

ASPECTS REGARDING WORK THROUGH A TEMPORARY EMPLOYMENT AGENT

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***Abstract:** The temporary work agent is a legal person, authorized by the Ministry of Labor and Social Solidarity, which concludes temporary work contracts with temporary employees, to make them available to the user/beneficiary, to work for the period established by the contract of making available under the supervision and its leadership. The operating conditions of the temporary work agent, as well as the authorization procedure, are established by a Government decision.*

***Keywords:** beneficiary, user, temporary employee, temporary work agent.*

***JEL Classification:** K0, K1.*

1. Introduction

According to article 88 of the Labor Code, work through a temporary work agent is the work performed by a temporary employee who has concluded a temporary work contract with a temporary work agent and who is made available to the user to work temporarily under his supervision and management From behind.

Therefore, the temporary employee is the person who concluded a temporary work contract with a temporary work agent, with a view to placing him at the disposal of a user to work temporarily under the latter's supervision and management.

The temporary work agent is a legal person, authorized by the Ministry of Labor and Social Solidarity, which concludes temporary work contracts with temporary employees, to make them available to the user/beneficiary, to work for the period established by the contract of making available under the supervision and its leadership. The operating conditions of the temporary work agent, as well as the authorization procedure, are established by a Government decision.

Therefore, the user is the natural or legal person for whom and under whose supervision and management a temporary employee provided by the temporary work agent works temporarily.

2. The content of the legislative provisions

This form of employment establishes an exception from the determined nature of the employment contract concluded for a period of no more than 36 months.

The temporary work assignment means that period in which the temporary employee is made available to the user to work temporarily under his supervision and direction, for the execution of a precise and temporary task.

According to Article 89 of the Labor Code, a user can call on temporary work agents to perform a precise and temporary task, unless he seeks to replace an employee whose employment contract is suspended as a result of the participation at strike.

According to article 90 paragraph (1), the temporary work assignment is established for a term that cannot exceed 24 months. The duration of the temporary work assignment may be extended for successive periods which, added to the initial duration of the assignment, may not exceed a period of 36 months.

The conditions under which the duration of a temporary work assignment can be extended are provided in the temporary work contract or may be the subject of an addendum to this contract.

The temporary work agent makes available to the user an employee employed through a temporary work contract, based on a contract of making available in written form.

The supply contract must include:

- duration of the mission;
- the specific characteristics of the position, the place of execution of the mission and the work schedule;

- specific working conditions;
- the individual protection and work equipment that the temporary employee must use;

- any other services and facilities in favor of the temporary employee;
- the amount of the commission that the temporary work agent benefits from, as well as the remuneration to which the employee is entitled;

- the conditions under which the user can refuse a temporary employee made available by a temporary work agent.

Any clause prohibiting the user from hiring the temporary employee after the assignment is completed is null and void.

Temporary employees have access to all the services and facilities provided by the user, under the same conditions as his other employees.

The salary received by the temporary employee for each assignment cannot be lower than that received by the user's employee (if they perform the same or similar work as the temporary employee).

The temporary work contract is an individual work contract concluded in writing between the temporary work agent and the temporary employee, for the duration of a mission.

The user is obliged to provide the temporary employee with individual protection and work equipment, except in the case where the supply contract is the responsibility of the temporary work agent.

The legislator also stipulated this possibility, which, however, is extremely rare in practice, given the fact that each beneficiary/user has a specific job, and it is extremely difficult to equip them with protective equipment specific to each risk or occupation.

The same is also ordered regarding the training in the field of safety and health at work of the temporary employee; thus, the introductory-general training is carried out by the temporary work agent, as it concerns general aspects related to work.

With regard to workplace and periodic training, where appropriate, it is carried out by the user/beneficiary, because he knows the specifics of the work and the particularities of the respective position.

To the extent that the user does not employ such an employee, the salary received by the temporary employee will be determined by taking into account the salary of a person employed with an individual employment contract and who performs the same or similar work, as established by the contract work collective applicable to the user.

According to article 93 of the Labor Code, the user cannot benefit from the services of the temporary employee, if he aims to replace an employee whose employment contract is suspended as a result of participating in the strike.

Just like a regular employment contract, the temporary employment contract is an individual employment contract concluded in writing between the temporary employment agent and the temporary employee, for the duration of an assignment.

The temporary employment contract includes:

- the identity of the parties;

- work;
- employer's headquarters/domicile;
- function/occupation, job description, specifying job duties;
- the criteria for evaluating the employee's professional activity;
- job-specific risks;
- the date from which the contract is to produce its effects;
- in the case of a fixed-term employment contract or a temporary employment contract, their duration;
- the duration of the vacation to which the employee is entitled;
- the conditions for granting notice by the contracting parties and its duration;
- the basic salary, other constitutive elements of the salary income, as well as the periodicity of the salary payment to which the employee is entitled;
- normal working hours, expressed in hours/day and hours/week;
- indication of the collective labor contract that regulates the working conditions of the employee;
- duration of the trial period
- the duration of the work period to be performed abroad;
- the currency in which salary rights will be paid, as well as the methods of payment;
- benefits in money and/or in kind related to carrying out the activity abroad;
- climate conditions;
- the main regulations of the labor legislation of that country;
- the customs of the place, the non-compliance of which would endanger his life, freedom or personal safety;
- the worker's repatriation conditions, as the case may be;
- the conditions under which the mission is to be carried out;
- duration of the mission;
- the identity and headquarters of the user;
- the amount and methods of remuneration of the temporary employee.

The temporary employment contract can also be concluded for several assignments, subject to the 24-month term.

The temporary work agent can also conclude an employment contract with the temporary employee for an indefinite period, in which case the temporary employee is at the disposal of the temporary work agent during the period between two assignments. For each new assignment, a temporary employment contract is concluded between the parties.

The temporary employment contract ends at the end of the mission for which it was concluded or if the user renounces his services before the end of the mission.

According to art. 96 of the Labor Code, throughout the duration of the mission the temporary employee benefits from the salary paid by the temporary work agent.

The salary received by the temporary employee for each assignment is determined by direct negotiation with the temporary employment agent and cannot be lower than the minimum gross salary per country guaranteed in payment.

The temporary work agent is the one who withholds and transfers all the contributions and taxes owed by the temporary employee to the state budget and pays for him all the contributions owed under the law.

If the temporary work agent does not fulfill the obligations regarding the payment of salary and contributions and taxes within 15 calendar days, they will be paid by the user, based on the request of the temporary employee.

However, the user who paid the amounts owed in this way, is subrogated, for these amounts, to the rights of the temporary employee against the temporary work agent.

According to article 97 of the Labor Code, the trial period established in the temporary employment contract cannot be longer than:

a) two working days, if the temporary employment contract is concluded for a period less than or equal to one month;

b) 5 working days, if the temporary employment contract is concluded for a period between one month and 3 months;

c) 15 working days, if the temporary employment contract is concluded for a period between 3 and 6 months;

d) 20 working days, if the temporary employment contract is concluded for a period longer than 6 months;

e) 30 working days, in the case of employees in management positions, for a duration of the temporary employment contract of more than 6 months.

During the mission, the user is responsible for ensuring the working conditions for the temporary employee.

The current rules for the authorization and operation of temporary work agents are to be replaced during 2024. Among the legislative changes that will be considered we list: more detailed and numerous conditions to request authorization as a temporary work agent, a longer period long validity of the authorizations, more obligations towards the workers made available and tougher sanctions for violating the legislation in the field.

3. Conclusions

The user shall notify the temporary work agent of any work accident or occupational illness of which he became aware and whose victim was a temporary employee provided by the temporary work agent.

This legislative provision should be amended in the sense that the legislator should require the user to immediately report any work accident or occupational disease of which he became aware and whose victim was a temporary employee, without notifying the temporary employment agent.

This is because the legislation in the field imposes certain communication deadlines (24 hours from production), but also because the user is the one who disposes in his unit.

At the end of the assignment, the temporary employee can conclude an individual employment contract with the user, and if the user hires, after an assignment, a temporary employee, the duration of the performed assignment is taken into account when determining the salary rights, as well as the other rights provided for by labor legislation.

According to article 100 of the Labor Code, the temporary employment agent who dismisses the temporary employee before the term stipulated in the temporary employment contract, for reasons other than disciplinary ones, has the obligation to comply with the legal regulations regarding the termination of the individual employment contract for reasons that do not by the employee.

Temporary employment agencies must not charge any fee to temporary employees in exchange for efforts to recruit them by the user or to conclude a temporary employment contract.

References:

1. Labor Code updated 2023. Law 53 of 2003, Published in the Official Gazette, no. 75 of February 5, 2003, updated on October 17, 2022 by Law 283 of 2022.

2. Law no. 283 of October 17, 2022 for the amendment and completion of Law no. 53/2003 - Labor Code, as well as Government Emergency Ordinance no. 57/2019 regarding the Administrative Code.