Legal update

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Weinhold Legal

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News in legislation

Amendment to the Energy Act from 1 January 2022

On 14 September, 2021, the Chamber of Deputies approved a government bill amending Act No. 458/2000 Coll., on the conditions of business and the exercise of state administration in the energy sectors and on amendments to certain acts (Energy Act), as amended, Act No. 455/1991 Coll, No. 634/2004 Coll., on administrative fees, as amended, as adjusted by the Senate (hereinafter referred to as the "Amendment to the Energy Act"). The Act was promulgated on 8 October 2021 in the Collection of Laws and will enter into force on 1 January 2022.

The amendment to the Energy Act aims to extend the protection of customers against unfair practices of dishonest traders. In particular, it introduces a register of energy supply intermediaries. The Energy Regulatory Office will now grant authorisations for energy brokerage activities as a new type of business.

According to the parliamentary version of the draft law, companies established by their suppliers for the purpose of mediating energy supply did not need to have an intermediary licence. The Senate version, whose adoption was supported by the Minister of Industry and Trade, introduces the obligation to obtain a licence for these companies.

Under the amendment to the Energy Act, energy suppliers will have to provide consumers and tradesmen with proof of price changes. It will no longer be sufficient for them to publish the change on their websites. Information on price changes can be sent to the customer by e-mail or by ordinary letter, but a registered letter is not required.

It should also now be possible to terminate an intermediary contract without penalty or financial payment as long as there is no compensation associated with the termination of the contract. The customer will also have the right to know exactly when his contractual obligation ends and the supplier will be obliged to tell him.

The amendment to the Energy Act also envisages that, for example, small entrepreneurs, sole traders or municipalities that rent municipal flats could terminate contracts immediately without delay

The government has extended the Antivirus A programme until the end of the year

On 25 October 2021, the government allowed employers to apply for a wage subsidy from the Antivirus A programme for employees in quarantine until the end of 2021. The maximum amount of support provided is 80 % of the wages paid, including social and health security charges, with a maximum monthly contribution per employee of CZK 39,000

Under the Antivirus programme, the state has been providing wage subsidies since 12 March last year to employers affected by the imposed anti-epidemic restrictions and the coronavirus crisis. The last time the government decided to extend Antivirus A was in June, until the end of October this year.

Employers whose employees have been ordered to be quarantined or isolated due to covid-19 disease can benefit from the allowance.This is because there are currently no longer any emergency notices in force that would prohibit employers from carrying out their economic activity. The whole point of the programme is to mitigate the impact on employment.

Thanks to the government's decision, companies can enter into an Antivirus A. contribution agreement up to the end of this year instead of 31 October as

was the case before.

From the launch of the programme on 6 April 2020 to 28 June 2021, a total of 74,211 contribution agreements have reportedly been concluded under Antivirus A, supporting 1.07 million employees. Contributions of approximately CZK 48.7 billion have been paid

Current case law

Employees are entitled to claim remuneration for breaks during periods of constant availability

(Constitutional Court ruling of 18 October 2021, Case No. II ÚS 1854/20)

Employees are also entitled to remuneration for the time when they are at the employer's disposal, ready to intervene immediately at the place designated by the employer. The Constitutional Court upheld the complaint of a former firefighter from Ostrava airport who claimed remunerations for meal and rest breaks. Even during meal and rest breaks, he had to be available to his employer at all times and to intervene in the event of a fire within three minutes at the most remote location of the airport. The General Court held that the applicant was not entitled to any remuneration for the scheduled breaks. In particular, they emphasised that the complainant had never actually been called to work during his lunch break and that there was therefore no reason to reward him for 'being on call' at the workplace.

On the contrary, according to the ruling of the Constitutional Court, "If the complainant was obliged to be ready to intervene within three minutes at the latest, even during a scheduled meal and rest break, then he was performing work which by its nature (being alert, being ready) could not be interrupted." Unpaid rest time, on the other hand, can only be such time as the employee is free to use at his discretion, i.e. to take a break and not be at the employer's disposal during that time.

In employment relationships, it is always necessary to determine whether the time under consideration is working time or rest time - the third option is not permitted by the legislation. According to the Constitutional Court, on-call time is then working time, and it is irrelevant whether there was ever an intervention during the breaks. The time during which the employee is ready to intervene is therefore working time, regardless of whether or not the intervention occurs.

The work that deserves just reward in these cases is merely the readiness to intervene, not the intervention itself, the constitutional judges said. It is, of course, possible, they said, to remunerate on-call time within working hours according to different principles than time spent in the normal course of work. However, it cannot be unpaid if the employee does not use the time at his or her own discretion. The Constitutional Court annulled the contested judgments of the Regional Court in Ostrava and the Supreme Court of the Czech Republic on the grounds of violation of the complainant's fundamental right to fair remuneration for work in conjunction with the right to judicial protection and remanded the case to the court of first instance for further proceedings

Plurality of Insolvency Creditors in the endorsement of a Security Promissory Note

(Judgment of the Supreme Court of the Czech Republic of 30 June 2021, Case No. 29 Cdo 96/2019)

The Supreme Court of the Czech Republic dealt with an unresolved question whether, for the purposes of assessing the debtor's bankruptcy, a plurality of creditors can be established by endorsement of a secured promissory note to a third party, with the original creditor retaining the secured claim.

According to the Supreme Court of the Czech Republic, the fact that the debtor is insolvent because he has multiple creditors (at least two), each of whom has a claim against him for 30 days past due and is unable to meet these obligations (pursuant to Section 3 (1) (b) of the Insolvency Act), or because he has several creditors (at least two), each of whom has a claim against him for a period of 30 days after the due date, and at the same time there is a rebuttable presumption of insolvency of the debtor, who does not fulfil these obligations (debts) for a period of more than 3 months after the due date (pursuant to Section 3 (2) (b) of the Insolvency Act), does not preclude the fact that the debtor's creditors are only the owner of the secured promissory note endorsed to him after its maturity and the owner of the (causal) claim secured by this note after its maturity. According to the decision of the Supreme Court of the Czech Republic, this conclusion is not precluded by the fact that the insolvency petitioner and one other creditor are each owners of a part of the originally single claim.

The Supreme Court of the Czech Republic also considers it essential that the promissory note securing the bond loses the bond upon endorsement, no longer has a security function in relation to the secured claim and the claim thereon is a separate claim which has no relationship with the claim "from the bond".

A promissory note is usually defined in legal theory as a debtor's perfect security, which, provided that strict formalities are met, creates a direct, unconditional, undisputed and abstract obligation of a certain person to pay the owner of the note a specified sum of money at a specified time and place. Although the issuance of a promissory note is usually based on a specific reason (cause), the promissory note gives rise to a specific legal relationship, the abstract nature of which lies in the fact that the legal reason (cause) is irrelevant to its existence and does not arise from the promissory note. The promissory note obligation is completely separate and distinct from any obligation that gave rise to it. The security promissory note (which was at issue in the present case) serves only as a source of possible substitute satisfaction of the secured claim in the event that the debtor fails to fulfil its obligation in due time.

A transfer of a promissory note that occurs after the maturity of the debt secured by the promissory note, without a simultaneous transfer of the debt secured by the promissory note, has no effect on the obligation to pay the promissory note. The fact that the transferee of a promissory note does not in such a situation simultaneously become the creditor of the debt secured by the promissory note does not in itself relieve the debtor of the obligation to pay the (transferred) promissory note. The sale of a promissory note to a third party after the secured claim has matured constitutes a possible means of (at least partial) substitute satisfaction of the claim secured by the promissory note. If the proceeds from the sale of the promissory note are not sufficient to (substitute) satisfy the entire secured claim, it cannot be concluded that the creditor cannot claim the remaining part of the secured claim against the debtor.

The secured claim is not extinguished by the performance on the secured promissory note, nor is the claim on the secured promissory

note. The fact that the promissory note was a secured promissory note and that the creditor can therefore only be entitled to the performance once from an economic point of view is reflected in the fact that, to the extent that the secured promissory note is paid, the debtor defends itself against any forced recovery of the secured claim granted by the enforcement title by objecting to the performance on the secured promissory note.

In conclusion, the debtor had multiple creditors (at least two) and the declaration of its insolvency was confirmed by the Supreme Court of the Czech Republic.

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