursuant to Section 309 (2) of Labour Code that must contain in particular:

- the user's designation and seat;
- the place of performance of work;
- the duration of temporary assignment;
- the determination of the user's managerial employee authorized to assign work to the employee and supervise it;
- the conditions for unilateral termination of performance of work before expiry of the period of temporary assignment if agreed in the agreement on temporary assignment of the employment agency's employee;

- information on the working conditions and wage or salary conditions of the user's comparable employee.

## Who supervises the agency employee at work

The **user** assigns tasks to the agency employees, organises and inspects their work, issues instructions for this purpose, creates favourable working conditions and ensures occupational safety and health protection of the employee.

## Termination of the temporary assignment



The temporary assignment terminates on expiry of the period for which it has been agreed; before expiry of this period it terminates when so agreed between the employment agency and the temporarily assigned employee, or on the unilateral statement by the user or the temporarily assigned employee under the conditions included in the agreement on temporary assignment of the employment agency employee.

## Limitation of the temporary assignment

The employment agency may not temporarily assign the same employee for performance of work to the same user for a period longer than 12 consecutive calendar months (this limitation does not apply in those cases where this is requested by the agency employee or where it concerns performance of work instead of the user's employee who is on parental leave).

## Comparable employee

The employment agency and the user will ensure that the working and wage conditions of a temporarily assigned employee are not worse than the conditions of the user's comparable employee. Where the wage conditions applying to a certain employee posted by the agency to perform temporary work for the user are worse than the conditions applying to the user's comparable employee, the agency must ensure equal treatment for its employee, acting either at the employee's request or on its own initiative



when it learns of such fact in another way; the agency's employee temporarily assigned to perform work for the user is entitled to demand the satisfaction of his rights, having thus arisen to him, from the employment agency.

## What are comparable conditions

The comparable conditions are stipulated in Section 309 (5) of Labour Code which is a transposition of the EU Temporary Agency Work Directive<sup>2</sup> under which the basic conditions of agency employees must be at least equal to those applying to the user's employees.

**Both the agency and the user** are obliged to ensure these conditions.

As regards the components of wages and salaries, they are practically all components including bonuses and extra pays. As regards the comparable employment conditions, they include mainly the length of leave, non-standard obstacles at work (for example sick days), travel expenses.

The comparable employment conditions usually do not include working conditions in the broader sense, i. e. **extra benefits or benefits not stipulated in the labour law regulations.**

## Agency employment and occupational safety and health

The Labour Code explicitly stipulates the **user's obligation to ensure occupational health and safety but, at the same time, does not release the employment agency from this obligation. It is therefore assumed that the agency is generally responsible for occupational safety and health. The specific occupational safety and health rules may be set only by the user because it is familiar with the specific workplace and occupational risks. It is advisable to regulate who will inform the employees about the risks, who will**



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<sup>2</sup> This is a transposition of Article 5 of the Temporary Agency Work Directive 2008/104/EC

**provide work equipment, how the user will be liable to the agency for damages caused by the employee etc. in the agreement on temporary assignment.**

## **Occupational health examination of employees**



**The employment agency (as an employer) ensures the initial medical examination of its employees before assigning employees to the user.** The user should provide all information to the agency that is necessary for the medical examination and assessment of

fitness for the work to be performed (assignment of work according to Act No. 258/2000 Coll., on Public Health).

The employment agency is responsible for periodical and extraordinary occupational health examinations.

## **Training of agency employees**

The user ensures the initial and periodical occupational safety and health and fire safety training for agency employees in the same scope as for its employees.

## **Provision of personal protection equipment to agency employees**

The user provides personal protection equipment to agency employees unless otherwise stipulated in an agreement concluded between the user and the agency.

## **Industrial injuries of agency employees**



In the event of an industrial injury of an agency employee the user informs the agency and provides cooperation on investigating the injury.

The employment agency is responsible for the investigation, reporting and compensation of the industrial injury. Both the employment agency and the user record the event in the log of work-related injuries.

## Agency employment and temporary assignment according to Section 43a of Labour Code

The temporary assignment of employees pursuant to Section 43a of Labour Code bears many features that are similar to agency employment, for example the comparable working and wage conditions, supervision of temporarily assigned employees, in the field of OSH, etc. where the role of the agency is substituted by the “assigning” employer.

**No payment is permitted for the temporary assignment of employees to another employer with the exception of costs incurred in connection with the wage or salary of the temporarily assigned employee.**

### Temporary assignment of employee pursuant to Section 43a of Labour Code must not be applied on agency employment

**In the case of temporary assignment**, the employer may enter an agreement on temporary assignment of an employee to another employer no earlier than 6 months after the beginning of employment.

The agreement must be concluded in writing and must contain:

- name of the employer to which the employee is temporarily assigned;
- date of the beginning of temporary assignment;
- type and place of work and the duration of time for which the temporary assignment is agreed.

### Who supervises the temporarily assigned employee at work, when does temporary assignment end and what are the wage and salary conditions

For a period of temporary assignment of an employee to perform work for another employer, this employee will be given working tasks and relating binding instructions, in the name of his employer, **by the employer to whom he is transferred**, and his work will be organized, controlled and supervised by the said employer; this employer will create favourable working conditions including occupational safety and health protection.

**For a period of temporary assignment, the employer having temporarily assigned an employee to another employer will pay this employee wage or salary and, where relevant, reimbursement of travel expenses.**

**The working and wage or salary conditions (terms) of an employee temporarily assigned to another employer may not be worse than those of a comparable employee of the employer to whom the employee is temporarily assigned.**

**Temporary assignment will end on expiry of the period for which it was agreed. Prior to the expiry of this period, temporary assignment may be terminated by agreement of the contracting parties to the employment contract or by notice of termination for whatever reason or without stating any reason; the notice period is 15 days and starts to run on the date when the notice is served on the other contracting party.**

## **Note**

If you believe that the labour law regulations are being violated do not hesitate to contact the State Labour Inspection Office ([www.suip.cz](http://www.suip.cz)). Labour inspection authorities are not competent to enforce the rights of individual employees; only an action brought before a competent court can serve this purpose.

