Legal Alert

December 2011

Speedread:

- Amendment to the Labor Code

2012 will be a relatively difficult year for employers in the Czech Republic as they will need to deal with a number of changes in employment law and related regulations.

In this newsletter we would like to inform you about the most important changes relating to the Labour Code, the performance of dependent work, including new penalties for the švarcsystém as well as changes allowing for the parallel existence of the performance of a statutory body function and employment.

1. Amendment to the Labour Code

On 1 January 2011 an extensive so called "conceptual" amendment to the Labour Code Act no. 365/2011 Coll., will come into force. During its brief existence the Labour Code no. 262/2006 Coll. (LC) was repeatedly amended and substantially affected by the repealing judgment of the Constitutional Court from March 2008.

This last and so far most extensive amendment (over 300 changes) was caused by the current unsatisfactory wording of the LC and also the effort to reflect the governmental policy statement regarding enhancing flexibility and liberalization of Czech employment law.

Please note that we have only provided an overview of the fundamental changes of the LC, which must be taken into account (or can be used) in everyday practice of each employer. For clarity, we have organized the fundamental changes in the chart below including the current regulation and characteristic of the change which will come into force from 1 January 2012.

It should also be noted that the amendment brings substantial modification to general institutes (new basic principles of employment law, subsidiarity of the Civil Code, or the concept of the invalidity of legal acts), the characteristics of which go beyond the scope of this informational material:

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Speedread:	Until 31 December 2011	From 1 January 2012
• Trial Period	**Trial Period:**	
	• the maximum length of 3 months applies to all employees and regardless of the agreed length of employment • during the trial period an employment may also be terminated orally	• in the case of **managerial employees** the maximum length may be extended **up to 6 months** • may not exceed half the length of employment • employment may be terminated only in writing
Speedread:	**Fixed-Term Employment:**	
• Fixed-Term Employment	• maximum total length of two years without limiting the numbers of repetitions (extension) within the maximum length • after the expiry of six months previous fixed-term employment will be disregarded • exceptions to replace a long-term absent employee and in the case of serious operational reasons	• maximum duration **increased to 3 years**, which may be twice repeated / extended • after 3 years previous fixed-term employment disregarded • repeal of exceptions to replace a long-term absent employee and in the case of serious operational reasons
Speedread:	**Temporary Assignment of Employees :**	
• Temporary Assignment of Employees	• temporary assignment in principle only possible for employment agencies	• re-introduction of possibility to arrange a temporary assignment with employee **for all employers** must be on non-profit basis and at the earliest 6 months after formation of employment
Speedread:	**Schedule of Working Hours:**	
• Schedule of Working Hours	• if the working hours are scheduled evenly to individual weeks, the length of one shift may not exceed 9 hours • if the working hours are scheduled unevenly, the length of one shift may not exceed 12 hours • employer's duty to draw up a written schedule of weekly working hours in advance only in the case of uneven schedules	• uniform maximum length of one shift 12 hours in the case of even as well as uneven schedules • employer's duty to always draw up a **schedule of weekly working hours for all employees** • simplifying the regulation of flexible schedule of working hours

Continuaition

	Until 31 December 2011	From 1 January 2012
Speedread: • Account of Working Hours	**Account of Working Hours:**	
	• employer's obligation to provide a weekly statement showing the difference between normal weekly working hours and the number of hours worked by a certain employee	• possibility to negotiate in the collective agreement the transfer of overtime work between the settlement periods in the maximum scope of 120 hours • abolition of employer's obligation to provide a weekly statement showing the difference between normal weekly working hours and the number of hours worked by a certain employee
Speedread: • Wage for Overtime Work	**Wage for Overtime Work :**	
	• possibility of negotiating wages with regard to overtime work in the range up to 150 hours per year only for managerial employees	• possibility of negotiating wages with regard to overtime work **for all employees** in the range **up to 150 hours** per year • in the case of **managerial employees** to take account of overtime work in the range **up to 416 hours** per year
Speedread: • Wage for Night Work / at the Weekends	**Wage for Night Work / at the Weekends**	
	• possibility to negotiate other than the statutory amount of premium only in a collective agreement	• possibility to negotiate other minimum amount of premium besides the collective agreement in an **individual contract concluded with the employee**

	Until 31 December 2011	From 1 January 2012
Speedread: • Leave Taking	**Leave Taking:**	
	• different regime for taking / payment for leave in the basic scope and leave exceeding four weeks • automatic start of an employee's leave provided that the employer does not determine taking of the basic scope leave by 30 October of the following calendar year • expiry of employee's entitlement to the leave in the basic scope, if such leave is not taken by the end of the following calendar year	• same regime for taking / payment in the whole leave entitlement • abolition of automatic start of an employee's leave. If the employer does not determine taking of the leave by **30 June of the following calendar year**, the employee will also be entitled to determine leave taking after previous announcement • entitlement to leave, which was not taken by the employee, does not expire by the end of the following year
Speedread: • Non-compete Agreement	**Non-compete Agreement:**	
	• employer's obligation to provide adequate monetary compensation at least in the amount of average monthly earning • may be concluded after the termination of the trial period	• the minimum amount of adequate monetary **compensation decreased to 50%** of average monthly earnings • may be concluded regardless of the trial period
Speedread: • Unauthorized Absence	**Unauthorized Absence:**	
	• assessment of the employer acting in agreement with trade union organization • employee is not entitled to compensatory wage if he/she missed the major part of a shift without authorization in the calendar month in which he/she was granted time off	• assessment of the employer only after consultation with trade union organization • abolition of provision about non-provision of compensatory wage to employee who in the calendar month in which he/she was granted time off missed the major part of a shift without authorization

	Until 31 December 2011	From 1 January 2012
Speedread: • Amount of Severance Pay	**Amount of Severance Pay:**	
	• if the employment is terminated due to organizational reasons, the employee is entitled to minimum severance pay in the amount of at least three times of his/her average earnings	• the amount of minimum severance pay in the case of employment termination due to organizational reasons **will be dependent on the length of employment** (less than 1 year / 1 average monthly earnings; more than 1 year, but less than 2 years / two average monthly earnings; at least 2 years / three average monthly earnings) • if account of working hours applied and transfer of overtime work between settlement periods is concluded, the severance pay of such employee will be increased by three of his/her average monthly earnings
Speedread: • Penalties for Breaches of Incapacity for Work Obligations	**Penalties for Breaches of Incapacity for Work Obligations:**	
	• possibility to decrease / not provide compensatory wage to employee, who in the first three weeks of his/her incapacity for work breached regimen prescribed to insured person who is temporarily unfit to work	• introduction of **new reason for dismissal** (Section 52 letter h) LC) – **breach of the regimen prescribed to insured person who is temporarily unfit to work** in a particularly gross manner • if the notice is given for the said reason, there is no further possibility to decrease / not provide compensatory wage
Speedread: • Court's Moderation Right	**Court's Moderation Right :**	
	• in case of the employer's failure in a void termination dispute, such employer is obliged to provide compensatory wage until the employee's new start of his/her work performance or other valid termination of employment	• re-introduction of court's moderation right to adequately reduced employer's obligation to provide compensatory wage provided that the void termination of employment occurred based on the employer's proposal, if the total period for which the compensatory wage should be provided **exceeds 6 months**

	Until 31 December 2011	From 1 January 2012
Speedread: • Agreement on Work Performance	**Agreement on Work Performance:**	
	• may be concluded if the scope of work will not exceed 150 hours in one calendar year • remuneration arising from agreement is not subject to the deductions for social security and health insurance regardless of income	• increased range **up to 300 hours** in one calendar year • if the income arising from agreement in a given calendar month **exceeds CZK 10,000**, this remuneration will be subject to **deductions for social security and health** insurance
Speedread: • Transfer of Rights and Duties ("TUPE")	**Transfer of Rights and Duties ("TUPE") :**	
	• the LC does not specify the period, in which the employees (their representatives) should be informed / consulted about planned transfer • rights arising from collective agreements pass into the end of their effect without any time limits an affected employee may prevent the transfer of his/her employment only by standard notice with two months notice period without entitlement to any compensation	• employer's duty to inform and consult planned transfer **at least 30 days before** its realization • rights from collective agreements pass only until the end of the following calendar year • in case of the employee's notice given for the reason of transfer, such employment terminates regardless of the notice period not later than the day before the effective date of transfer • if the employee terminates his/her employment within the 2 month period starting at the effective date of transfer, he/she can seek a court declaration that it happened because of **significant deterioration in working conditions after transfer** and if successful will be entitled to severance pay as in the case of organizational changes

Speedread:

- The new definition for dependent work and penalties for the so called švarcsystém

2. The new definition for dependent work and penalties for the so called švarcsystém:

The new amendment to the Labour Code also introduced a modified definition of dependent work. Dependent work may be performed only in basic employment relationships according to the Labour Code, ie based on an employment contract or agreements on work performed outside an employment relationship.

The new definition distinguishes the characteristics of dependent work and the conditions under which it is to be performed. The basic characteristics of dependent work are the following: (i.) performance in the relationship of employer's superiority and employee's subordination, (ii.) in the employer's name, (iii.) according to employer's instructions and (iv.) personal performance of work by the employee. Dependent work must be performed for a wage, salary or other remuneration paid for work done, at the employer's instruction and liability, within working hours at the employer's workplace or at some other agreed place.

In connection with this new regulation of dependent work we need to highlight the related amendment to the Employment Act governing the definition of illegal work, which will come into force on 1 January 2012, as well. The new refined definition will also expressly include "the performance of work by a natural person outside the employment relationship" according to the Labour Code.

Up until 1 January 2012, within the performance of dependent work by natural persons as entrepreneurs outside employment relationships (the so called Švarcsystém) was also banned, but apparently lacked the tools as well as motivation for enforcement. According to the new regulation the Labour Inspection Authorities will be entitled to impose a fine of up to CZK 10 million (but at least CZK 250,000!) on companies using the "Švarcsystém" and fine the employee up to CZK 100,000. Further to these direct sanctions, other significant penalties may be imposed on companies for non-payment of deductions in the income tax area as well as insurance connected with using the "Švarcsystém".

In the case services of self-employed persons are used, where there are doubts about the "independence" of their work (in particular personal and long-term work performance only for one company, according its to instructions and in such company's name), we recommend reviewing the contractual relationships with such persons and taking corrective measures to eliminate or at least reduce possible risks. The fact that the above may not be only idle fears, has been confirmed by non-official information from Ministry of Labour, according to which the Ministry is calculating on an exponential increase in the number of inspections aimed directly at potential violations of the "Švarcsystém" ban.

Speedread:

- Enabling the parallel performance of functions and related changes

3. Enabling the parallel performance of functions and related changes:

With effect form 1 January 2012 the period of uncertainty regarding the admissibility of the parallel performance of the function of statutory body (member) while a managerial employee will end. The parallel existence is expressly allowed by an amendment to the Commercial Code Act no. 351/2011 Coll., which was prepared specifically in response to the parallel existence "panic" generated by a year old decision of the Supreme Administrative Court (see our Newsletter from 23 February 2011).

The new regulation not only allows the statutory body to appoint another person to provide the business management of the company wholly or partly, but expressly provides that *"these activities may also be performed in an employment relationship according to the Labour Code by a company employee, while such employee may concurrently perform the function of a statutory body or act as its member."* In this context, there is a statutory requirement that the wage of the employee performing parallel functions was negotiated or determined in the same manner as in the case of a statutory body, ie mostly by the company's general meeting.

The amendment has no retroactive effect and therefore does not solve the possible negative consequences of inadmissible parallel existence up to 2012. In the area of tax and social insurance it may be reasonable to assume a "general pardon" from the state and regulatory bodies, which does not have to apply in the case of potential private claims between companies and s statutory body because of the questionable validity of parallel employment contracts. In such situation we recommend some form of contractual settlement for all questionable relationships from the past.

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Another legislative response to the parallel existence are the changes in the tax area as well as in the area of deductions of social and health insurance from the statutory body's or its member's remuneration, which will be effective from 1 January 2012 and subject to the essentially the same procedure as an employees' wages. This change will negatively affect in particular the remuneration of board members. In contrast, there is a very positive change for companies, as the expenses concerning board members' remuneration will now be tax deductible.

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