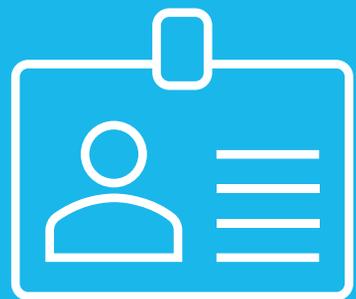


Assignment of employees

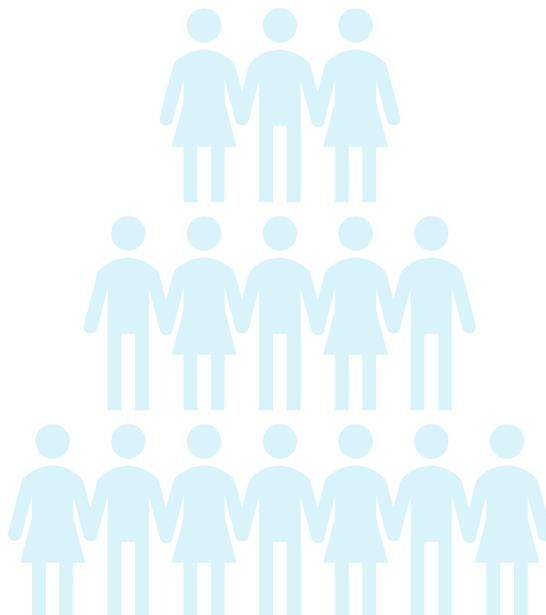
March 2022



Introductory notes

Entrepreneurs are often interested in legal possibilities of assigning their employees to other companies when there is no need for their labour, i.e. the possibility of using the work of employees that are employed by another employer. More precisely, entrepreneurs are interested in assigning their employees to another employer without the involvement of temporary employment agency.

The following text offers a brief overview of the legal institute of assignment of employees.



Assignment of employees to the affiliated company

In cases when the employer has no need for labour of certain employees, it may temporarily assign those employees to an affiliated company in terms of a special regulation on companies. Such assignment can be organized for an uninterrupted period which may not exceed 6 months, must be based on the agreement between the affiliated employers and the employee has to provide his/hers written consent.

Hence, the following preconditions necessary for the employer to legally assign the employees:

- ▶ there is no need for the labour of the respective employee;
- ▶ the employee is being assigned to an affiliated company;
- ▶ assignment of the employee may not exceed an uninterrupted period of 6 months;
- ▶ there must be an assignment agreement between the employers;
- ▶ there must be a written consent of the employees that are being assigned.

It is clear from these mandatory provisions of the Labour Act that the employer is not entitled to assign the employee to any other employer, but its affiliated company.

Exception from the stated rule are the employers registered as temporary employment agencies in accordance with the applicable regulations.



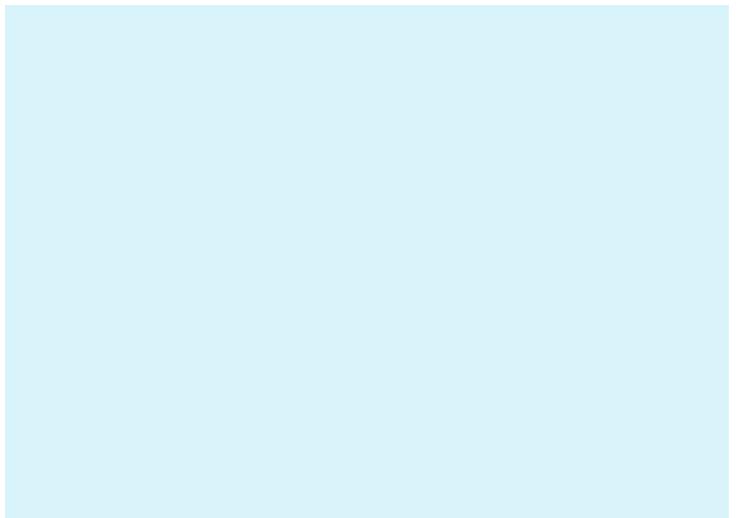
Assignment of employees

Assignment of employees is an employment relationship in which the employee does not work for and with its employer, but instead works dependently for and with the legal entity its employer assigned him to (the user).

It is important to note that, in such an employment relationship, and when the employers assigning their employees are not affiliated, only a temporary employment agency registered in the records of the competent ministry may act as an employer assigning the employee to another employer (the user).

Assignment of employees is a special legal institute regulated by the Labour Act (croatian: *Zakon o radu* Narodne novine, br. 93/14, 127/17, 98/19).

On the other hand, the institute of assignment of employees by the temporary employment agencies is regulated by Articles 44 to 52 of the Labour Act.

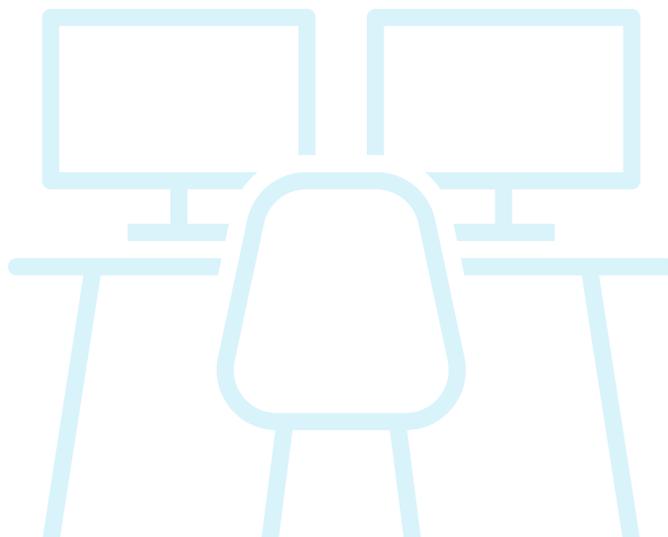


Obligations towards the assigned employees

According to the Article 50 of the Labour Act, the employer whom employees are assigned to or which uses the assigned employees, has an obligation towards the assigned employees to fulfill the obligations arising from the legal provisions relating to occupation safety, health risks and special protection of specific categories of employees.

In doing so, the employer using the assigned employees is then considered to be the employer of the assigned employee.

Furthermore, in case that the assigned employee suffers damage at work or in relation to work performed for the user he or she may claim compensation for damages from the agency or from the user according to the Article 51, paragraph 3 of the Labour Act.



Risks of illegal assignment of employees

Nowadays, there is an increasing number of employees who are temporarily assigned to work for another employer. Also, more and more employers are deciding to establish such an employment relationship, i.e. to assign workers.

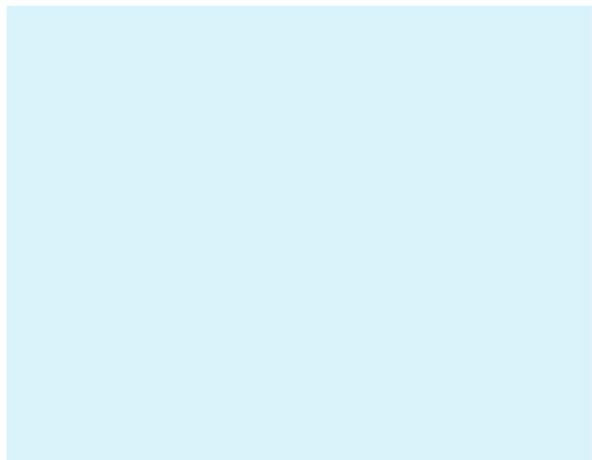
It is crucial to assess how this can be done. Namely, from what has been stated above, it follows that the transfer of employees is possible only (i) through the temporary employment agency or (ii) in case of affiliated companies.

However, in practice, this is not always the case. We are aware that many employers conclude agreements for the provision of services which actually have characteristics of an assignment agreement, i.e. the employment relationship of these employees has a character of temporary employment. At the same time, the employers are not affiliated companies, they are not using the services of the temporary employment agencies, nor are they registered as one.

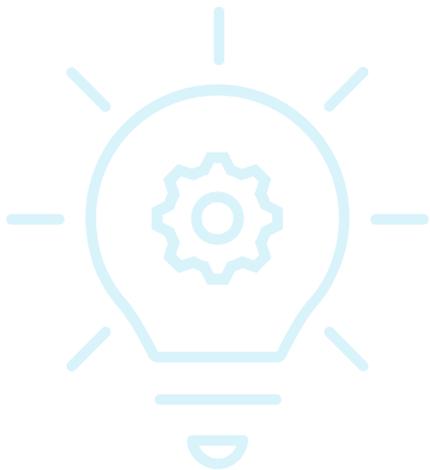
In such situations, contracts for the assignment of workers concluded between the employer who assigns the worker, without being registered as a temporary employment agency, and the employer who uses the assigned workers, are **illegal**, unless those agreements are concluded between the affiliated companies.

Also, a **misdemeanor liability exists for the employer who assigns the employee** acting as a temporary employment agency, but who is not registered as nor can such employer be found in the records of the competent ministry.

Pursuant to Article 229, paragraph 11 of the Labor Act, an employer who assigns employees may be fined in the amount of HRK 61,000.00 to 100,000.00, if it performs the activities of assigning employees to the user before registration in the relevant records of the Ministry.



Conclusion



Assignment of employees by an employer who is not registered as a temporary employment agency and who is not registered with the relevant records of the competent ministry is not in accordance with positive legal requirements. Only employees registered as temporary employment agencies which are, as such, registered with the relevant records of the competent ministry can assign employees.

Please note that there is an exception to this fundamental rule stated in Article 10, paragraph 3 of the Labour Act: assigning an employee to an affiliated company. In such cases, the provisions of the Labour Act on temporary employment do not apply, but such assignment can only be done if an employee gave his/her consent and it may only be temporary.