

New forms of employment Employee sharing, Czech Republic

Case study 7: Policy analysis

The temporary assignment of staff from one employer to another is a new form of employment that is most widespread in the US and Canada. Although useful in terms of labour market flexibility, this form of employee sharing is rarely used in the Czech Republic.

Introduction

Temporary assignment of one employer's staff to another employer (*Dočasně přidělení zaměstnance k jinému zaměstnavateli*) can be considered a specific type of employee sharing. It is a new form of employment that is most widespread in the US and Canada, but in recent years has been gaining popularity in some of the EU countries.

However, Czech commentators have never drawn direct links, explicit or implicit, between this measure and employee sharing. The relationship has been largely ignored by writers and commentaries on the temporary assignment of employees from one employer to another. It appears the measure is seen merely in terms of a flexible instrument for addressing a business's structural problems in times of economic crisis.

Nonetheless, the term 'employee sharing' is not unfamiliar in the Czech Republic. Around 2000, a pilot project, supported by public employment services, tested this employment method in one of the country's regions.

In 2012, the administration of Moravian–Silesian Region, in collaboration with regional employers and Employment Offices, carried out preparations for another project, in which 'employee sharing' was one of the pillars. This project is focused on the long-term-unemployed. Public employment services with key regional employers help long-term unemployed people find temporary job opportunities in an employee sharing system as the first step to long-term employment. The idea is that people eventually 'graduate' from being shared to regular employment. At the time of writing, early 2014, the project was still in its implementation stage.

This report is based on desk research and interviews with the government, social partners, the labour inspectorate and the association of personal services providers.

Background and objectives of temporary assignment in the Czech Republic

The temporary assignment of staff from one employer to another has existed in the Czech Republic for more than a decade now. In 2004, it was repealed and fully replaced by temporary assignment of employees through employment agencies (the Act No. 436/2004 Coll., on

employment amended the Labour Code with effect from the 1 October 2004). All employers, who needed to assign their employees elsewhere for a limited period had to do so exclusively through the existing employment agencies or by obtaining an employment agency's status. The main reason for this step was the government's attempt to prevent abuses and control working conditions of all temporary workers in the Czech Republic.

The so-called 'major amendment' to the Labour Code, initiated by an expert group of the Ministry of Labour and Social Affairs ([MoLSA](#)) headed by Prime Minister Petr Nečas, reintroduced the measure in 2012. It was based on consensus proposed by the social partners (employers and trade unions) in an effort to steer the country out of the economic crisis and promote employment.

The measure aimed to complement temporary assignment through employment agencies with a more flexible form of employer-employer cooperation, especially in the context of conglomerates. At a time of economic crisis, the measure was supposed to help businesses preserve employment vis-à-vis temporary decline of sales and demand for work by assigning their labour force to other employers for limited periods of time. The priority was to keep temporarily redundant workers as members of staff and thus prevent the growth of unemployment and at the same time preserve the employer's competitiveness.

As an alternative measure to reduce soaring unemployment, the social partners proposed a short-time working programme, typically referred to by its German name, Kurzarbeit.

However, due to resistance from the Minister of Finance Miroslav Kalousek, the government refused to implement it and instead, chose employee sharing. This was despite the fact that MoLSA chose to execute a short-term working programme with the support from the European Social Fund ([ESF](#)). The programme was not very successful due to the lack of state aid and the high administrative burden associated with it, compared to the low amount of ESF funds appropriated for the project.

Since 2012, temporary assignment of employees from one employer to another is regulated by Section 43a (Act No. 262/2006 Coll.) of the Labour Code. According to the provisions in the Labour Code, an agreement on the temporary assignment of employees is concluded between the employee and the employer. Compared to temporary assignment through employment agencies, the measure differs in two respects:

- it is not a subject to payment to employment agencies;
- it cannot be applied during the first six months of an employment relationship.

A government representative said in an interview that the measure was prepared by a team of labour law experts and, more specifically, members of the MoLSA expert group on Labour Code, which included representatives of employers and employees.

The measure underwent a broad interdepartmental consultation procedure and was discussed in the [Government Legislative Council](#) in line with the government's legislative procedures. The draft measure was supported by all parties involved in the consultative procedure, including various working commissions and the Legislative Council itself. In the stages of the legislative procedure following government approval – that is when the Labour Code amendment was discussed by both chambers of the legislature – no comments or reservations were raised.

According to the interviewed government and trade union representatives, the preparation of the measure was not based on experience from other countries, but was rather based on Czech experience from the period before 2004, when the same measure was in place. It also drew experience from the time period 2004–2011 when it was replaced by temporary assignment through employment agencies.

There have been no amendments to the measure since its reintroduction in 2011.

Characteristics of temporary assignment

Unfortunately, there is no evidence or information regarding the number and types of workers generally assigned in the Czech Republic. No information about the actual working conditions of these workers or the actual description of their jobs is available.

The measure allowing temporary assignment of employees from one employer to another is open to all employers and employees irrespective of their sector, industry, discipline or occupation. There is no criterion regarding the initial employer's economic performance. The application of the measure is bound by the provisions of Section 43a of the Labour Code. According to the interviewed government representative, no direct experience or statistical data are available on the application of the instrument by individual employers since its reintroduction on 1 January 2012. The government representative noted that the measure was mostly welcomed by conglomerate-type businesses because employees can, subject to their consent, be assigned to other employers in the conglomerate relatively easily, without waiting for an official authorisation of assignment through the employment agency.

The [State Labour Inspection Office](#) is authorised to monitor compliance with the Labour Code and does so in the framework of its inspection activities. However, it is not allowed to disclose information about the businesses applying the measure it has inspected. The application of the measure in the Czech Republic is not being monitored in any other respect.

The measure is not eligible for any financial aid from the state, because, as the government representative explained, it consists of the private law contract between two parties concerning the employment relationship. The measure is not financially supported by the social partners either. Awareness-raising activities can be realised under collective agreements or employers' internal regulations. However, according to the employer and the trade union representatives, this is not the case.

Employers can apply the measure without any external authorisation, provided the employee agrees and another employer is interested and the procedures complying with the conditions set in the Labour Code. As a general condition, the temporarily assigned employee must have the same (or better) terms of salary compared to an actual or potential comparable employee of the receiving employer (but it can be less or more than was his or her previous salary). The assigned employee continues to be covered by the employment relationship with their employer, who pays their wages, and only performs temporary work for another employer for the course of the assignment.

The character of the employment relationship remains unchanged, typically including number of hours per week. During the temporary assignment, the employee's wage or salary, as well as any travel expenses, are paid by the assigning employer, while the receiving employer is obliged to refund such expenses to the assigning employer. The employee also continues to be covered by insurance based on the worker's employment relationship with the assigning employer. The employee can be dismissed during the temporary assignment solely by the assigning employer. This employer has to pay severance pay and comply with all conditions of the Labour Code.

The work of the temporarily assigned employee is organised in line with the regulations of the receiving employer. The receiving employer sets the assigned employee's work tasks, organises, directs and monitors their work, creates working conditions, and ensures safety and protection of employee's health. Primarily, this employee has access to training and fringe benefits of the sending employer. However, the formal contract between the sending and receiving employers may contain another provision and division of HR policy responsibilities. The receiving employer cannot take any legal action towards the employee on behalf of the assigning employer – for example laying the worker off – according to the interviewed government representative.

In the Czech Republic, there is no external support provided to businesses planning, preparing or implementing temporary assignment measure.

Outcomes

So far, the government has not carried out any evaluations of the measure's effectiveness. Information about the outcomes and effectiveness is limited, as there are no monitoring activities being conducted. Also, as highlighted previously, there is lack of secondary data on the subject.

The State Labour Inspection Office only monitors the measure's compliance with the legal provisions. However, due to lack of resources, these inspections are limited to a small percentage of Czech employers. In addition, inspection findings are confidential and cannot be disclosed.

All the interviewed stakeholders agreed that the measure had been used very rarely and did not have any special relevance to the overall situation of employment and the labour market.

According to the government representative, the measure is still fulfilling the objectives for which it was introduced. Its biggest contribution lies in increased flexibility of industrial relations. The measure is primarily used by businesses that need to find use for their employees in times of the economic downturn. By assigning their employees to another employer, they prevent job cuts and, at the same time, do not have to pay replacement salary or wage for terminating the employment contract.

From the trade unions' perspective, the measure is serving its purpose as well, because it helps prevent unemployment. Nonetheless, it is seldom used and has had a minimal macroeconomic effect. According to the labour inspection's representative, the measure mostly helps employees keep their jobs and businesses maintain good workers at times of crisis.

Since its reintroduction in 2012, the measure seems to be functioning smoothly and there have been no demands for changes in the wording of Labour Code Section 43a. Trade unions and employers note that the wording of Section of 43a is adequate and does not require any changes. According to them, stability of the labour law and industrial relations is crucial, as frequent changes gravely disrupt the functioning of the labour market and social protection system.

Strengths and weaknesses

The main advantage of this form of employment lies in the opportunity to fully utilise the labour force in the labour market, especially during times of business decline or restructuring. The application of this measure is based on the formal contract between two or more employers and consent of the employees assigned and is not administratively demanding. The measure increases job protection and, to some extent, the flexibility of businesses in times of crisis, preventing employers from losing qualified workers. For these reasons, it has been considered as an important instrument of flexicurity policy (Eurofound, 2013). The government representative admitted that the MoLSA had no information about employers' and employees' satisfaction with the measure. Nevertheless, the interviewee assumed the satisfaction rates are high.

Based on the interviews, trade unions and employers are satisfied with the measure in its current form. They consider it a natural remedy for negative developments in the labour market and the economy. It helps employees keep their jobs and employers maintain good workers.

Nevertheless, as they emphasise, the measure cannot help the economy 'to get back on its feet' and it is not a panacea for the regions hit by high levels of unemployment. It is merely a small piece in the mosaic of measures to decrease unemployment.

The labour inspection representative, too, says the measure is useful insofar as it helps employees keep their jobs and employers keep good workers in times of crisis. However, the representative noted it was necessary to increase the efforts and, to some extent, businesses' awareness so that the measure is not applied in violation of the Labour Code. An employer who contacts the State

Labour Inspection Office should obtain all the relevant information about the measure's legal framework which helps preventing irregularities in the future.

However, there have been some difficulties with the application of this measure as some employers 'consciously' or 'unconsciously' assigned their employees and (without the registration as employment agency) received a fee for it. Unfortunately, the labour inspection representative could not tell what proportion of Labour Code violations were related to such misapplication, because comprehensive statistics were not available.

Trade union representatives also view the measure favourably and believe that, when interested, employers know how to apply it. Trade unions are much more concerned about other labour market problems, such as government's unwillingness to boost economic development through adequate incentives or public contracts, excessive burden of bureaucracy in drawing European funds or ignorance of the grey and underground economies.

Transferability

According to the interviewed labour market stakeholders, the measure is simple and administratively undemanding. They do not see any limits to its application. Whenever employers and workers agree, the measure can be implemented in any region or country. However, implementation should be accompanied with sufficient monitoring and inspection mechanisms to prevent instances of abuse, such as using the measure as a cheaper alternative to temporary employee assignment through employment agencies.

Commentary

Although useful in terms of labour market flexibility, temporary assignment of employees from one employer to another is rarely applied in the Czech Republic. It was reintroduced in the context of the economic crisis, but had virtually no effect on employment levels. Its low popularity is largely caused by lack of awareness among Czech employers, which tend to confuse it with another measure allowing temporary assignment through employment agencies.

Another reason for lack of uptake could be related to low levels of cooperation among regional employers in addressing their structural difficulties. It is interesting to note that Czech multinational companies apply the measure not only when addressing crisis situations, but also when deploying staff in their affiliates abroad.

Information sources

Websites

Association of Personnel Services Providers: www.apps.cz

Confederation of Industry of the Czech Republic: www.spcr.cz

Czech Ministry of Labour and Social Affairs: www.mpsv.cz

Czech–Moravian Confederation of Trade Unions: www.cmkos.cz

State Labour Inspection Office: www.suip.cz

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Eurofound (2013), *Development of collectively agreed working conditions 1993–2011*, Dublin.

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