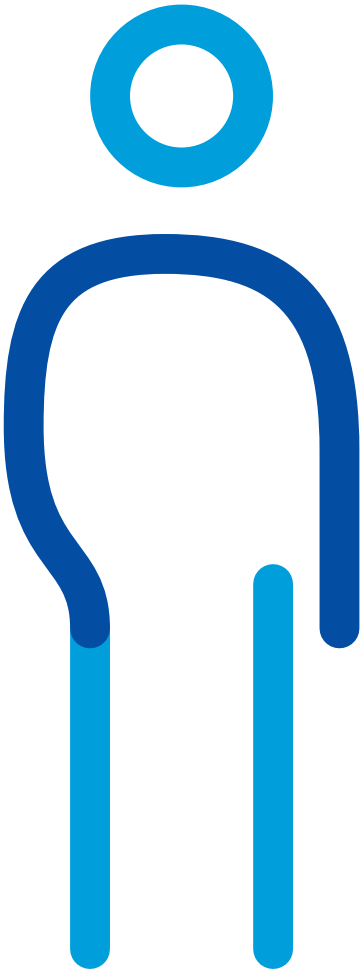
CENTRAL AND EASTERN EUROPE

Employment law

Survey | 2020



bnt attorneys in CEE

close. straight. forward.

The legal framework of local labour markets plays a fundamental role in the development of the corporate strategy of investors in their target country. Flexibility of employment, consideration of new trends and the attractiveness of personnel costs are among the most important expectations of investors in business ventures in the labour markets of Central and Eastern Europe.

bnt attorneys in CEE and its labour market experts from Bulgaria, Estonia, Latvia, Lithuania, Poland, Slovakia, Romania, the Czech Republic, Hungary, and Belarus have analyzed the most important data, facts, and risks of labour law in the region in order to provide you with a valuable overview of labour law in Central and Eastern Europe.

In this third edition of our Employment Law Survey, we would draw your attention in particular to the new alternative forms of employment that are available in Central and Eastern Europe to help be competitive as an employer in the rapidly developing "gig economy".

As for citizens of the United Kingdom of Great Britain and Northern Ireland (UK), when the manuscript was written, in May 2020, it was still unclear what rules would apply to UK citizens after the end of the transition period after Brexit (currently after 31 December 2020). In the case of a so-called "hard Brexit", i.e. Brexit without an agreement between the EU and the UK or without an extension of the transitional period, some of the countries in the Central and Eastern European region have enacted special laws, which are referred to at the end of each country overview.

We hope that this publication will give you a clear overview of labour law in Central and Eastern Europe. If you have specific questions and need legal advice, please contact our bnt team for labour law in Belarus, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, or Slovakia.

With kind regards,
Zuzana Chudáčková and Éva Ratatics

Zuzana Chudáčková
Partner

Co-Head of Employment
Practice Group

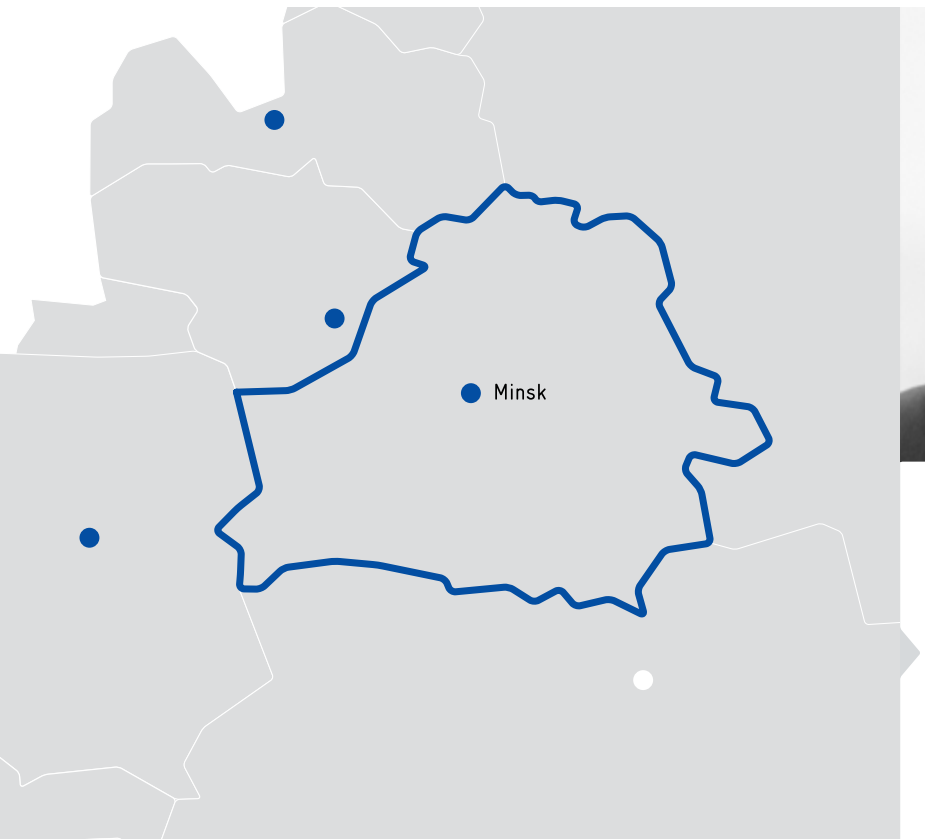
Éva Ratatics
Partner

Co-Head of Employment
Practice Group

Table of contents

Belarus

bnt legal and tax
Revolutsionnaya Str. 9
building 4 office 40
BY - 220030 Minsk



YOUR CONTACT

Alexander Liessem
Partner

T +375 1 7203 94 55
alexander.liessem@bnt.eu

1. Employment relationship

1.1. Employment agreements

- The types of employment agreement are regulated by the Labour Code of the Republic of Belarus.
- The types of employment agreements are: indefinite term employment agreement and fixed-term employment agreement (for a period not exceeding five years).
- An employment agreement must be in writing, but an employment relationship can also be commenced by virtually admitting a person to perform work by the employer's authorized officer.
- An employment agreement must contain the following information: employer and employee, place of work (including particular unit), job description, rights and obligations of the parties, the duration of the employment agreement (for fixed-term agreements), working hours and time off, remuneration conditions.
- In addition to the information mentioned above, an employment contract (i.e. a fixed-term employment agreement concluded in writing for a specified period with certain peculiarities of employment relations) should contain the following information and terms and conditions:

  1. days and frequency (at least once a month) of salary payments;
  2. evaluation of employee's performance skills at least once in 3 (three) years, unless another term is set by the President of the Republic of Belarus;
  3. additional incentive measures, including:
     - granting additional paid vacations of up to 5 calendar days compensated by the employee's average salary;
     - increase of the tariff rate (salary) to no more than 50 percent unless a larger amount is set by legislation;
  4. reduction of all kinds of bonuses (irrespective of bringing to disciplinary liability) for absence from the workplace without justifiable reason, late or improper performance of working duties without valid excuse;
  5. reduction of the employee's vacations by the number of days of absence at work or days of the employee's deliberate non-fulfilment of working duties for more than three hours during a working day without valid excuse; however, vacations must not be shorter than 24 (twenty four) calendar days;
  6. the employee's obligation to notify the employer in writing about a decision to extend or terminate labour relations at least 1 (one) month prior to the contract expiration date;
  7. the employer's obligation to notify the employee in writing of a decision to extend or terminate labour relations under the terms and conditions of the contract or to sign an indefinite term employment agreement (subject to the conditions laid down in the first part of Article 261-4 of the Labour Code of the Republic of Belarus) not later than 1 (one) month prior to the expiration of the contract.

1.2. Limitation of the employment relationship

- An employment contract is the most commonly used type of employment agreement with a fixed term. An employment contract is regulated by the Labour Code.
- An employment contract may be concluded for a period of 1 (one) to 5 (five) years and only in written form.
- If a fixed-term employment agreement is not concluded in writing, the employment agreement is considered to be concluded for an indefinite period.
- In comparison with other types of employment agreement, employment under contract puts the employee in a disadvantaged position. The rules mentioned above for additional holidays and salary increases are aimed at compensating the employee for the disadvantage of an employment contract.
- Other special types of fixed-term employment agreement (apart from employment contracts)

may be concluded in cases when employment relations cannot be established for an indefinite period because of the nature of the work or the conditions of its performance, including:

  - for performing special tasks, when the time of finishing work cannot be specified;
  - an employment contract for seasonal work - up to 6 (six) months a year;
  - for replacing an employee whose place of work, job title (profession) should be held for that employee, such as replacement during maternity leave;
  - persons employed in organisations established for a period;
  - persons employed in a position (profession) that had been occupied by a young professional (worker, officer) until called up for military service, assigned to alternative service, for the period of such service and three months after it;
  - a company head, deputy head and chief accountant during procedures established by law and (or) the company's constituent documents for the appointment of an employee to the corresponding position;
  - individuals sent by labour, employment and social protection authorities to perform paid public work;
  - in other cases established by the Labour Code or other legislative acts.

- A fixed-term employment agreement may be concluded by mutual agreement between the employer and the employee:
  - with an attorney who carries out activity individually, a notary who carries out activity in a notarial bureau, an individual providing services in the sphere of agroecotourism, an individual entrepreneur, or a person employed by a micro organisation;
  - with an employee holding a second job.

1.3. Probation period

- The duration of the probation period may not exceed three (3) months.

1.4. Managing director agreement

- Employment agreements with managing directors are regulated separately in the Labour Code and by Presidential Decree No. 5 of 15 December 2014 "On strengthening requirements for management personnel and employees of organizations". These employment agreements must be signed by the organisation's property owner or authorised person.
- According to the Law of the Republic of Belarus No. 2020-XII dated 9 December 1992 "On commercial companies", employment agreements with managing directors shall be signed by the chairman of the company's general shareholders' meeting, which adopted a resolution to elect the director, or by a person authorised by resolution of the company's general shareholders' meeting. If there is a management board (supervisory board) the employment agreement with the managing director shall be signed by the chairman of the management board (supervisory board) or by another member authorized by the management board (supervisory board).
- A managing director's employment agreement may be terminated without cause at any time by a decision of an authorised person or body, on payment of compensation provided for in the agreement. In addition, an employment agreement with a managing director can always be terminated for cause.

2. Working time

2.1. Weekly working time

- Full-time or reduced or part-time work is possible. Full-time work may not exceed 40 hours per week. Reduced working time is max. 23 hours per week (for workers aged 14 to 16) or max. 35 hours per week (for work with harmful working conditions, for workers aged 16 to 18, for physically challenged persons, etc.).
- The daily limitation on working hours may also depend on the category of employees. In the case of shift work, the duration of a shift may not exceed 12 (twelve) hours.
- The employer may specify a different working time regime, such as calculated working time,

division of working time, flexible working time, etc.

2.2. Time account and flexible working hours

- The employer is obliged to organize a record of working time. Forms of documents for recording working time as well as the procedure for filling in such documents are approved by the employer.
- The employer can introduce an irregular working hours regime that must be compensated by granting additional days' holiday. An irregular working hours regime cannot be introduced for some categories of employees (e.g. for workers aged 14 to 16, physically challenged persons).

2.3. Overtime

- Overtime work is work carried out at the employer's offer, order or with the employer's knowledge and exceeds the employee's normal working hours.
- In certain exceptional cases an employee is obliged to work overtime without consent, e.g. in the event of industrial accidents, natural disasters or serious technical incidents.
- An employer may order overtime work for a maximum of 180 hours within a calendar year, provided that the employee does not work more than 10 (ten) overtime hours per week and the total daily working time (normal and with overtime) does not exceed 12 (twelve) hours. Compensation of 100% salary is payable for overtime work. Instead of compensation another unpaid day off can be granted subject to the employee's consent, calculated as one unpaid day off for eight hours of overtime work.

2.4. Vacations

- The main vacation must be at least 24 calendar days per year. By agreement between the employer and employee leave may be divided into two parts, one of which must be at least 14 days.
- Employees must be compensated with additional days of leave in the following cases:
  - if an employment contract is concluded between the employer and the employee;
  - in the case of an irregular working hours regime;
  - for work involving harmful and (or) dangerous working conditions and for the special nature of the work.
- In some cases, leave may be replaced by monetary compensation in the following cases:
  - if part of the leave exceeds 21 calendar days;
  - if the employee has been recalled from leave.

3. Remuneration

3.1. Types of salary

- Legislation provides for two forms of remuneration: time pay and piecework pay.
- In principle, remuneration is paid regularly on the days specified in the employment agreement, but at least twice a month. Under the employment contract salary can be paid at least once a month.
- The minimum salary is BYN 375 (approx. EUR 142) per month - as of 27 May 2020.

3.2. Subsidies

- The nature of subsidies/benefits for employees is generally defined in employment agreements and the employer's internal rules.

3.3. Benefits

- The type and amount of subsidies/benefits for employees is generally defined in employment contracts and the employer´s internal rules.

3.4. Social and health insurance contributions

Total burden of social and health insurance contributions in:	Total monthly contribution payments as of 27 May 2020 (in % of the gross monthly salary)	
	Employer	Employee
BELARUS	34.6% [1]	1%

[1] 34% is the general contribution rate; the value of 0.6% is an average that can vary from employer to employer.

3.5. Ancillary wage costs

- Employers must pay the following contributions to the Social Security Fund of the Ministry of Labour:

  1. Pension insurance for the employer - 28% (for employers working in the agricultural sector - 24%; for consumer cooperatives, owner cooperatives, pensioner associations - 5%).

  2. Temporary incapacity for work for the employer - 6%

- The amount of social contributions per month for each employee is limited to 5 (five) monthly average salaries in Belarus in the month preceding the month for which social contributions are paid. No social insurance contributions are payable on income exceeding this limitation.

- The employer must insure the employee with the State Insurance Organisation "Belgosstrakh". The rate of interest for occupational injury insurance may vary and depends on the type of work and working conditions. The average rate is 0.6%.

- Additionally, the employer withholds income tax from the employee's salary 13%.

4. Changes in the employment relationship

4.1. Unilateral changes by the employer

- The employer may change the employment relationship in the following cases:

  – A change in the essential conditions of the employment agreement. The employer must provide economic justification for the amendment of material conditions of employment. The employer must notify the employee of the changes at least 1 (one) month in advance. If the employee refuses to renew the employment relationship under the new conditions, the employment agreement is terminated and compensation in the amount of 2 (two) weeks salary (1 (one) month salary in case of changes related to establishing part-time work that is less than half of the normal working hours) is paid to the employee.

  – Transfer of the employee, i.e. assigning the employee to perform work with qualifications or job title different from the qualifications or job title specified in the employee's employment agreement, as well as assigning the employee to work for another employer or elsewhere (excluding business trips). The prior consent of the employee is required.

  – Relocation of the employee, i.e. assigning the employee to work at a new workplace in the same or another department (except for a separate business unit), on another machine or mechanism (qualification and job title as well as working conditions remain unchanged). The employee's consent is not required for this.

4.2. Transfer of business

- If in the case of transfer of business (for example, spin-off deal) no new employment agreement is wanted or needed, existing employment agreements are simply transferred. A new employment agreement is unnecessary.

- If changes in working conditions (for example, salary changes) are planned during transfer of the business, the procedure for introducing changes to the employment conditions must be followed (see para. 7.12).

- In the case of mass dismissal, the relevant requirements for mass dismissal apply.

4.3. Temporary work/employee leasing

- No legal provisions govern the supply of temporary workers.

- An employer can temporally transfer an employee to other work, including in another location, as well as to another employer, subject to:

  – written consent of the employee and for a term not exceeding 6 (six) months in 1 (one) calendar year;

  – business needs;

  – downtime.

- The previous employment agreement continues to be valid; a new employment agreement with the employee is not necessary.

4.4. Secondment

- The following documents are generally required in the case of posting an employee:
  - regulation on business trips, in order to avoid disputes on reimbursement of business trip costs, inter alia, between the employer and the employee;
  - the employer's order on posting the employee based on an invitation from a foreign company or international organisation, business trips schedule, internal report, etc.;
  - the employer's task for the business trip;
  - the employee's report on the business trip and on the costs (after return) with attachment of documents confirming these costs;
  - if required by the employer's internal rules, a business trip certificate, on which the employee receives a stamp confirming arrival at and departure from the place of business trip.
- Employees on a business trip are subject to the working hours and rest periods stipulated at the place of business trip.

5. Termination of the employment relationship

5.1. Amicable termination

- Both permanent and fixed-term employment agreements may be terminated at any time by mutual agreement.
- A fixed-term employment agreement ends upon expiry. If the employment relationship effectively continues after a fixed-term employment agreement expires and neither of the parties requests termination, the employment agreement is deemed to be extended for an indefinite period.

5.2. Termination

5.3. Extraordinary termination

- The Labour Code contains specific grounds for terminating an agreement at the employer's initiative, applicable to all types of agreement. These are the following groups of cases:
  1. liquidation, post reductions;
  2. termination (suspension) of the activities of an attorney who carries out activity individually, a notary who carries out activity in a notarial bureau, an individual providing services in the sphere of agroecotourism, an individual entrepreneur, with the exception of cases of termination (suspension) because of a call to military or alternative service;
  3. failure to perform job duties due to health reasons of the employee;
  4. lack of qualifications;
  5. non-fulfilment of job duties without good cause by the employee who has an unexpunged disciplinary sanction;
  6. absence from work for four (4) months for health reasons (does not apply to pregnancy leave, accidents at work, temporary and seasonal employment and other exceptions);
  7. one-time gross violation of working duties, including:
     - absence from work for a period of three (3) hours or more without good cause;
     - appearance at the workplace under the influence of alcohol, narcotics or other toxic substances, as well as drinking alcohol, taking narcotic or toxic substances during working hours or at the workplace;
     - stealing employer's property at the workplace, established by decision of a court or other competent administrative authority;
     - violation of production, technological, executive or labour discipline causing damage to the organization in an amount exceeding three accrued average monthly salaries of employees in the Republic of Belarus;

- violation of accident prevention or safety regulations that lead to the injury or death of other persons;

8. property damage to state property, property of legal entities or natural persons occurring while fulfilling work obligations;

9. repeated (two or more times within 6 (six) months) violations of the procedure set by law for considering petitions by citizens and legal entities, as well as unlawful refusal to consider appeals by citizens and legal entities falling within the competence of the corresponding state body;

10. unlawful prosecution of citizens and legal entities;

11. repeated (2 (two) or more times during 6 (six) months) submission of incomplete or false information by the employee to the authorities.

- The Labour Code also sets forth a list of additional grounds for termination of employment agreements with certain categories of employees under certain conditions.

- In the event of liquidation, mass dismissal or termination (suspension) of the activity of an attorney who carries out activity individually, a notary who carries out activity in a notary bureau, an individual providing services in the sphere of agroecotourism, an individual entrepreneur, with the exception of cases of termination (suspension) because of a call to military or alternative service, the employee should be notified within two (2) months prior to termination of the employment agreement. The notice period may be replaced by payment of two average monthly salaries as additional compensation in the case of liquidation or post reduction. In the case of termination (suspension) of the activity of an attorney who carries out activity individually, a notary who carries out activity in a notarial bureau, an individual providing services in the sphere of agroecotourism, an individual entrepreneur, with the exception of cases of termination (suspension) because of a call to military or alternative service, the employer is obliged to replace notification by payment of two average monthly salaries.

5.4. Mass dismissal

- A mass dismissal occurs if either of the following is present: (i) liquidation of a company with 25 employees or more, (ii) termination of a contract in the following cases:

  - in a company with less than 1000 employees: termination of 20% of the employees (but not less than 25 persons) within one month;

  - in a company with 1001-2000 employees: termination of 15% of the employees within one month;

  - in a company with 2001-5000 employees: 10% of the employees within one (1) month;

  - in a company with 5001-10000 employees: termination of 10% of the employees within two months;

  - in a company with more than 10000 employees: termination of 5% of the employees within two months.

- The employee should be notified of termination of the employment agreement within 2 (two) months before termination. The employer should pay the employee compensation of 3 (three) months' salary. In some cases, mass dismissal can only take place after the employment agency has been notified accordingly. Some employees have special rights in the event of mass dismissal.

5.5. Severance pay

- The employer is obligated to pay a severance payment equal to 2 (two) weeks' salary upon termination for the following reasons: (i) refusal to work by the employee due to changes in essential working conditions, (ii) refusal to continue work because of company reorganisation, change of owner, leasing of the company's property complex or transferring the company's stocks (shares in the statutory fund) to trust management, (iii) for health reasons or lack of sufficient qualifications of the employee, (iv) employer's violation of labour law regulations, (v) call to military or alternative service; (vi) reinstatement in work of an employee who previously performed this work, (vii) termination (suspension) of the activity of an attorney

who carries out activity individually, a notary who carries out activity in a notarial bureau, an individual providing services in the sphere of agroecotourism, an individual entrepreneur, with the exception of cases of termination (suspension) because of a call to military or alternative service.

- The employer is obligated to pay a severance payment equal to 1 (one) month's salary upon termination by reason of the employee's refusal to continue work due to changes in essential working conditions related to establishing part-time work being less than half of the normal working hours.

- Employees are entitled to a severance payment equal to three (3) average monthly salaries in the case of the employer's liquidation, reduction of jobs for economic reasons or termination (suspension) of the activities of an attorney who carries out activity individually, a notary who carries out activity in a notarial bureau, an individual providing services in the sphere of agroecotourism, an individual entrepreneur, with the exception of cases of termination (suspension) because of a call to military or alternative service.

- in the case of a change of owner, leasing of the company's property complex or transferring the company's stocks (shares in the statutory fund) to trust management, the new property owner, the tenant of the company's property complex or the person to whom trust management of the company's stocks (shares in the statutory fund) was transferred must pay 3 (three) average monthly salaries to managing directors, deputy directors and chief accountants if their employment agreements are terminated by the new property owner, the tenant of the company's property complex or the person to whom trust management of the company's stocks (shares in the statutory fund) was transferred.

- For employees employed on the basis of employment contracts, the Labour Code provides for compensation in the amount of 3 (three) average monthly salaries in the event of early termination of the employment contract due to violation of labour legislation, a collective agreement, or an employment contract by the employer.

6. Post-contractual relations

6.1. Prohibition of competition

- In general, a managing director can also work for another employer. Exceptions apply only to managing directors of state-owned or at least 50% state-controlled companies.

- Employees (including managing directors) may also perform other paid activities (as sole traders, partners in a company).

- Companies-residents of the High Technology Park are allowed to conclude non-competition agreements with their employees subject to the employee's consent and to provision of monetary compensation.

6.2. Labour law disputes

- The Labour Code sets out the procedure and specific competent persons for individual and collective dispute resolution.

- Individual disputes are negotiated by the Labour Disputes Commission, which consists of equal numbers of employer and trade union representatives. The Commission's decision is binding on the parties, but can also be challenged in court.

- In principle, the Commission is the first instance for settlement of disputes, but in some cases a dispute can be settled by an action before a court. This is usually a district court of common jurisdiction. Labour cases are usually decided by a single judge within one month of the action being brought. Employees are exempt from paying the state court fee.

- An employer may, with the consent of trade unions, create other bodies for conciliation, arbitration and mediation.

- Collective labour disputes are usually settled before a conciliation commission as the first instance. If the parties disagree with the decision, they may choose mediation or labour arbitration. An arbitration decision can be either recommendatory or mandatory depending on the subject of dispute. Any party may apply to the court for enforcement of an arbitration decision.

7. New forms of employment

- The Labour Code of the Republic of Belarus has been amended with a new chapter on relations between employers and employees who work remotely. This chapter has been in force since 28 January 2020.
- Remote work is work done by an employee elsewhere than the employer's place of business and via information and communication technologies that are used for the work itself and also for communicating with the employer.
- Attendance at the employer's office is not required, except for concluding an employment agreement, when the employee must be present in person. However, personal attendance is not required for familiarizing the employee with the procedure for dismissal.
- Employment relations with remote workers are regulated by general provisions of labour legislation to the extent not covered by the special chapter of the Labour Code. However, in addition to the usual terms and conditions, an employment agreement should contain, e.g., terms and conditions for exchange of electronic documents and information between employee and employer, the procedure for progress reporting by the employee, and the procedure for providing the employee with equipment, data security facilities, software and hardware facilities required for work.
- Despite the remote nature of the work, the employee's working hours must be agreed and fixed in the employment agreement. At the same time, the employee alone may be allowed to determine these – a possibility that must be clearly stated in the agreement.
- The chapter also specifies the rules for document exchange between an employer and an employee who works remotely. A document that does not require the employee's signature can be sent electronically without additional formalities such as an electronic signature. If the document requires the signature of the employee, it can be sent in electronic form with or without electronic signature, but must be followed up with a hard copy of the document sent by registered mail with return receipt to the employee within two working days.

8. Employment of foreigners

8.1. EU citizens (and citizens from EEA countries and Switzerland)

- EU citizens (and citizens from EEA countries and Switzerland) need a work permit to work in Belarus. Exceptions apply to employees of High Technology Park residents and heads of representative offices of foreign companies.
- A work permit regularly serves as the basis for a residence permit.
- When employing foreigners, the employer must also observe the special conditions arising from migration law in employment agreements with a foreigner and register the employment agreement with the authorities.

8.2. Third-country nationals

- The requirements regarding work permit and registration of employment agreements also apply to citizens of other countries. Citizens of states with which Belarus has concluded special international agreements are an exception. At the moment, citizens of the Eurasian Economic Union states (Russia, Armenia, Kazakhstan, Kyrgyzstan) are exempt from the work permit requirement.

Author: Alexander Liessem

Bulgaria

bnt Neupert Ivanova & kolegi adv.dr.
Gladstone 48
BG – 1000 Sofia

YOUR CONTACT

Stela Ivanova
Partner

T +359 2 980 11 17
stela.ivanova@bnt.eu

1. Employment relationship

1.1. Employment contracts

- The basis for an employment relationship is conclusively regulated in the Labour Code. Other relevant legal acts are the Collective Disputes Settlement Act and the Employment Promotion Act.
- An employment contract is the most common basis for an employment relationship. Other bases are choice and competition.
- An employment contract may be limited or unlimited in time.
- The employer is under an obligation to ensure that the employment contract is concluded in writing. However, an employment relationship is also established by de facto activity. The lack of written form does not affect the validity of the employment relationship.
- An employment contract must contain the following minimum content: type of work with a job description, place of work, commencement of work and salary.
- A collective employment contract (collective agreement) is an agreement between the employer and an employee organization, which is intended to contain more favorable provisions than those provided for by law.

1.2. Limitation of the employment relationship

- In the case of employment contracts, the time limit must be expressly agreed in writing, otherwise the employment contract is considered to be of unlimited duration.
- Employment contracts can be limited to a maximum of 3 (three) years. A fixed term is permissible on the basis of material reasons: e.g. for the performance of temporary, seasonal or short-term work. In exceptional cases, e.g. at the explicit request of the employee, the employment contract may also be limited in time without a material reason, but in such cases it must be concluded for a minimum period of one year; it can only be extended once. The extension period may not be shorter than one year. In the event of infringements, fixed-term employment contracts are considered to be of unlimited duration.
- The fixed term is the rule for temporary employment contracts. Here, the legislator assumes that a temporary employment contract is concluded either until a certain volume of work has been completed or to replace a missing member of the regular user staff.

1.3. Probationary period

- The probationary period can only be agreed once between the same parties for the same employment contract.
- It may last a maximum of six months.
- It can be stipulated in the contract that the probationary period is agreed only for the benefit of the employer. In such a case, only the employer may invoke the probationary period.
- During the probationary period, notice of termination may be given with immediate effect. Further justification is not required.

1.4. Managing director contract

- According to established case law, managing directors and members of the management board or supervisory board are not employees.
- They perform their functions on the basis of the Commercial Code and, in accordance with the principle of subsidiarity, the law of obligations and contracts.
- However, they are treated as employees from a tax law perspective.

2. Working hours

2.1. Weekly working hours

- The working week is generally 40 hours. Reduced working hours apply to dangerous and health-endangering professions. In this case, it is a weekly number of less than 40 hours (sub-legal rules apply), but the job is still considered a full-time job.

- The legislator assumes a five-day working week in which each working day comprises 8 (eight) hours. However, this is not mandatory, and the employer has a great deal of freedom to organise the work. This freedom is limited by the mandatory breaks (12 hours between days, 48 hours between weeks, and 24 hours between shifts).

- Breaks in the course of the day, e.g. the 30-minute meal break, are not considered working time.

2.2. Time account and flexitime

- The employer has the possibility to make working hours more flexible by ordering the so-called summary calculation of working time. This institution can also be translated into German as "Zeitkonto". Here, the employer introduces working time accounts, which must be balanced by non-working time within a period of no more than 6 (six) months. Under this model the daily working time can be up to 12 (twelve) hours and the weekly working time up to 56 hours. If, at the end of the reference period, the work account shows a surplus of working hours, these are to be paid as overtime with a 50% surcharge.

- Flexitime is a way for the employer to allow employees to arrive at work and/or leave the workplace within a certain permitted time corridor. In practice, this possibility is usually combined with the introduction of a time clock or a similar system for automated recording of working time. This is regarded as an organisational measure of the employer, which is covered by his organisational right to issue instructions and does not require further regulation in the employment contract. In any case, the employer's power to organise working time is limited by the mandatory breaks prescribed by the Bulgarian Labour Code (see "Working hours"). As a result, the time account and flexitime are very similar. The main difference lies in who (employer in the case of time accounts, employee in the case of flexitime) has the power to decide when to start and end work.

- There is a third possibility for flexible working hours, which is suitable for managers. Here, the employer and the employee agree on a so-called non-standard working time. As a result, no overtime is incurred, regardless of the actual workload. However, the employer must compensate for this with additional annual leave. It is still unclear in case law whether each additional hour worked is to be compensated or whether a lump sum for additional annual leave is sufficient. Since, by definition, no overtime is incurred in the case of non-standardized working time and the employer therefore has no obligation to document it, the second solution appears to be more system-logical.

2.3. Overtime and readiness to work

- Any work performed over and above the legal or contractual limits is considered overtime. In general, a working week has 40 hours, spread over five days (Monday to Friday) of eight hours each.

- Overtime can only be ordered in exceptional cases which are conclusively regulated in the Labour Code: e.g. because of seasonal work and/or to complete urgently required work which was started during regular working hours but could not be completed.

- Overtime is prohibited in any case if its number exceeds 150 per calendar year, 30 day hours and 20 night hours per calendar month, 6 (six) day hours and 4 (four) night hours per calendar week or 3 (three) day hours and 2 (two) night hours per calendar day.

- Overtime can be compensated by time off. Overtime must be remunerated, with the application of hourly bonuses. These are 50% for overtime worked on working days, 75% for overtime worked on weekends, and 100% for overtime worked on public holidays.

2.4. Vacation

- Every employee has a legal right to paid annual leave to recover and restore his or her working capacity. In industry, there are generally no vacation entitlements under labor law or collective agreements that exceed the minimum legal requirements. Employers are more generous in the public administration and in service sectors with high added value (such as the software industry).

- The duration of statutory holiday leave is 20 working days, which corresponds to 4 (four) weeks.

- In the case of first-time employment, the right to annual leave only arises after the eighth month of work.
- Upon termination of the employment contract, the annual leave, which cannot be granted in the remaining period of employment, must be paid out.
- In principle, leave is determined by the employer, taking into account the wishes of the employee. So-called self-abandonment - the unauthorised commencement of leave - can constitute a reason for termination.
- Remuneration during the holiday is based on the average gross salary of the past 12 (twelve) months. Additional holiday pay is rarely given.

3. Remuneration

3.1. Types of salary

- The employer is obliged to pay the contractually agreed remuneration ("salary"). The salary may be based on time or performance (e.g. number of units produced). In any case, the minimum wage may not be undercut.
- Every employee is entitled to receive at least the statutory minimum wage. Since 1 January 2019, the minimum wage has been BGN 560 per month for full-time employment (i.e. the gross wage of the employee). This corresponds to EUR 286. Industry-specific minimum wages are currently being discussed, but have not yet been introduced at the beginning of 2019. Collective bargaining plays a very minor role.

3.2. Grants

- A general mandatory supplement of 0.6% per year of the contractually agreed employee gross salary is granted for relevant work experience with previous employers and for each year of service.
- Overtime is generally prohibited. However, if it occurs, it must be documented by the employer, registered with the state labour inspection service and remunerated by supplements to the monthly salary. The surcharges can reach up to 100% of the contractually agreed employee's gross wage, reduced to one hour (see "Overtime").
- Employers have the right to pay bonuses on the basis of a labour law agreement or on their own initiative. However, they are not legally obliged to do so.
- In a few cases, the employer is obliged to grant non-cash benefits in kind that are justified under occupational health and safety law (e.g. fortifying food for employees working underground, e.g. in mining).

3.3. Benefits

- A special benefit which employers grant in addition to the remuneration for work for a specific reason is called a gratuity. Voluntary gratuities in the form of e.g. Christmas bonuses are not very common in Bulgaria, as they are subject to contributions and income tax.
- The Labour Code provides for an obligatory special form of gratuity payments for employees who are dismissed by their employer due to or in connection with their retirement pension. This type of gratuity is payable once and usually amounts to two monthly salaries, but 6 (six) monthly salaries are payable for a previous 10-year employment with the same employer. The legislator lists this bonus payment as "compensation payment", so that it can be granted tax-free.
- Moreover, in Bulgaria, benefits in the form of so-called meal vouchers are relatively common in industry as well, since an amount of up to BGN 60 per month may be exempt from wages and contributions under certain conditions. Food vouchers may only be issued by state-licensed exhibitors with whom the employer must conclude a contract.
- The provision of company cars, service telephones and other items that can also be used privately has recently also had fiscal consequences in Bulgaria. As a rule, however, these are not handled at the level of wage income but at the level of VAT and may result in incomplete reimbursement of VAT incurred by the employer on acquisition, leasing or operation.
- In addition, there are tax breaks that apply to certain forms of employer-sponsored additional

voluntary pension or unemployment insurance. These are used in the preparation of internal company programs for personnel retention.

3.4. Social and health insurance contributions

Table of social and health insurance contributions

Total burden of social and health insurance contributions in:	Total monthly contribution payments as of 01.01.2019 (in % of gross monthly salary)	
	Employer	Employee
Bulgaria	18.92%	13.78%

3.5. Non-wage labour costs

- The insurance burden and its distribution depends on the age of the employee (there are certain variations in the structure of pension contributions for employees born before 1960) and on the severity of the work. In the first and second categories of work (heavy and hardest work) the employer's contribution reaches 34.62% and 29.62% respectively. The employee's contribution remains unchanged.
- The upper limit for the assessment of contributions is generally fixed and has been BGN 3,000 (approx. EUR 1,500) since 1 January 2019.
- There are also lower income thresholds for the assessment of contributions. These depend on the sector and sometimes exceed the Bulgarian minimum wage. This means that if the employer should pay a lower permissible wage, the contributions must nevertheless be calculated and deducted from the relevant lower income limit.
- Contributions are paid into the public pension insurance, into a compulsory private pension insurance chosen by the employee, into unemployment insurance, into health insurance (treatment costs), into insurance against loss of income in the event of general illness or maternity, and into insurance against accidents at work and occupational diseases. The insurance in case the employer becomes insolvent has been non-contributory for years.
- Wage tax is 10% and is payable on the difference between the gross wage amount and the employee's share of social contributions.

4. Changes in the employment relationship

4.1. Unilateral changes in the employment relationship by the employer

- The employer may be generous and at all times make the employment relationship more favourable to the employee. In practice, such constellations do not arise too often, so that the problem of the company practice is rather unknown.
- The right of direction gives the employer the authority to specify the employee's duty of work in more detail, for example, according to type, time and place, i.e. to assign certain work to the employee. In doing so, the employer must take into account the qualifications of the employees.
- In the event of the company's stoppage (due to a deterioration in the order situation), the employer may order the employees to take annual leave in order to relieve themselves.

4.2. Transfer of business

- Legal regulations ensure that a change of the company owner has no influence on the existing employment contracts.
- In principle, the transfer of business does not give rise to a right of termination for the new employer.

4.3. Temporary work/employment of temporary staff

- Temporary employment agencies require registration with the Bulgarian State Employment Agency. The registration is valid for a period of 5 (five) years and can be extended without restriction. The register is public and accessible online. A processing fee of BGN 740 (approx. EUR 370) is payable for registration. An additional 80 BGN (approx. 40 EUR) are due for the preparation of the registration certificate. This is a document by means of which the temporary employment agency identifies itself as a legitimate provider in business transactions.

- The employer is the temporary employment agency. However, the hirer is jointly and severally liable for all obligations to his or her employees.

- Entrepreneurs may cover a maximum of 30% of their workforce with temporary workers. Temporary work is prohibited 6 (six) months after a mass dismissal and during a strike. Personnel used for heavy and extremely heavy work or employed in the field of national security may not be temporary workers.

- The hirer has the duty to inform the temporary employment agency about comparable employment relationships. An obligation to grant equal pay is not explicitly regulated.

4.4. Secondment

- The secondment is limited to 180 calendar days per year. If it is to last more than 30 days, it is only possible with the employee's written consent. Stricter restrictions apply to specially protected groups of employees, such as mothers of children until the age of three.

- In the case of postings within the country and outside the European Union, the employer bears travel, accommodation and daily expenses in accordance with maximum limits set by law.

- Before posting to an EU Member State, the employer must conclude a special agreement with the employee, which sets out in detail the terms and conditions of employment at the place of deployment. Under this agreement, the employer is obliged to allow the employee to benefit from the minimum local working conditions for the entire duration of the assignment, irrespective of the fact that it may last less than 30 days. Travel costs must be borne by the employer, accommodation costs can be covered by the employer, but daily allowances cannot be covered, so that they must be treated as a wage component when granted.

- In the transport industry, special rules sometimes apply where the employer pays flat-rate, non-purpose daily allowances.

5. Termination of the employment relationship

5.1. Consensual termination

- Employees and employers may at any time agree by mutual consent to terminate the employment relationship without being bound by the restrictions applicable to termination. For this purpose, a written offer must be submitted, which must be accepted by the other party within 7 (seven) days. If they do not accept the offer within this short period, the offer loses its validity. If the initiative for the offer comes from the employer, a severance payment in the amount of at least 4 (four) months' salary must be offered and paid within one month from the end of the employment relationship. Any delay in doing so will result in the employment relationship being treated as continuing. The employer is not obliged to inform the employee about his or her rights and obligations under social security law.

5.2. Notice of termination

- Ordinary dismissal by the employer is permitted only in cases expressly and conclusively regulated in the Labour Code, including Closure of the establishment or part thereof, relocation of the establishment if the employee refuses to go along, reduction of the establishment plan for the employee's job, non-compliance with the legal requirements for the employee to perform the contractual work, unsatisfactory performance of work, material breach of contract by the employee.

- The case law grants employers a free, hardly controllable discretion to initially determine the requirements for a job and to subsequently change them. Such a change, which an employer carries out alone by means of a so-called internal order, can serve as the basis for an ordinary termination if the employee concerned does not meet the new requirements profile.

- The notice period is generally one month. For fixed-term employment contracts, the period of notice is 3 (three) months, but not longer than the remaining term of the employment contract.

- Longer notice periods can be contractually agreed. However, they may not exceed the upper limit of 5 (five) months and must be of equal length for both parties.

5.3. Extraordinary termination

- Extraordinary dismissal is justified if the employee has committed a serious breach of labour discipline, which is listed exhaustively by the legislator.
- The employer is obliged to conduct internal disciplinary proceedings, in the course of which he must disclose the allegations to the employee and enable him to be heard. In the event of formal errors in this procedure, the dismissal, if any, will not stand up to judicial review.
- The employer must also react quickly. His ability to initiate disciplinary proceedings is very limited in time.
- A declaration of dismissal must be justified, a later extension of the reasons is not possible. Formal notification by registered mail is required.

5.4. Mass dismissal

- A mass dismissal is deemed to have occurred if the employer, within a period of 30 days:
  - at least 10 (ten) employees for a workforce of between 20 and 100 employees; or
  - at least 10 % of the employees in the case of a workforce of between 100 and 300 employees; or
  - at least 30 employees with a workforce of more than 300 employees are dismissed.
- This is a complex procedure that takes about 4 (four) months.
- In the course of the procedure, numerous consultations must be held with employees, trade union representatives and the employment agency.
- The dismissal rules apply in full.

5.5. Compensation

- An employer who terminates a contract for more than 15 days due to closure, relocation, lack of work or job cuts is liable to pay severance pay equal to an average monthly wage, irrespective of the length of the employment relationship.
- Employees who accept a termination agreement offered by the employer are entitled to severance pay in the amount of 4 (four) average monthly wages.
- An employer who is entitled to terminate an employment contract and who is bound by a notice period (notice periods are extremely short under Bulgarian law) may decide not to comply with it, but to terminate the contract with immediate effect. If the notice of termination takes effect immediately, the employer owes a severance payment equal to the average wage until the end of the notice period.

6. Post-contractual relations

6.1. Prohibition of competition

- The employee is entitled to pursue other activities during his employment. However, the employer may expressly forbid him to do so in the employment contract, or he may make it dependent on his consent.
- Post-contractual prohibitions of competition are not regulated in the Labour Code. It is not clear whether and under what conditions a contractual agreement will stand up to judicial review in case of dispute.
- A post-contractual non-competition obligation that lasts longer than (two) years is likely to be ineffective.
- It can be assumed that the effectiveness of a post-contractual non-compete obligation depends on the payment of appropriate compensation. This compensation should be exempt from social security contributions but taxable.

6.2. Labour law disputes

- Labour disputes are decided by the local courts in accordance with the rules of ordinary jurisdiction.
- Local courts are generally the courts at the defendant's location. However, the employee may also sue the employer at the place where the work is performed. The single judge has jurisdiction.
- Employees do not have to pay court fees if they take their case to court. Legal fees and court costs are ultimately imposed on the party that is unsuccessful in the dispute.
- Labour disputes are common and there is extensive case law. Disputes are settled relatively quickly compared to civil disputes. However, as there is no culture of settlement in Bulgaria and disputes often go through several instances, an employment dispute can take up to 3 (three) years. As a rule, the courts tend to decide in a worker-friendly manner.
- An employer who is ordered to resume employment must pay damages for a maximum of 6 (six) months, even if the employee was unemployed for a longer period due to the unfair dismissal.

7. New forms of employment

- Part-time contracts are not widespread on the Bulgarian market.
- Fixed-term contracts are mainly found in tourism and agriculture. In these sectors, employers have the option of registering jobs with the employment agency and filling them after payment of taxes.
- Recently, there are more and more examples of "home office" type jobs. In this type of work, employers and employees have to contractually regulate the organisation of work, the bearing of costs and the control mechanisms that the employer is allowed to use, as these are to a certain extent in conflict with the employee's privacy.

8. Employment of foreigners

8.1. EU citizens (and citizens of EEA states and Switzerland)

- EU citizens who are in Bulgaria as employees looking for work or vocational training or who are entitled to exercise self-employment are entitled to entry and residence in accordance with the Law on Free Movement of Persons/ EU. They do not require a visa for entry and a residence permit for stay.
- Nationals of EEA states, i.e. Norway, Iceland and Liechtenstein, as well as Swiss citizens are essentially on an equal footing with EU citizens.

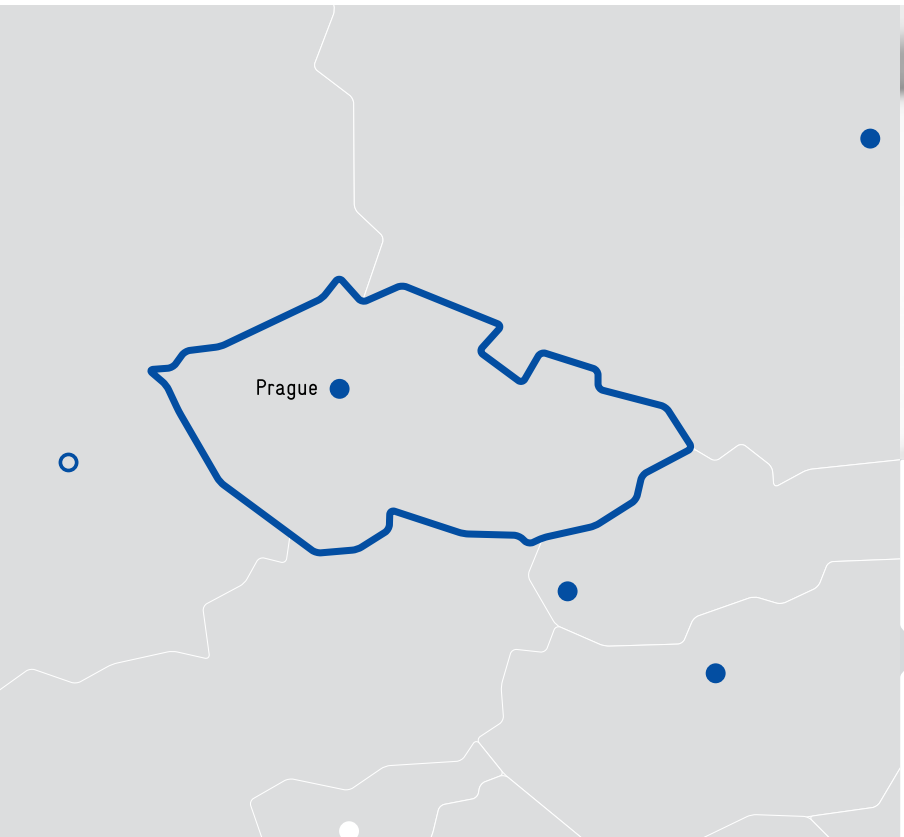
8.2. Third-country nationals

- Foreigners who are not citizens of the EU, the EEA or Switzerland may only take up employment with the permission of the employment agency and may only be employed if their residence permit permits this.
- The residence title indicates whether and to what extent foreign employees may be employed by the employer in Switzerland.
- Finally, there are isolated international agreements that contain special provisions on the right to work permits, e.g. for Ukrainian employees.

Author: Stela Ivanova

Czech Republic

bnt attorneys-at-law s.r.o.
Slovanský dům (building B/C)
Na příkopě 859/22,
CZ – 110 00 Praha



YOUR CONTACT

Markéta Pravdová
Partner

T +420 222 929 301
marketa.pravdova@bnt.eu

1. Employment relationship

1.1. Employment contracts

- Types of contract are regulated by the Czech Labour Code (in Czech: "Zákoník práce").
- An employment relationship arises on the basis of an employment contract.
- An employment contract may be concluded for a limited or unlimited period of time.
- An employer must conclude the employment contract in writing, but the employment relationship may also arise from performance of work itself (factual contractual relationship); if a contract is not in writing, this does not invalidate it, but it may result in significant financial penalties for the employer.
- An employment contract must at least contain information on the nature of the work, the place of performance of work and the date of commencement of work.

  In addition to the employment contract, two (2) specific types of contract can be concluded (these are so-called "minor employment relationships"), namely an agreement on performance of work and an agreement on work activity:

  – both types of contract are alternatives to an employment contract for minor or temporary employment → no employment relationship in the classic sense is created;
  – there is no holiday entitlement, no long notice periods, no severance pay;
  – the minimum wage must be observed;
  – on the basis of an agreement for work performance, an employee may perform work for a maximum of 300 hours a year; there is no obligation to pay social security contributions up to a monthly salary of CZK 10 thousand;
  – on the basis of an agreement for work performance, an employee may work up to 20 hours a week.

1.2. Limited term of the employment relationship

- A fixed-term employment relationship must be in writing and must specify its duration; otherwise it is considered to be an employment relationship for an indefinite period.
- A fixed-term employment relationship can be agreed for up to three (3) years and can be extended twice (2x) within this period, always by up to 3 (three) years (i.e. up to a total of 9 (nine) years); interpretation of this norm is controversial - in our opinion the extension may last up to a total of 3 (three) years, but the norm is generally interpreted in the sense of a possibility to extend to 9 (nine) years; in fact the wording in the EmplLaw-cz allows both variants but the question has not yet been decided by a court.
- The restriction on extending an employment relationship does not apply if the employer has serious operational reasons, which is why an employer cannot be required to conclude unlimited contracts This procedure requires a written agreement with a trade union organisation or adoption of an internal regulation by the employer if no trade union organisation is active with the employer.
- If a fixed-term employment relationship is extended, it is considered to be a new employment relationship. If three (3) years have elapsed since the termination of a previous fixed-term employment relationship between the same parties, the previous employment relationship is irrelevant for the purposes of this regulation. The restrictions on extending or renewing a fixed-term employment relationship do not apply to temporary employment agencies.

1.3. Probationary period

- A probationary period may be agreed for up to three (3) months, for senior executives for up to six (6) months; and in each case not for more than ½ of the duration of the employment relationship. The trial period cannot be extended. The probationary period must be agreed in writing no later than on the day of commencement of work; otherwise the agreement on the probationary period is null and void.

1.4. Managing director contract

- Managing directors and other members of a statutory body (e.g. board members) are neither employees nor salaried employees; the function of these persons (board members, managing directors) cannot be exercised on the basis of an employment contract. Rather, the office of these persons must be performed on the basis of a "contract for performance of a function" (manager contract or managing director contract) in line with the Act on Corporate Entities (Act No. 90/2012 Coll.). From the point of view of tax law and health and social insurance, a manager (or board member) contract is subject to the same regime as an employment contract.

2. Working time

2.1. Weekly working hours

- An employee's fixed working time is up to 40 hours a week in a one-shift operation, up to 38.75 hours in a two-shift operation and 37.5 hours in a three-shift or uninterrupted operation.
- The maximum duration of a shift is 12 hours.
- For minors the maximum working time is 40 hours a week, up to 8 hours a day (together for all working conditions).
- The employer may distribute working time evenly or unevenly over individual weeks; the compensation period in the case of uneven distribution of working time may not exceed 26 weeks (a longer period of 52 weeks may be agreed in a collective agreement).
- An employee whose shift lasts longer than six (6) hours is entitled to a 30-minute rest and meal break.
- Work on Sundays and public holidays is permitted only in exceptional cases. If it is ordered, the employee is entitled to a salary supplement.
- The employer must observe an uninterrupted daily rest period, which as a rule consists of a rest break of 11 consecutive hours within 24 hours, and an uninterrupted weekly rest period of 35 hours, which should fall on a Sunday.

2.2. Time account and flexitime

- A special type of uneven distribution of working time is the working time account. The compensation period for a working time account must not exceed 26 weeks (a longer period of 52 weeks may be agreed in a collective agreement). However, the introduction of working time accounts is relatively demanding from an administrative point of view. For the duration of a compensation period, an employee is paid a permanent salary (at least 85% of the average salary). At the end of the balancing period, time worked is compared with the permanent salary paid, and if necessary the employer pays the difference to the permanent salary if this is calculated in the employee's favour (i.e., the employer pays the negative difference).
- The Labour Code also regulates the so-called flexible division of working time, whereby during a selectable period the employee himself chooses the beginning and end of his working time; however, during the core working time he is obliged to be at the workplace.

2.3. Overtime and readiness to work

- Overtime work is work performed in excess of the fixed weekly working hours. It may only be used in exceptional cases for a serious operational reason, e.g. due to urgent economic interests of the employer.
- Employees may be instructed by the employer to work overtime for a maximum of eight (8) hours a week and 150 hours a calendar year.
- Total overtime may not exceed an average of eight (8) hours a week for 26 consecutive weeks (in a collective agreement this can be extended to 52 weeks). This does not include overtime for which replacement leave is granted.

2.4. Holidays

- Minimum: four (4) weeks a year (= 20 working days).
- Entitlement to total annual leave begins after 60 working days with the same employer; for employment < 60 days: 1/12 of the annual leave

per each 21 days worked.

- If the employment relationship begins / ends during the year, a pro rata entitlement arises; holiday entitlement is rounded up or down to half working days.
- During vacation, the employee is entitled to continued salary payments in the amount of the average salary (= paid vacation), possibly with provisions that deviate from any collective agreement.

3. Remuneration

3.1. Types of salary

- Methods for determining wages - employment contract, wage assessment, collective agreement. An employer may unilaterally change the salary by issuing a salary notice, if it has been so determined. A salary can be set at a monthly or hourly rate.
- The salary may not be lower than the minimum salary and the so-called guaranteed salary. Since the beginning of 2020, the minimum monthly salary is CZK 14,600 per month. The guaranteed salary is derived from the minimum salary. Individual professions are divided into eight (8) groups according to the difficulty, liability and stringency of the work performed. In the lowest group (i.e. the least strenuous work) the guaranteed salary is equal to the minimum salary.

3.2. Grants

- For overtime work, employees are entitled to a salary supplement of at least 25% of their average salary or substitute time off. The employer may agree on the salary with the employee, taking into account any overtime work, if the extent of overtime work included in the salary is also agreed, up to 150 hours a year, in the case of executive employees up to the maximum permissible amount of overtime work.
- Work on public holidays - only permitted in exceptional cases (e.g., necessary repairs, averting imminent danger, work in continuous operation). Compensation: in addition to their wages, employees are entitled to compensatory leave to the extent of the work performed or, by agreement with the employee, to a supplement at least equal to the average wage (resulting in double the wage).
- In the case of a combination of overtime and work on public holidays: summation of bonuses.
- Supplement for night work, weekend work on Saturdays and Sundays - at least 10% of the average wage; however, deviating collective agreement regulations are permissible.

3.3. Benefits

- These are benefits in cash or in kind provided by an employer to an employee in addition to wages and salaries; they result from internal regulations, the employment contract or collective agreement (so-called "benefits").
- Benefits are usually provided under a preferential tax regime on the part of the employer (in which case they are tax-deductible costs) or on the part of the employee (in which case they are income in kind which is tax-exempt for the employee); a benefit which is tax-deductible costs is usually taxable income in kind for the employee.
- The most common benefits include food vouchers, extension of holidays, the so-called 13th salary, language and other specialised courses; so-called sick-days (days of illness that do not have to be specifically confirmed by a doctor); bonuses for certain periods during which the employee has not fallen ill - are controversial; etc.

3.4. Social and health insurance contributions

Table of social and health insurance contributions

Total burden of social and health insurance contributions in:	Total monthly contribution payments as of 1 January 2020 (in % of monthly gross salary)	
	Employer	Employee
Czech Republic	38.2%	11%

3.5. Incidental wage costs

- Taxes: the employer pays wage tax, where the basis of assessment for calculation is the so-called super-gross salary (gross salary increased by the employer's share of social and health insurance contributions); tax is 15%; in addition, there is 7% of the solidarity increase in income tax (for monthly income exceeding CZK 139.340).
- Accident insurance: the contribution depends on the risk category of the business activity and in low-risk sectors it is 5.6 per thousand of the tax base.

4. Changes in the employment relationship

4.1. Unilateral changes in the employment relationship by the employer

- As a general rule, the employee must only perform work other than that agreed in the employment contract or to work in a place other than that agreed if the law so provides or if the employee agrees. This means that without the employee's consent, the employer may (and usually must) assign the employee to other work if:
  - the employee cannot perform the agreed work according to a medical certificate;
  - a pregnant employee performs work that is forbidden to her, or if an employee who performs night work is unable to perform such work;
  - it is necessary for reasons of protection of third persons against infectious diseases;
  - it has been so ordered on the basis of a final judgment of a court or administrative body (prohibition of employment);
  - criminal proceedings have been instituted against the employee on suspicion of having committed an intentional offence in the course of or in connection with performance of work, until the criminal proceedings have been finally terminated.

4.2. Transfer of business

- The Labour Code defines transfer of an undertaking more broadly than in European law. Transfer of rights and obligations arising from an employment relationship occurs in the event of transfer of all or part of an employer's activity or a transfer of tasks of an employer or part of its activities to another employer. The new (accepting) employer thus acquires not only the rights and obligations under concluded employment agreements but also, e.g., under a collective agreement.
- In connection with transfer of an undertaking, the two employers concerned must inform trade union organisations or all employees affected by transfer of the undertaking, and must comply with this information obligation no later than 30 days before the decisive day (deadline).
- If a transferring employee gives notice of termination due to notified transfer of business, the employment relationship will terminate no later than on the day preceding the transfer of business.

4.3. Temporary work/employee leasing

- Employees may be temporarily loaned to another employer for work, through a temporary employment agency with a valid licence.
- An agency operating as a temporary employment agency obtains a licence (applied for from the Czech Ministry of Labour and Social Affairs) if it meets the legal requirements (especially if it has paid a deposit of CZK 500,000).
- Employees are lent to user employers on the basis of an agreement on temporary work between the agency and the user employer and on the basis of an agreement on temporary work between the employee and the agency; the main requirements for these agreements are regulated by the Czech Law on Employment – not the Labour Code.
- An employee may not be assigned to an employer with whom he/she already works on the basis of an employment contract or to which he/she was already assigned by another agency in the respective month.

- An employee may be assigned to an employer for up to twelve (12) months (exception - an employee's application for maternity or parental leave).

- The terms and conditions of employment and wages and the terms and conditions of employment of a loaned employee must be at least as favourable as those of a comparable regular employee of the user employer.

4.4. Posting

- The Labour Code does not regulate so-called posting of employees, but only their so-called temporary assignment. With regard to posting of workers, attention must be paid to current developments due to implementation of the EU Posting of Workers Directive (EU) 2018/957, which amends Directive 96/71/EC; implementation in national law is to take place by 1 July 2020; at present there is no draft law.

- The principle of temporary assignment is that the "accepting" employer imposes working tasks on the assigned employee, but cannot take legal action against him. The previous employer continues to pay the employee's salary or travel expenses. However, the working and wage conditions of a temporarily assigned employee may not be worse than the conditions of a comparable employee at the "accepting" employer.

- An agreement on temporary assignment may be entered into with the employee no earlier than six (6) months after conclusion of an employment relationship, and may be terminated by 15 days' notice.

- An agreement between employers should also be concluded with respect to temporary assignment, but the Labour Code does not explicitly regulate this. The employers concerned may not charge any remuneration for a temporary assignment, with the exception of passing on wage costs, including any travel expenses.

5. Termination of the employment relationship

5.1. Amicable termination

- An agreement to terminate an employment relationship must be in writing. The employment relationship then ends on the agreed date. An agreement to terminate an employment relationship may also be concluded with an employee who is not capable of working, and also with a pregnant employee or an employee on maternity or parental leave.

5.2. Termination of employment

- Dismissal by the employer is permitted only in certain cases expressly listed in the Labour Code:
  - closure or relocation of the employer, loss of the workplace for operational reasons (job cuts) - so-called operational dismissal;
  - health reasons on the part of the employee;
  - failure to comply with the law with regard to the conditions for performance of the agreed work;
  - unsatisfactory work performance;
  - breach of duty on the part of the employee - dismissal for conduct.

- The standard notice period is two (2) months. Employer and employee may also - in the employment contract or an addendum - agree on a longer period of notice, but this must always be the same for both parties.

- The employee may terminate an employment relationship at any time in compliance with the notice period.

- Notice of termination must be in writing and must be served, otherwise it is invalid. The employer's notice of termination must contain the reason for termination, which cannot later be changed. In some cases there is a prohibition of dismissal (e.g. for pregnant employees, an employee on maternity or parental leave).

- The employer should discuss termination with employee representatives.

5.3. Extraordinary termination

- Under certain conditions, the employee can terminate without notice:
  - if the employer is in arrears with payment of all/part of wages for more than 15 days after the due date; or
  - if he/she is unable to work for an important health threat-related reason and the employer does not transfer him/her to another suitable job within 15 days.
- The employer can terminate without notice if:
  - the employee violates his obligations in a particularly gross manner; or
  - the employee has been convicted with final effect of a specific offence listed in a law.

5.4. Mass dismissal

- Collective redundancies are deemed to occur if a large number of employees are dismissed within 30 days for so-called operational reasons (or if a termination agreement is concluded with them for this reason):
  - with at least ten (10) employees (in the case of an employer with at least 20 and up to 100 employees);
  - with at least 10% of the workforce (for an employer with more than 100 and up to 300 employees);
  - with at least 30 employees (if the employer has more than 300 employees).
- A mass dismissal is a complex process, the implementation of which takes at least four (4) months.
- A mass dismissal is accompanied by numerous consultation and information obligations towards employees, employee representatives and the employment office. In this case, individual employees must also be given ordinary notice of termination or a termination agreement must be concluded with them.

5.5. Compensation

- An employee whose employment relationship has been terminated by notice of termination from the employer or by mutual agreement to terminate the employment relationship by reason of closure or relocation of the employer or for other operational reasons is entitled to severance pay of at least:
  - one (1) average monthly salary, if the employment relationship has lasted for less than one year;
  - two (2) average monthly salaries for a minimum of one (1) year and up to two (2) years of service;
  - three (3) average monthly salaries for at least two (2) years of service.
- In the event of termination of employment for health reasons due to an accident at work or occupational disease (whether by notice of termination from the employer or by an agreement to terminate), the employee is entitled to severance pay of at least twelve (12) average monthly salaries.

6. Post-contractual relations

6.1. Prohibition of competition

- At the same time as the employment relationship, the employee may also carry out another income activity. If this is in competition with the employer's object of business, the employee requires the employer's written consent. This non-competition clause may be extended in the employment agreement.
- A non-competition clause may be agreed for up to one (1) year after termination of employment.
- If a non-competition clause is agreed after termination of employment, the employer must pay the employee at least 50% of the average monthly wage for each month of compliance with the non-competition clause.

- A contractual penalty may be agreed for breach of the non-competition clause after termination.
- A non-competition clause after termination of employment must be agreed in writing, otherwise it is invalid.

6.2. Labour law disputes

- Labour disputes, including disputes about the validity of termination of employment, are decided by the local courts (in Czech: Okresní soud, in Prague: Obvodní soud pro Prahu 1, 2, 3 etc.) in accordance with the Czech Code of Civil Procedure. There are no labour courts in the Czech Republic.
- The place of jurisdiction is the defendant's place of residence or registered office; the court that has local jurisdiction over the place of work may also be chosen. Disputes are decided by a senate of three (3) judges.
- Disputes under labour law are numerous; there is therefore a solid basis of trend-setting decisions.
- Court fees are initially payable by the plaintiff. Employees who sue for compensation for damage caused by an industrial accident or occupational disease are exempt from the obligation to pay court fees. At the end of a legal dispute, the fees are distributed in proportion to the success of the action.
- An employer who loses a lawsuit for invalid termination of employment and has to pay the employee more than six (6) months' wages may apply to the court for a reduction of compensation for wages beyond the six (6) months.

7. New forms of employment

- The Labour Code currently does not sufficiently reflect the needs of employees for more flexible employment for the purpose of reconciling work and private life. In practice, employment contracts are often related to an agreed shorter working time, or agreements on performance of work and agreements on work activities are used as alternatives for minor or temporary employment.
- In connection with the development of a "divided economy", the number of people who do not want to be traditionally employed, but who want to work only on specific projects or for several employers, as so-called independent workers (so-called freelancers), is also increasing. However, the use of so-called freelancers by employers for essential activities is problematic, because according to the EmplLaw-cz, so-called dependent work may be performed only on the basis of an employment contract or an agreement on performance of work (the Labour Code defines the characteristics of dependent work).
- An amendment to the Labour Code that is currently being prepared includes the so-called institute of a shared workplace. If the employer agrees to this, in the future two or more employees may share a single workplace; they must then agree on the extent to which each of them will work the specified working time.

8. Employment of foreigners

8.1. EU citizens (as well as citizens of the EEA and Switzerland)

- EU citizens (as well as citizens of the EEA and Switzerland) can be employed in the Czech Republic under the same conditions as Czech citizens - in fact, they must be employed in the same way, as Art. 18 and Art. 21 TFEU prohibit discrimination on the basis of citizenship alone. EU citizens do not need to obtain any special permits for employment. The same applies to citizens from the states of the European Economic Area (EEA, currently only Liechtenstein, Iceland and Norway) and Switzerland. For citizens from Great Britain (United Kingdom of Great Britain and Northern Ireland - UK), after the end of the transitional period following Brexit on 31 January 2020 (currently 31 December 2020), it was still unclear which rules will apply when this manuscript was written in March 2020. In the case of a so-called "hard Brexit", i.e. Brexit without an agreement between the EU and Great Britain, which is

still possible after Brexit, when no agreement is reached between the EU and the UK in 2020, a special Czech law (Law 74/2019 Coll.) has been passed which grants UK citizens a transitional period.

- An employer is obliged to keep a record of EU citizens and third country nationals he employs. The same obligation applies to a legal entity and a natural person or a legal entity that has concluded a contract with a foreign employee on the basis of which this person was brought to the Czech Republic for work.

- An employer must inform the competent department of the Labour Office in writing about commencement of work by EU citizens and citizens of third countries (this also applies to persons who have concluded an agreement with a foreign employee on the basis of which this person was sent to the Czech Republic for work).

8.2. Third-country nationals

- Citizens of third countries, i.e. employees from countries other than the EU, EEA or Switzerland, can work in the Czech Republic only with a special permit; since 1 February 2020, citizens of the UK are citizens of third countries, even though the transition period between the EU and the UK will continue until the end of 2020.

- In addition, third-country nationals require a residence permit under the Aliens Act (Act No. 326/1999 Coll.). This is issued by the Foreigners Authority of the Ministry of the Interior (in Czech: OAMP MV). In general, the process is relatively cumbersome; the Foreigners Authority is the authority that is generally considered to be the worst functioning State authority in the entire Czech public administration.

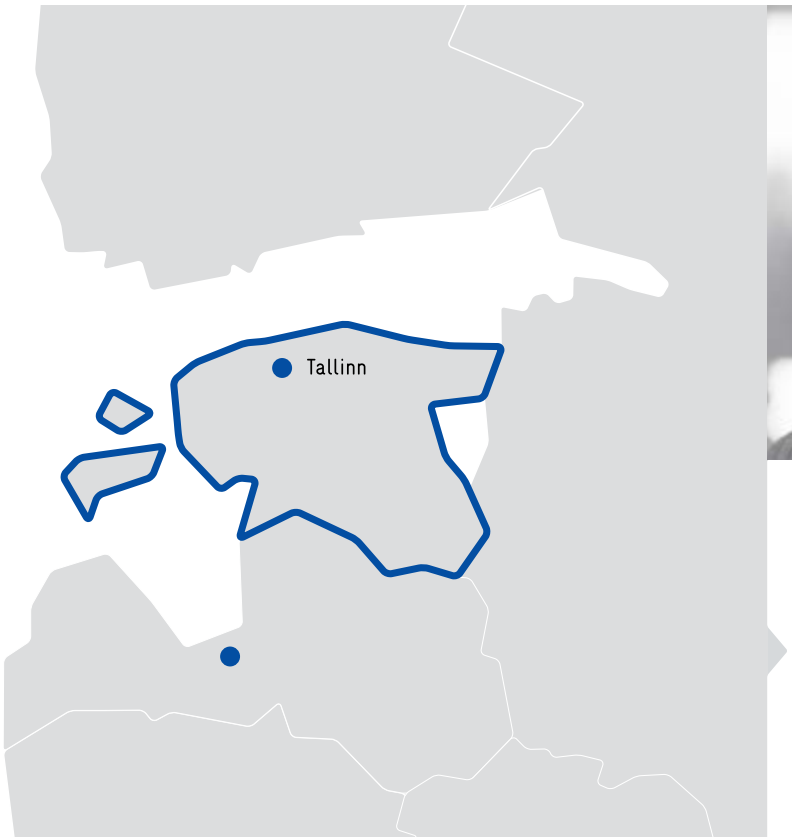
- The Czech Republic has a highly restrictive approach to granting asylum (according to Act No. 325/1999 Coll. on Asylum) and refugee status (according to international agreements).

- In particular, the regulations governing employment of third country nationals are very complicated; there are state programmes for which it is easier to obtain work and residence permits for participants.

Author: Markéta Pravdová

Estonia

bnt attorneys-at-law
Advokaadibüroo OÜ
Tatari 6
EE – 10116 Tallinn



YOUR CONTACT

Aet Bergmann
Partner

T +372 667 62 40
aet.bergmann@bnt.eu

1. Employment relationship

1.1. Employment contract

- The Labour Code („Töölepingu seadus“) states the legal regulations on employment contracts; other types of service contract, which mainly concern provision of services, are regulated by the Law of Obligations ("Võlaõigusseadus").
- An employment contract is the most common type of contract when entering into an employment relationship.
- An employment contract can be concluded for a limited or unlimited period.
- An employer must conclude an employment contract in writing, but an employment relationship may also arise from performance of the work itself; an oral employment contract is still valid.
- A written employment contract must include at least the following: Name, personal identification or registration code of the parties, domicile or place of business of the parties, date of conclusion of the contract, commencement date of the contract, description of the activity/obligations, agreed remuneration, date of payment of wages, working hours, place of work, holidays, reference to the applicable work regulations and provisions on termination.

1.2. Limitation of the employment relationship

- A fixed-term employment relationship must be in writing and must specify its duration; otherwise, it is considered to be an employment relationship for an indefinite period.
- A fixed-term employment relationship ends after its last day of validity. If the employee continues to work and the employer allows the employee to work, it is automatically considered to be an employment relationship for an indefinite period.
- A fixed-term employment relationship can be agreed for a maximum of five (5) years and can be extended only once. A fixed-term employment contract that is extended more than once is automatically considered to be an employment relationship for an indefinite period.
- A renewed fixed-term employment relationship is an employment relationship entered into between the same parties before the expiry of two (2) months after the termination of the previous fixed-term employment relationship.

1.3. Probationary period

- A trial period can be agreed for up to four (4) months.

1.4. Managing director contract

- Managing directors are not employees within the meaning of Estonian law; their functions and duties cannot be regulated on the basis of an employment contract. The duties and functions of a managing director may be regulated by an agreement referred to in the Commercial Code ("Äriseadustik") and determined by the Law of Obligations.

2. Working time

2.1. Weekly working hours

- The law sets 40 hours a week as normal working time. The maximum working time of an employee including overtime is 48 hours a week.

2.2. Total working time

- If aggregate working time is agreed in a written employment contract, then working time (without exceeding otherwise agreed or statutory maximum working hours) can be determined for an agreed calculation period of up to four (4) months, i.e. the workload can vary daily or weekly.
- In the case of aggregate working time, overtime means what exceeds the agreed working time at the end of the calculation period. In this case, over a calculation period of four months, average working time of 48 hours (distributed over a seven (7) day week) may not be exceeded. Longer working time may be agreed if the average working time does not exceed 52 hours (spread over a seven (7) day week) during a four (4) month period.

2.3. Overtime

- Overtime work is work in excess of the fixed weekly working hours. It may only be used as such in exceptional cases for a serious operational reason, in particular to prevent damage to the employer.
- The total amount of overtime work may not exceed an average of eight (8) hours a week over a period of four (4) months. The Parties may by agreement extend the permissible average total amount of overtime to twelve (12) hours a week. The Employee may terminate this agreement at any time by two weeks' notice.
- Usually, overtime is compensated with time off. If the parties agree that overtime is compensated in money, a salary supplement for overtime is payable.
- An overtime agreement with a minor is void.

2.4. Holiday

- Ordinary annual leave is at least 28 calendar days. National holidays and public holidays are not included in annual leave.
- At least 14 days of annual leave must be used in one go. The remaining annual leave can be used in shorter periods if so agreed between the parties. The employer may decide not to accept shorter periods of leave than seven (7) calendar days.
- During vacation, the employee is generally entitled to continued pay at the level of the average wage (= paid vacation).

3. Remuneration

3.1. Types of salary

- The salary forms are monthly salary, hourly salary, salary from financial results of the company and salary from transactions.
- The salary must not be lower than the minimum salary laid down by law. The minimum salary for 2020 is 584 euros/month or 3.48 euros/hour.

3.2. Salary supplements

- For overtime work, employees are entitled to a salary supplement of at least 50% of their average salary, unless the overtime is compensated by time off.
- Supplement for night work is at least 25% of average salary, unless it is contractually agreed that the regular salary includes night work.
- Supplement for work on public holidays is at least 100 % of the average wage (double pay).
- If overtime and work on public holidays are combined: accumulation of bonuses.

3.3. Benefits

- These are benefits in cash or in kind provided by an employer to an employee in addition to wages; they result from internal regulations, the employment contract or a collective agreement.
- Usually, these benefits represent a preferential tax regime on the employer's side (in this case, tax-deductible costs).
- The most common benefits include, e.g.: health-promoting measures (e.g. sporting events and membership fees for sports clubs, health insurance contributions), extension of holidays, the so-called 13th salary, language and other specialist courses; so-called sick-days (days of sickness that do not have to be specifically confirmed by a doctor).

3.4. Social and health insurance contributions

Table of social and health insurance contributions

Total burden of social and health insurance contributions in:	Total monthly contribution payments as of 1 January 2020 (in % of gross monthly salary)	
	Employer	Employee
Estonia	33.8%	3.6%

3.5. Incidental wage costs

- Taxes: The employer withholds income tax (20% minus certain allowances), the unemployment insurance premium (1.6%) and the personalised pension insurance portion (2%) from the wage and pays them to the tax office. In addition, the employer pays the health (20%) and pension (13%) insurance contributions and the employer's share of the unemployment insurance premium (0.8%).

4. Changes in the employment relationship

4.1. Unilateral changes in the employment relationship by the employer

- An employment contract can only be amended with the consent of both parties.

4.2. Business transfer

- Employment contracts are transferred to the transferee in unmodified form if the entity continues with the same or a similar economic activity. It is prohibited for transferees of an enterprise to terminate an employment contract because of the business transfer.

4.3. Agency workers/ temporary employment

- Employers registered as temporary employment agencies may, by agreement with the employee, transfer control over their employees to third parties.
- Usually, the employer gives instructions to the worker. The employer is responsible for safety at work.
- Agency work may be temporary if the work which the user is undertaking is of a temporary nature. Temporary contracts in the user enterprise are subject to the same restrictions as usual: such a contract may only be renewed once.

4.4. Secondment

- The employer may send the employee to another place to perform working tasks for a maximum of 30 consecutive calendar days.
- Pregnant women, parents of small children and minors may not be posted without their consent (or the consent of their legal representative).
- The costs of posting are borne by the employer prior to posting. A daily allowance of up to 50 euros a calendar day is tax-free if the secondment takes place outside of Estonia.

5. Termination of the employment relationship

5.1. Amicable termination

- The parties may terminate the employment relationship at any time by mutual consent.

5.2. Termination

- The employee can terminate an open-ended employment contract at any time by one month's notice. The employee may not terminate a fixed-term employment contract unless a fixed-term employment contract has been concluded for replacement of an employee.
- The law does not allow ordinary termination of employment by the employer. Notice of termination by the employer is only permitted in certain cases expressly listed in the law:
  - Closure or relocation of the employer, loss of job for operational and economic reasons (job cuts) - so-called operational redundancy;
  - health reasons on the part of the employee;
  - failure to comply with the law with regard to the conditions for performing agreed work;
  - unsatisfactory work performance;
  - breach of duty on the part of the employee - dismissal for conduct.

- The following periods of notice apply:
  - During the probationary period: 15 calendar days (for employees and employers);
  - On the part of the employee: 30 calendar days (ordinary termination) to without notice (extraordinary termination if continuation of the employment relationship is not reasonable for the employee);
  - On the part of the employer:
    - employment of less than one year: 15 calendar days;
    - employment relationship 1 - 5 years: 30 calendar days;
    - employment relationship 5 - 10 years: 60 calendar days;
    - employment over 10 years: 90 calendar days;
    - without notice in the event of extraordinary termination if continuation of the employment relationship would be deemed unacceptable for the employer.
- Before terminating an employment contract for reasons other than the person of the employee, the employer must, if possible, offer the employee another job. The employer must offer the employee alternative work (including, if necessary, further training, adaptation of the employee's job or working conditions) if the changes do not result in disproportionately high costs for the employer and the offer can be reasonably expected, taking into account all circumstances.
- The employer may terminate an employment contract only within a reasonable period after having learned of a circumstance that serves as a basis for termination.

5.3. Mass dismissal

- Mass dismissals are deemed to have occurred if the following numbers of employees are dismissed for operational reasons within thirty days:
  - at least five (5) employees for an employer with up to 19 employees;
  - at least ten (10) employees for an employer with 20 - 99 employees;
  - 10% of employees for an employer with 100 - 299 employees; or
  - at least 30 employees for an employer with more than 300 employees.
- A mass dismissal is accompanied by obligations to consult with and provide information to employees, employee representatives and the employment office. In this case, the individual employees must also be given ordinary notice of termination or a termination agreement must be concluded with them.
- Employees must be served with customary notice of termination; they are entitled to the statutory period of notice and a severance payment in accordance with their period of employment.

5.4. Severance pay

- An employee whose employment relationship has been terminated by the employer for operational reasons is entitled to severance pay equal to one average monthly salary.
- If a fixed-term employment contract is terminated by the employer for operational reasons, the employee is usually entitled to severance pay in the amount that he would have received as salary until the regular end of the fixed-term contract.

6. Post-contractual relations

6.1. Prohibition of competition

- A prohibition of competition for the employee only exists if there is a written agreement to that effect.
- A non-compete clause may be agreed for a maximum of one (1) year after termination of the employment relationship.

- If a non-compete clause is agreed after termination of employment, the employer must pay the employee adequate compensation for each month of compliance with the non-compete clause.
- A contractual penalty may be agreed upon for violation of the non-compete clause.

6.2. Labour law disputes

- Labour disputes are submitted either to the Labour Disputes Commission or, alternatively, to the ordinary courts (maximum of three (3) instances).
- The decision of the Commission may also be appealed against in the ordinary courts.
- The limitation periods for labour disputes are short (usually four (4) months).

7. New forms of employment

- New forms of employment (flexible working hours, employment with several employers, project-based employment etc.) are not yet covered by Estonian legislation.

8. Employment of foreigners

8.1. EU citizens (and citizens from the EEA and Switzerland)

- EU citizens and citizens from the European Economic Area and Switzerland ("EU citizens") are employed in Estonia under the same conditions as Estonian citizens and should not be discriminated against based on their origin. EU citizens do not need to obtain special permits for employment.
- EU citizens can live and work in Estonia for up to three (3) months without reporting to the police. Thereafter, they must register and receive a five-year residence permit upon registration. After that, if they continue their stay in Estonia, they will receive a permanent residence permit. The residence permit includes the right to employment.
- The employer registers foreigners as employees with the tax office in the same way as locals.

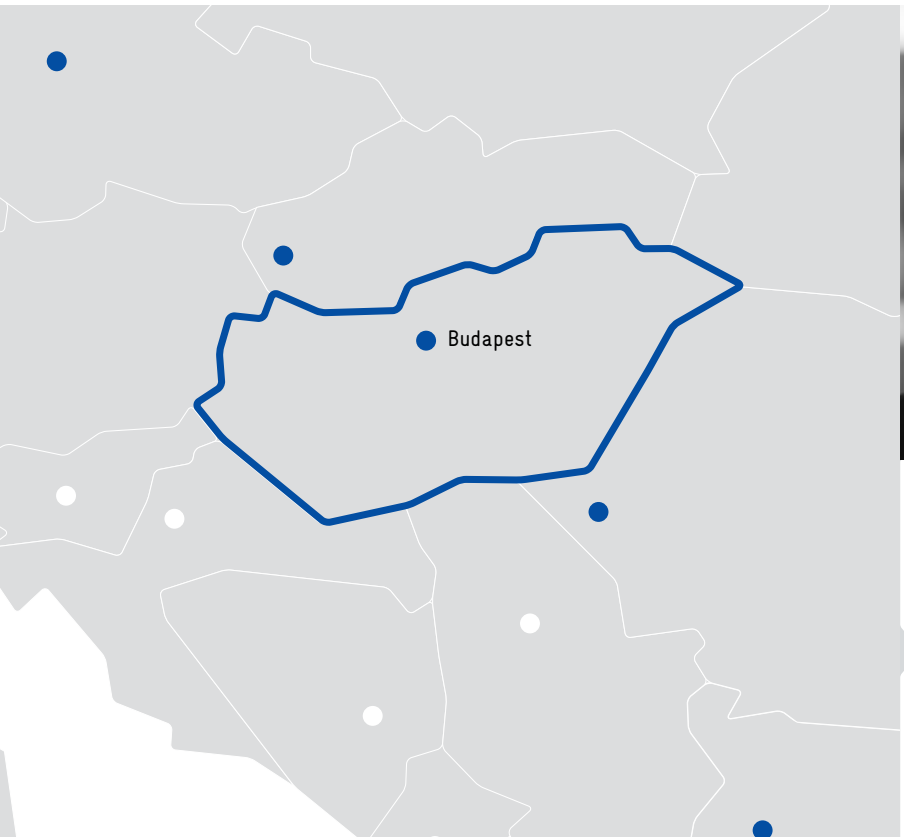
8.2. Third-country nationals

- Foreigners from third countries, including stateless persons who have a valid residence permit in Estonia, generally have the right to work without a separate work permit.
- Strict requirements apply to foreigners who come to Estonia for work; depending on their activity, the unemployment insurance fund must consent and the wage may not be lower than the official average income of the country. There is also a limit on immigration (in 2018: 1,314 persons), which applies only to citizens of third countries (not to EU citizens and citizens of selected other, mostly Western, countries, nor to certain sectors), but which is set too low according to the general consensus.
- The EU directive introducing the EU Blue Card has been implemented in Estonia.
- Estonia has a very restrictive approach to granting asylum.

Author: Aet Bergmann

Hungary

bnt ügyvédi iroda
Stefánia út 101–103.
H–1143 Budapest



YOUR CONTACT

Éva Ratatics
Partner

T +36 1 413 3400
eva.ratatics@bnt.eu

1. Employment relationship

1.1. Employment contracts

- Agreements under which a person can perform work are regulated in the Hungarian Labour Code (Act No. 1 from 2012; Hungarian Labour Code) and in the Hungarian Civil Code (Act No. V from 2013; Hungarian Civil Code).
- An employment contract regulated in the Hungarian Labour Code is the most commonly used contract for employment relationships.
- Employment contracts can be concluded for an indefinite or fixed term.
- Employers must conclude employment contracts in writing; however, an employment relationship can also result from actual work. The employer can be fined if there is no written employment agreement, but the employment relationship is established. The employee can invoke the invalidity of an employment contract within thirty (30) days from the first day on which he starts work.
- Employment contracts must contain at least the position and the basic salary.
- If the period of validity and the place of work are not set, the agreement will be for an indefinite period and the workplace will be where the employee normally works.
- Besides an employment contract, a contract of mandate or a contract for work can also be concluded. However, these contracts can only be qualified as an employment contract if their content complies with the requisites for an employment contract.

1.2. Fixed-term employment

- A fixed-term employment relationship must be expressly agreed in writing, otherwise it will be considered as a contract of employment of indefinite duration.
- A fixed-term employment relationship can be agreed for up to five (5) years. If after the end of a fixed-term contract within six (6) months another fixed-term contract is concluded, in order to calculate the duration limit, the duration of the contracts must be totalled.

1.3. Probation period

- A probation period of three (3) months can be agreed (it can be extended to six (6) months by a collective agreement).
- If the parties agree on a shorter duration, an extension by mutual consent is renewable once; however, the time limits mentioned above must not be exceeded.

1.4. Contract of the managing director

- Managing directors can carry out their work based on an employment contract or based on a contract of mandate.
- Managing directors and their deputies are executive employees by law and are not covered by collective agreements.
- The employment relationship of executives can deviate from the Hungarian Labour Code in almost all aspects.

2. Work time

2.1. Weekly working time

- The daily working time in full-time employment is eight (8) hours; in some cases it can be extended to twelve (12) hours.
- In general, employees' weekly working hours must not exceed forty-eight (48) hours.
- Employees can also work part-time and in that case the daily working time must be less than eight (8) hours.
- The employer unilaterally sets the rules for the working time schedule. Working hours for a week must be set seven (7) days in advance, but at least four (4) days in the event of unforeseen events.
- In the general work regulations working hours are planned for five (5) days from Monday to Friday.

- In case of flexible working hours, the employee can arrange his own working hours. Qualification as flexible working hours is not affected if certain tasks must be done at a certain time.

- In the case of a working timeframe or a payroll period working time can be unevenly distributed.

- Use of a working time framework or a payroll period grants certain flexibility in the organization of working hours. (Certain restrictions must always be observed when organizing working hours: e.g. mandatory rules and rest hours).

- In principle, the working timeframe must not exceed four (4) months or sixteen (16) weeks. The working timeframe may last six (6) months or twenty-six (26) weeks in certain cases. Collective agreements can allow a maximum working timeframe of up to thirty-six (36) months.

2.2. Time account and flexible working hours

- In Hungary, the labour law regulations describe two models for a flexible working schedule by the employer: a working timeframe and flexible working hours.

- Both models are suitable for organizing flexible working hours, thus compensating for seasonal fluctuations in the workload. By using these working time models, working hours can be divided unevenly. However, regulations in connection with the daily, weekly, monthly and annual minimum rest periods or the maximum working hours must be observed.

- The possible duration of the two models is between one month and (thirty-six) 36 months, whereby duration over six (6) months can only be achieved through a collective agreement or company agreement.

- The working timeframe is a popular form and is often used, whereas flexible working hours is rarely used due to its complicated rules.

2.3. Overtime and standby duty

- Extraordinary working hours are working hours that deviate from the working time regulations or that exceed accumulated normal working hours in the working timeframe or payroll period.

- In the case of full-time employees, extraordinary working hours may not exceed 250 (two hundred and fifty) hours in a calendar year. Collective agreements can increase these limits up to (three hundred) 300 hours.

- In addition to the maximum, one hundred and fifty hours (150) of overtime work can be ordered in a given calendar year; however, this must be agreed between the employee and the employer in writing (voluntary overtime). The employee can withdraw from the agreement at the end of the given calendar year. Voluntary overtime must be applied proportionately:

  – if the employment relationship started during the year;

  – in the case of fixed-term employment; or

  – in the case of a part-time job.

- During extraordinary working hours employees are entitled to an overtime payment of 50% on working days and 100% on rest days and on public holidays. Free time can also be granted instead of overtime payment for the employee based on an individual agreement or a collective agreement.

- Sunday work is only possible in the cases provided by law. However, in some cases Sunday work is not qualified as extraordinary working time.

- An employee can be obliged to be ready to start work after receiving a corresponding order from the employer (**standby duty**) beyond the daily working hours. Standby duty lasting over four (4) hours may only be ordered in special cases.

2.4. Vacation

- Vacation consists of basic vacation and additional vacation. The minimum amount of basic vacation is twenty (20) working days. An employee is entitled to additional vacation according to age, number of children, as well as their possible disability and the disability of the employee.

- If the employment relationship begins or ends

during the year, a proportional claim arises. Rounding up and rounding off vacation entitlement is possible for half working days.

- During the vacation the employee is entitled to continued salary in the amount of absentee pay (= paid vacation).

3. Salary

3.1. Types of salary

- These are: time-salary, performance-based salary or mixed implementation.
- The basic salary must be determined as time-salary. However, the employer can set monthly salary as performance-based salary or combine time-salary and performance-based salary.
- Performance-based salary can only be regulated in an employment contract. If it applies, a guaranteed salary must be set, which must be at least half the basic salary.
- Besides foreign employment or as otherwise stated in current regulation the salary must be paid in Forint.

3.2. Bonus

- Overtime: Employees are entitled to extra pay of 50% on working days and 100% on rest days and on public holidays for extraordinary working hours. Instead of extra pay, the employee can also obtain free time based on an individual agreement or a collective agreement. The employee is entitled to:
  - a bonus of 30% for shift work;
  - a bonus of 15% for evening work, if the work lasts longer than one hour;
  - a bonus of 20% for standby duty;
  - a bonus of 40% for on-call duty;
  - a bonus of 50% for working on Sunday in some cases.

3.3. Preferential treatment

- The employer can provide certain benefits for the employee in advance in addition to salary that are tailored to the needs of the employee. Such benefits are suitable for motivating employees. It is important to emphasise that payment of benefits is not mandatory; it is only a possibility within a certain framework and with regard to the applicable tax regulations.
- The types of these cash or in-kind benefits vary from sum & vouchers to company cars.

3.4. Social and health insurance contributions

Chart of social and health insurance contributions

Total burden of social and health insurance contributions in:	Total monthly contribution payments at 1 January 2020 (in % of monthly gross income)	
	Employer	Employee
HUNGARY	19% **Detailed:** - "Social contribution tax" 17.5%; - Contribution of 1.5% in a job training fund	18.5% **Detailed:** - Pension contribution of 10% - Health insurance and labour market contribution of 8.5%

3.5. Incidental wage costs

Chart of total incidental wage costs

	Total monthly payments at 1 January 2019 (in % of the gross monthly salary)	
	Employer	Employee
Hungary	19% **Detailed:** - "Social contribution tax" of 17.5%; - Contribution of 1.5% to a job training fund	33.5% **Detailed:** *- Income tax for natural persons of 15%;* - Pension contribution of 10% - Health insurance and labour market contribution of 8.5%

4. Amendment related to the employment relationship

4.1. Unilateral termination of the employment relationship by the employer

- The employer is basically not entitled to amend the employment contract unilaterally.
- By way of derogation from the employment contract the employer can employ the employee in a different function, at a different location or possibly with another employer.
- The duration of employment deviating from the employment contract must not exceed (forty-four) 44 working days or (three hundred and fifty-two) 352 hours a year. The employee must be informed about the foreseeable duration of different employment.
- The place of work cannot be relocated without the employee's consent for the following employees:
  - women after confirmation of pregnancy until the child is aged three;
  - single parents until the child is sixteen;
  - long-term care of a close relative;
  - if the responsible authority decides that the employee is at least 50% health-impaired.

4.2. Transfer of undertakings

- In case of transfer of undertakings existing work relationships remain unchanged.
- The employee has no decision-making authority about the transfer but must be informed in advance about any planned measures, the new employer and about possible changes in working conditions.
- However, the employee has a special right of termination if maintaining the employment relationship affects him disproportionately or makes it impossible for him to continue work because of significant and adverse changes in the employment relationship having occurred due to the transfer of business.

4.3. Temporary agency work

- In the case of temporary agency work employees of one company (lender) are borrowed by another company (hirer) and the employee's salary is paid by the hirer. The hirer also takes care of costs and obligations regarding temporary agency work.
- Temporary agency work enables the hirer to hire workers without administrative difficulties. The hirer has significant control over hired workers.
- Employees can be hired for up to five (5) years.
- The lender can be a company based in Hungary or in another EEA member state (Switzerland is not mentioned in the Hungarian government regulation).
- Temporary agency work must be agreed in writing. The agreement must regulate the distribution of the employers' rights; however, the contract details can be freely agreed by the parties. The lender can terminate the employment relationship of a hired employee.
- Temporary agency work is invalid if the lender and the hirer are affiliated companies.

4.4. Posting

- As explained in point 4.1 the employer is entitled to employ the employee by way of derogation from the employment contract in a different function, at a different workplace or possibly with another employer.
- Furthermore, foreign employers can employ their employees in Hungary based on an agreement concluded with third parties. Some Hungarian regulations apply to the employment relationships of such employees, e.g. minimum salary, health and safety regulations, even if their employment contract has not been concluded in Hungary.
- Foreign employees posted to Hungary must be registered with the competent authorities.

5. Termination of the employment relationship

5.1. Mutual consent

- An employment relationship can be terminated by mutual consent. The termination agreement must be in writing. Within the framework of the law the parties can freely determine the content of the termination agreement.

5.2. Termination by notice

- Termination by the employer is only possible in cases expressly provided by the Hungarian Labour Code.
- Termination of permanent employment is only possible in the following cases:
  - capabilities of the employee;
  - behaviour of the employee in connection with the employment relationship; or
  - reasons in connection with the employer's operation.
- The employer can terminate a fixed-term employment for the following reasons:
  - insolvency or bankruptcy procedure of the employer; or
  - capabilities of the employee; or
  - if maintaining the employment relationship is no longer possible because of unavoidable external reasons.
- The notice period for the employer is between thirty (30) and ninety (90) days depending on the employee's service duration.
- Duration of the notice period in the case of termination by the employer: 30 days
  - after 3 years: 35 days;
  - after 5 years 45 days;
  - after 8 years: 50 days;
  - after 10 years: 55 days;
  - after 15 years: 60 days;
  - after 18 years: 70 days;
  - after 20 years: 90 days.
- The employee can terminate an indefinite employment contract without reason. The employee can terminate a fixed-term employment contract only for reasons that make maintaining the employment relationship impossible or, in relation to the circumstances, is combined with disproportionate infringement.
- A longer notice period of up to six (6) months can be agreed. Without agreement, the employee has a notice period of thirty (30) days.

5.3. Termination without notice

- In the event of a material breach of contract the employment relationship can be terminated with immediate effect within fifteen (15) days. In the case of a fixed-term employment relationship no reasons need be indicated; however, the employee's remaining salary must be paid (up to twelve (12) months).

5.4. Collective redundancy

- A collective redundancy occurs when the employer intends to terminate the employment relationship (ordinary termination) within thirty (30) days of the following employee numbers for a reason related to the employer's operation:
  - of at least ten (10) employees, when employing more than twenty (20) and less than one hundred (100) employees;
  - of at least 10% of employees, when employing over (100) but under three hundred (300) employees;
  - of at least thirty employees (30) from over three hundred (300) employees.
- Termination of an employment relationship based on a termination agreement and termination of a fixed-term employment relationship can also be considered as ordinary termination. (If the employer owns more than one

permanent establishment, these requirements must be met for each permanent establishment separately.)

- Collective redundancy is a complicated process associated with an information obligation towards employees, but also towards the employment office.

5.5. Severance payment

- An employee is entitled to severance payment if his employment relationship after at least three (3) years of employment period is terminated by the employer.
- The sum of the severance payment: one (1) to six (6) monthly salaries depending on the period of service:
  - in the case of at least three (3) years: one (1) month's severance payment;
  - in the case of at least five (5) years: two (2) months' severance payment;
  - in the case of at least ten (10) years: three months' (3) severance payment;
  - in the case of at least fifteen (15) years: four (4) months' severance payment;
  - in the case of at least twenty (20) years: five (5) months' severance payment;
  - in the case of at least twenty-five (25) years: six (6) months' severance payment.
- Employees who have less than five (5) years to run before their pension are entitled to an additional severance payment in the amount of one (1) to three (3) months' salary.
- Pensioners are not entitled to severance payment.
- An employee is not entitled to severance payment if the employment relationship terminates because of the employee's behaviour or on other grounds than health.

6. Post-contractual relationships

6.1. Non-Competition

- Simultaneously with the employment relationship an employee can engage in other professional activities; however, if the professional activity is identical to the business area of the employer, the employer's written consent is required.
- Managing directors, their deputies and executive employees can only have another employment relationship with the consent of the employer.
- A non-competition ban can be agreed for a maximum of two (2) years following termination of the employment relationship.
- In the case of a non-competition clause after termination of the employment relationship the employer must pay at least 1/3 of the last basic salary to the employee for each month of the non-competition clause.
- For infringement of the non-competition clause a contractual penalty can be agreed.
- An employee can contest the non-competition clause if the employment relationship is terminated with immediate effect due to a breach of contract by the employer.

6.2. Labour dispute

- The General Courts are competent to hear labour disputes at first instance, the high courts of appeal at second instance and, in case of review procedure, the Curia.
- If the employer as plaintiff wants to initiate proceedings against the employee, the local jurisdiction depends on the employee's domestic residence or last place of residence.
- Legal disputes at first instance are decided by a professional judge and two (2) lay judges.
- Exemption from procedural and other fees is achievable for both employees and employers.

- The above-mentioned courts are also competent for collective legal disputes (works council elections, strikes by labour unions).
- According to legal practice, the numbers of labour disputes had been increasing, and proceedings have become faster after introduction of the new Labour Code. At the same time the courts must continue to deal with questions of interpretation that come up. This rise in legal disputes stopped with introduction of the new Civil Procedure. This law envisages the idea of a "professional, concentrated and rapid process" which requires the plaintiff to meet several rules with regard to court formalities as well as to present all the evidence at the very beginning of the process. This has resulted in a decrease of new proceedings since the 1 January 2018.

7. New forms of employment

- The forms defined and known by the Labour Code:
  - part-time;
  - job-sharing;
  - employee sharing;
  - distance work;
  - home office;
  - telework;
  - call for work;
  - fixed-term employment;
  - temporary agency work;
  - simplified employment.

8. Employment of foreigners

8.1. EU Citizens (and citizens of the EEA and Switzerland)

- There is no obligation to obtain a work permit for employment of EU citizens (as well as for citizens from EEA countries and Switzerland) in Hungary.
- However, the employer must notify the competent district office about employment of EU citizens (as well as citizens from EEA countries and Switzerland), anonymously, i.e. without mentioning the specific employees' name(s). A register is kept at the district office about employment of EU citizens (as well as citizens from EEA countries and Switzerland).
- If notification is not fulfilled the employer can be fined from HUF 5,000 – 500,000.
- In the case of employment of EU citizens (as well as citizens from EEA countries and Switzerland) for more than three (3) months, the employee must register their stay. The employee then receives a registration confirmation that is permanently valid.
- Payment obligations regarding taxes, social and health insurance contributions must be reviewed and determined with regard to the given constellation.

8.2. Third-country nationals

- There are three different types of procedures in the framework of which third-country citizens can be employed in Hungary:

  1. Employment without a permit:

  - In certain cases (listed in a government regulation) the employer must register the employee at the competent district office, but a work permit is not required. If notification is not fulfilled the employer can be fined from HUF 5,000 – 500,000.

2. **Employment based on a single application procedure:**

   - Based on this procedure - conducted by the competent regional directorate of the National Directorate-General for Aliens Policing - third-country nationals may obtain a residence permit enabling them to have an employment relationship with a particular employer.

3. **Employment based on a non-single application procedure:**

   - In the following cases, the employer must register third-country nationals at the competent government authority of the capital or of the county:

     – A third-country citizen who has already obtained an EU residence permit in another EU member state for a longer term;

     – residence for studies;

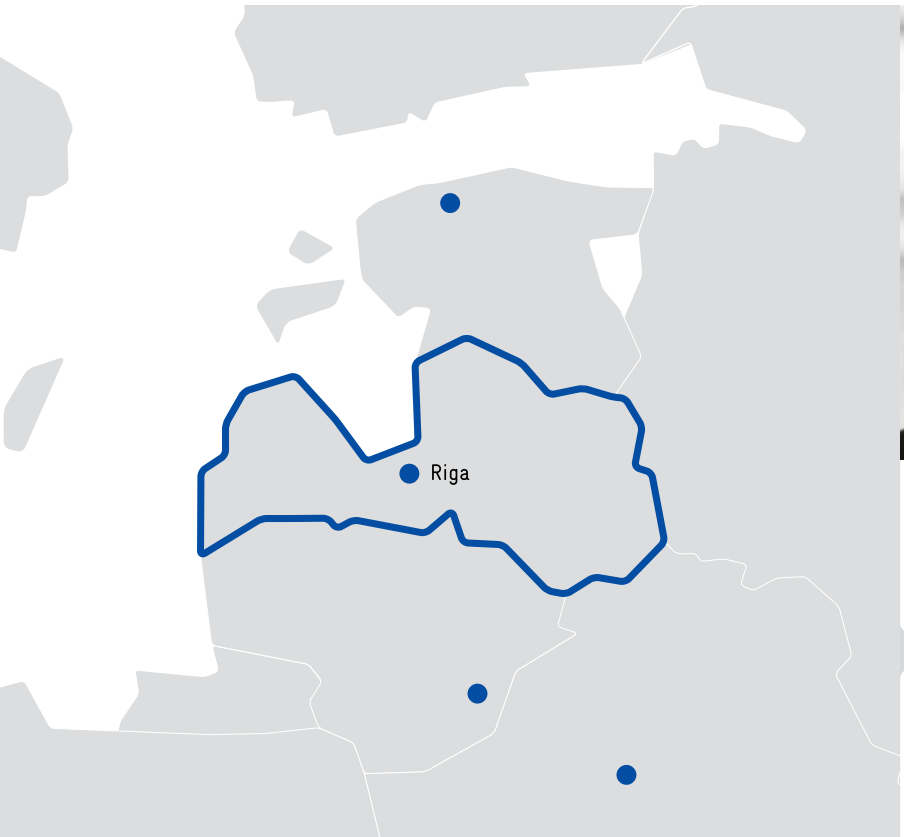
     – a person who wishes to stay in Hungary for no longer than (ninety) 90 days within (one hundred and eighty) 180 days; and

     – someone recognized as a refugee.

Author: Éva Ratatics

Latvia

Jensen & Svikis Legal
Antonijas iela 24-7
LV-1010 Rīga



YOUR CONTACT

Karlis Svikis
Partner

T +371 6616 44 11
karlis.svikis@bnt.eu

1. Employment relationship

1.1. Employment contracts

- An employment contract is the most common type of contract used in Latvia to hire staff.
- An employment contract can be for an indefinite term or, in certain cases, for a fixed term.
- The employer must conclude an employment contract in writing, but it is also possible to create an employment relationship by actual work performed; an employment contract not in writing is not invalid.
- An employment contract must contain at least the job title and job classification (under Latvian classification), general duties, place of work, starting date and duration of the contract, as well as the amount and payment date of the salary. Certain provisions must either be set out in the contract or replaced by legal references, collective agreements or employment law regulations, for example - weekly or monthly working hours, the length of annual leave, notice periods (note: a reduction of the notice period by the employer or an extension of the notice period by the employee contrary to the law is prohibited) and the provisions of a collective agreement or internal regulations.
- A collective agreement is an agreement between an employer and a trade union, usually offering more favourable working conditions for employees compared to those laid down in Latvian Employment Law and usually agreed in employment contracts.

1.2. Fixed-term employment relationships

- Fixed-term employment contracts must be expressly agreed in writing, otherwise they are considered to be concluded for an indefinite period.
- A fixed-term contract is permitted in the following exceptional cases:
  - in certain business sectors this is laid down by law (e.g. art, agriculture, real estate management) and for certain positions; (office manager of a foreign representation, e.g. embassy or consulate) or for seasonal work (e.g. landscaping, heating);
  - for temporary work aimed at short-term increase of work performance in the company (the increase in work performance must be demonstrable and described in the contract);
  - for emergency assistance dealing with consequences of force majeure or accidents;
  - to replace a specific employee (named in the contract) who is temporarily absent;
  - with a trainee, if the work relates to the field of a study;
  - for members of a management board or supervisory board of a company – until the end of their powers as defined by law and the company's articles of association.
- Fixed-term employment contracts may not exceed five (5) years, including all interruptions of less than 61 consecutive days. So, a fixed-term contract may also be concluded after five (5) years for an indefinite period if the interruption between contracts does not exceed 60 days.

1.3. Probation period

- The probation period may not exceed three (3) months.

1.4. Management contract

- Members of a management board or supervisory board of a company are employed on the basis of an employment contract or on the basis of a permit or on the basis of legal relationships agreed in the company. Also, within the framework of an employment contract, the members of the management board and the supervisory board can usually be dismissed by a resolution of the shareholders without prior notice or compensation.

1.5. Employees' representatives

- Employees represent their interests through participation in trade unions, works councils or through employee representatives.

- Trade unions are associations listed in the Enterprise Registry.
- Trade unions carry out advisory tasks and negotiate collective agreements.
- An employees' representative or a works council usually represents the interests of the employees with almost all the powers of a trade union, if no trade union is active in the company.

2. Working hours

2.1. Weekly working hours

- Regular working hours are eight (8) hours a day and 40 hours a week.
- Part-time working hours are less than the regular working hours. If, for any reason, an employee is required to work more than eight (8) hours a day but not more than 40 hours a week in total, the additional hours do not amount to overtime.

2.2. Time account and flexitime

- Accumulated working hours are calculated for each verifiable period.
- The reference period must not exceed three (3) months (unless a collective agreement specifies a longer period, up to twelve (12) months).
- The maximum working hours are 24 hours a day, 56 hours a week. The minimum average daily rest period should be twelve (12) hours, the average consecutive weekly rest period 35 hours.
- Working hours in excess of regular working hours per reference period are regarded as overtime and result in extra remuneration.
- In the context of shift work, in which employees replace each other, the above-mentioned models of working hours can be applied.
- Work on public holidays must be remunerated at twice the regular rate or compensated by paid leave on another day.

2.3. Overtime and availability

- The permissibility of overtime requires a written agreement between the contracting parties. Even without such an agreement, overtime may be ordered by the employer if it is necessary due to urgent public interest, imminent danger, force majeure or urgent operational requirements.
- If the above-mentioned conditions exist for more than six (6) consecutive days, a written State Labour Inspectorate permit is required for further overtime unless it is unlikely that similar work will be repeated.
- The maximum average number of overtime hours within a period of seven (7) days must not exceed eight (8) hours over a total of four (4) months.
- Overtime is paid at twice the regular hourly rate. The contracting parties may also agree on compensation through time off.

2.4. Annual leave

- Every employee is entitled to paid annual leave. The annual leave entitlement is at least four (4) calendar weeks. Public holidays are excluded. Minors are entitled to one (1) month's annual leave.
- Use of annual leave may be split up by agreement between the contracting parties; yet in this case the employee must be given continuous leave of at least two (2) weeks.
- In exceptional cases, where urgent operational needs make it impossible for an employee to take annual leave, the contracting parties may agree that any annual leave not taken may be carried over to the following year. This does not apply to leave entitlement of minors.
- Financial compensation for annual leave is not permitted, unless the employment relationship has already ended and the employee still has outstanding leave entitlements from this employment relationship vis-à-vis the employer.

3. Wage

3.1. Types of remuneration

- Wage is remuneration for work performed by an employee. It may consist of basic remuneration, additional remuneration provided for or agreed by law, by collective agreement or by individual contract, as well as benefits linked to individual work performance.
- There is a legal obligation to pay female and male employees equally.
- There is a minimum wage, the level of which is set by the state.

3.2. Supplements

- Employees who work for the employer above and beyond the contractual level are entitled to wage supplements and/or additional remuneration.
- Wage supplements must be paid for activities with increased risk to the safety or health of the worker. The amount should be set by collective agreements or employment contracts.
- A wage supplement of at least 50% must be paid for night work. A higher wage supplement may be agreed in collective agreements or employment contracts.
- Additional work (overtime) and work on public holidays is paid at a rate of 100% of the average hourly wage. A higher supplement may be agreed in collective agreements or employment contracts.

3.3. Benefits

- There are no other legally required benefits in favour of the employee. Nevertheless, the parties to the employment relationship may agree such benefits in individual contracts (e.g., Christmas bonus and/or 13th month's salary, company car, fuel card).

3.4. Social and health insurance contributions

Table of social and health insurance contributions

Total burden of social and health insurance contributions in:	Total monthly contribution payments as of 1 January 2019 (in % of gross monthly salary)	
	Employer	Employee
LATVIA	24.09% **In detail:** - Annuity insurance – 24.50% - Social security in the case of unemployment – 1.84% - Insurance against accidents at work – 0.53% - Disability insurance – 2.23% - Maternity and health insurance – 3.65% - Parental insurance – 1.34% - Health insurance – 1.00%	11%

3.5. Ancillary employment costs

- Tax: income tax of natural persons: 20% and 23%.
- Continued payment in the case of illness: an employer must pay 75% of average daily earnings for the second and third day of illness and 80% of average daily earnings for the fourth to tenth days of illness. From the eleventh day of sickness onwards, the State pays 80% of the sick pay.
- Business risk levy: an employer must pay a business risk levy of EUR 0.36 per employee every month to protect employees from possible employer insolvency.

Table of total wage-unrelated employment costs

	Total monthly contribution payments as of 1 January 2019 (in % of gross monthly salary)	
	Employer	Employee
LATVIA	% **In detail:** - Business risk levy 0.36 EUR	% **In detail:** - Income tax • 20% - for monthly salary up to EUR 1667.00 • 23% - for the part of the monthly salary exceeding EUR 1667.00

4. Changes in the employment relationship

4.1. Unilateral changes in the employment relationship by the employer

- The employer in principle cannot change the employment contract unilaterally.
- However, the employer can assign to the employee tasks other than those stated in the employment contract if this should be necessary for urgent operational reasons, imminent danger or force majeure. This period may not exceed one (1) month in any one year.
- The employer must guarantee the safety and health of pregnant women upon presentation of a medical certificate confirming pregnancy. If the working conditions offered do not provide such a guarantee, the employer must temporarily assign the employee to another job in the company under the same conditions.

4.2. Transfer of undertaking

- An existing employment relationship continues unchanged with transfer of undertaking.
- Both the transferee and the transferor must inform their employees in advance of the planned measures, of the new employer and of any changes in working conditions.
- The transferee may not terminate an employment contract on the grounds of transfer of the undertaking. This does not affect its right to terminate the employment relationship for economic, organisational or technical reasons.

4.3. Temporary work/Employee leasing

- A temporary employment agency (agency) is to be seen as an employer. Temporary work is concluded on the basis of two (2) contracts with the agency - one contract with the client (a service contract), the other contract (an employment contract) with the employee (a fixed term may be agreed). Agencies require a licence from the State Employment Agency.
- Agencies must guarantee the same conditions for employees as for their clients' employees (in terms of working hours, similar remuneration, protection of minors and pregnant or breast-feeding women, etc., in accordance with the principle of equal treatment).
- Agencies must pay their employees a statutory minimum wage for idle time between assignments.

4.4. Posting

- Foreign workers can be employed in Latvia through posting companies. Various conditions and requirements must be met, set forth by the Latvian Employment Agency (registration, etc.).
- Irrespective of the conditions of the underlying employment contract with the sender, posted workers are subject to the laws, regulations and collective agreements of Latvia during the period of posting.
- It is mandatory for the sending company to appoint a local representative.

5. Termination of employment relationship

5.1. Consensual termination

- An employment relationship can be terminated by mutual agreement. Termination must be in

writing. The parties are free to determine the content of the termination agreement within the limits of statutory restrictions.

5.2. Notice of termination

- In the Employment Law, termination by the employer is only possible in certain cases:
  - the employee has, without good reason, committed a material breach of the employment contract or established company rules;
  - due to an illegal act and the resulting loss of confidence on the part of the employer;
  - if moral principles are violated and this makes further employment impossible;
  - work was done under the influence of alcohol, narcotics or other toxic substances;
  - due to a serious breach of safety rules at work, resulting in a risk to the safety and health of other workers;
  - if the appropriate professional competence is lacking;
  - if inability to perform work is for health reasons;
  - if an employee who previously worked for the employer resumes work after an interruption (if the employee was hired as a temporary replacement only for a certain period of time);
  - if notice is given for operational reasons;
  - if an employee does not work for six (6) months because of temporary incapacity and if incapacity to work continues or lasts for a total of one year within a period of three (3) years and if incapacity to work recurs with interruptions;
  - if the employer (a legal entity or a partnership) is dissolved.
- Notice periods vary from immediate to ten (10) days or one (1) month, depending on the reason for dismissal.

5.3. Collective redundancy

- Collective redundancy is deemed to exist if - over a period of 30 days - notice of termination is given, stating operational reasons, as follows:
  - to at least 5 employees, if the employer usually employs more than 20 but less than 50 employees in the company; or
  - to at least 10 employees, if the employer usually employs more than 50 and up to 99 employees in the company; or
  - to at least 10% of employees, if the employer usually employs between 100 and 299 employees in the company; or
  - to at least 30 employees, if the employer usually employs more than 300 employees in the company.
- Collective redundancy cannot begin earlier than 30 days after notification to the State Employment Agency, unless the employer and employee representatives fix a longer period. Exceptionally, the State Employment Agency may extend the 30-day period to 60 days.
- The employer must inform employees of collective redundancy in due time, i.e. at least one (1) month in advance, and must notify them in writing of the reasons for redundancy.

5.4. Severance pay

- Employees dismissed for lack of professional competence, for health reasons, as a result of termination of temporary employment, for operational reasons or due to dissolution of the company or for ethical or moral reasons, are entitled to the following severance pay:
  - one (1) monthly salary - if the employee has worked for the enterprise for less than five (5) years;
  - two (2) monthly salaries - if the employee has worked for the enterprise for between five (5) and ten (10) years;
  - three (3) monthly salaries - if the employee has worked for the enterprise for between ten (10) and twenty (20) years;

  - four (4) monthly salaries - if the employee has worked for the enterprise for more than twenty (20) years.

- After termination by mutual consent, the parties may freely agree on compensation.

6. Post-contractual relationship

6.1. Non-competition clause

- A non-competition clause can be agreed for up to two (2) years after termination of an employment relationship.
- A non-competition clause can only relate to activities carried out by the employee with the employer.
- If a non-competition clause has been agreed, the employer must pay the employee monthly compensation for the entire period of validity of the non-competition clause. The amount of compensation is not fixed by law or case law, but should be agreed at an appropriate level.
- The contracting parties may agree on an appropriate contractual penalty for violation of the non-competition clause after termination of the employment relationship.
- The non-competition clause and compensation after termination of the employment relationship can already be set out in writing in the employment contract, but it is also possible to set it out in writing later.

6.2. Employment Disputes

- Disputes between the employee and the employer are settled by district courts under the Civil Procedure Law.
- Disputes are resolved by the court in whose district the defendant is domiciled. An employee may also sue in the court in whose district he is domiciled or in which his place of work is located.
- Disputes at first instance courts are decided by a single judge.
- An employee acting as plaintiff does not have to pay court fees.
- Due to the large number of employment disputes there is extensive case law.
- Claims concerning termination must be assigned to the court of first instance within approximately two months from receipt of the claim.
- For other employment disputes, there are no strict time limits for the courts to order legal proceedings. If the parties exercise the right of appeal in the next two (2) instances, the dispute usually lasts up to three (3) years.

7. New types of employment

- part time work;
- home-office;
- fixed-term employment relationships;
- lease of labour force.

8. Employment of foreigners

8.1. EU citizens (and citizens from EEA countries and Switzerland)

- EU citizens and equivalent citizens from EEA countries and Switzerland do not need a work permit if they intend to work in Latvia.
- EU citizens and citizens of EEA countries and Switzerland who reside in Latvia for more than three months (3) within a six-month period must hold an appropriate certificate. This certificate is issued by the competent migration office for an initial period of five (5) years or for the planned period of residence of the EU citizen, if this is shorter than five (5) years.

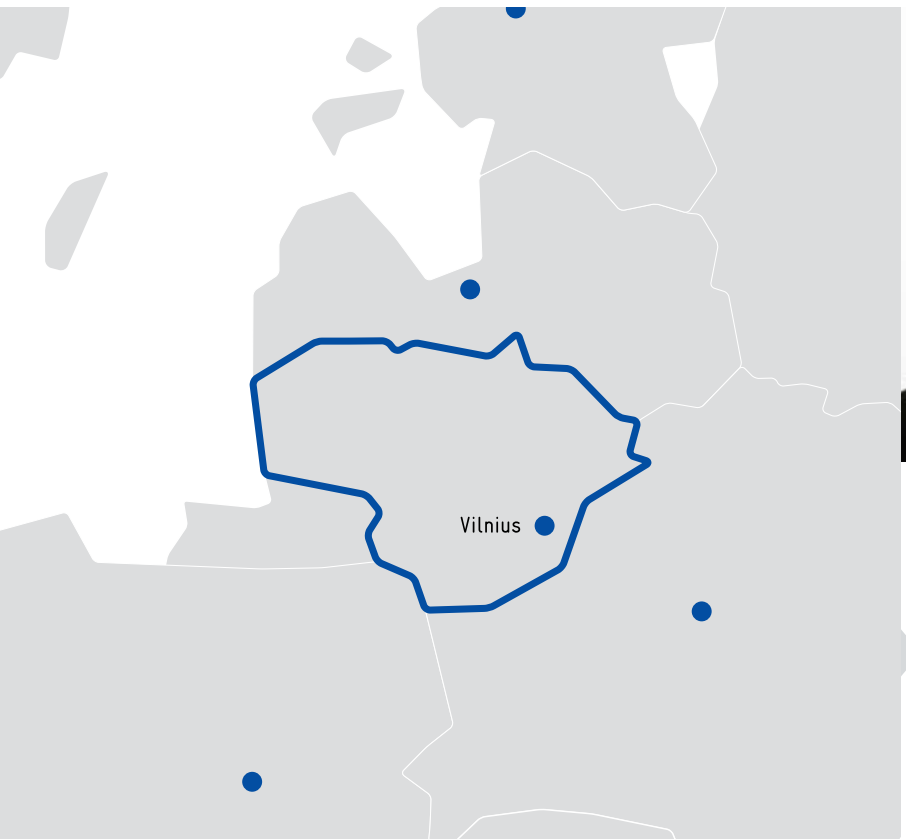
8.2. Third-country nationals

- Foreigners from third countries generally require a visa, a residence permit and a work permit in order to be allowed to work in Latvia.
- If a shorter stay in Latvia is planned, which does not exceed 90 days within a six (6) month period, it is mandatory to obtain a visa enabling a stay in the country.
- If a longer stay is planned, the employee should apply for a temporary residence permit. The application for a residence permit should be submitted to the locally competent embassy or consulate of Latvia (if the person is abroad) or the Migration Office (if the person is staying in Latvia either on the basis of a valid visa entitling him/her to work or a residence permit issued in another Schengen state). The residence permit is handed over personally at the Migration Office.
- The work permit must be obtained before starting work.

Author: Kārlis Sviķis

Lithuania

bnt Heemann APB
Embassy House
Kalinausko 24, 4th floor
LT-03107 Vilnius



YOUR CONTACT

Jolanta Zupkauskaite
Senior Associate

T +370 5 212 16 27
jolanta.zupkauskaite@bnt.eu

1. Employment relationship

1.1. Employment contracts

- Employment can only be based on an employment contract.
- The employment contract must be in writing.
- Each employment contract must contain three core elements: work function (job description), salary, place of work.
- Additional working conditions are: agreement on additional work, probation period, compensation for training costs, non-competition, confidentiality agreement, agreement on part-time work.
- The employer must inform the Lithuanian social insurance institution about the employment relationship one day before the start of work, otherwise a fine may be imposed on the employer for illegal employment.

1.2. Limited term of the employment relationship

- Employment contracts are generally concluded for an unlimited term.
- Fixed-term employment must be expressly recorded in writing, otherwise the employment relationship is considered to be unlimited.
- If the employment relationship is continued after expiry of the time limit and neither of the parties has terminated the employment contract, the contract is deemed to be of unlimited duration.
- Discrimination against fixed-term employees by the employer is prohibited.
- As a rule, a fixed-term contract can be concluded for a period of 2 (two) years; in certain cases, e.g. in the case of alternating, consecutive activities, the total period of fixed-term contracts may not exceed 5 (five) years.
- Fixed-term employment contracts may not exceed 20% of the total number of a company's employment contracts.

1.3. Probation period

- The probation period may not exceed 3 (three) months.
- Periods during which the employee was unable to work (e.g. illness, vacation) are not counted towards the length of the probation period, but result in extending the probation period.
- The notice period during probation is 3 (three) working days for both employer and employee.

1.4. Managing director contract

- The managing director is the sole managing body of the company.
- As a rule, an employment contract must be concluded with the managing director.
- The law provides for a severance payment of one average salary when the managing director is dismissed, unless other severance conditions are contractually agreed. The managing director is not entitled to a severance payment if dismissed due to his fault.

2. Working time

2.1. Weekly working time

- The standard employee working time is 40 hours a week, unless reduced working time is agreed or the parties agree on part-time work.
- The average weekly working time including overtime may not exceed 48 hours in 7 (seven) consecutive days.
- Maximum working time, including overtime and additional working time, must not exceed 60 hours in 7 (seven) consecutive days.
- No more than 12 (twelve) hours daily may be worked, including overtime and additional work.
- In the case of night shifts, the average working time must not exceed 8 (eight) hours within a period of 3 (three) months, unless collective employment agreements stipulate otherwise.

- In the case of a seven-day week, work may never exceed 6 (six) days in a row.

- Special features of night work, special conditions for workers under 18 years of age, for workers who are breastfeeding and for women who have recently given birth must be taken into account.

2.2. Time account and flexitime

- The Labour Code provides for the following working time models: fixed working time, flexible working time, cumulative working time, the so-called model of divided working time, and individual working time.

- The fixed working time model is characterised by predetermined, unchangeable working and break times.

- The flexible working time model is characterized by an agreement on flexible working hours and is comparable to German flexitime. With this working time model, the employee can decide within the agreed framework when to start and end work. This framework can stipulate that the employee must be present at the workplace at certain times (e.g. daily from 1-3 p.m.). These fixed attendance times can be changed by a decision of the employer.

- The cumulative working time model is characterised by the fact that the statutory standard working time of 40 hours per week is not calculated on a weekly basis, but at the end of a time recording period set by the employer, which may not exceed 3 (three) months; this model is only applicable with a specific justification, such as uninterrupted maintenance of a business.

- The special feature of the model of so-called split working time is that the usual maximum break time of 2 (two) hours may be exceeded; this model is often used in the catering industry, where employees are only required at certain times.

- The individual working time model is characterised by freely configurable working hours and is not regulated in the Labour Code, but in practice it is often used for managing directors of companies or in the case of distance work; however, the Lithuanian Labour Office considers a mixture of the individual working time model with other models to be inadmissible.

2.3. Overtime and standby work

- Hours of work in excess of fixed working time are considered overtime.

- Overtime may only be worked with the employee's written consent or due to special circumstances, e.g. urgent economic needs of the employer.

- No more than 8 (eight) hours of overtime may be worked in a seven-day week, unless the employee's written consent for 12 (twelve) hours of overtime per week has been obtained.

- Up to 180 hours of overtime may be worked each year. Collective agreements may allow a greater number of hours.

- The employee must be paid a legally set bonus for overtime worked.

- However, the employee may, at his or her option, claim additional vacation time instead of the bonus to which he or she is entitled, whereby additional vacation time is calculated in the same way as calculation of the bonus.

- There are two forms of standby work in Lithuania - active and passive.

- Active standby work means fulfilment of a worker’s tasks by guard duty. Passive standby work means availability of the employee at a certain place to start work immediately if necessary (e.g. IT specialist, doctor).

- A special position of passive standby work is on-call duty, in which the employee is not available at the workplace but at home for possible assignments.

- The form of on-call duty must be agreed with the employee in the employment contract.

- In the case of on-call duty, only the time actually required for activities counts as working time. The maximum duration of on-call duty may not exceed one week within a period of 4 (four) weeks.

- Note that on-call duty must also be remuner-

ated. Together with remuneration for actual working time, the employer must pay a supplement for on-call duty, which must not be less than 20 percent of the average salary. In the case of on-call duty of less than one week, the supplement must be paid in proportion to the actual duration of on-call duty.

- The employer decides the exact calculation and settlement of bonuses in the company's remuneration system, as remuneration groups plus the amount of salaries, conditions and procedure for paying bonuses and regulations on salary increases must be specified in the system. Employers with an average of 20 or more employees must establish a remuneration system.

2.4. Leave from work

- The Labour Code regulates the following types of leave: annual leave, so-called earmarked leave, extended annual leave and additional leave.
- Annual leave is 20 working days' leave in the case of a 5-day week and 24 working days' leave in the case of a 6-day week.
- As a rule, employees must take their annual leave in the calendar year in which it accrues, and employers must generally grant it accordingly.
- An employee need not take all annual leave at once, but may divide it up. However, a part of the annual leave must be at least 10 (ten) consecutive working days (which usually corresponds to 2 (two) weeks), if a 5-day working week applies.
- Public holidays are not counted towards the duration of annual leave.
- For the first year of work, entitlement to annual leave will in principle only arise after at least six months of uninterrupted work. However, the employer may grant leave earlier. There is a priority rule according to which certain employees enjoy a privilege over other employees when applying for and granting leave.
- The employee is entitled to average salary during annual leave. In principle, the gross salary for the last 3 (three) months before the holiday is used to calculate the average salary.
- Holiday allowance must be paid to the employee no later than on the last working day before the holiday begins. It is generally forbidden to pay the employee instead of granting his annual leave. However, leave compensation is permissible in the event of termination if the employee cannot or does not wish to take leave before termination of the employment relationship. In principle, the employer cannot force the employee to take accumulated leave before termination.

3. Remuneration

3.1. Types of salary

- Remuneration under collective agreements or the local remuneration system may not be less than the statutory minimum wage (since 1 January 2020 – EUR 607 a month; EUR 3.72 an hour).
- Remuneration according to the minimum wage is only permitted for unqualified work. Unqualified work is defined as work that does not require special professional skills.
- Remuneration must be paid twice a month. At the employee's request, a one-off monthly payment may be agreed. However, remuneration may not be paid later than the 10th working day of the following month.
- Salary must be paid in cash.
- An employer with an average of 20 or more employees must introduce a remuneration system that specifies remuneration groups, the amount of salaries, the conditions and procedure for payment of bonuses and regulations concerning salary increases. All employees must be made familiar with this system. Before the system is introduced, legal provisions on information and consultation must be complied with.

3.2. Bonuses

- Bonuses may be granted as a supplement to the fixed salary if the parties have agreed to this in the employment contract or as part of the

remuneration system or if this is stipulated by law.

- Bonuses may be granted for a qualification obtained for additional work or an additional work function or for performing additional tasks.
- Bonuses may be granted at the employer's initiative for good results as promotional measures.
- Bonuses for work done are set by contract, as part of the agreed remuneration system or by law.

3.3. Benefits

- The employer must take measures to enable the employee to fulfil family obligations. For example, at the employee's written request, the employer must adjust the employee's working hours so that the employee has a chance to take his/her children to kindergarten or school or to pick them up.
- The employee's various motivations, such as company car, training opportunities, additional health insurance, and so on, can be introduced at the employer's initiative in order to motivate employees and retain them in the long term.

3.5. Incidental wage costs

- Since 2019, income from employment has been subject to progressive taxation, which will be further adjusted in the following years. Since 1 January 2020, rates of 20% and 32% apply.

	Standard rate	Progressive rate	When does the progressive rate apply?
since 1 January 2020	20%	32%	For the part of income from employment that exceeds 84 average monthly salaries as determined by the state
from 1 January 2021	20%	32%	For the part of the income from employment that exceeds 60 average monthly salaries determined by the state

3.4. Social and health insurance contributions

Year	1 January 2020	1 January 2021	1 January 2022	1 January 2023
Social security contributions (employees)	19.50%	19.50%	19.50%	19.50%
Transfer to pension funds (voluntary)	2.1% or 3%	2.4% or 3%	2.7% or 3%	3%
Social security contributions (employer)	1.77%	1.77%	1.77%	1.77%
cap for social security contributions (excluding 6.98% of health insurance)	The part of working income exceeding 84 average monthly salaries.	The part of working income exceeding 60 average monthly salaries.	The part of working income exceeding 60 average monthly salaries.	Part of the working income exceeding 60 average monthly salaries.

4. Changes in the employment relationship

4.1. Unilateral change in the employment relationship by the employer

- Changes to essential elements of the employment contract and additions require the employee's written consent, which must be obtained at least 5 (five) working days in advance.

4.2. Transfer of business

- Employment relationships continue under the same conditions at the time of transfer of the business.
- Changing the provisions in employment contracts or terminating contracts as a result of a transfer of business is prohibited.
- Employees must be informed in advance of transfer of the business. Within 5 (five) working days of receiving notification of transfer of business, they are entitled to notify the current employer that they do not agree to continue employment with the new employer.

4.3. Temporary work/employment

- Temporary employment agencies must notify the Lithuanian Public Employment Service of their temporary employment activities and the number of temporary workers.
- The activity of these enterprises is not licensed in Lithuania. The Lithuanian government has therefore developed criteria for classification as a temporary employment agency in order to improve monitoring.
- Temporary employment agencies that meet the criteria are listed on the Lithuanian Labour Office website and must apply to the Labour Office annually for renewal of this status.
- Temporary employment contracts may be fixed-term or open-ended. The term of fixed-term temporary employment contracts may not exceed 3 (three) years.
- The temporary worker must be notified of his or her assignment at least 2 (two) working days in advance, unless he or she agrees to start work earlier during a specific assignment.
- The temporary worker must be informed of his/her work function, the scope, start and end of work prior to his/her posting. The employer to whom the temporary worker is posted must provide the temporary worker with information about the working time and details of a contact person for any questions and information.

4.4. Secondment

- If a worker is posted to Lithuania from an EU country or any other country for a limited period exceeding 30 days, the employer must report accordingly to the Lithuanian Labour Office.
- For workers on construction sites, the employer has even more extensive information obligations.
- The law of the sending state continues to apply, unless mandatory provisions of Lithuanian law prevent this.
- If the period of posting is less than 30 days, mandatory Lithuanian provisions regarding the statutory minimum wage, remuneration for overtime, night work and work on public holidays need not be applied.

5. Termination of the employment relationship

5.1. Consensual termination

- Mutual agreement: 5 (five) working days to accept the offer.

5.2. Termination

- Notice types:
  - at the employer's initiative without the employee's fault (ordinary termination);

  - at the employer's initiative and through the fault of the employee;
  - at the employer's initiative without reason;
  - at the employee's initiative without cause (ordinary termination);
  - at the initiative of the employee for good cause;
  - through no fault of either party.
- Termination must be in writing.
- Reasons for dismissal are reasons for ordinary dismissal by the employer (according to Lithuanian law - at the employer's initiative without the employee's fault):
  - the activity of the employee is no longer required;
  - the employee does not achieve the agreed work results;
  - the employee does not agree to changes in the employment contract;
  - the employee does not wish to continue employment after a business transfer;
  - under a decision of the employer's management body or court, the employer is dissolved.
- The period of notice is one month for ordinary termination. If the employee has worked for less than a year, the period of notice is only 2 (two) weeks. These periods double for employees during the last 5 (five) years until retirement. They are tripled in the case of disabled employees and employees with children under the age of 14 or who are raising a disabled child under the age of 18, as well as employees who are only 2 (two) years away from retirement age.
- The employer can terminate the employment contract at any time at its own initiative and without cause with a notice period of 3 (three) working days, if the conditions for termination at the employer's initiative are not present through no fault of the employee.
- The employee may terminate the employment contract by giving 20 calendar days' notice.
- For good cause, the employee may terminate the employment agreement by notice of 5 (five) working days (termination at the employee's initiative for good cause). An important reason exists, for example, if the employer does not pay the full salary for 2 (two) consecutive months or does not fulfil its legal obligations, for example with regard to occupational safety.
- The employment contract may also be terminated without fault of either party. The grounds for termination are regulated in the Labour Code, for example, the existence of a final judgment or a final penalty decision, sentencing the employee to a penalty ruling out his/her continuing work, or at the request of the competent authority that has proven illegal work.

5.3. Extraordinary termination

- Termination at the employer's initiative due to the fault of the employee is possible if a serious breach of duty is established or if the employee breaches the same duty twice within the last twelve (12) months.
- The list of serious breaches of duty is regulated by the Labour Code.
- Before giving notice of termination, the employer must follow the procedure set by law (written hearing of the employee, etc.).
- Dismissal in the case of repeated breach of the same duties may be pronounced if:
  - the employee commits the same breach of duty again within 12 (twelve) months;
  - the employer has proven both breaches of duty;
  - the employee was asked to submit written comments on both breaches of duty;
  - the employer has warned the employee of possible dismissal without notice within 12 (twelve) months for the same repeated breach of working duties.
- The decision on termination of the employment contract due to the employee's breach of work-

ing duties must be taken by the employer within one month from the day of detection, but no later than within 6 (six) months from the day the breach was committed. If the employee's breach is discovered during an audit, revision (inventory) of monetary or other assets or an audit of activity, a decision on termination of the employment agreement must be taken within 2 (two) years from the day of the breach at the latest.

5.4. Collective dismissals

- The preconditions for collective redundancies are economic or technological reasons, structural reorganisation of the employer or other reasons not related to the individual employee.
- The number of employees to be dismissed may not exceed the following number in a period of 30 calendar days:
  - 10 (ten) or more employees in an enterprise with 20-99 employees;
  - 10% of employees in an enterprise with 100-299 employees;
  - 30 employees or more in an enterprise with 300 employees or more.
- In the event of mass dismissal, the employer is legally obliged to inform the employee representatives in advance about the planned mass dismissal and to discuss it with them.
- After announcing the mass dismissal to the employee representatives and explaining the reasons for it, the employer must inform the competent labour office in writing.

5.5. Severance pay

- Severance pay depends on the type of termination.
- In the case of termination of the employment contract at the employer's initiative without the employee's fault, as well as in the case of termination at the employee's initiative for good cause and in the case of liquidation of the employer, the employee is entitled to a one-off severance payment as follows:
  - 2 (two) average monthly salaries for continuous employment of at least one year;
  - half an average monthly salary for uninterrupted employment of less than one year.
- The employer must pay the employee severance payment of 6 (six) average monthly salaries if the employee wishes to terminate the employment relationship at his/her own initiative without cause.
- In certain cases of termination through no fault of either party, the employee is entitled to a one-time severance payment as follows:
  - one average monthly salary for uninterrupted employment of at least one year;
  - half an average monthly salary for uninterrupted employment of less than one year.
- In the event of termination at the employer's initiative without fault of the employee, the employee is entitled to an additional payment. This depends on the employee's uninterrupted period of employment and is calculated by the social security institution and paid out if the employee has been employed for at least 5 (five) years without interruption.

6. Post-contractual relations

6.1. Prohibition of competition

- A non-competition clause must mention the employee's position and areas of activity (including scope and terms of payment) and the duration of the non-competition clause.
- An employee must be adequately compensated for concluding a non-competition clause. The compensation must be at least 40 percent of the average monthly salary.
- Restrictions arising from non-competition clauses may only exist for 2 (two) years after termination of employment at the latest.
- The employee is entitled to terminate the agreement if the employer is more than 2 (two)

months in arrears with payment of compensation.

6.2. Labour law disputes

- There are two types of labour disputes in Lithuania: individual and collective.
- Collective labour law disputes are submitted to the Conciliation Committee, the Labour Arbitration Court.
- Individual disputes are disputes between employer and employee.
- For such disputes, the commissions for labour law disputes and the courts are competent.
- The commission for labour law disputes is usually a necessary preliminary instance for clarifying individual disputes.
- It is only possible to take legal action directly in court in certain cases regulated by law. If the Commission for Labour Law Disputes has not been called upon as a lower instance, the court rejects the action.
- Alternative dispute resolution: Disputes may be heard before an arbitration tribunal if the parties agree on such a procedure after the dispute has arisen.

7. New forms of employment

7.1. Job sharing

- Two employees agree with the employer that they will share a job, whereby the individual employee may not exceed the maximum working time of 40 hours weekly (with overtime 48 hours weekly and with additional working time 60 hours weekly).
- In this type of contract, the employment contract of both employees must state the identity of the other employee and his or her contact details, and contain the specified working hours (hours worked weekly).
- For this type of contract special, flexible termination conditions apply if the employment relationship of one job-sharing partner ends.
- In this case, the remaining employee remains employed for another month; if no new job-sharing partner can be found during this time, the employment contract can be terminated by notice of 3 (three) working days; a severance payment amounting to half of an average monthly salary must be paid.
- This simplified termination method cannot be applied to employees who are raising a child under 7 (seven) years of age; these employees remain in part-time employment.

7.2. Employee sharing

- An employee can work for several employers.
- The different employers are then parties to the same employment contract.
- One of the employers is then responsible for remuneration, payment of social security contributions, etc.; the other employer(s) pay(s) an appropriate allowance for expenses.
- Termination of the contract must also be declared to this employer.
- All employers are nevertheless equally liable to the employee for fulfilment of contractual obligations; the employee can, for example, take legal action against any of the employers if the salary is not paid on time.
- If the distribution of working time is not stated in the employment contract, at least the amount of remuneration should be contractually fixed by the respective employers.
- This type of contract is particularly suitable for employees who perform specific tasks such as accounting or HR for several companies in a group of companies.

7.3. Project-based contract

- A fixed-term contract under which an employee undertakes to achieve an agreed project objective in or outside the workplace.

- A project-based contract must specify the specific project objective and the average weekly working time required to achieve it.
- The employee arranges the working time, taking into account minimum rest periods and maximum working time.
- A project-based contract may be concluded for up to 2 (two) years if it concerns new employees or an agreement on additional work, which is concluded in addition to the normal employment contract.
- For the duration of the contract, the employee will be remunerated according to working hours, performance, or a mixed method.
- The rules for ordinary fixed-term contracts do not apply to a project-based contract; once the period expires, a project-based contract cannot be converted into an open-ended contract under any circumstances.

8. Employment of foreigners

8.1. EU citizens (and citizens of EEA states and Switzerland)

- EU citizens (as well as citizens of EEA countries and Switzerland; hereinafter: EU citizens) do not need a work permit if they intend to work in Lithuania.
- EU citizens staying in Lithuania for more than 3 (three) months within a six-month period must be in possession of an appropriate certificate. This certificate is issued initially for 5 (five) years or for the planned period of stay of the EU citizen in Lithuania, if less than 5 (five) years.

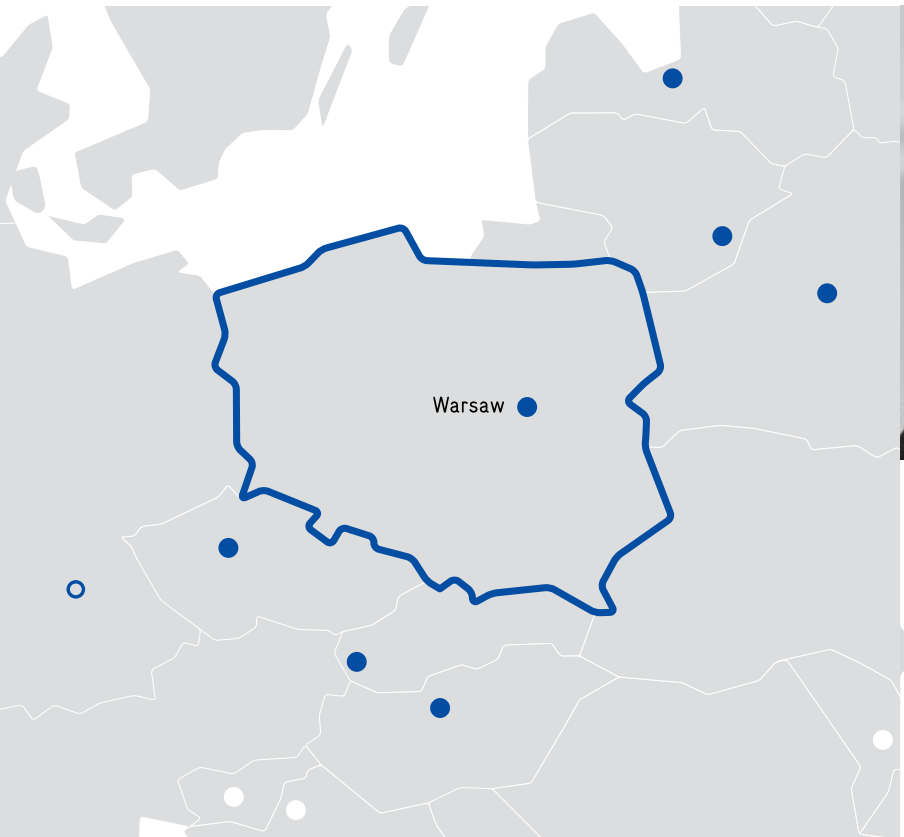
8.2. Third-country nationals

- Third-country nationals generally require a visa, residence permit and work permit to work in Lithuania.
- If the period of stay in Lithuania does not exceed one year, a national visa should be obtained.
- If a longer stay is planned, a temporary residence permit should be obtained (usually this is issued for 2 (two) years at the beginning, or 3 (three) years in the case of highly qualified employees). An application for a residence permit should be delivered to the Lithuanian Embassy or Consulate (if the person is abroad) or Migration Office (if the person is in Lithuania).
- A work permit must be obtained before starting work. A work permit may be issued for up to 2 (two) years and may be extended under certain conditions. However, there are exceptions with regard to seasonal work. A work permit is issued for 6 (six) months in a year.

Author: Jolanta Zupkauskaitė

Poland

bnt Neupert Zamorska & Partnerzy sp.j.
ul. Chłodna 51
PL – 00 867 Warsaw



YOUR CONTACT

Katarzyna Harna
Associate

T +48 22 373 65 50
katarzyna.harna@bnt.eu

1. Employment relationship

1.1. Employment contracts

- Types of contract are regulated by the Polish Labour Code ("Kodeks pracy").
- An employment contract is the most common form of employment.
- An employment contract may be concluded for a definite or indefinite period of time.
- A probationary period must not exceed three (3) months.
- An employer must conclude an employment contract in writing, although the employment relationship can also be concluded by mere performance of work - the absence of a written contract does not render it void.
- A binding employment contract must contain at least the following data: parties, type of work, working time, place of performance, the date of commencement of work and remuneration.
- In addition to a definite or indefinite employment contract, a specific type of contract can be concluded: a traineeship contract (for professional preparation)

1.2. Limited term of the employment relationship

- A contract of employment for a definite period must be in writing, otherwise it will be considered by the courts as concluded for an indefinite period of time.
- The Labour Code sets a maximum of 33 months for which a contract of employment for a definite period can be concluded. After this period, a contract of employment for a definite period is considered to be an indefinite employment contract.
- Parties may enter into three (3) successive contracts of employment for a definite period. The fourth contract of employment for a definite period will be deemed to be a contract of employment for an indefinite period. This rule also applies to an extension of the contract (an extension is considered a new contract).
- This rule does not apply to contracts of employment for a definite period for substituting an employee during absence from work, for seasonal or casual work and if the employer indicates objective and justified reasons attributable to the employer.

1.3. Probationary period

- An employment contract for a probationary period may not exceed three (3) months. Such a contract may be concluded only once, unless the employee is employed after a lapse of at least three (3) years or the employee is employed to perform a different type of work.
- An employment contract for a probationary period terminates at the end of that period; prior to its expiry, the employment contract may be terminated by notice.
- The period of notice of termination is:
  - 3 business days if the trial period does not exceed 2 weeks;
  - 1 week if the trial period is longer than 2 weeks;
  - 2 weeks if the trial period is 3 months.

1.4. Managing director contract

- Managers or directors may be considered as employees and work on the basis of an employment relationship. However, they may also provide their services on the basis of a civil law contract (a so-called management contract) to which the provisions of the Polish Civil Code ("Kodeks cywilny") apply.

2. Working time

2.1. Weekly working hours

- Working time may not exceed eight (8) hours a day and an average of forty (40) hours in an average five-day working week, within an adopted settlement period not exceeding four (4) months.

This limitation does not apply to managers.

- The settlement period may be extended, but it may not exceed twelve (12) months and the rules on employees' safety and health must be ensured.
- Every public holiday on a day other than a Sunday reduces the settlement period by eight (8) hours.
- Shift work is permitted regardless of the applicable working time system.
- Different working time systems can be applied, if justified by the type of work:
  - Balanced working-time system: daily working time may be extended up to twelve (12) hours in a settlement period of one month (three (3) or four (4) months in particular cases), and this will be compensated by shorter working hours on other days;
  - With regard to work that may not be discontinued due to production technology, working time may be extended to forty-three (43) hours a week on average. For each hour exceeding eight (8) hours of work in a 24-hour period, the employee is entitled to an overtime allowance;
  - A non-consecutive working-time system providing for not more than one break from work during the day, for no longer than 5 hours. The break is not included in working time, although the employee will have the right to remuneration at half rate;
  - Task-specific working time, where an employer agrees with an employee the working time which is necessary to carry out the tasks, taking into account the normal working time.
- At the employee's written request, the employer may establish an individual schedule, shortened working-week system or weekend work.

2.2. Time account and flexitime

- There is no such regulation in Poland - a comparable solution could be the system of balanced working time (see point 2.1. above).

2.3. Overtime and readiness to work

- Work exceeding the daily and weekly maximum working hours thresholds may only be performed in the case of special needs of the employer or due to legally specified rescue operations.
- The number of hours of overtime work may not exceed 150 hours a calendar year.
- A collective labour agreement or work regulations, or a contract of employment may increase the maximum amount of overtime hours up to 416 hours in a calendar year (this hypothetical maximum amount is reduced by the length of a worker's annual holiday leave).
- The operations manager decides whether overtime work is necessary. The limitation on overtime hours applies.
- Employees are entitled to an additional allowance of 50% and in some cases 100% for overtime hours worked.
- In exchange for overtime work the employer may grant the employee time off.
- In principle, operations managers are not entitled to an allowance for overtime work, unless performed on legal holidays or Sundays and they were not given extra time off for it.
- The employer may oblige the employee to be on duty (standby), outside standard working hours, at the employing establishment or at any other location designated by the employer.
- Time on duty is not included in working time unless an employee did perform work while on duty.
- During the duty period, except for any time on duty performed at home, the employee is entitled to time off in an amount corresponding to the duration of the duty or to remuneration (if not otherwise stated - 60% of regular remuneration).

2.4. Holidays

- The length of leave is:
  - 20 days, for those employed for less than ten (10) years;

  - 26 days, for those employed for at least ten (10) years.

- Periods of education completed add up to the duration of the above-mentioned employment time, e.g. for university - eight (8) years.
- An employee who commences work for the first time will, in the calendar year in which he/she commenced work, acquire the right to leave after each month of work at 1/12 of the length of leave due to him/her after working for one year (pro rata temporis).
- The employee acquires the right to full annual leave in each subsequent calendar year.
- The employee must be granted leave by 30 September of the subsequent calendar year at the latest.
- For the period of leave, the employee is entitled to the remuneration which he would have received if he had been working at that time.

3. Remuneration

3.1. Types of remuneration

- Possible remuneration forms: time wage (hourly wage, daily wage, monthly remuneration), incentive wage (piecework wage, premium wage) and participation wage (share of profit or sales).
- The remuneration and the remuneration components are paid according to a collective agreement, remuneration regulations or employment contract.
- Currently the minimum remuneration amounts to PLN 2,600 gross (approximately EUR 590).
- Remuneration is paid to the bank account specified by the employee, unless the employee requests payment in cash or electronic form.

3.2. Grants

- For overtime work, the employee is entitled to remuneration of 50% and in some cases 100%.
- An employee who works at night is entitled to remuneration of 20% of the hourly rate resulting from the minimum wage for each hour of work at night.
- The employer must give an employee who works on Sundays and holidays another day off within a specified period. If granting a day off as compensation within that period is not possible, the employee is entitled to an allowance of 100% of the remuneration for each hour of work on a Sunday or holiday.

3.3. Benefits

- Among the most commonly used benefits are: membership in a fitness club or tickets for other physical activities, private health care, the so-called 13th salary, language and other specialized courses, company car, meal allowances, Christmas or Easter vouchers.
- Benefits are regulated in a collective agreement, internal regulations or in an employment contract.
- Tax issues must be taken into account when granting additional benefits: Benefits can (sometimes) be considered as tax-deductible costs by the employer, while for the employee they often constitute taxable income.

3.4. Social and health insurance contributions

- Table of social and health insurance contributions

Total burden of social and health insurance contributions in:	Total monthly contribution payments as of 1 January 2020 (in % of monthly gross salary)	
	Employer	Employee
Poland	20.48%	22.71% *

*including 9% health insurance – as a rule, the taxpayer has the right to deduct 7.75% out of 9% health insurance from personal income tax

3.5. Incidental wage costs

- Tax: Personal income tax - 17% of annual income up to approximately 20,000 EUR; 32% of annual income in the portion exceeding 20,000 EUR. Tax allowance approximately 1,850 EUR a year. Individual entrepreneurs may pay 19% income tax without additional income tax thresholds.

- **Social fund:** An employer of at least 50 employees on a full-time basis must set up a company social benefits fund and allocate annual contributions to it. The contributions are calculated according to the number of employees. The amount of basic contribution for an employee is 37.5% of the average monthly remuneration in the national economy in the previous year or the second part of the year before.
- **Accident insurance:** contribution in the amount of 0.67% up to 3.33% of the gross monthly remuneration of an employee. Payment of this amount is for the employer to bear.
- **Labour Fund (along with Solidarity Fund for the Disabled):** An employer pays 2.45% of the base amount of the Social Fund contribution. The purpose of the fund is to finance actions against unemployment, and also finance unemployment benefits and public works for the unemployed, etc.
- **Fund for guaranteed work benefits:** An employer must pay 0.1% of the base amount of the social fund contribution. This fund is intended to protect employees in the event of the employer's insolvency and covers outstanding remuneration and other benefits to which employees are entitled.
- **Refreshments:** An employer must provide employees with a free refreshment meal (once a day) and beverage, if they work under particularly difficult conditions and if such measures are necessary for precautionary reasons.

4. Changes in the employment relationship

4.1. Unilateral changes in the employment relationship by the employer

- A unilateral change in the employment relationship is effected by notice of termination of conditions of work and pay, whereby the essential terms and conditions of employment and remuneration may be changed.
- The essential conditions of work include the nature, place and duration of work.
- Termination of working and payment conditions or pay is deemed effected if new conditions are proposed to the employee in writing.
- If the employee rejects the proposed working or payment conditions, the contract of employment will be terminated at the end of the period of notice.
- The main purpose of a notice of termination of conditions of work and pay is to change the working conditions and to continue the employment contract on new conditions less favourable for the employee.
- A notice of termination of conditions of work and pay does not constitute a sanction for the employee's failure to fulfil obligations. The liability of the employee is not a prerequisite for the effectiveness of this act.
- Termination of conditions of work and pay by the employee is not permitted.

4.2. Transfer of employing establishment

- Transfer of an employing establishment includes both transfer of property on any legal basis (sale, lease, donation, conversion, inheritance) including tasks and employees, as well as transfer of tasks or duties and of employees.
- Where an employing establishment or a part of it is transferred to another employer, the new employer becomes a party to the previous employment relationship.
- The new employer is therefore bound by the content of employment contracts and employment relationships.
- Within two (2) months of the transfer of all or part of an employing establishment to another employer the employee may, without notice, upon seven-day advance notification, terminate the employment relationship. Termination of the employment relationship in accordance with this procedure has the same effect on the employee as those provided for in labour law in relation to termination of employment by the employer by notice.
- Both the former and the new employer are jointly and severally liable for the duties resulting from an employment relationship which originated

before the transfer of part or whole of the employing establishment to the new employer.

4.3. Temporary work/employee leasing

- In cases of temporary work, a temporary-work agency employs temporary agency workers on the basis of an employment contract for a definite period, or for the duration of performing specified work.
- Temporary work means performing the following tasks for a certain user-undertaking:
  - of a seasonal, periodic or casual work; or
  - work that the employees of the user-undertaking would not be able to perform on time; or
  - work that falls within the scope of duties of an employee of the user-undertaking who is absent.
- Over a period of thirty-six successive months, a temporary-work agency may not assign a temporary agency worker to do temporary work for a single user-undertaking for a total period of work exceeding 18 months (If a temporary agency worker does continuous temporary work for the benefit of a given user-undertaking, and the work includes performing the tasks of an absent worker of the user-undertaking, then the period of temporary work may not exceed 36 months).
- The temporary employment agency employs temporary workers on the basis of an employment contract for a definite period.
- The user-undertaking performs the duties and enjoys the rights of an employer to the extent necessary to organise work with the participation of the temporary agency worker (in particular with regard to ensuring healthy and safe working conditions, keeping a register of working hours).
- While working for the benefit of the user-undertaking, a temporary agency worker may not be treated less favourably, as regards working conditions and other conditions of employment, than the user-undertaking's employees employed in the same or a similar position.

4.4. Posting

There are three types of so-called “posting“:

- Posting of workers in the framework of provision of services:
  - posting a worker outside the country in which the employer has its registered office;
  - an employer who posts a worker to another country must offer that worker working conditions which are not less favourable than those laid down by the legislation of the country of posting;
  - as a rule, there are no timeframes for posting a worker; however, it should be defined according to the period after which the tax and insurance residence changes (in principle, for permanent employees in Poland, the above residence changes after six (6) months with regard to income tax and after two (2) years with regard to social security, but it may be different if national tax laws or tax treaties concluded between individual EU countries state otherwise).
- Temporary assignment of other activities to an employee:
  - only when it is justifiable by the interest of the employer;
  - for a period not longer than three (3) months in a calendar year;
  - assigned to work other than that specified in the contract of employment, if that does not result in lower remuneration and corresponds with the qualifications of the employee;
  - notice of termination of present conditions of work or pay is not required.
- Employment by another employer:
  - by consent of the employee expressed in writing, an employer may grant an employee unpaid leave for him/her to work for another employer for a period agreed in an arrangement made for this purpose between the employers (so-called employee leasing);

– during unpaid leave, the employee thus has two (2) employment relationships: with the former employer, which is temporarily suspended for the duration of the leave, and with the new employer, for the duration specified in the agreement between the employers on this matter.

5. Termination of the employment relationship

5.1. Amicable termination

- Amicable or mutual employment contract termination is an agreement between an employer and an employee that can be concluded at any time.
- The initiative to conclude such an agreement can be taken by either party.
- An employment contract may cover all conditions and claims in connection with termination of the employment relationship.

5.2. Termination of employment

- A declaration by an employer of termination of an employment contract concluded for an indefinite period or of termination of an employment contract without notice of termination should state the reasons justifying the notice of termination of the contract.
- A notice of termination in respect of other types of employment contract does not have to state reasons justifying the notice of termination.
- The period of notice of termination of a contract of employment for an indefinite period and for a definite period depends on the period of employment with a given employer and is:
  - two (2) weeks for those employed for less than six (6) months;
  - one (1) month for those employed for at least six (6) months;
  - three (3) months for those employed for at least three (3) years.

5.3. Extraordinary termination

- **The employer** may terminate a contract of employment without notice **due to fault** by an employee who:
  - seriously violates the basic duties of an employee;
  - while the contract of employment is valid, commits an offence rendering ruling out further employment in the occupied post, if the offence is obvious or proven by a valid judgement, e.g. if an employee is caught red-handed or has admitted a crime, or this has been established by a valid judgment;
  - due to his own fault loses the licence necessary for performing duties connected with the post.
- **The employer** may terminate an employment contract without notice and **without fault** of the employee:
  a. if the employee's incapacity to work by reason of illness:
     - lasts longer than three (3) months, if the employee has been employed by a given employer for less than six (6) months; or
     - lasts longer than the period of receiving remuneration and welfare benefits as well as rehabilitation benefits for the first three (3) months, if the employee had been employed by a given employer for at least six (6) months or if the incapacity to work was caused by an accident at work or by an occupational disease;
  b. in the case of justified absence of the employee from work due to reasons other than those mentioned above for a period longer than one month.
- The employee may terminate a contract of employment without notice:
  - if a medical certificate has been issued stating that the work performed by the employee constitutes a health hazard, and the employer does not transfer him/her within the time limit specified in the medical certificate to other work appropriate to

his/her health condition and occupational qualifications; or

– when the employer has committed serious violations of basic duties towards the employee.

5.4. Mass dismissal

- Mass dismissal applies if an employer who employs at least 20 employees needs to terminate employment relationships for reasons not related to the individual employees concerned, by notice or by the mutual consent of the parties, and where, over a period not longer than 30 days, the redundancy includes at least:
  - 10 employees if the employer employs fewer than 100 employees; or
  - 10 % of the staff if the employer employs between 100 and 300 employees; or
  - 30 employees if the employer employs 300 employees or more.
- A mass dismissal is a complex procedure that can take approximately four (4) months.
- Mass dismissal involves many consultations and information obligations towards the workers, their representatives and the Labour Office.
- Standard notices of termination must be given to the employees.

5.5. Compensation

- If it has been determined that notice of termination of a contract of employment for an indefinite period is unjustified or that it violates the provisions on termination of contracts of employment, the labour court, at the request of the employee, will declare the notice of termination ineffective, and if the contract has already been terminated – the Court will order that the employee be reinstated to work on the former conditions or that **compensation** is due to the employee.
- Compensation amounts to the remuneration due for a period ranging from two weeks to three months, but not less, however, than the remuneration for the period of notice.
- An employee, in connection with the termination of an employment relationship as part of a mass dismissal, will be entitled to severance allowance amounting to the equivalent of:
  - one (1) month remuneration for those employed for less than 2 years; or
  - two (2) months' remuneration for those employed for 2 to 8 years; or
  - three (3) months' remuneration for those employed for over 8 years.

6. Post-contractual relations

6.1. Non-competition clause

- An employee may simultaneously perform other profit-making activities, but if these are identical to the employer's activities, the employer's consent is required.
- A non-competition clause during employment: an employer and an employee may determine the exact scope of the non-competition clause.
- A non-competition clause after termination of employment: an employer and an employee, who has had access to particularly important information the disclosure of which could cause damage to the employer, may conclude a contract prohibiting competition after the employment relationship ends. This contract should also specify the period of prohibition of competition and the compensation due to the employee from the employer, which may not be lower than 25 % of the remuneration received by the employee prior to cessation of the employment relationship for a period corresponding to the period of validity of the prohibition of competition. Agreement on a contractual penalty for breach of the prohibition is not permitted.
- A non-competition clause must be in writing, under pain of nullity. It may constitute a separate contract or be included in the employment contract.

6.2. Labour law disputes

- Labour disputes are heard by regional courts under the Polish Code of Civil Procedure (*"Kodeks postępowania cywilnego"*).
- Actions in labour law cases may be brought either in a court of general jurisdiction over the defendant, or in a court in the district of which the work is, was, or was supposed to be performed, or in a court in the district of which the employer's establishment is located.
- The court of first resort, consisting of the presiding judge and two lay judges, hears cases pertaining to labour law. In the second resort, cases are heard by a panel of three professional judges. A cassation appeal (*"skarga kasacyjna"*) is not always admissible.
- An employee as plaintiff only has to pay a court fee if the claim exceeds PLN 50,000 (currently approx. EUR 12,000).
- An employer as plaintiff must pay a fee of 5% of the claim.
- Labour disputes are very common and there is a wide range of case law. Disputes are usually settled quickly.

7. New forms of employment

- **Telework:** work may be performed regularly outside the employing establishment with the use of electronic communications.
- In case of telework the employer:
  - provides the teleworker with the equipment necessary for performing telework;
  - insures the equipment;
  - covers the costs of installation, servicing, exploitation, and maintenance of the equipment;
  - provides the teleworker with appropriate technical support and necessary training in equipment operation.
- **Employee leasing** (see point 4.3 above)
- **Management contract** - a more comprehensive type of mandate contract intended for the management of a company. The core of these contracts is professional management of the company by a natural person. The manager is independent, does not report to the client and does not work under his or her direction (a management contract is not an employment contract).

8. Employment of foreigners

8.1. EU citizens (as well as citizens of the EEA and Switzerland)

- The employment in Poland of citizens of the Member States of the European Union, the EEA and Switzerland (hereinafter only "EU citizens") is subject to the same principles as for Polish citizens.
- In particular, these foreigners need not apply for a work permit.
- An EU citizen and his/her family member who is not an EU citizen may reside in Poland for up to three (3) months.
- An EU citizen who has moved to Poland to find a job may reside in Poland for a maximum of six (6) months, unless after this period he/she proves that he/she is still actively seeking employment and has a reasonable chance of obtaining employment.
- An EU citizen who is an employee or self-employed person in Poland has the right to reside for a period exceeding three (3) months.

8.2. Third-country nationals

- A third-country national must be in possession of a valid visa or other document entitling him/her to reside in Poland (e.g. a temporary residence permit), which entitles him/her to perform professional activity – this must not be e.g. a tourist visa.

- The employer must obtain a work permit for a third-country national.

- A foreigner may not perform work under different conditions or in a position other than that specified in the work permit.

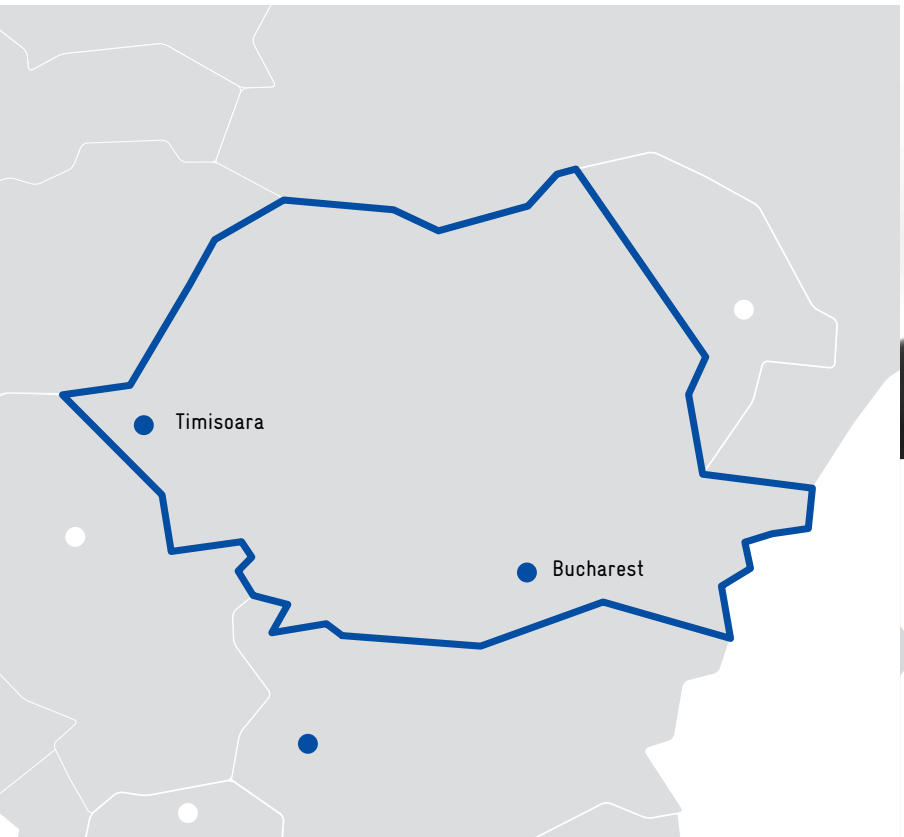
- Assigning performance of work in a so-called simplified procedure, i.e. on the basis of declarations by persons registered in the district labour office who intend to assign work to a foreigner, is not allowed. On the basis of a declaration on assignment of work to a foreigner, citizens of Belarus, Georgia, Moldova, Russia, Armenia and the Ukraine may, within the consecutive next twelve (12) months, take up short-term work in Poland for up to six (6) months without the obligation to obtain a work permit first.

Author: Katarzyna Harna

Romania

bnt Gilescu Valeanu & Partners
69 Dacia Boulevard, 1st District
RO-020051 Bucharest

bnt Gilescu Valeanu & Partners
No. 1 Ionel I.C. Brătianu Square
Bratianu Real Estate, ground floor
RO-300056 Timisoara



YOUR CONTACT

Iuliana Dinu
Partner

T +40 21 311 12 13
iuliana.dinu@bnt.eu

1. Employment relationship

1.1. Employment agreement

- The types of contract that can be concluded in the field of labour law are mainly regulated by Law No. 53/2003 - Labour Code ("Codul Muncii") as well as in several laws and regulations.
- An employment relationship can only be concluded on the basis of an employment agreement.
- An employment agreement can be for an unlimited period or a fixed term. A fixed term employment agreement can only be concluded in certain legally regulated cases.
- An employment agreement is concluded in Romania on the basis of the written consent of the parties at the latest on the day before the employee starts work. The obligation to conclude an employment agreement in writing is borne by the employer. Lack of written form does not invalidate the employment agreement; however, this can result in significant financial penalties for the employer.
- The Labour Code regulates the essential provisions that an employment agreement must contain. Also, the essential content of an employment agreement must be adapted to a binding template set out by the Minister of Labour. Special clauses that do not appear in the template agreement can - as far as legal and permissible - also be included in employment agreements or annexes thereto.
- Before the actual start of work, the employer must give the employee a copy of the employment agreement. A mandatory part of the employment agreement is the job description.
- Every employer must keep an electronic "General Register of Employees" (Registrul General de Evidenţă a Salariaţilor - "Revisal") and register all employment agreements in it. At the latest one day before the start of work, the employer must register the employment agreement in the register and transmit it electronically to the Labour Inspectorate. If this obligation is not observed, the employer can be fined Lei 20,000 (approx. Euro 4,146) / each employee, without exceeding the cumulative value of Lei 200,000 (approx. Euro 41,458).
- Except for a fixed-term or unlimited-term employment agreement, a special type of agreement can be concluded: an agreement for an internship for professional training (internship-agreement).

1.2. Duration of employment agreements

- A fixed term employment relationship requires written form and specification of its duration; otherwise it is deemed as an employment relationship for an unlimited period.
- As a rule, employment agreements are for an unlimited period, fixed-term agreements being the exception.
- A fixed-term employment agreement can only be concluded in certain legally regulated cases, namely: (i) if an employee is replaced, in the event of suspension of his/her employment agreement (e.g. pregnancy leave), unless it is an employee participating in a strike; (ii) if the employer's activity structure is temporarily increased and/or changed; (iii) in the case of seasonal work; (iv) if the agreement is concluded on the basis of legal provisions for the purpose of temporary promotion of certain categories of unemployed persons; (v) if a job seeker who will reach retirement age in 5 years is employed; (vi) if concluded for a leadership position in a trade union, employers' association or non-governmental organization, during the exercise of the mandate; (vii) if a pensioner is employed, their pension income may be legally cumulated with the wage; (viii) when carrying out specific work, projects, programmes or in other special cases regulated by law.
- A fixed-term employment agreement may not exceed 36 months.
- Between the same parties, no more than 3 consecutive fixed-term employment agreements may be concluded. A new fixed-term employment agreement signed less than three months after the end of a previous fixed-term employment agreement is considered a successive agreement. The maximum duration of each successive fixed-term employment agreement is

regulated by law and limited to 12 months each.

- If a fixed-term employment agreement is concluded to replace an employee whose employment agreement is suspended, the term of the fixed-term employment agreement expires as soon as the reasons that led to the suspension of employment agreement no longer exist.

1.3. Probationary period

- At the start of their employment, employees may be subject to a probationary period, for the purpose of verifying their skills. In order to be enforceable, the probationary period must be expressly provided for in the employment agreement, which must state the duration. The maximum length of a probationary period is 120 calendar days for managerial positions and 90 calendar days for executive positions. A person with a disability must not be subject to a probationary period of more than 30 days.

- During a probationary period, the employer or employee may terminate the employment agreement by notifying the other party in writing, with no requirement to give notice or a reason for termination.

- An employee may generally be subject to only one probationary period during an employment agreement. However, an employee may, by agreement, be subject to a new probationary period if starting a new position or occupation with the same employer, or moves to an arduous, unhealthy or dangerous workplace.

- Special rules apply to probationary periods during fixed-term and temporary employment agreements.

- A particular type of probationary arrangement may be used in the case of graduates of higher education institutions in their first job: generally, the probationary period being of a maximum 6 months.

1.4. Management agreement

- Managing directors do not, in general, conclude an employment agreement with the employer, but rather a management agreement and are therefore normally not considered to be employees by law. In this case, the provisions of the mandate agreement, provided for under the Civil Code, apply.

- The remuneration of the managing director is equal to employment law remuneration for taxation purposes.

2. Working hours

2.1. Weekly working hours

- The statutory normal working time for full-time employees is 8 hours daily and 40 hours weekly.

- The maximum working week for employees, including overtime, is generally 48 hours. However, this maximum may be exceeded as long as average weekly working time does not exceed 48 hours over a reference period of four months. Collective labour agreements may extend this reference period up to six months or, where necessary for objective technical or work-organisation reasons, up to 12 months. Weekly working time may also exceed 48 hours as a result of overtime worked in the event of force majeure, or for urgent work necessary to prevent, or cope with, the effects of an accident.

- The maximum daily working time is 12 hours and must be followed by a rest period of 24 hours. Uneven working hours are possible only if this has been expressly provided for in the employment agreement.

- The weekly rest period is 48 consecutive hours, usually Saturdays and Sundays. Should these two days interfere with normal activity, then 48 consecutive hours are granted on other days of the week. In this case, wage and salary supplements are granted as provided for in the employment agreement or collective labour agreement.

- In exceptional cases, the weekly rest period can also be cumulatively granted, after an uninterrupted period of activity of maximum 14 calendar days. This exception has to be approved by the local labour inspectorate and the labour union or employee representative has to agree.

- In the event of temporary reduction in activity, due to economic, technical, structural or similar

reasons, for more than 30 working days, the employer has the option of reducing working time from 5 to 4 days weekly, including a corresponding reduction in salary, until the cause that led to the reduction in working time is eliminated. In order to implement this measure, the employer must consult beforehand with the union or the employee representative.

2.2. Time account and flexible working hours

- The regular weekly working time of 40 hours can also be distributed unevenly, by using an uneven work schedule, by which the weekly working hours are unequally distributed across five or fewer days, in compliance with the applicable collective labour agreement at the company level or, in the absence of such an agreement, the internal regulations of the employer. If an employee is subjected to an uneven work schedule, this must be explicitly regulated in the employment agreement. In the case of an uneven work schedule system, daily working hours can be higher or lower than the eight-hour rule. However, if an employee works for 12 hours a day or more, a 24-hour rest period before a new work period must be granted. The maximum working-week time of 48 hours, including overtime, also applies to the uneven work schedule.

- The labour code provides another exception to the regular distribution of weekly working hours, under the form of individualized work schedules (flexitime). Such a schedule can be used with the approval of the employee or at the employee's request. This system involves flexible distribution of working hours or division of daily working hours into two periods: a fixed core daily working time, during which employees, at the same time, are at their work places; and a variable time frame in which the employee has the possibility to freely decide when to start and end work, under observation of daily working hours. The maximum weekly working time of 48 hours, including overtime, also applies to an individualized work schedule.

2.3. Overtime

- Overtime represents all working hours that exceed the regular legal weekly working time of 40 hours. Overtime can generally be performed with the consent of the employee. Further, the employer can require an employee to work overtime only in the event of force majeure, or to perform urgent tasks necessary to prevent, or deal with, the effects of an accident. Part-time employees are not allowed to do overtime, that is, work in excess of their contractual hours, except in the case of force majeure, or to prevent accidents or remove their consequences.

- Compensation of the employee for overtime is, as a rule, by equivalent paid time off within 60 days after the overtime is done. Only if this is not possible within that term is the employee entitled to a bonus for overtime. The overtime bonus, which must be paid on top of the normal wage, is set by the applicable collective labour agreement or the employment agreement and must be at least 75% of the employee's basic wage.

2.4. Annual leave

- An employee is entitled to paid annual leave. The minimum duration of legal annual leave is 20 working days. Employees who work under difficult, dangerous or unhealthy conditions, who are visually impaired or have other disabilities, as well as under the age of 18, receive additional annual leave of a minimum 3 working days.

- In a collective labour agreement or the employer's internal regulations, additional annual leave longer than the legal minimum may be provided for. In this case, the employer must observe the employee's longer leave entitlement. The effective duration of paid annual leave must be stated in the employment agreement.

- Annual leave must generally be granted during the calendar year in which entitlement to leave arises. If, for justified reasons, the employee is not able to take all or part of his annual leave in the corresponding year, the employer must grant the unclaimed paid leave within 18 months from the beginning of the following year.

- Public holidays and any paid days off, which are provided for in a collective labour agreement, are not included in annual leave.

- The leave schedule for a calendar year must be drawn up by the end of the previous calendar

year. Employees are in all cases entitled to take one uninterrupted yearly paid leave period of at least 10 working days.

- For objective reasons, an employee can interrupt annual leave, on request, and return to work. The employer is entitled to recall an employee from annual leave in the event of force majeure or if urgent matters arise that require the presence of the employee at work. In such cases, the employer must pay the costs incurred by the employee and his family and compensate the employee for damages caused by interruption of the vacation.

- During annual leave, an employee is entitled to a vacation allowance that corresponds at least to his/her average wage (basic salary plus bonuses and supplements of a permanent character). The minimum holiday allowance corresponds to the average daily wages for the last 3 months before the start of leave, multiplied by the number of leave days. The employer must pay holiday allowance at least 5 working days before leave starts.

- Compensation payment for unused annual leave is permitted only upon termination of the employment agreement.

- Employees cannot waive their annual leave entitlement. Also, the annual leave entitlement cannot be exchanged for payment, unless the employment agreement is terminated. In that case, the employer must pay the employee in place of unused annual leave.

3. Remuneration

3.1. Wage forms

- The employer must pay the contractually agreed remuneration (“remuneration”, “salary”). Salary is to be paid at least once a month, on the date specified in the employment agreement, in the applicable collective labour agreement or in the employer's internal regulations.

- The minimum wage is regulated by law. This is, since 1 January 2020, as follows: Lei 2,230 (approx. Euro 460) gross/month and Lei 2,350 (approx. Euro 485) gross/month for employees in positions requiring a university degree and with at least one year of professional experience in the area of the relevant degree.

- Higher wages and certain wage levels can and are usually determined by a collective labour agreement.

- The employer must deduct from the employee's salary the income tax and social security contributions payable by the employee and transfer them to the competent authorities. The employer has no other implied right to make other deductions from an employee's wage and such deductions can only occur in cases and under the conditions expressly provided by law.

3.2. Allowances

- Overtime: The employer is legally obliged to pay a bonus for overtime work if no paid leave is possible. The legal minimum value of the overtime bonus is 75% of the basic salary.

- Work on public holidays: The employer is legally obliged to pay a bonus for work on public holidays if paid leave is not possible. The bonus amounts to at least 100% of the basic wage corresponding to work within normal working hours.

- Night work: an employee who does at least 3 hours of night work is either entitled to reduced working hours (by one hour), without wage reductions, or a bonus of at least 25% of the basic wage for night work done if the work represents at least 3 night-working hours within the normal working hours of the employee.

- Working on Saturdays and Sundays: employees are entitled to bonuses set out in the employment agreement or the collective labour agreement.

- Additional bonuses are possible for dangerous work or special difficulties.

3.3. Benefits

- These generally result from the employment or collective labour agreement or from the employer's internal regulations. In addition to the wage, the most common are the following

benefits: the so-called 13th salary, Christmas bonus, private health care, language and other specialist courses.

3.4. Social and health insurance contributions

Table of social and health insurance contributions

Total burden of social social and health insurance contributions in:	Total monthly contribution payments as of 9 November 2018 (in % of gross monthly salary)	
	Employer	Employee
ROMANIA	2.25%	35%

3.5. Ancillary wage costs

- Social Security (CAS): amounts to 25% of the gross wage and is borne by the employee, via source deduction by the employer.
- Health insurance (CASS): amounts to 10% of the gross wage and is borne by the employee, via source deduction by the employer.
- Income tax: in terms of wages it amounts to 10% of the tax base consisting of the difference between the gross wage, social security and health insurance contributions and is borne by the employee.
- Employment insurance contribution: amounts to 2.25% of the gross wage and is borne by the employer.
- Social security contribution for employees whose work is performed under exceptional conditions (or under occupational risk factors that can lead to occupational diseases) (CAS): amounts to 4% of the gross wage and is borne by the employer.
- Social security contribution for employees whose work is performed under special conditions (or 50% of the working time is carried out under occupational risk factors that can have serious consequences for occupational safety and health) (CAS): amounts to 8% of the gross wage and is borne by the employer.
- Separate rates of contributions apply to part-time workers and construction workers.

4. Amendments in employment relations

4.1. Unilateral amendments of employment relations by the employer

- In principle, the terms of an employment agreement can be amended only with the mutual consent of the employer and employee. Such an amendment requires a written addendum to the agreement. The employer must register the addendum in the general register of employees in due time.
- An employer can unilaterally amend some terms and conditions of the employment agreement in certain cases, as long as the law is observed. In particular, an employer can unilaterally change the employee's place of work and type of work temporarily, in the event of force majeure, as a disciplinary measure or to protect the employee's health and safety. The employer can also change the employee's place of work unilaterally either by "delegating" the employee temporarily to work somewhere other than his or her normal workplace (e.g. undertakes business trips) or by seconding the employee to work temporarily for another employer, under observance of legal provisions and deadlines.
- If an employer intends to amend employment agreements as a result of a transfer of undertakings, the information and consultation requirements that apply to changes related to such transfers must be observed. An employer with more than 20 employees that plans amendments as a result of decisions likely to lead to substantial changes in work organization or in contractual relations must comply with information and consultation obligations.

4.2. Transfer of undertaking

- Due to the applicable legislation, in the case of transfer of all or part of an undertaking, employment relationships are automatically transferred to the transferee, by virtue of law.
- The main rights and obligations of the transferor, transferee and employees are: (i) transferred employees cannot be dismissed for reasons due to, or in relation to, the transfer of undertaking immediately before or after

the transfer; (ii) transferred employees cannot have fewer rights than those provided under individual employment agreements or the applicable collective labour agreement; (iii) the transferee is not allowed to amend the collective labour agreement for at least 12 months after the transfer; (iv) both the transferor and the transferee have to inform the employees' representatives regarding the consequences of the transfer.

- Breach by the transferor or the transferee of their legal obligations may trigger fines between Lei 1,500 and Lei 3,000, the employees being entitled to challenge the transfer in front of the competent courts.

4.3. Personnel leasing/ Temporary employment

- Employers, who, in their capacity as agencies, intend to provide employees (temporary workers) to third parties (users) as part of their economic activity (personnel leasing) require permission from the Ministry of Labour, Family and Social Protection.

- An essential condition for obtaining a permit is that the agent sets up a financial guarantee of 25 gross minimum wages (approx. Lei 55,750, i.e. approx. Euro 11,500) by depositing the guarantee amount in a bank account set up for this purpose.

- If the agent does not have permission from the Ministry of Labour, a fine of between Lei 10,000 and Lei 30,000 (approx. Euro 2,100 and Euro 6,200) can be imposed.

- An employment agreement between the agency and the employee must include, in addition to the essential provisions, the following information: the conditions under which the temporary work mission will be executed; the duration of the temporary work mission; the identity and the headquarters of the user; the amount and payment terms of the employee's salary.

- Usually, an employment agreement is concluded for a period corresponding to the temporary work mission. The employment agreement may not exceed 24 months; however it is possible to extend it for successive periods that, in addition to the initial temporary work mission, may not exceed 36 months.

- Under Romanian labour law, any provision that forbids employment of the employee by the user upon the expiry of the temporary work mission is null.

- The wage received by the employee must not be lower than the salary received by any other employee of the user doing identical or similar work.

- If the agent fails to pay the wages, social contributions and taxes to special funds, which are to be paid by the agent in its capacity of employer, the user has the obligation to pay.

4.4. Posting

- Posting is temporary activity of an employee at a place other than the usual place of his work as agreed in the employment agreement, while the employment agreement continues with his regular employer.

- Employees who normally work outside Romania and are posted for a limited time in Romania by their employer based in another European Economic Area (EEA) member state or Switzerland, are, for the duration of their posting, covered by various provisions of Romanian employment legislation if these are more favourable than those that would otherwise apply to them. The relevant statutory provisions are those relating to: working time; paid annual leave; minimum rates of pay, including overtime rates; protective measures for women who are pregnant; protective measures for young people and children; equal treatment for women and men and non-discrimination on other grounds; the conditions for hiring out workers, in particular the supply of workers by temporary work agencies; and health and safety at work.

- Romanian employment legislation provides different definitions and sets of rules for "posting (detaşare)". The Labour Code contains general rules regarding posting as a unilateral measure by the employer (whereby control over a posted employee is transferred to another employer) and the special law on the posting of workers as part of the provision of services uses the same term in another context (international posting between EU and EEA member states or Switzerland, which implies that the employer keeps control over the posted employee) which leads to different legal effects.

5. Termination of employment relations

5.1. Amicable termination

- Employees and employers can agree to terminate the employment relationship at any time without being bound by restrictions on termination. However, a termination agreement must be concluded in written form and must be registered in the general register of employees.

5.2. Termination

- The employment relationship must be terminated in writing and can be done at the initiative of both the employer and the employee.
- The employer can dismiss the employee in the following situations (reasons pertaining to the employee): (i) the employee has committed serious or repeated misconduct of the rules of work procedure or of the rules laid down in the employment agreement, collective labour agreement or internal rules of procedure (disciplinary sanction); (ii) the employee is in pre-trial detention for more than 30 days under the conditions of the Code of Criminal Procedure; (iii) as a result of a decision by the competent health committee, the employee was found to be unable to continue fulfilling the duties of the current position; (iv) the employee does not have the technical requirements/skills that the job requires.
- The employer can also terminate the employment agreement for other reasons not pertaining to the employee, such as a reduction of workplaces for operational reasons.
- In the event of termination for medical reasons or due to lack of professional prerequisites or for reasons not pertaining to the employee, the notice period under Romanian labour law is at least 20 working days.
- The employee can terminate the employment agreement in writing, without justification, within the notice period specified in the employment agreement. The legal notice period is 20 working days for executive employees and 45 working days for managerial employees. The employer must register the employee's resignation.

5.3. Extraordinary termination

- The employer is not required to give an employee notice if dismissal is on the grounds of gross or repeated misconduct - disciplinary dismissal - or because the employee is in custody for more than 30 days. In these cases, the employer can dismiss the employee summarily.
- The employee can terminate the employment contract without notice if the employer does not meet the obligations under the employment agreement.

5.4. Redundancy

- A collective redundancy occurs if the employer dismisses within 30 calendar days:
  - at least 10 employees (for employers with a number of employees between 20 and 99);
  - 10% of employees (for employers with a number of employees between 100 and 299 employees);
  - 30 employees (for employers with more than 300 employees).
- Redundancy triggers a preliminary procedure for informing the union/employee representatives, the territorial labour inspectorate about the redundancy plan and social measures, which must be carried out at least 30 calendar days before issuance of the redundancy decision.

5.5. Severance pay

- No general legal requirement exists for employers to make severance payments to employees whose employment agreement is terminated. Applicable legislation provides that, in the event of termination due to medical incapacity, the employee should receive compensation, under the terms of any applicable collective labour agreement or the employment agreement. The legislation does not stipulate, however, the amount of such compensation. The legislation also states that, in the case of redundancy, employees may be granted compensation under conditions of the law or the applicable collective labour agreement. Also, in this case, the legislation does not provide the amount of such compensation. As a result, severance

payments are based only on the requirements of collective labour agreements and/or the employment agreement.

6. Post-contractual relationships

6.1. Non-competition clause

- A duty of non-competition extends beyond termination of employment only if there is an explicit agreement in the employment agreement. The labour code places several restrictions on such non-competition clauses.
- A non-competition clause is valid only if inter alia it does not last more than two years after termination of the agreement and it does not impose absolute working restrictions on the employee. During the non-competition restriction the employee is entitled to monthly indemnification of at least 50% of the average gross salaries received in the previous six months before termination of the employment contract.

6.2. Labour litigation

- The competent courts for labour law disputes between employees and employers are the regional courts (labour law departments). In addition to the judge, the composition of the court also includes two judicial assistants with an advisory role.
- Labour lawsuits are generally exempt from the judicial stamp fee.
- Labour lawsuits are considered to be urgent legal proceedings, and, by law, the court dates cannot be set longer than 15 days apart. In practice, the court dates often exceed this term.
- The subpoena procedure is deemed to be lawfully fulfilled if the subpoena is served at least 24 hours before the court date.
- In labour law litigation, the burden of proof rests with the employer.

7. New forms of employment

- Teleworking, which is regulated by Romanian law, exists when employees work outside the workplace set up by the employer at least one day a month and use information technology.
- Teleworking is only possible with the consent of the teleworker. This consent must be given in the employment agreement or, in the case of existing employment agreements, in an addendum. The employee's refusal to perform telework must not give rise to any reason for changes in the employment agreement or sanctions.
- Teleworkers set their working hours in agreement with the employer. The employer is entitled to inspect the work of the teleworker on site under the conditions set out in the employment or collective labour agreement or company regulations.
- At the request of the employer and with the written consent of the teleworker, he / she can work overtime.

8. Employment of foreigners

8.1. EU citizens (as well as citizens from the EEA and Switzerland)

- EU citizens who reside in Romania for the purpose of employment opportunities or for vocational purposes or who are entitled to exercise an independent professional activity, according to the Freedom of Movement Law / EU, are entitled to entry and residence. No visa for entry and no residence permit is needed.
- Citizens of Switzerland and the EEA countries are treated as EU citizens.

8.2. Third-country nationals

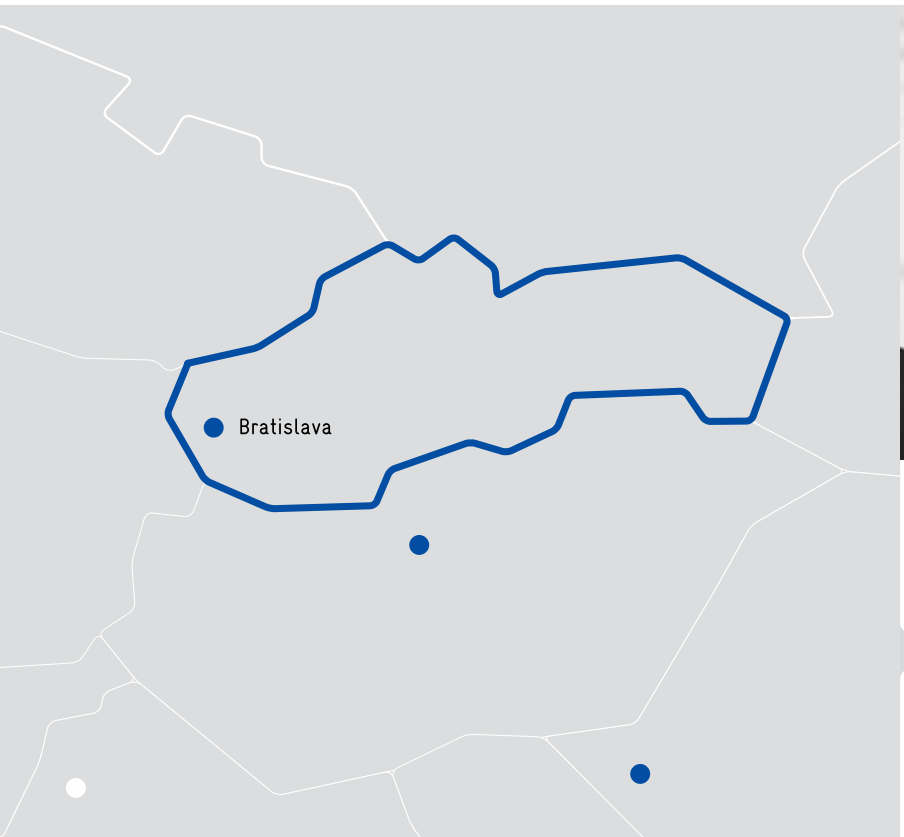
- Third-country nationals generally need a residence permit and a work permit to be able to work in Romania.

- The following conditions must be met in order for third-country nationals to be able to work in Romania:
  - vacancies cannot be filled by Romanian citizens or citizens of other EU Member States or EEA countries, or permanent residents of Romania;
  - special conditions regarding professional qualifications, experience and authorization are fulfilled;
  - the employee provides medical evidence that shows that he is fit for performing the activity;
  - the employee has no criminal record that would be incompatible with the activity to be performed in Romania;
  - the employee can be included in the annual contingency quota approved by the government;
  - the prospective employer has no debts to the state budget;
  - the prospective employer carries out activities compatible with the employee's requested employment position;
  - the employer / provider has not been penalized for undeclared or illegal employment in the last 6 months prior to processing the application.

Author: Iuliana Dinu

Slovakia

bnt attorneys-at-law, s.r.o.
Cintorínska 7
SK - 811 08 Bratislava



YOUR CONTACT

Zuzana Chudáčková
Partner

T +421 2 33 10 47 33
zuzana.chudackova@bnt.eu

1. Employment

1.1. Employment contracts

- The types of contract that can be concluded in the field of labour law are listed in the Labour Code ("Zákonník práce").
- An employment relationship can be concluded only on the basis of an employment contract.
- An employment contract may be concluded for a limited or unlimited period of time.
- The parties to an employment contract may conclude it in writing or orally. If the contract is not in writing, this does not invalidate it; under certain circumstances, an employment relationship could also arise from actual performance of work.
- An employment contract must contain at least information on the type of work and a brief description, the place of work, the date of starting work and the wage conditions, if not set in a collective agreement.

In addition to an employment contract, three (3) specific types of contract may be concluded under certain circumstances, namely an agreement for work performance, an agreement on work activity, and an agreement with a student:

- these three (3) types of contract must be in writing, otherwise they are invalid;
- no employment relationship in the classic sense is created;
- these types of contract do not give rise to holiday entitlement; they contain reduced notice periods but no severance pay;
- the minimum wage must be observed;
- if the work is defined by a specific result, the employee can work for up to 350 hours a year;
- if certain long-term work is to be performed without a specific result, the employee can work up to ten (10) hours a week;
- in the case of agreements between an employer and a student, work can be up to 20 hours a week on average.

1.2. Employment for a definite time

- A fixed-term employment relationship may be agreed in writing or orally; however, its duration must be agreed and specified in writing, otherwise it is considered to be an employment relationship for an indefinite period.
- A fixed-term employment relationship can be agreed for up to two (2) years and can be extended twice (2x) within that period.
- A renewed fixed-term employment relationship is an employment relationship that is to be established between the same parties before the expiry of six (6) months after the termination of the previous fixed-term employment relationship.
- An extension or renewal of a fixed-term employment relationship more than twice or beyond two (2) years is only possible for the following reasons:
  - replacement of an employee during maternity or parental leave, temporary incapacity to work;
  - seasonal work and temporary activities for up to eight (8) months in a calendar year;
  - for activities specified in a collective agreement.
- The working conditions of an employee working on a fixed-term contract must be similar to those of employees working on a permanent contract.
- The restrictions on extending or renewing a fixed-term employment relationship do not apply to temporary employment agencies.

1.3. Probation period

- A probationary period may be agreed for up to three (3) months, for executive employees for up to six (6) months. The probationary period may not be extended. The probationary period must be agreed in writing; otherwise it is ineffective. The probationary period is extended by the duration of obstacles at work on the employee's side.

1.4. Management agreement

- Managing directors and other members of a statutory body (e.g. board members) are neither employees nor salaried employees; the function of these persons cannot be exercised on the basis of an employment contract under the Labour Code.
- Their function is subject to commercial law and is performed on the basis of an agreement on performance of the function of a managing director (so-called managing director agreement) under the Commercial Code ("Obchodný zákonník", No. 513/1991 Coll.).

2. Working hours

2.1. Weekly working hours

- The fixed working time is up to 40 hours a week in a one-shift operation, up to 38.75 hours in a two-shift operation and up to 37.5 hours in a three-shift operation or in uninterrupted operation.
- The maximum employee working time including overtime is 48 hours a week.
- The employer may distribute working time evenly or unevenly over individual weeks; uneven distribution of working time may last up to twelve (12) months under certain circumstances (by agreement only).
- An employee whose shift lasts longer than six (6) hours is entitled to a 30-minute break for rest and meals.
- The employer must observe the uninterrupted daily rest period, which normally consists of a rest break of twelve (12) consecutive hours within a 24-hour period, and an uninterrupted weekly rest period, which normally consists of two (2) consecutive uninterrupted days of rest, which should fall on Saturday and Sunday or Sunday and Monday.

2.2. Work-time banking and flexible working hours

- Work-time banking is a special type of uneven distribution of working time that can only be introduced under the following conditions:
  - the working time account is anchored in a collective agreement or agreed with employee representatives (works council, employee trustee);
  - the agreement on introduction of the working time account must be in writing;
  - the compensation period can be up to 30 months;
  - the employee is entitled to basic wage components.
- The employer can introduce flexible working hours as a flexible day, flexible week, flexible four-week work period, or other work period. With flexible working hours, the employee must generally be at work during basic working hours and determine the start and end of his or her working time on his or her own.

2.3. Overtime and standby duty

- For serious operational reasons, e.g. if the employer has an urgent economic need, the employer may unilaterally order overtime work up to 150 hours in a calendar year as an exception. By agreement with the employee, additional overtime may be worked. An employee may work up to 400 hours' overtime in a calendar year.
- In justified cases, the employer may unilaterally order the employee to work up to 100 hours of standby duty a year in order to ensure urgent tasks are carried out.

2.4. Vacation

- Minimum: four (4) weeks a year or, in the case of employees aged 33 or over and – for an employee who takes care of a child on a permanent basis - five (5) weeks a year.
- Entitlement to total annual leave must be granted from 60 working days of employment with the same employer; in the case of employment of less than 60 working days, leave entitlement is determined as follows: 1/12 of the annual leave for every 21 working days worked.

3. Remuneration

3.1. Forms of payment

- The wage is agreed either in the employment contract or in a collective agreement. Salary can be agreed as a monthly salary or an hourly salary.
- The employee is entitled to the minimum wage. In 2020, the minimum wage is EUR 580 gross monthly. The minimum hourly wage in 2020 is EUR 3.33 gross. (In 2019, the minimum wage was EUR 520 gross monthly. The minimum hourly wage in 2019 was EUR 2.99 gross.)
- If applicable, piecework may be introduced after consultation with the trade union or the works council and piecework pay may be agreed accordingly.

3.2. Extra payments

- Overtime: overtime bonus of at least 25% of average salary for each hour worked or time off in lieu. In accordance with agreement between the employer and certain groups of employees (e.g. senior managers), the employee's salary may include any overtime work, up to 150 hours a year.
- Holiday work: salary supplement of at least 100% of the average salary for one hour worked or compensation for time off. In the case of executive employees, work on public holidays can be agreed without a bonus.
- Night work: salary supplement of at least 40% of the minimum wage for one hour worked. Night work can be agreed with senior executives without a bonus.
- Work on Saturdays and Sundays: a supplement applies for Saturday work at 50% of the minimum wage and for Sunday work at 100% of the minimum wage for every hour worked.

3.3. Benefits

- Benefits generally arise from the employment or collective agreement or from the employer's internal regulations. The most common benefits in addition to salary are: food vouchers outside the legal entitlement, the so-called 13th salary, language and other professional courses, free tickets to a fitness centre.

3.4. Social and health insurance contributions

Chart with social and health insurance contributions

Total burden of social and health insurance contributions in:	Total monthly contribution payments as of 1 January 2020 (in % of gross monthly salary)	
	Employer	Employee
SLOVAKIA	35.2%	13.4%

3.5. Incidental wage costs

- Tax (2018): income tax for individuals at 19% on annual income up to EUR 35,268.06, above this limit income is taxed at 25%; tax-free amount of EUR 3,803.33.
- Social fund: Employers must create a social fund and pay monthly contributions of 0.6% to the social fund up to 2% of the gross monthly wage of all employees.
- Catering: An employee who works more than 4 hours is entitled to a hot meal or a meal voucher. The employer pays at least 55% of the price of the meal or meal voucher, i.e. at least EUR 2.64.

4. Changes in the employment contract

4.1. Unilateral changes in the employment contract by the employer

- In principle, changes in the employment relationship can be made either with the employee's consent or unilaterally in cases set by law.
- Without the employee's consent, the employer may assign the employee to a different type of work if:
  - the employee cannot perform the agreed work according to a medical opinion; or

- a pregnant worker, a worker during the nine (9) month period following childbirth or a worker who is breastfeeding is performing work which is prohibited to her, or such a worker who is performing night work is requesting conversion to day work; or
- a worker who performs night work is unable to perform such work; or
- it is necessary for the protection of third parties against infectious diseases; or
- it has been so ordered on the basis of a final judgment of a court or administrative body (ban on employment).

4.2. Transfer of undertaking

- Transfer of rights and obligations arising from employment relationships occurs when an employer transfers an activity or part of an activity or when all or part of an employer's tasks are transferred to another employer.
- The rights and obligations arising from employment contracts and collective agreements, for example, are transferred to the accepting employer by law on the effective date of transfer of the business.
- Transfer of business involves numerous information and discussion obligations of affected employers towards employees or the trade union, the works council or the employee trustee.

4.3. Temporary employment/labour leasing

- Employees may be temporarily transferred to another employer for work, either via a temporary employment agency with a valid licence or by any employer with objective operational reasons for doing so.
- A temporary employment agency obtains a licence from the Slovak Ministry of Labour, Social Affairs and Family, if it meets the legal requirements (especially proof that it has equity capital of at least EUR 30,000).
- A temporary employment agency provides employees for a profit; it is a business activity.
- Employees are provided to user employers on the basis of an agreement on temporary work between the agency and the user employer and on the basis of an agreement on temporary work between the employee and the agency; the main requirements for these agreements are regulated in the Labour Code.
- During the assignment, the user employer gives the assigned employee work tasks, organizes, manages and supervises his work and gives him instructions to that end.
- Although wage and travel expenses continue to be paid by the employer (the temporary employment agency) without interruption, they are passed on to the user employer.
- An employee can be hired out to a user employer for up to 24 months, with a maximum of four extensions within that period.
- If these periods are exceeded, the employee's employment relationship with the agency automatically terminates by law and an employment relationship for an indefinite period is established with the user employer.
- The working and wage conditions and terms of employment of a leased employee must be at least as favourable as those of a comparable regular employee of the user employer.
- The user employer is responsible for paying a wage that is at least as favourable; otherwise he is obliged to pay the difference.

4.4. Posting of employees

- A posting is defined as the temporary activity of an employee at a place other than the usual place of work agreed in the employment contract, while continuing his employment contract with his regular employer.
- Performing work via an employee in the provision of (cross-border) services is also considered to be a posting.
- A posting can be identified by the fact that the work tasks of the posted employee and the organisation, management and supervision of his work and issue of instructions always remain with the regular employer.
- Wages and travel expenses will continue to be paid by the regular employer without interrup-

tion and will not be charged on to the operator of the place where the employee is posted.

- A (cross-border) business trip or posting within the scope of a group of companies is also considered a posting.

5. Termination of employment

5.1. Termination by mutual agreement

- Amicable termination of an employment relationship is possible on the basis of a written agreement between the employer and the employee. The employment relationship ends on the agreed day. The reasons for terminating the employment relationship must be stated in the agreement if the employee so requests or if the employment relationship was terminated for operational reasons.

5.2. Notice

- Termination of an employment relationship can be effected either by the employee or by the employer by written notice of termination. Failure to comply with the written form renders the notice ineffective. A notice of termination must be delivered to the other party personally or by registered mail, otherwise it will not be validly served and will be invalid.
- The employer can only terminate employment in specific cases, as listed exhaustively in the Labour Code. These reasons must be explicitly stated in the letter of termination. The reasons for termination are as follows:
  - termination of the employer or part of the employer;
  - change of employer's registered office if the employee does not agree with a change of the agreed place of work;
  - redundancy of the employee due to operational reasons or termination of temporary work before the end of the period for which the fixed-term employment relationship was agreed with the temporary employment agency;
  - the health condition of the employee, i.e. the employee is no longer able to work due to health reasons;
  - failure to comply with the conditions laid down by law for performance of the agreed work;
  - unsatisfactory performance of working tasks;
  - less serious or serious violation of work discipline by the employee.
- The basic period of notice is at least one (1) month.
- If the employment relationship has lasted for more than five (5) years and the employer gives notice of termination due to termination or change of seat, redundancy or due to the employee's state of health, the notice period is at least three (3) months.
- For all other terminations of employment relationships that have lasted longer than one (1) year, the notice period is at least two (2) months.
- In some cases laid down by law (e.g. during illness or maternity leave), there is a prohibition of dismissal.
- In the case of operational reasons for dismissal, the employer must offer the employee other work suitable for that employee, otherwise the dismissal is invalid.
- If there are employee representatives working for the employer, the dismissal must first be discussed with them, otherwise the dismissal is invalid.

5.3. Extraordinary termination

- The employee has the right of immediate termination under certain legal conditions, namely:
  - if the employer delays in paying all or part of the wage for more than 15 days after it is due; or
  - if he cannot work for an important reason involving health hazard and the employer has not transferred him to another suitable job within 15 days.

- The employer can also terminate without notice under extraordinary legal conditions, namely:
  - in the case of a serious violation of work discipline; or
  - if the employee has been convicted by a final judgment of a wilful criminal offence.

5.4. Mass dismissal

- A mass dismissal is when the employment relationship is terminated within 30 days for operational reasons:
  - of at least ten (10) employees of an employer who has more than 20 and less than 100 employees; or
  - of at least 10 % of the employees of an employer with at least 100 and less than 300 employees; or
  - of at least 30 employees of an employer with at least 300 employees.
- A mass dismissal is a complex process which usually takes at least four (4) months.
- A mass dismissal involves duties of discussion with and information to employees, employee representatives and the Labour Office; in case of violation of these duties, the employee is entitled to a two-month wage compensation.
- The employees must be served the usual notice of termination, whereby the statutory period of notice and severance pay in accordance with the length of service must be observed.

5.5. Severance pay

- An employee whose employment relationship is terminated by notice of termination for operational or health reasons is entitled to severance pay based on the length of service in the amount of:
  - one (1) average monthly salary if the employment relationship has lasted for at least two (2) years and less than five (5) years at the date of termination; or
  - twice (2) the average monthly salary, if the employment relationship has lasted for at least five (5) years and less than ten (10) years as of the date of termination; or
  - three (3) times the average monthly salary if the employment relationship has lasted for at least ten (10) years and less than twenty (20) years as of the date of termination; or
  - of four (4) times the average monthly salary if the employment relationship has lasted for at least twenty (20) years as of the date of his termination.
- An employee whose employment relationship is terminated by a termination agreement for the above-mentioned reasons is entitled to a severance payment in at least the following amount:
  - one (1) average monthly salary if the employment has lasted for less than two (2) years as of the day of termination; or
  - two (2) times the average monthly salary if the employment relationship has lasted for at least two (2) years and less than five (5) years as of the date of termination; or
  - three (3) times the average monthly salary if the employment relationship has lasted for at least five (5) years and less than ten (10) years as of the date of termination; or
  - four (4) times the average monthly salary if the employment relationship has lasted for at least ten (10) years and less than twenty (20) years as of the date of termination; or
  - of five (5) times the average monthly salary if the employment relationship has lasted for at least twenty (20) years as of the date of termination.

6. Post-contractual relationships

6.1. Non-competition clause

- In principle, the employee can also carry out another income activity in addition to the employment relationship; if this is in competition with the employer's business purpose, the employee requires the employer's written

consent to carry out that activity.

- A post-contractual non-competition obligation may be agreed upon for a maximum of one (1) year after the termination of the employment relationship.
- If a post-contractual non-competition obligation is agreed, the employer must pay the employee at least 50% of the average monthly wage for each month of compliance with the non-competition obligation.
- A contractual penalty may be agreed for breach of the non-competition clause.
- A post-contractual non-competition obligation and its terms and conditions must be agreed upon in writing in the employment contract, otherwise they are invalid.

6.2. Labour disputes

- Labour disputes are decided by special district courts ("Okresný súd") under the Code of Civil Procedure.
- The courts in the district in which the defendant is domiciled have local jurisdiction.
- Disputes are decided by a single judge.
- As a rule, employees do not have to pay court fees as plaintiffs.
- Labour disputes are relatively frequent and there is a wide range of case law.
- If the validity of termination of the employment relationship is contested, the employee may be awarded wage compensation of up to 36 average monthly wages.
- In the event of wage compensation in excess of twelve (12) monthly wages, the court's so-called moderation right applies, whereby the employer must expressly request a reduction or non-application of this part.

7. New forms of employment

- The Labour Code currently does not sufficiently reflect the needs of workers for more flexible employment for the purpose of combining work and private life. In practice, part-time employment contracts are often used, or various non-employment contracts are used for minor or temporary employment.
- In connection with the development of a "divided economy", the number of people who do not want to be traditionally employed but who only want to work on specific projects or for several employers, as independent workers (freelancers), is also increasing. In principle, freelancers cannot be employed as employees, as dependent work may only be performed on the basis of the types of contract specified in the Labour Code (the characteristics of dependent work are defined in the Labour Code).
- The Labour Code currently regulates the following legal tools which can be used to support the new forms of employment:
  - part-time employment;
  - so-called shared workplace, when two (2) or more employees may share a single workplace; they must then agree on time and tasks alone;
  - working from home;
  - telework;
  - agreements outside the employment relationship.

8. Employment of foreigners

8.1. EU citizens (and citizens of EEA states and Switzerland)

- EU citizens (as well as citizens from the states of the European Economic Area (EEA, currently only Liechtenstein, Iceland and Norway) and

Switzerland (hereinafter only "EU citizens") must be employed in the Slovak Republic under the same conditions as Slovak citizens.

- EU citizens do not require special permits for employment.
- Under the Employment Act, EU citizens (or the employers with whom they work) must inform the relevant employment office of their arrival (departure) by means of a form within seven (7) working days of the commencement (termination) of their employment in the Slovak Republic.
- Under the Act on Residence of Foreigners, an EU citizen staying in the Slovak Republic for more than three (3) months must apply for registration of his/her stay after three (3) months from the date of entry into the Slovak Republic. The application for registration (free of charge) must be submitted in person, using an official form, to the competent Slovak foreign police authority within 30 days of the expiry of three (3) months.

8.2. Third-country nationals

- Third-country nationals can in principle only reside and work in the Slovak Republic with a residence and work permit. These are issued by the competent foreign police authority in cooperation with the employment office after legal requirements have been met.
- As a general rule, residence and work permits are issued only after confirmation of the possibility of filling a vacant job, which is issued by the competent employment office.
- Confirmation from the employment office is not required in cases where the vacant job is located in a region with a low unemployment rate and at the same time among the types of jobs listed with the Ministry of Labour.
- Another possibility where no confirmation from the Labour Office is required is employment of third-country nationals on the basis of an internal posting (only highly qualified workers).
- Third-country nationals do not require a work permit (a residence permit is always necessary, at least in another EU country) during a stay in Slovakia only in cases expressly stipulated by law (e.g. in the case of delivery of goods and related assembly, which may not last longer than 90 days, in the case of posting by an employer resident in the EU for the cross-border provision of services).

Author: Zuzana Chudáčková

Country data valid as of 31 March 2020

	SK	CZ	HU	PL	BG	LT	LV	EE	BY	RO
Population	5,450,421	10,693,939	9,772,756	38,406,000	6,951,482	2,794,158	1,919,968	1,328,360	9,408,400	19,414,458
Unemployment rate (in %)	5.19	3.4	3.3	5.4	6.2	6.4*	7.3	4.1*	0.2	3.06
GDP increase (in %)	3.4*	- 2.2	4.5	1.9	3.4*	3.8*	2.2	2.2	1.2*	4.4
Average monthly wage (in €)	1,092	1,318.53*	1,071	1,220.94	675	1,346.70*	1,091	1,551	450	1,134.83
Minimum monthly wage (in €)	580	519*	460	567	311	607	430	584	136*	463.07
Average labour costs (in €)	1,476	1,764*	1,275	1,472	803	1,383.60	1,354.18	2,075	484.6	949.60
The annual CPI inflation rate (average in %)	2.7*	2.1 3.1	3.4	3.4	3.1*	2.7*	2.2	2.3	1.9	3.8
Income tax for natural persons (in %)	19/25	15/22	15	17/32 or 19	10	20/32	20/23/31.4	20	13*	10

* Status 1 January 2020

Our Team: Practice Group Employment

Alexander Liessem
Partner
Belarus

Stela Ivanova
Partner
Bulgaria

Markéta Pravdová
Partner
Czech Republic

Aet Bergmann
Partner
Estonia

Éva Ratatics
Partner
Hungary

Karlis Svikis
Partner
Latvia

Jolanta Zupkauskaite
Senior Associate
Lithuania

Katarzyna Harna
Associate
Poland

Iuliana Dinu
Partner
Romania

Zuzana Chudáčková
Partner
Slovakia

Our Offices

BELARUS

bnt legal and tax
Revolutsionnaya Str. 9
building 4 office 40
BY-220030 Minsk
T +375 17 2039455
F +375 17 2039273
info.by@bnt.eu

BULGARIA

bnt Neupert Ivanova & kolegi adv.dr.
Gladstone 48
BG-1000 Sofia
T +359 2 980 1117
F +359 2 980 0643
info.bg@bnt.eu

CZECH REPUBLIC

bnt attorneys-at-law s.r.o.
Slovanský dům (Building B/C)
Na příkopě 859/22
CZ-110 00 Praha
T +420 222 929 301
F +420 222 929 309
info.cz@bnt.eu

ESTONIA

bnt attorneys-at-law Advokaadibüroo OÜ
Tatari 6
EE-10116 Tallinn
T +372 667 62 40
F +372 667 62 41
info.ee@bnt.eu

HUNGARY

bnt ügyvédi iroda
Stefánia út 101-103.
H-1143 Budapest
T +36 1 413 3400
F +36 1 413 3413
info.hu@bnt.eu

LATVIA

Jensen & Svikis Legal
Antonijas iela 24-7
LV-1010 Rīga
T +371 25 23 20 22
info.lv@bnt.eu

LITHUANIA

bnt Heemann APB
Embassy House
Kalinausko 24, 4th floor
LT-03107 Vilnius
T +370 5 212 16 27
F +370 5 212 16 30
info.lt@bnt.eu

POLAND

bnt Neupert Zamorska & Partnerzy sp.j.
ul. Chłodna 51
PL-00 867 Warsaw
T +48 22 373 65 50w
F +48 22 373 65 55
info.pl@bnt.eu

ROMANIA

bnt Gilescu Valeanu & Partners
69 Dacia Boulevard, 1st District
RO-020051 Bucharest
Tel.: +40 21 311 12 13
Fax.: +40 21 314 24 70
info.ro@bnt.eu

bnt Gilescu Valeanu & Partners
No. 1 Ionel I.C. Brătianu Square
Bratianu Real Estate, ground floor
RO-300056 Timisoara
Tel.: +40 35 600 70 33
Fax: +40 35 600 70 34
info.ro@bnt.eu

SLOVAKIA

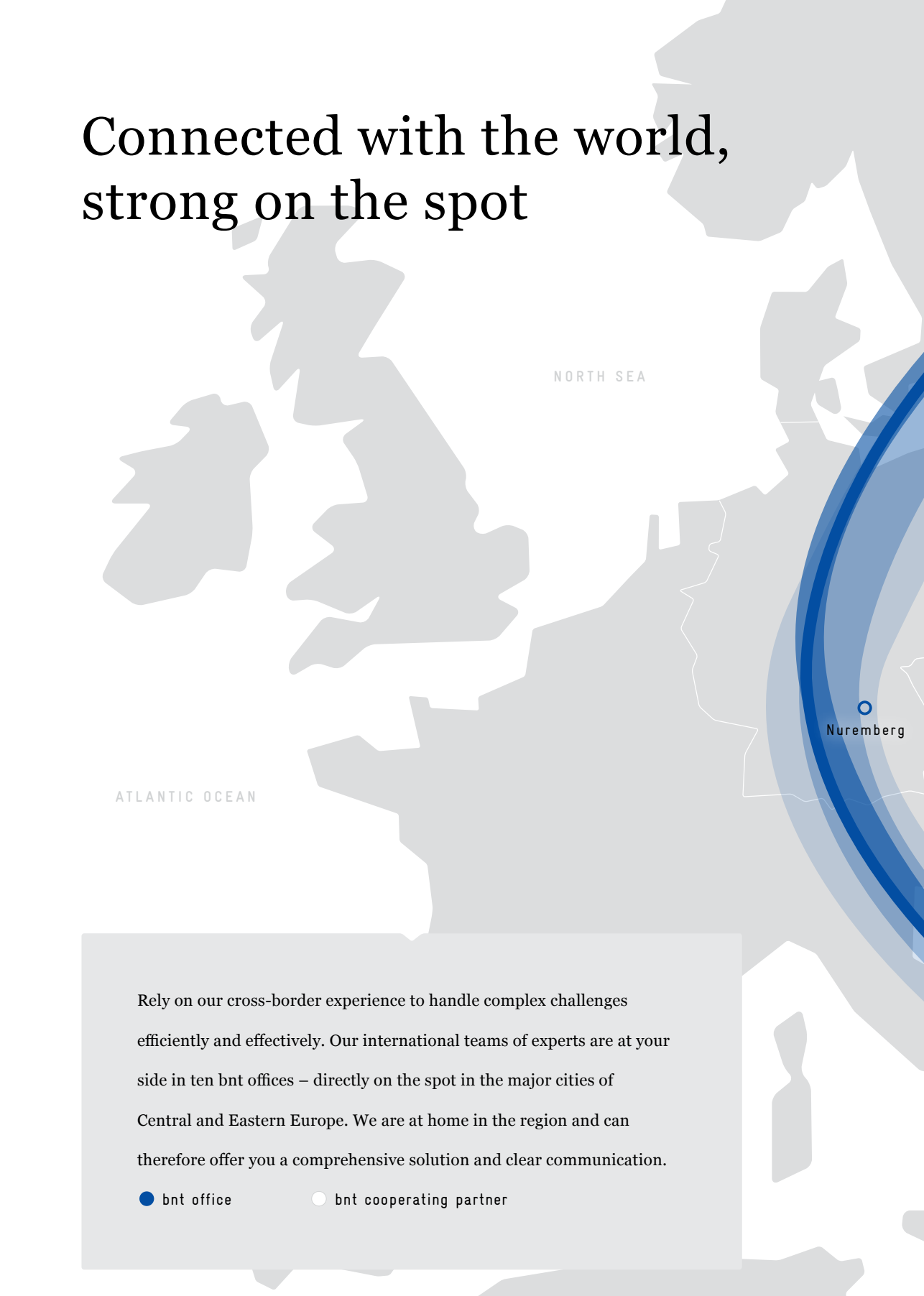
bnt attorneys-at-law, s.r.o.
Cintorínska 7
SK-811 08 Bratislava
T +421 2 57 88 00 88
F +421 2 57 88 00 89
info.sk@bnt.eu

BNT NETWORK OF COOPERATIVE OFFICES

Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Russia, Serbia, Slovenia, Ukraine

further information:
www.bnt.eu

Connected with the world, strong on the spot



Rely on our cross-border experience to handle complex challenges efficiently and effectively. Our international teams of experts are at your side in ten bnt offices – directly on the spot in the major cities of Central and Eastern Europe. We are at home in the region and can therefore offer you a comprehensive solution and clear communication.

● bnt office ○ bnt cooperating partner


Tallinn
Riga
Vilnius
Minsk
Warsaw
close
Prague
Bratislava
Budapest
Timisoara
Bucharest
Sofia
MEDITERRANEAN
SEA

bnt at a glance

We are one of the leading international law firms specialising in business law in Central and Eastern Europe. Clients working with us have a clear local advantage: our international teams on the spot in ten offices provide regional expertise that hardly anybody else can match. This means we can guide our clients on the shortest route to their economic targets in the region.

FACTS

10 offices in CEE

30+ partners

120+ lawyers

22 working languages

17+ years of expertise in CEE

MANY awards

Czechia | Poland | Lithuania | Latvia | Estonia | Belarus
Slovakia | Hungary | Romania | Bulgaria

bnt