Legal update

May 2023

Weinhold Legal

Table of Contents

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 listed in this bulletin should be consulted before any decisions are made.

Banking, Finance & Insurance:
Daniel Weinhold, Václav Štraser, Ondřej Tejnský
Competition Law / EU Law:
Tomáš Čermák
Dispute Resolution: Milan Polák, Zbyšek Kordač, Anna Bartůňková, Michaela Koblasová, Michal Švec
ESG – Environment, Social, (corporate) Governance
Daniel Weinhold, Tereza Hošková
Family Office:
Milan Polák, Zbyšek Kordač, Michaela Koblasová
Insolvency and Restructuring:
Zbyšek Kordač, Jakub Nedoma
IT, Media & Telecommunication:
Martin Lukáš, Jakub Nedoma, Michal Przeczek
Labour Law: Eva Procházková, Anna Bartůňková, Daša Aradská, Ondřej Tejnský
Mergers and Acquisitions:
Daniel Weinhold, Václav Štraser
Personal Data Protection
Martin Lukáš, Tereza Hošková, Daša Aradská
Public Procurement & Public Sector:
Martin Lukáš, Tereza Hošková, Monika Švaříčková
Real Estate:
Pav Younis, Václav Štraser
Slovak Law:
Tomáš Čermák, Karin Konečná
Start-ups, Venture Capital and Cryptocurrency:
Pav Younis, Martin Lukáš, Jakub Nedoma, Michal Švec, Ondřej Tejnský

News in legislation

Amendment to the Employment Act and the Labour Code re agency employment

On 15 May 2023, the Government submitted to the Chamber of Deputies an amendment to the Employment Act (No. 435/2004 Coll.) and the Labour Code (No. 262/2006 Coll.), which is being discussed as Chamber of Deputies Document 450 ("Amendment") and which aims to:

- Modify the conditions for obtaining experience as a proposed responsible representative of an employment agency and other conditions for granting a permit for an employment agency,
- abolish the institute of insurance against employment agency bankruptcy, as it has proved to be very costly and ineffective,
- modify the grounds for withdrawal of the authorisation for employment mediation, in order to clarify and simplify the legislation; and
- respond to the findings of the decision-making process.

The Amendment is proposed to take effect on 1 January 2024.

Amendment to the Employment Act

The amendment concerns compulsory insurance of employment agencies in case of bankruptcy. At present, employment must take out insurance against their own insolvency, which gives temporarily assigned employees the right to benefits in the event that the employment agency is unable to pay wages. However, the payment is linked to the declaration of bankruptcy of the employment agency, whereas in the case of Act No 118/2000 Coll. on the protection of employees in the event of the insolvency of the employer, it is sufficient for insolvency proceedings to be initiated or even a moratorium to be declared before the insolvency proceedings themselves are initiated. This means that an employee in a basic employment relationship does not have to wait for a decision on insolvency. On the other hand, an employee in an agency relationship will usually only receive the insurance benefit after a longer period of time - when the insolvency decision is made. The amendment thus responds to **the inequality by abolishing the institution of compulsory insurance.**

Also, employment agencies should also disclose in their annual reports the identification of the user to whom the employment agency employees were temporarily assigned and the number of employees by CZ-ISCO classification groups assigned to the user so identified. This information should be published by the Directorate General of the Labour Office.

The amendment is to introduce a limitation for the purposes of assessing the experience of the responsible representative, so that only professional experience gained in the last 10 years prior to the application should now be relevant.

Furthermore, it should be examined whether:

- the applicant, his/her statutory representative or responsible representative has not been **fined for an offence in the last 3 years which would constitute grounds for withdrawal of the employment agency permit**,
- the applicant is **debt-free,** i.e. a person who will not be allowed to have registered arrears, with the exception of arrears for which it is permitted to postpone their payment or to spread their payment into instalments: 1. with the authorities of the Financial Administration of the Czech Republic, 2. with the authorities of the Customs Administration of the Czech Republic, 3. for insurance premiums and penalties for general health insurance, 4. for insurance premiums and penalties for social security and contributions to state employment policy

Legal update

May 2023

Weinhold Legal

The employment agency will have to comply with the debt-free condition when submitting the application and throughout the duration of the employment agency permit, which should be checked every six months. Existing employment agencies will have to meet and prove the debt-free condition within 3 months from the date of entry into force of the Amendment. If they fail to comply with this obligation, the employment agency permit will expire at the end of this period.

Another condition is the posting of an increased security deposit of CZK 1 million (the current security deposit of CZK 500 000 is reportedly insufficient in practice to cover potential costs, including mandatory social security and health insurance contributions). The employment agencies that have been issued an employment agency permit pursuant to Section 14(1)(b) of the Employment Act, as amended before the effective date of the Amendment**, will be obliged to pay a deposit of up to CZK 1,000,000 within 3 months of the effective date of the Amendment, otherwise their employment agency permit will expire**.

Furthermore, the amendment aims to specify the cases of violation of the law leading to **mandatory revocation of the employment agency permit** and to add a new reason consisting in repeated failure to provide cooperation to the labour inspection authorities. The point is that currently the grounds for mandatory withdrawal of a permit (without the discretion of the administrative authority) are set out in such a way that any, even minor, breach of the Employment Act may justify the withdrawal of such a permit.

Change to the Labour Code

It is also proposed to amend the current regulation which provides that an employee in an agency relationship may work for the same user for a maximum of 12 calendar months unless he/she requests an extension. In practice, this situation has led to a constant extension of the duration by the employee without the creation of a classic basic employment relationship. The amendment therefore sets **the maximum duration of agency employment for a single user at 3 years over 5 consecutive years.**

The amendment will **render null and void** any arrangement whereby an employment contract or an employment agreement between an employment agency and an employee, which includes an arrangement for the temporary assignment of the employee to a user, is negotiated for a **fixed term defined by the duration of the temporary assignment of the employee to the user.**

Case law

Fulfillment of the information obligation pursuant to § 55 ZOK in spol. s r.o.

(judgment of the Supreme Court of the Czech Republic of 10 January 2023, Case No. 27 Cdo 1206/2022)

The plaintiff filed a claim with the Regional Court in Ostrava seeking payment of CZK 356,374.00 with accessories from its former managing director. That sum represented interest on a loan of CZK 4 596 350,- which the defendant had granted to the applicant and had wrongfully withdrawn from her account.

The Court of First Instance concluded that, on the basis of the above facts, the defendant, as the applicant's managing director, had not breached her duty of care. The Court of Appeal ruled similarly in the case.

In response to the court's previous action, the applicant brought an appeal. In the appeal, the applicant formulated as an unresolved issue what are the consequences of a breach of the information obligation under section 55 of the Companies Act ("**CCA**") and what are the required qualities of information. This question relates to the duty of loyalty pursuant to section 51(1) of the German Companies Act.

In its appeal, the applicant further pointed out that the content of the duty to disclose is not merely a statement that a member of the company's bodies intends to conclude a contract, but that the information must be properly stated, including the conditions under which the contract is to be concluded.

The Court of Appeal then held that it considered that the Court of Appeal had not sufficiently addressed whether all the members of the company concerned had been informed in advance of the intention to conclude the contract and of all the terms of the contract and whether they had agreed to them or at least taken note of that intention, thereby waiving their right to negotiate the matter.

Therefore, the defendant did not inform the general meeting of the applicant and thus did not fulfil the purpose of section 55(1) of the CCC and was therefore not entitled to represent the applicant in concluding contracts, if the applicant did not approve the contract without undue delay, the company is not bound by it. At the same time, the defendant breached the duty of the necessary loyalty, which is part of the duty of care of a sound economic operator, by failing to comply with the duty of information laid down in section 55(1) of the CPL.

Liability for damages of an assistant in the position of employee and executive

(judgment of the Supreme Court of the Czech Republic of 14 February 2023, Case No. 25 Cdo 1319/2022)

It follows from the facts that the defendant, as the driver of the motor vehicle, reacted late to the slowing down of the vehicle in front of him (driven by the plaintiff) and also failed to keep a safe distance between the vehicles, whereupon he rear-ended the plaintiff's vehicle and should therefore be liable for the damage caused by the collision between the two vehicles.

However, the defendant defended himself by invoking the provisions of Civil Code §2914 ('the CC'), which establishes the liability of a person who, in the course of his business, uses an agent, employee or other helper for damage caused by him as if he had caused it himself, since the operator of the motor vehicle in question was the company F.H., of which the defendant was an employee and also a managing director and partner.

Section 2914 of the Civil Code therefore deals in particular with the relationship between persons in an employment relationship, where the employee who causes the injury finds himself in a given situation, as a rule, as a result of working for the employer. The Supreme Court has already ruled on this situation in the past and stated that if an employee causes damage to a third party in connection with a work activity performed for the employer and is bound by the employer's instructions, then only the employer is obliged to compensate for this damage (Supreme Court judgment of 26 October 2021, Case No. 25

Legal update

May 2023

Weinhold Legal

Cdo 1029/2021, published in No. 51/2022 of the Collection of Judicial Decisions and Opinions).

However, in this particular case, the defendant who caused the collision of the vehicles was not only an employee but also the managing director and shareholder of the company in question. In those circumstances, the defendant's employment with that company cannot be regarded as dependent work carried out in the context of a relationship of superiority of the employer and subordination of the employee. The defendant was in control of the company in which he was also employed and he himself directed his work activities, including the decision to undertake the business trip on which the collision occurred. The Court of Appeal therefore concluded that the defendant was not an auxiliary within the meaning of section 2914(1) of the Civil Code and that he was therefore liable, together with the principal, i.e. the limited liability company, to compensate the victim.

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