

## **Working abroad (Part 1.): the principle of equal treatment**

**In this series dedicated to working abroad and to the domestic employment of foreign workforce, the expert of Kovács Réti Szegheő Attorneys at Law is going to examine every possible aspect of the underlying legal framework. Besides looking into the questions of labour and EU law, Dr Andrea Bayer will also assess the economic, occupational, social security and tax related implications.**

The expert of Kovács Réti Szegheő Attorneys at Law explained that any employer may conclude and perform contracts of employment with workers from another member state, just like any national of an EU member state may apply for vacancies and conclude contracts of employment in another member state.

Hungarian employees have been present at the European labour market for a long while, and in constantly growing numbers. The number of Hungarian businesses carrying out contracts in other member states is also on the increase, and the accession of new member states to the European Union has amplified Hungary's power to attract workforce from the newly acceded countries.

Thus, questions pertaining to missions, assignments or posting of employees abroad, as well as the employment of foreign workforce in Hungary represent day to day challenges for employees and employers alike – underlined Dr Andrea Bayer.

### **The EU Regulation and Directive**

This principle constitutes a fundamental right of workers and their families and has been laid out in Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, and in Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.

Pursuant to the Regulation, the attainment of this objective entails the abolition of any discrimination based on nationality between workers of the EU member states as regards employment, remuneration and other conditions of work and employment.

### **The principle of equal treatment**

It means that employers must ensure equal treatment to nationals residing in other member states and to nationals of the host country, right from the outset of the selection and recruitment stages. Consequently, the employer may not set conditions to be met by the applicants in the course of the selection procedure that are discriminative on any ground – for example that of the applicant's nationality.

The employer, however, may require applicants from foreign member states to have a certain level of command of the language, but the required level of language skills must be proportionate at all times to the vacant position.

As regards the employment relationship the Hungarian Labour Code, just like the national labour regulations of any other member state, incorporates the requirement of equal treatment, which obliges the employer to provide equal work conditions to nationals of another member state, and to employees of the host country.

According to the expert of Kovács Réti Szegheő Attorneys at Law it is important for employers to know that foreign employees contracted only for a definite term must be ensured the same treatment as their co-



workers contracted for an indefinite term. As a result of the equal treatment principle discrimination between the applicants and employees (e.g. annual paid holidays, parental leave or remuneration) is prohibited not only on the ground of nationality, but also based on gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Dr Andrea Bayer pointed out: as a rule of thumb EU nationals wishing to work in other EU countries do not need work permits to be allowed to work in another EU member state. Croatia is an exception, as its citizens may still be required to possess a work permit in certain EU countries, and vice versa, nationals of some EU member states may be required to have work permits if they wish to live and work in Croatia.

### **Recognition of professional qualifications**

If a Hungarian or foreign employer recruits employees for a vacant position in a professional field which is subject to regulations in the host country, the applicants having obtained their professional qualifications in another member state need to have their qualifications recognised by the competent authority of the host country. Certain professions are subject to specific, additional EU regulations when it comes to the recognition of professional qualifications obtained in other member states.

Since the administrative processes of recognition may entail lead times adding up to several months, it is advisable to make the necessary arrangements prior to the commencement of employment in another member state.

### **Posted works**

Enterprises often operate branch offices or places of business in another member state, and may need to send their employees on a temporary basis to carry out their work there, based on their employment agreement (e.g.: at the premises of a business partner).

In these cases, employers must comply with the mandatory rules on posting, which are equally based on the principle of equal treatment – pointed out the expert of Kovács Réti Szegheő Attorneys at Law.

The employment relationship between the employer and the posted worker must be maintained invariable during the period of posting, but the employer must guarantee the same terms and conditions of employment to the posted employee, as those in effect in the state to which he or she is posted. This applies irrespectively of whether these requirements have been enacted by the force of law or collective agreements. This rule applies particularly to the protective measures with regard to maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay, to the terms and conditions of employment of pregnant women or women who have recently given birth.

However, if the whole length of the posting is less than one month, the member states, after consulting the representatives of the employers and labour, may decide not to apply the requirements in effect in the host country pertaining to the minimum rates of pay and to paid annual holidays.