

Engaging employees | contractors in S/CEE

✓ Distinguishing between employers and contractors

EMPLOYMENT RELATIONSHIP		RELATIONSHIP WITH CONTRACTOR/FREELANCER
Strongly regulated via the Labour Code		Parties free to agree on terms of cooperation
Termination by employer only for statutory reasons		Termination possible even without a specific reason
Employer responsible for payment of the respective income tax, health insurance and social security contributions		Contractor responsible for income tax, health insurance and social security contributions in respect of the supplied services
Limited liability for employee-caused damage		No statutory limitations of contractor liability
Work typically performed during scheduled working hours at the employer's workplace		Hours and place for performing the work typically determined by the contractor
Work performed for the employer on an exclusive basis		Contractors may provide services for a number of different clients
Employees receive a regular monthly salary		Contractors submit invoices for the services rendered, which are then paid by the company
Entitlement to a number of employee benefits (vacations or sick-days)		Should not receive any of the benefits given to company employees
Work equipment provided by the employer		Freelancers typically use their own equipment for the performance of services
Work performed at the employer's expense and responsibility		Services performed at the responsibility of the contractor

✓ Risk of hidden employment

Agreements with contractors should not contain features that are typical of “dependent work” and employment relationships.

Dependant work is characterised by the performance of work (i) within a relationship of professional superiority by the employer and subordination by the employee, (ii) based on the employer's instructions (i.e. the work is performed in the way required by the employer and in accordance with its instructions; the employer also manages and controls the employee's work on an ongoing basis; thus, the employee performs specific activities on a repetitive basis in accordance with issued instructions), (iii) personally by the employee and (iv) on the employer's behalf.

Furthermore, other characteristics may indicate dependant work, e.g. the employee performs work for a wage, during scheduled working hours and at the employer's workplace, at the employer's expense and responsibility, or receives benefits typical for employees.

✓ Possible consequences of hidden employment

In the event that the nature of the contractual relationship between a company and its contractors would resemble an employment relationship (i.e. the provision of dependent work), such conduct would likely be considered as “hidden employment” and the respective labour authority **may impose a fine against the company of up to CZK 10,000,000** (EUR approx. 420,000). In addition, the company would be obliged to pay all due taxes and related costs associated with the contractor’s invoiced remuneration as if such gross remuneration actually constituted the contractor’s net salary. Such taxes and related charges can total almost 100 percent of the remuneration paid to the contractor (less in the event of higher wages when the social security cap has been reached). The authorities typically calculate charges to cover the past full three fiscal years.

✓ Recommendation

Before engaging a contractor, the individual terms of both the agreement to be concluded and the respective factual working relationship should be carefully reviewed so as to prevent the inclusion of features that are typical of “dependent work” and employment relationships. Although engaging a contractor may initially appear financially more advantageous for an employer, such apparent advantages can ultimately be erased by the aforementioned penalties.



Martina Mazůrková | Senior Associate
martina.mazurkova@kinstellar.com
+420 606 647 407

Tereza Mašková | Senior Associate
tereza.maskova@kinstellar.com
+420 602 695 628