Legal Alert

11/2015

Changes in Labour Law

Increase in the minimum

The government has decided to **increase the minimum wage effective 1 January 2016**. Like last year, the monthly minimum wage will rise by CZK 700 (approximately EUR 26) to CZK 9,900 (approximately EUR 365) and the minimum hourly rate to CZK 58.70 (approximately EUR 2.2) from CZK 55 (approximately EUR 2).

Subsequently, the **lowest guaranteed wage will be valorised** for employees whose wages are not subject to collective agreements and for employees working in public services and administration.

It is not sufficient for employers to follow the previously fixed minimum wage.

Work category	Lowest guaranteed wage			
	CZK per hour (1 EUR is approximately CZK 27)		CZK per month (1 EUR is approximately CZK 27)	
	now	from 1 January 2016	now	from 1 January 2016
1.	55.00	**58.70**	9,200	**9,900**
2.	60.70	**64.80**	10,200	**10,900**
3.	67.00	**71.60**	11,200	**12,100**
4.	74.00	**79.00**	12,400	**13,300**
5.	81.70	**87.20**	13,700	**14,700**
6.	90.20	**96.30**	15,100	**16,200**
7.	99.60	**106.30**	16,700	**17,900**
8.	110.00	**117.40**	18,400	**19,800**

The **minimum wage for persons with disabilities** will also increase, from the current monthly minimum of CZK 8,000 (approximately EUR 295) to CZK 9,300 (approximately EUR 343), as well as their basic hourly rate and lowest guaranteed wage for a fixed 40 hour work week.

This change is a compromise that has left neither employers nor unions satisfied.

Amendment to the Labour Code

The amendment returned the explicit regulation of **compensation for work injuries and occupational diseases** to the Code from 1 October 2015. The system of compensation through state-organized insurance (ČSSZ), which was prepared simultaneously with the new Labour Code in 2006 but has not come into effect, will not be realized.

The amendment also explicitly declares **the right to compensation** for employees working on the basis of agreements on work performed outside an employment relationship.

The **legal possibility to terminate an agreement to complete a job** with 15 days' notice is also new. So far, this was only regulated in case of an agreement to perform work. Features of these two agreements are similar so there is no reason to have different ways of termination.

Amendment to the Act on Employment – "kurzarbeit"

State help in the form of an **allowance at the time of partial unemployment** (section 115) can now be provided to the employer for temporary restrictions on the sale of its products or the demand for its services or interruption of work due to natural disasters.

The allowance is made by concluding an agreement with the labour office and the prior approval of the Government is required in each case.

Several conditions set by law should be fulfilled to grant this allowance. The amount of this allowance is 20% of the average income of the employee, but not more than 0.125 times the average wage. The allowance can be provided for a maximum period of 6 months with the possibility of one repeat for a maximum of 6 months as well.

Another change is the **unification in payment of unemployment benefits**. It will no longer be possible to get this benefit if the applicant is acting as a member of a business company´s or cooperative´s body, regardless of whether he/she has income or some kind of reward from this activity or not.

From case law

- **simultaneous position of a statutory body and employment**

According to established case law, it is not possible to perform an activity as a statutory body member in an employment relationship. This function is not a type of work referred to in section 29, paragraph 1, letter a) of the Labour Code and the establishment, termination and content of this legal relationship are not governed by the Labour Code. However, nothing prevents individuals who are performing the function of a (member of the) statutory body from realizing other activities for the company (or cooperative) on the basis of a labour relationship.

In this case, the Supreme Court found that activities performed such as "computer network administration" or other "technically specific" activities (like property management, checking apartment residents and commercial space users, overseeing repairs, preparing inspection protocols, etc.) cannot be separated from the activities comprising the function of a statutory body member.

Supporting, subsidiary, technical and administrative activities that are necessarily required for the common management of the company cannot be separated from the managing and decision-making activities essential to a board member's position. Courts have also decided that this is not a single (random) but larger, continuous or regular activity.

(from the judgement of the Supreme Court of the Czech Republic, file no. 21 Cdo 2687/2014 of 25 June 2015)

- **the principle of equal pay for equal work**

It is not possible to derogate from the legal principle of equal pay for equal work, unless it benefits the employee. Fees that exceed the wage otherwise provided for equal work or work of equal value may be validly negotiated, according to the contractual freedom principle.

However, contractual freedom is not limitless. It has to respect the rights and legitimate interests of the employer or other employees and especially has to comply with the equal treatment principle and with the prohibition of discrimination. Any conflict with these norms means a diversion from the legal framework and leads to an unlawful situation. The employer would be able to correct such a situation only by ensuring the same right applied to every other employee.

The courts dealt with the case of a cook, who was demanding compensation for lost wages (plus interest) from his employer, due to unequal treatment – his wage was CZK 2,000 (approximately EUR 74) below his colleague's wage.

The Supreme Court reaffirmed that wages can be negotiated with an individual employee "above the general framework for equal treatment" and in his favour only if it is for a valid reason representing a significant advantage in comparison with the other employees or if the different treatment was an essential requirement necessary for the work.

In this case, greater experience and practice due to age, hotel school graduation or long-term performance of duties as an apprentice teacher, were considered valid reasons.

The courts rejected the arguments of the plaintiff that both employees had an employment contract for the same type of work (a cook) and that a diploma, which is not necessary to perform the job, should not ensure a right to a higher wage.

Such a reduced, formal and mechanical assertion did not reflect other facts expressing the value of work of the employee, like education, length of practice, experience, reliability, etc. Only other relevant facts in the summary allow for the evaluation of the employees' status on the labour market in general and his benefit to the employer in particular.

Thus, in this case, the courts did not infer unequal treatment.

(from the judgement of the Supreme Court of the Czech Republic, file no. 21 Cdo 3976/2013 of 6 August 2015)

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