Legal Alert

12/2016

The Czech Republic

Important Amendment to the Labour Code

The first reading of the so called **conceptual amendment to the Labour Code** is currently underway in the Chamber of Deputies of the Czech Parliament. It is assumed that it will be passed without significant changes, because it implements the EU legislation with mandatory transposition, as well as current developments in the law and Czech and European case law.

The legal concept of **the key managing employee** is an important novelty. It can be a senior employee in direct managing power of the employer – a natural person or statutory employer - legal person or such employee directly subordinate to the senior employee. The prerequisites are the conclusion of an agreement between the employer and employee and a gross monthly salary of at least CZK 75,000. These employees will be entitled to determine their own working hours but will not be eligible for some of the bonuses.

Holidays should not be determined from the days worked. An entitlement should be based on weekly working time. For shorter periods or agreed working time, the holidays will be set in hours.

The amendment specifies the conditions for working from home, so called **home office**. The employee in agreement with the employer will be entitled to schedule his/her working hours himself/herself. He/she will be entitled to reimbursement of the costs of communication with the employer, in particular, to internet and telephone expenditures. These reimbursements will be not included in wages or salary.

The current legislation on the **transfer of an employee to other work** is conceived as the employer’s unilateral measure without the employee’s consent. Newly, it will not be a "transfer", but a "performance of other work." The employer will be able to assign the employee to other suitable work within the agreed type of work only. If this is not possible, the employer must offer him/her other suitable work that is adequate to the employee’s health, ability and qualifications. However, the employee must agree with it. His/her refusal of the proposed work will be an impediment to work on the employee’s side without wage compensation.

Other changes concern for example the service of documents in labor relations, agreements on work performed outside employment relationships or the employers’ obligations to prevent the risk of work-related stress and the risk of violence and harassment in the workplace.
The proposal foresees the amendment’s effect **from 1 July 2017**, some sub-parts will be effective from January 2018.

The business community has stated that changes in the regulation of working from home, for example, will in fact lead to its liquidation.

A Slovak View:

The Slovak Labour Code already recognizes the institute of a **key managing employee** (although called differently), but in a slightly different form than proposed by the above mentioned amendment. The Slovak Labour Code implements several special working conditions for managing employees in a direct managing capacity of the statutory body or its member and for managing employees in a direct managing capacity of such managing employee, e.g. a longer probationary period and the possibility to agree in an employment contract that the agreed wage will cover potential overtime in the amount of a maximum 150 hours per calendar year.

Pursuant to the valid Slovak Labour Code, employees working from their "**home office**" are not subject to the regulation of the provisions concerning the distribution of the designated weekly working time, uninterrupted daily rest, uninterrupted rest in the week and downtimes. In case of a major personal obstacle at work, such employee is not entitled to wage compensation, except for the death of a family member, and such employee is not entitled to wages for overtime work, a wage surplus for working on a public holiday, a wage surplus for night work or wage compensation for working under difficult conditions, unless the employee agrees with the employer otherwise.

The Slovak Labour Code imposes an obligation **to unilaterally transfer** an employee to a different type of work only exceptionally, e.g. due to an employee's health condition, pregnancy or quarantine. The employer is entitled to temporarily transfer an employee to a different type of work in order to avert an emergency. The employee's consent with such measure is not required. Except for statutorily regulated exceptions, an employee's transfer to a different type of work always requires his/her consent.

Slovakia

Electronic mail boxes

Starting 1 August 2016, electronic mail boxes were automatically established for all commercial companies without the need of any cooperation on the part of the company at the portal www.slovensko.sk. Electronic mail boxes are free of charge and are used to deliver electronic official documents and for the purpose of communication between the company and public authorities in electronic form. The activation of the electronic mail boxes occurs with the first login of the entitled person but at the latest automatically on 1 July 2017. Basically, the activated electronic mail box, unless otherwise specified, will be used as a place of delivery of electronic official documents from the public authorities and official documents will no longer be delivered to the company's address in paper form.

When is an electronic document considered delivered to the electronic mail box?

With respect to personal delivery, an electronic document is considered "delivered" on the day of confirmation of its acceptance via proof of delivery or 15 days after it is deposited in the electronic mail box. As regards other electronic documents (delivered in another way than by personal delivery) these are considered "delivered" on the day following the day they are deposited in the electronic mail box.

Who will have access to the electronic mail box?

The person authorized to access the electronic mail box is the commercial company itself, its statutory body or a member of the statutory body, the head of the incorporated organizational unit or any person entrusted or empowered by such authorized person.

What are the requirements for accession to the electronic mail box?

The necessary requirements for accession to the electronic mail box are the following: a valid ID card with an electronic chip (the so called eID card) and with the Online eID function activated (with respect to foreign persons they need a residence permit with an electronic chip plus a personal security code), a card reader with the relevant card reader drivers downloaded and installed eID client software for accession. Foreign members of the statutory body may empower another person who already has an ID card with an electronic chip with the Online eID function activated.

The above mentioned procedure does not resolve the problem of foreign persons as a statutory body who, in order to have full access to their electronic mailbox, have to authorize a Slovak citizen or a person with a valid residence permit in Slovakia and with a residence card with an electronic chip or they themselves must be granted a residence permit with a residence card with an electronic chip.

To the Invalidity of Termination of the Employment Relationship

The Slovak Supreme Court published the 8th Collection of the Supreme Court's rulings and the Slovak's courts decisions for the year 2016. One of the published court decisions was the order of the Supreme Court of December 21, 2015, file no. 6 Cdo 273/2013, under which the court in proceedings concerning the invalidity of the dismissal of employee representatives does not examine on its own whether or not it can be fairly required from the employer to further employ the employee.

The essence of the present case was an action for annulment of the dismissal of an employee, who was also deputy of employees, by reason of redundancy. The applicant challenged the termination inter alia on the grounds that the workers' representatives had not granted the required consent to dismissal.

According to Section 240 paragraphs 9 and 10 of the Labour Code, the employer can give a member of the relevant trade union body notice or terminate his/her employment with the prior consent of such employees' representatives only. When the employees' representatives refuse to give their consent, the notice or immediate termination of employment for that reason will be invalid. If the other conditions of such a notice are met and the court finds that the employer could not be fairly required to employ the employee further, the notice or immediate termination of employment is valid.

In the given case the court of lower instance upon its own initiative looked into whether there are such circumstances that would justify a conclusion that the employer cannot fairly be required to further employ the employee. The court then had such a circumstance established and it ruled that the dismissal was valid.

The Slovak Supreme Court has assessed the procedure as wrong with the fact that it is a substantive provision which falls outside the procedural obligation of the court's duty to instruct. The court is therefore not entitled to examine this fact ex officio, but on the proposal of the party only.

The Czech View:

The Czech Supreme Court decides such cases in the same way. In its judgment of April 16, 2009, file no. 21 Cdo 1539/2008, for example, the court ruled that in case the members of the relevant trade union body must, for the validity of the notice's employment termination, meet not only the general formal and substantive conditions of notice, but beyond that (in addition) the prerequisites specified in Section 61 paragraph 4 of the Labour Code as well. It cannot therefore be deduced from the sole fact that the general requirements of the validity of notice of the employment termination because of redundancy pursuant to Section 52 letter c) of the Labour Code, that there is also given the condition that the employer cannot reasonably be required to further employ the employee (see Section 61 paragraph 4 of the Labour Code).

From the substantive rules on the participation of trade union bodies upon termination of employment the obligation arises to declare and prove that the employer cannot reasonably be required to continue to employ the employee, which rests on the employer. If the employer cannot bear the burden of allegation and his/her burden of proof, he/she must be aware of the fact that the dispute over the dismissal from employment will be determined by the court to its detriment; thus, the action for nullity of the dismissal will be upheld. The court must instruct the employer about this duty to assert and prove.

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