Legal Alert

In the field of labour law

June 29, 2022

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There have been no significant legislative changes in employment law and related areas in the first half of 2022, but we would like to summarise some of these changes and bring you up to date with the proposed changes to the premium discount and some recent case law.

Legislative changes and proposals

Regulation on the adjustment of compensation for loss of earnings

Government Decree No 138/2022 Coll. provides for an **increase of 8.2% in compensation for loss of earnings following incapacity for work** resulting from an occupational accident or occupational disease to which employees are entitled under labour law. A similar adjustment is made in the area of compensation for the costs of maintenance of survivors, with an increase of 8.2% in the average earnings relevant for the calculation of compensation for maintenance of survivors. The entitlement to the increase will apply from 1 June 2022. The same increase will apply if the entitlement arises between 1 June 2022 and 31 December 2022.

Determination of the average wage for the purpose of issuing the Blue Card

According to the Communication of the Ministry of Labour and Social Affairs, promulgated under No.64/2022 Coll., the average gross monthly wage in 2021 of CZK 37,839 and the average gross annual wage of CZK 454,068 for the period from **1 May 2022 to 30 April 2023** are used to assess compliance with the conditions for issuing the Blue Card. To apply for a Blue Card, the applicant must submit an employment contract containing an agreed gross monthly or annual salary of at least 1.5 times the average gross annual salary. This means that **the gross monthly salary of the foreigner applying for a Blue Card** in the above-mentioned period must be at least **CZK 56,759**.

Adjustment of the average fuel price for the purpose of granting travel allowances

Decree No. 116/2022 Coll. establishes, with effect from 14 May 2022, a new **average fuel price for the purpose of providing travel reimbursements** set for 2022 by Decree No. 511/2021 Coll., as amended by Decree No. 47/2022 Coll:

- **CZK 44,50 per litre of** 95 octane **petrol**,
- **CZK 47,10 per litre of diesel fuel**.

Obligations on termination of employment

Amendment to Act No. 187/2006 Coll., on Sickness Insurance, as amended, adopted by Act No. 248/2021 Coll., extended the employer's notification obligation to the district (Prague) social security administrations with effect from 1 April 2022, i.e. not only the date of termination of employment will be communicated, but also::

- type of employment,
- duration of employment,
- period of pension insurance,
- the amount of average or probable monthly net earnings determined in accordance with the relevant legislation,
- the amount of entitlement to severance pay, redundancy pay, redundancy payments, including whether they have been paid, and
- the manner and reason for termination of employment,

all in the form of an electronic form available here.

Proposal for a discount on employer-paid insurance premiums for certain groups of employees

The Senate is currently debating a proposal to amend social security insurance premiums (pension insurance and sickness insurance premiums) and contributions to state employment policy (hereinafter referred to as "insurance premiums") (senate press 264). B If this proposal is approved (it is proposed to take effect on the first day of the seventh calendar month following its promulgation), the employer will be able to apply a discount on insurance premiums in the amount of **5% of the aggregate of the assessment bases** of the following groups of employees in an employment or service relationship (i.e., instead of 24.8%, the employer will pay 19.8%):

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- persons over 55 years of age,
- persons caring for a child under the age of 10 (parents or carers according to the decision referred to in Section 7(10) of the State Social Support Act),
- persons caring for a close relative under 10 years of age who is dependent on the assistance of another person in grades I to IV,
- persons continuously preparing for a future profession by studying at a secondary or higher education institution,
- persons who, in the 12 calendar months preceding the calendar month for which the insurance premium reduction is claimed, have entered retraining as a jobseeker pursuant to Section 109 or 109a of the Employment Act,
- persons with disabilities pursuant to Section 67(2) of the Employment Act, or
- persons under 21 years of age.

The insurance premium discount will **only** be granted if a **shorter working or service period** of **not less than 8 hours and not more than 30 hours per week is agreed**.

No discount on insurance premiums if:

- the aggregate of the employee's assessment bases from all jobs performed in an employment or service relationship with the same employer **in a calendar month is higher than 1.5 times the average wage**,
- the aggregate of the employee's assessment bases from all jobs performed in an employment or service relationship with the same employer attributable to 1 hour of the aggregate of hours worked from all such jobs in a calendar month is **higher than 1.15% of the average wage**,
- the employee's hours of employment or service from all jobs with the same employer, including periods that are considered as performance of work or service, **exceed 138 hours with the same employer in a calendar month**;
- the discount on insurance premiums for persons with disabilities is applied by their employer recognised as an employer in the protected labour market pursuant to Section 78 of the Employment Act, or
- the employee is listed in the monthly summary of the employee's wage replacement costs for the purpose of claiming the part-time allowance under Section 120e(5) of the Employment Act.

A discount on insurance premiums may only be granted to one employer per calendar month for the same employee and only if the employer has notified the Czech Social Security Administration of its intention to apply the discount on behalf of the employee before applying the discount.

Case law

Distance conclusion of employment contracts

(Judgement of the Supreme Court File No. 21 Cdo 2061/2021, of 27th April 2022)

The plaintiff sought payment of severance pay pursuant to a settlement agreement. The employer gave notice to the employee for organisational reasons, the claimant did not agree with the notice given by the defendant and insisted on continued employment. In the context of the dispute, the parties negotiated a settlement agreement, which was to consist of the employer rescinding the dismissal, the employee's employment being terminated on the basis of an agreement for organisational reasons on an agreed date and the employee being entitled to a severance payment of seven times his average earnings. The draft agreement was sent by the defendant as a scan by email, including the signatures of the chairman and chief executive officer and a member of the board of directors. By e-mail, the plaintiff's representative informed the defendant that she thanked him for concluding the agreement and sent confirmation that the agreement had been signed by the plaintiff on the agreed date. The defendant responded to this email by stating that they had a reservation that the agreement would only be deemed to be concluded once the case law they had previously discussed had been produced. In the context of a dispute over the payment of severance pay, the lower courts awarded the plaintiff the severance pay negotiated pursuant to the agreement made by email communication.

On appeal, the defendant (employer) argued that the employee had not consented to service by email and that the conditions of Section

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334 et seq. of the Labour Code for the service of documents relating to the establishment, amendment and termination of employment relationships were not met. The Supreme court then addressed the following question:

- whether an agreement can be reached between an employee and an employer acting at a distance if the statutory conditions for the service of documents laid down in Sections 334 to 337 of the Labour Code were not complied with in the service of documents containing the offer of agreement and its acceptance.

The Supreme court stated, in view of its previous decisions, that *„the Civil Code must therefore be applied to the conclusion of these contracts (agreements) and therefore also to the conclusion of the severance agreement. … Therefore, even the special regulation of the service of documents in employment relations, implemented in Title XIV, Part 13 of the Labour Code, is not essential for the assessment of the prerequisites for the creation of a bilateral legal transaction (agreement); the purpose of the legal regulation of the service of documents on an employee is that the document actually reaches the employee.… A contract is concluded once the parties have agreed on its content."*

*„… **only the judgment (cognition) of the common will (intention) of the acting parties, not the "path" that led to the agreement of the acting parties on the content of the legal act, is relevant for the consideration of the creation (existence) of a joint (multilateral) legal act**; **such a consideration can only be asserted in the assessment of the so-called form of the legal act**, which is reflected only (as explained above) in the solution of the question of the validity of the legal act, which, however, is not subject to the appeal review (with regard to the appeal argumentation).."*

The above judgment is certainly a step in the right direction. However, it should be noted that the Court of Appeal did not specify whether the agreement was in writing. Even after this judgment, we would advise caution when entering into employment contracts, particularly if the parties are interested in agreeing a probationary period. As a general rule, once an employee has started work, neither party can claim that the employment contract is invalid, even if it was not concluded in writing (see Section 20 of the Labour Code).

However, it cannot be ruled out that it would be impossible to invoke the invalidity of a probationary arrangement or a competition clause for lack of form if the employee invoked such invalidity and the court took into account the principle of special protection of the employee. In the present case, the employer invoked the invalidity.

Unequal treatment by the employer

(Judgement of the Supreme Court File No. 21 Cdo 3858/2020, of 30th November 2021)

In the case at hand, the employee's claims were for unequal treatment. As an employee of the defendant in the position of HR manager from January 2014 to 30 September 2015, the plaintiff was subjected to substandard conduct by her supervisor. During that time, her immediate superior repeatedly expressed dissatisfaction with the applicant's work performance, disseminated that opinion among her superiors and colleagues, and evaluated the applicant negatively in the Talent Management (appraisal system) - all without any apparent objective basis, respectively. on the basis of a subjective evaluation judgement, gave the applicant a verbal reprimand for the disclosure of sensitive data by her supervisor on the basis of an anonymous suggestion, without any objective basis, gave the applicant a written reprimand for not having interrupted her working hours on the days in question before the start of the language course, although this was not reproached (was tolerated) by other employees who behaved in the same way, and reduced the personal evaluation of the employee. The plaintiff was evaluated positively by other senior staff. The plaintiff complained about her supervisor's behaviour, but her formal complaint was not evaluated. In proceedings concerning claims of unequal treatment and discrimination, the lower courts awarded an apology and compensation of CZK 100,000, which was reduced to CZK 10,000 by the Court of Appeal.

The Supreme court addressed the following questions:

- what legal framework governs the legal remedies against unequal treatment of employees, and
- what are the relevant circumstances for assessing the adequacy of monetary compensation for non-pecuniary damage.

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The Supreme court stated, inter alia, that in the case of unequal treatment, the motivation is not one of the discriminatory reasons. Conduct which is often referred to in the literature as "bossing" „*may fulfil the elements of harassment within the meaning of Section 4(1) of the Anti-Discrimination Act. ... In the absence of any of the discriminatory grounds, such conduct may be considered a breach of the employer's duty to ensure equal treatment of all employees in the statutory field." The court reasoned that the remedies for unequal treatment are also provided for in the discrimination law.*

In determining the amount of compensation, the court should not take into account the costs of the proceedings and the difficulties involved, nor should it take into account the fact that the applicant works for the defendant, albeit in a different place and city. On the contrary, the defendant's supervisor's faulty conduct (poor assessment), which had a negative impact on the applicant's career progression, since the defendant's senior management also drew adverse consequences for the applicant from the supervisor's assessment when deciding on the applicant's career progression, should be taken into account in the amount of the financial compensation, and the Court of Appeal thus deduced the original amount of the financial compensation fixed by the Court of First Instance. Employers should thus beware that employee appraisals must be objective, otherwise employees may be liable for the damage caused thereby.

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v.o.s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

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