

New forms of employment

Employee sharing, Hungary

Case study 14: Two IT firms

Employee sharing is relatively new in Hungary. The design and functioning of an employee sharing scheme designed by two Hungarian IT companies has been very successful and could be used as a model for others.

Introduction

This case study examines the sharing of highly trained IT staff by two employers who wished to remain anonymous. The project was initiated by a specialist IT specialist firm founded in 2000 as a ‘garage company’ owned by three childhood friends. The firm specialises in creative software development and innovative web strategies. In the past 10 years it has grown to be a widely known actor in the market with over 50 employees.

The other employer is one of their most important clients, also working in the IT industry. The company hosts important websites in Hungary, a web community page and also operates a free email service used by hundreds of thousands of people. The company operates as a subsidiary of a multinational corporation best known as a communications service provider.

The client company faced the challenges of shared employment even before starting the project with the IT firm. The HR department had to find a solution for cases when a number of its subsidiaries – over a dozen, each with separate legal entities – wanted to share personnel with each other. They also wanted to share personnel with the parent company; in one instance they ‘borrowed’ employees with special expertise from each other.

Under the scope of the 1992 Labour Code, however, there was no provision – either legal or practical – for this type of arrangement.

In some cases the affected companies concluded separate employment contracts with the same employee, thus creating parallel employment relationships. While this setting was clear from the tax and labour authorities’ point of view – and decreased the risk of attracting any financial penalties – it increased the administrative burden for the companies involved. There were difficulties, for example, with scheduling working time and with the formulation of a policy in the case of dismissals.

Another way of tackling the issue was to temporarily assign the employee to perform work at the other employer. Section 106 of the 1992 Labour Code (Act XXII of 1992) enabled employers to use such an order only if the two employers’ ownership was somehow connected. It was possible to do this if, for example, the owner of the employer was also the owner – in part or in full – of the other employer, the assignment was only temporary (meaning maximum 44 working days annually) and no fees were paid to the original employer. So this kind of assignment was only applicable when the additional workforce or the special expertise of the assigned employee was

needed for a short term at the other company. This excluded situations when the shared staff member was needed for a long duration.

The introduction of employee sharing in Article 195 of the new Labour Code, which came into effect on the 1 July 2012, made it a lot easier to deal with these scenarios.

One of the first instances where the parent company made use of this new atypical employment relationship was in the case of the general manager of one subsidiary. For financial reasons, the company had to find ways to bail out the subsidiary and decided to employ the top executive jointly, which meant that all costs of employment could be financed by the parent company. This meant the experienced executive's skills could still be used for the management of the parent company where he worked anyway before being appointed as the general manager of the subsidiary. It meant the employee worked for both companies.

There are two representative trade unions at the parent company and both of them have members in the client company as well, and there is also a works council in operation. There are no active trade unions at the IT firm, nor a works council.

The trade union interviewee argued that structural change happens frequently in the organisation. The union has no experience with employee sharing yet, but often has to deal with scenarios that are broadly comparable to employee sharing – for example, employees are moved back and forth from the parent company to subsidiaries, and agency workers are taken into direct employment or outsourced again to agencies.

The key sources of information for this case study were three interviews with employees who were directly involved in the employee sharing project. In addition, the HR manager who participated directly in setting up and operating the employee sharing as well as a labour law specialist and trade union representative were interviewed.

General characteristics

The two companies that have created the employee sharing system have no connection in their ownership, although their cooperation started over a decade ago. The IT firm services the client company with special operational and product development tasks and is one of its most important suppliers. Both are SMEs with high growth rates, looking for ways to reduce operational costs and maximise profits.

The employee sharing started in February 2013 with 16 employees involved. The workers were selected on the basis of two phases. First, the IT firm sent its detailed professional specifications of the personnel required for their common project. Later, the client company selected those of its employees who met the requirements. Finally, the best and most loyal employees among them were offered the chance to join the project. All employees were highly educated IT professionals.

As the shared employment framework kicked off well, during spring 2013 additional five employees joined the employee sharing scheme of the two companies, bringing the total number to 21. All shared employees came from the client company. The numbers of the jointly employed employees remained stable until the end of 2013. The project went well, so there was no need for redundancies, and the employees were keen to carry on. By December 2013 certain parts of the project ended, so the companies decided to reinstate nine employees to the company's employment. The other 12 employees are still working for both employers until the project reaches its end – as planned – in June 2014.

Design and implementation process

Background and objectives from the employers' point of view

The planning and designing phase of the employee sharing started in early autumn of 2012. The client company was approached by the IT firm with a proposal for cooperation on an EU-funded project. The IT firm won a tender but found it needed more people to do the work. Given that the client company also ran an IT department with a significant number of highly trained and experienced professionals, the IT firm initiated negotiations to find ways of common employment of a group of these employees for the implementation of the EU project. In exchange, the IT firm offered reductions in the fees it charged the company for IT services.

Given the mutual trust and the history of their fruitful cooperation, the company agreed to start negotiations. This preparation process was long and required intensive work from the legal and HR experts of both companies. While the financial aspects of the project were a hard nut to crack – especially with regard to division of costs between the two companies – this case study is devoted specifically to the process of designing the framework for shared employment.

Soon after starting the negotiations both parties discovered that the arrangements used for such situations (such as simultaneous employment relationships or temporary assignments) would be unsatisfactory. An alternative option was to conclude a simple civil law contract with the IT firm while upholding the employment contract with the company. This would address the burdens of parallel employment relationships but would also mean it could be treated as illegal employment by the authorities.

Yet another option was to terminate the employment of the affected employees at the company and re-employ them the next day at the IT firm. However, the HR specialists concluded that this would have sounded dangerous to the employees who probably would have refused such a solution. Moreover, the company could only accept an outcome which would not harm the loyalty of its employees.

Having considered the option, the people involved decided to consult the company's labour law specialist who raised the idea of using employment sharing introduced by the brand new Labour Code. As the structure of this new employment relationship exactly corresponded with the needs of the two parties, the companies decided to use this instrument while accepting that the new legal framework will inevitably bring some risks and uncertainties.

The legal advisors decided that employee sharing needed to be introduced through a new employment contract because it was not enough to simply amend the already existing contracts with the client company.

This required a two-step process. First, the current employment relationship had to be terminated by mutual agreement of the parties. Second, a new employment contract had to be concluded with the two employers for employee sharing. Both employers agreed that the process should not affect the employment conditions of the employees. The aim was to modify the legal structure of the employment into a three-way relationship without changing the existing conditions, such as wages, seniority, eligibility for severance pay and other benefits of the participating employees.

This aim was reached by introducing a clause acknowledging continuous employment in all documents, including both the mutual agreement on contract termination and the new contract.

The parties stipulated that

...if the employee, after the termination of the present contract (that is with the two employers), will not receive an offer for further employment in the Company, the start of the previous employment relationship with the Company shall be considered as the start of the present employment

relationship. All benefits and other remuneration due at the end of the employment shall be granted according to the conditions set in the previous employment contract with the Company. In case of reemployment by the Company after the end of the employee sharing relationship, the continuity of employment shall be respected too.

This wording means there is an uninterrupted chain in the three employment relationships: the one before the employee sharing project, the one established with the two employers and the one with the client company again after the end of the shared employment.

According to the HR manager, communication strategy was a crucial factor for the success of the employee sharing. It was the policy of both employers that no working condition may change to the detriment of the employee and during the whole process maintaining employees' trust was of utmost importance.

Firstly, all chosen employees were approached with the project as an honour for their service at the company. Secondly, it was the general manager personally who invited them to join the new employee sharing system during a face-to-face conversation.

Although it was not usual in the company to involve the CEO in the implementation of an HR processes, this time it was considered reasonable to use his personal prestige to give weight to the offer and also to build trust.

After the personal meeting with the general manager, a group session introducing the project was organised for all the selected employees where both general managers and HR specialists of the two employers were present. In addition, a symbolic, small extra remuneration was offered to all employees who were willing to join the employee sharing scheme.

None of the selected employees refused to take part, which in the eyes of the management of both employers was an unambiguous sign of success. Every interviewee who took part in the designing of the employee sharing emphasised that the detailed and well developed communication strategy was crucial for the effective start of the project, and strongly contributed to the smooth operation of the employee sharing initiative.

Early phase of the project from the employees' point of view

In the interview, the trade union official noted that the parent company and all subsidiaries have strict policies on informing employees and their representing bodies and recognised that the employer uses excellent practices for informing the employees on restructuring plans. In this particular occasion no employee representatives were consulted as it affected only a small number of workers. Instead an employees' meeting was held where the supervisors – the two general managers themselves – gave a personal briefing to the affected employees.

The employee interviewees confirmed that they received useful and detailed information on the project. None of them were legally trained and so they appreciated that the briefing covered all legal issues as well.

All three interviewees were somehow connected to the IT firm previously. One employee performed different tasks to them and therefore was familiar with the organisation. The product manager specifically dealt with the services of the IT firm. For him the transition to joint employment did not come as much of a surprise as he already knew his colleagues and the processes of this company. The only new element was the legal background of his employment. The software tester had even tighter connection with the IT firm because she had worked there before.

The employees' previous affiliation with the IT firm made it a lot easier to convince them to join the project. As one of them put it, he could sign the contract with the two employers knowing that

none of them would invite him to take part in something that would harm his own interests. Nonetheless, they had questions and doubts at the beginning.

The basic concerns they raised during the negotiations were that:

- all three employees were working for the client company for over five years and wanted to preserve their rights and benefits including the severance pay, notice period and others;
- none of employees wanted to lose their current job profile, an issue which was easy to tackle as only those employees who had the necessary expertise to perform the tasks also in the IT firm were approached with the offer – the employees were open for the new challenges once they were assured that they would fit their expertise;
- they wanted no significant change in the place of work – a question raised as the IT firm is located near Lake Balaton while all employees live in Budapest;
- at the end of the project they should have a right to return to the company's regular staff, and although some of them inquired about the possibility of joining the IT firm, it was clear that they all preferred to stay in the employment of the client company.

The project staff expected such questions and provided detailed answers. Such a complex communication process was necessary to convince employees to join in. In addition, the interviewed employees argued that even though the whole process was something of an inconvenience for them, they accepted the offer in order to show their loyalty to the company.

Working method, processes and procedures

Designing the legal background of the employee sharing scheme was a big challenge. Employee sharing was a new concept in the Hungarian labour law, with no practical application at all. There were a number of key issues to cover.

As the actual employment relationship was terminated before the new contract with two employers was concluded, it was necessary to settle each employee's annual cafeteria allowance and annual paid leave. Even if the new employment contract started on the next day, formally the process included ending one employment relationship and starting another. It meant all the tax and social security obligations had to be fulfilled as required at the end and at the beginning of an employment relationship. The new employment contracts were open-ended, as the two employers were not sure on the timeframe of the joint employment.

Implementing the principle of continuity needed careful preparations. For example, the employees' activities fell under a different tax regime in the client company than in the IT firm. To maintain the income level and avoid the loss in net income, a pay raise of the basic wage of employees was necessary.

Similarly, while the company had a collective agreement for years, there was not even a representative trade union at the IT firm. It meant all special benefits and allowances specified in the company's collective agreement had to be guaranteed in the new employment contract or built in the basic wage. In one case the HR management faced a special problem that one employment contract was concluded at the time when the company had no collective agreement and it contained references only to one of the parent company. In Hungarian labour law, parties may agree in the employment contract to apply another employer's collective agreement if it is beneficial for the employee. Here, the contract upheld these references even after the company concluded its own collective agreement. As it was decided not to change any circumstances to the detriment of the employee, even the employee's right to the benefits stipulated in the parent company's collective agreement – otherwise not in use in the remuneration policy of the company any more – were respected.

The new employment contract was drafted on the basis of a model employment contract used by the company. Besides the obvious changes as the new construction involved two employers, they

had to take into account also some requirements of the IT firm's tender specification (like the exact job profiles and the organisational structure). All the job profiles were designed to fit both the organisation structure of the IT firm and the company.

Another challenge was that the client company was located in Budapest while the IT firm was located near the Lake Balaton, 135 kilometres away.

Although the new Labour Code did not require the parties to specify the workplace in the employment contract, it stipulated that in the absence of an exactly defined workplace the place where work is normally carried out shall be considered the workplace. The notion 'where the work is normally carried out' could have caused a lot of uncertainty in the situation with two employers, so the parties decided to choose another solution. The employment contract established teleworking, enabling the employees to work from any location they chose. The nature of the job was suitable for teleworking, which also corresponded to the demands of the employees.

In order to extend the flexibility of the working arrangement, the parties also agreed that the employees could schedule their own working time. As a result, shared employees enjoyed significant autonomy in work, nonetheless weekly meetings and regular reporting still meant adequate control for the employers.

For tax reasons, the companies decided that while the IT firm would be responsible for paying the wages, all additional benefits (for example, subsidised food) would be granted by the client company. This division of obligations meant a significant cut in gross wage costs, while it guaranteed no change in the net pay levels. This arrangement worked well, yet it still caused problems when the client company decided to pay ad hoc Christmas allowances at the end of 2013. This was not planned before nor was it included in the agreement of the two employers. In order to respect the equal treatment between the regular workers and the employees taking part in the employee sharing, the company decided to grant this extra payment to the employees taking part in the employee sharing. Given that the tax law required the IT firm to pay this amount directly to the employees, the company reimbursed the relevant costs to the IT firm.

Under the employment contract both employers could give assignments to employees taking part in the employee sharing. The employees found no difficulties in working under this arrangement. Most of the employees already knew the IT firm and were involved in common projects which made it easier to work together with them. The close connection of the two employers also made it feasible to agree on the joint use of the employees' working time.

The employers had to also decide which one would provide the necessary working equipment. Both companies had the assets needed for the job, but the client company used special online communication applications which were not available in all devices. Therefore, it was decided that the company will provide the necessary equipment.

Before the project began, some administrative constraints also had to be dealt with. While most of the company's HR processes were digitalised and administered by online applications, the IT firm used traditional paper-based HR support (among others, for payroll, working time scheduling and attendance registering). The HR departments also had to find ways to exchange data between the two employers. The client company's HR software was not designed to handle the employment form including more than one employer. In the end, the client company's more developed HR support was used with some necessary amendments in the software.

Termination of employment has the potential to cause problems when more than one employer is involved. However, this is not something the parties have faced as none of the employment relationships were terminated during the project. When one employee was found underperforming, the employers discussed the possibility of dismissing him. They agreed to offer all benefits he would have received if he was dismissed as a company employee. However, the

dismissal did not go ahead. At the end of 2013 the first group of workers, including the employee threatened with dismissal, were taken back from the employee sharing to the client company.

Despite the initial uncertainties, the framework designed for the implementation of the employee sharing worked well, not least due to the careful preparatory process. For example, neither of the employment contracts were amended. The labour law specialist did not receive any questions from the employees taking part in the employee sharing once the project was started.

The project partly ended in December 2013 when nine employees returned to employment in the company. The same procedure was used that was already tried out from implementing the change from traditional employment to employee sharing.

Firstly, all three parties signed a mutual agreement to terminate the employment contract.

Secondly, on the same day an employment contract was signed with the client company.

All the documents maintained the principle of continuous employment. This transition went well and the only element that needed more preparation was the return of the equipment, documents and data. At the time of the interviews, all nine employees were working for the client company with a full-time employment contract acknowledging their previous work history at the company as well as the joint employment with the IT firm. The interviewed product manager who was one of the returnees confirmed that the transition went smoothly and he was totally satisfied with the months he spent in the employee sharing system.

External support

No external support was given. One of the challenges for the employers was the lack of any previous example or practice they could follow or an external actor they could turn to for advice.

Outcomes

The overall evaluation of the employee sharing initiative was overwhelmingly positive. Both companies were satisfied with its operation, although it was not fully completed at the time of the interviews.

The HR manager in charge of the project concluded that after a difficult starting period – with long negotiations and a lot of discussions with lawyers and HR specialists – the project went surprisingly well. This is a very positive outcome given that there was no prior experience that the companies involved could build on, so they had to explore all challenges and issues by themselves. The labour law specialist also emphasised the difficulties presented during the setting up phase as they had to adapt a new legal instrument to an already existing working environment. Nonetheless, she agreed that overall the project was successful.

There were several positive outcomes from the project.

Firstly, both employers reached their economic goals. The IT firm could fulfil its tender obligations. The monitoring authorities found the project has complied fully with the employment regulations. The client company decreased its wage costs significantly and received services from the IT company at the reduced rates. The project's EU funds were otherwise not shared by the two companies. At the same time the IT company helped one of its most important business partners. The project-related wage costs of 21 employee did not appear in the books of the client company (because the wages were paid by the IT firm), which led to better financial results in its business reports.

Secondly, the employees found the project successful. The client company devoted a lot of attention to maintaining the trust and loyalty of its employees, which meant it promised to reemploy everyone once the project was over. The HR and legal specialist at the client company both agreed that such a high level of employee satisfaction could not have been reached without the guarantee of continuous employment.

The labour law specialist argued that in similar situations the key risk for the employee is the possible loss of the rights and benefits that are related to the duration of the employment contact. The other side of the coin is that the system is open to abuse on the side of the employer. The reality of this threat was emphasised by the trade union official, as in past many temporary agency workers who were offered a permanent internal position were treated as new entrants and denied their seniority earned as agency workers.

From the employees' view, one reoccurring answer was that they did not experience any significant change in terms of their working conditions. During the project they were affiliated to two organisations and received tasks and orders from both of them. They had to cooperate with other workers from both companies, attend meetings in two organisations and use their working time to complete tasks coming from any of the employers. This apparently complex scenario caused no practical difficulties. None of the employees highlighted any problems with increasing workload or overtime. Nonetheless, this required colleagues in the client company to take on some of the former tasks of the shared workers.

All employees pointed out that working on the employee sharing project was no different from what they usually did before the start of the project. They are highly educated IT experts and they usually work in close cooperation with outside partners, suppliers or other subsidiaries of the parent company. Once the company assigned them the work on a project, they would receive requests from other partners working on the same task. One of the interviewees indicated that working with the IT firm was not the most complex of his assignments because he could choose the work location and do teleworking, while previously on some occasions he had to commute between a partner's office and the company. Teleworking helped promote the autonomous nature of their job; however, they were used to enjoying a certain level of freedom on choosing their workplace before the employee sharing.

The nature of the professional tasks implemented by the employees in the employee sharing project did not change from what they used to do while working at the company. Basically the IT firm's assignments were just jobs among similar tasks coming from other partners or directly from the company. The only novelty was that the IT firm was under strict monitoring by the organisation which hosted the tender. Therefore, there were more administrative obligations than usual, which also affected the working process, however these were related to the particular EU project, and were not specific to the employee sharing.

Keeping in touch with the management of both companies caused no difficulties. While there were regular conference calls and meetings with the team of the IT firm, the client company also maintained its tradition of weekly meetings in each department. Shared workers were involved in both.

All of the interviewees emphasised that employee sharing was implemented smoothly because the two companies had worked together for a long time, which meant staff were familiar with the other organisation. Another factor was that the two employers worked in the same industry and had a similar internal structure. It meant the shared staff already had trust in the new employing organisation.

Another employee has pointed out that an important factor in the success of the scheme was the willingness of the two employers to support the employees working in the employee sharing system whenever needed. For example, in order to apply for a credit card, the employer needed a certificate from her employer stating her regular monthly income and the start and the likely end of her employment. Even though she started to work for the company in 2006, her valid employment contract – the one signed by two employers – was started in February 2013. However, the HR department backed her up with a formal letter signed by both general managers of the companies, explaining the special circumstances of her employment history.

All of the interviewed employees stated that they would enter an employee sharing scenario again and that they would definitely recommend this form of employment to others. However, one of them noted that he would sign such a contract only if he knew all the employing entities and could be sure that there will be no unexpected issues in terms of maintaining his wage and other benefits. Another employee said that being employed by an 'unknown' organisation could have its advantages as the employee might discover an alternative organisational culture with new habits and internal procedures.

Employee sharing assumes a very close cooperation between the companies which may help to identify new areas for cooperation. After working in such a close connection for over a year, the two companies are now jointly searching for tenders and started to develop new products together.

Strengths and weaknesses

In summary, the major strengths of the employee sharing regime are that:

- the two companies could build on their excellent relationship, and mutual trust turned out to be a crucial element in employee sharing;
- coordination came easily, and there were no disputes – interestingly, the two employers did not even write a dispute resolution procedure into their contract;
- the whole model was beneficial to both companies – the IT firm could fulfil its obligations to the contracting authority drawing on the workforce coming from the company;
- employee sharing may help companies to resolve their practical needs with lower administrative costs – situations involving more employing entities are often solved with illegal practices, thus the legally regulated employee sharing could help to reduce undeclared work;
- smaller firms could make use of employee sharing by sharing highly educated or executive staff as a cost effective way to gain access to their expertise (however, setting up a well-functioning employee sharing system needs significant HR and legal support which might not be available to small and medium-sized companies).

Some weaknesses have to be pointed out, including the fact that:

- because this was the first time the parties had been involved in designing an employee sharing scheme, there were no previous examples to follow and a certain level of risk had to be accepted;
- the set up phase was very time consuming and required huge efforts from the HR and legal departments of the companies;
- although the project was successful, it had a rather unique setting, based on the already existing business links between the two employers;
- there was no possibility to broaden the employee sharing by means of involving other employers, so the model may not be adaptable to situations where the employers are not that closely connected.

Future plans

After the return of the first group of employees in December 2013, 12 employees continued to work in the employee sharing system by the time of the interview. These remaining employees stayed in the system until the end of the project, in June 2014. Afterwards they returned to the client company.

The client company's HR manager and the labour law specialist agreed that they were willing to use the employee sharing again. One future employee sharing system could consist of employees from the member companies of the holding company, and this would allow sharing employment costs and enable one person to exercise management rights in more than one organisation. For instance, the general manager of a parent company could directly act as the manager of a subsidiary, although in March 2014 this was not a common practice.

Commentary

Employee sharing is one of the newest instruments in Hungarian labour law, introduced in July 2012. The project examined in this case study was one of the first examples of employee sharing in the country. As demonstrated in the policy analysis on employee sharing carried out for this project, the authorities admitted that they have only very limited, if any, experience with the practicalities of this new atypical form of employment. The design and functioning of the employee sharing presented in this case study was very successful and could be used as an example to other stakeholders.

However, some features of this case makes it quite different from the usual employee sharing. Firstly, the founders had solely economic goals in mind and aimed no labour market outcomes (in terms of recruiting new employees).

Secondly, the employees were shared only for a fixed-term period and returned to their original employer at the end of the project. As a result, which might be less likely in other cases, all interests of the affected employees were carefully safeguarded. Also, it was the original employer who dominated the designing process and suggested most of the HR processes for the employee sharing. The IT firm was a temporary user of the joint workforce.

There were several challenges that had to be addressed. The employers devoted a lot of attention to the communication process. It was necessary to keep the loyalty and trust of the employees. Shared employees perform work for multiple employers and therefore the rights and obligations of the employers have to be divided precisely. In this case the questions of remuneration led to a long list of issues that needed to be resolved. Most problems were caused by the principle of continuity which meant it was necessary to ensure that taking part in employee sharing had no detrimental effect on the salaries and other benefits of the employees.

The most interesting finding was the fact that all the interviewed employees stated that they experienced almost no change in their everyday work routines during the project. Performing services for organisations other than the employer is a usual feature of their work. Therefore, even in the framework of their traditional employment it was nothing extraordinary to receive requests from or fulfil tasks for other companies. From this perspective employee sharing is only a legal instrument making cooperation and sharing of employees easier from the legal point of view but with few implications for the actual working practices and work conditions of the affected employees.

The case study showed that the new rules of employee sharing respond to the needs of employers and employees and it is an adequate new form of employment. It could be reasonably assumed that in the future employee sharing will be used by more companies provided they are willing to cooperate and are able to take a creative approach with regard to the new legal framework regulating employment relationships and the new possibilities it provides.

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