

Speedread:

- The new Anti-Discrimination Act provides for the comprehensive treatment and unification of fragmented regulations dealing with equal treatment and combating discrimination
- The new act on free movement of services allows service providers established in a Member State of the European Union temporarily or occasionally to also offer and provide services in the Czech Republic
- The act establishes unified contact points which will provide information to the service providers
- Duty to have a registered seat in same place the legal entity has a real seat (i.e. where the management is located and where the public can contact the legal entity) has been canceled

ANTI-DISCRIMINATION ACT

On 17 June 2009 the Chamber of Deputies over-rode the President's veto and approved Act no 198/2009 Coll, on equal treatment and legal remedies to protect against discrimination (**the Anti-Discrimination Act**). The Act came into force on 1 September 2009 (with the exception of Part Two, which covers the amendment related to the Ombudsman Act, which became effective on 1 December 2009).

Rather than fundamental changes, the new Act provides for the comprehensive treatment and unification of fragmented regulations dealing with equal treatment and combating discrimination.

Prohibition of discrimination

The Act defines the right to equal treatment and non-discrimination in many areas, such as in:

- employment or business
- health care
- education
- social security
- access to goods and services (including housing), if they are offered to the public.

The law prohibits discrimination on the grounds of:

- race
- ethnic origin
- nationality
- sex (this includes pregnancy, maternity or paternity)
- sexual orientation
- age
- disability
- religion, faith or belief.

Direct and indirect discrimination

Except for direct discrimination, which means the procedure when someone is treated less favourably than another person is treated in a comparable situation, the Act recognizes indirect discrimination, which means a situation in which a person is disadvantaged on the basis of an apparently neutral provision or condition. Furthermore, the Act also considers discrimination to be harassment, sexual harassment, victimization, instruction to discriminate and to induce discrimination.



Exceptions

On the other hand, the Act sets out areas where certain forms of differential treatment are allowed under specified conditions. Examples include the determination of different retirement ages, access to employment exercised in churches or religious societies and differential treatment applied to the protection of women because of pregnancy and motherhood.

Penalization of discrimination

A person who has been affected by the violation of their rights and obligations resulting from the right to equal treatment or prohibition of discrimination has the right to seek a judicial process to put an end to the discrimination, to eliminate the discriminatory effects of the intervention and receive reasonable satisfaction. In some cases, the concerned person has the right to financial compensation for non-pecuniary damage.

The Act divides the burden of proof between the plaintiff and the defendant in such a way that if the plaintiff states before the court the facts from which it may be inferred that there has been direct or indirect discrimination on the defendant's side, the burden of proof passes to the defendant and he/she/it is then obliged to prove that the principle of equal treatment was not breached.

ACT ON THE FREE MOVEMENT OF SERVICES

Act no 222/2009 Coll, on the free movement of services and Act no 223/2009 Coll, amending certain laws in connection with the adoption of the act on the free movement of services were published in the Collection of Laws on 20 July 2009. These acts are the result of the implementation of an EU directive (no 2006/123/EC of 12 December 2006 on services in the internal market) into the Czech legal order. The act becomes effective on 28 December 2009.

Cross-border provision of services and scope of the act

The new act allows service providers established in a Member State of the European Union temporarily or occasionally to also offer and provide services in the Czech Republic, to the extent of the authorization granted by another EU member state. This eliminates the obligation for service providers to obtain necessary permits, licenses or meet other conditions to provide services in the Czech Republic.

This permission does not apply to services which are services of general economic interest in nature, such as postal services, electricity supply, etc. Provision of banking and other financial services, telecommunication services and lottery activities is not regulated within the scope of the Act.

Recognition of licenses

If for the provision of services in the Czech Republic it is necessary that the service provider meet certain requirements, these requirements are met if the service provider proves that in another EU Member State he/she/it has fulfilled equivalent or comparable requirements.

Documents recognition

If it is necessary to submit to an administrative authority in the Czech Republic proof of compliance with certain obligations, this is considered to be fulfilled by submitting documents from another EU Member State. The presented document must serve the same purpose, eventually it must be clear that the set obligation has been fulfilled.

Insurance recognition

If a service provider is obliged to arrange insurance in connection with the provision of services in the Czech Republic, this can be replaced by similar insurance or guaranteed insurance negotiated in another EU Member State. Comparability of insurance is assessed according to the purpose, scope of insurance, limits of insurance coverage and exclusions of insurance.

Institute of tacit consent

The act introduces the institute of *tacit consent*, i.e. that if the authority does not respond within the prescribed period, the silence equals consent. This institute will be established as the procedure for e.g. driving school operators, energy auditors, insolvency administrators, etc.



Unified contact points

The Act establishes unified contact points - local trade licensing offices - which will provide information to the service providers, receive their submitted applications, notifications and reports and transmit them to the competent administrative authority. The service provider will be entitled to choose any contact point for the performance of any of the above actions.

COMPANIES CAN NOW REGISTER THEIR SEAT ANYWHERE

Act no 215/2009 Coll, which came into force on 20 July 2009, has changed among other things section 19c of the Commercial Code dealing with the registered seat of a legal entity. Now, after being several months in force, there is a practical experience with its application.

Registered vs. real seat

The main change is that the company's duty to have a registered seat in same place the legal entity has a real seat (i.e. where the management is located and where the public can contact the legal entity) has been canceled. A company can now place its real seat anywhere.

A better address or other practical reasons

This change has opened new options for companies and can significantly influence the decision as to where a company places its registered seat. The motives for placing or changing the seat may vary. One reason can be a situation in which a company changes its seat to gain a more prestigious address.

Another reason from the legal point of view could be linked with determining the relevant state agency overseeing the company. Most state agencies base their competency over a company on the registered seat of the company. In other words, a company will determine de facto the particular state agency which will oversee it by determining its registered seat.

In practice, many cases of "transferring a seat" are intended to change jurisdiction of relevant tax authority. The frequency of tax audits varies greatly. For example, according to a study by the company TERRINVEST, s.r.o. (www.terrinvest.cz) eg the frequency of tax audits by the Tax Office for Prague 5 is once per 104 years, but (in average) every five years for the Tax Office in Pacov.

Tax offices may delegate responsibility

Practice shows that tax offices are struggling with the situation. To address the problem tax offices can delegate oversight responsibility. This allows eg the Tax Office in Prague 5 to delegate a case to the Tax Office in Pacov based on the reasoning that they can execute the audit more efficiently, easier and faster. This fact should be kept in mind when considering changing the registered seat of a company.

Contacts

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