

# Legal Alert

## from the field of labour law

2 January 2024

## Weinhold Legal

Below we summarise the changes employers should be preparing for from the start of 2024. If you have any questions about the following, please do not hesitate to contact us.

### Legislative changes

#### Amendment to the Labour Code – liability in the construction industry

Act No. 408/2023 Coll., amending Act No. 435/2004 Coll., on employment, as amended, and other related acts (hereinafter referred to as the "**Amendment**"), introduces into Act No. 262/2006 Coll., the Labour Code, as amended (hereinafter referred to as the "**Labour Code**"), the liability of construction entrepreneurs for wage claims of employees of subcontractors, with effect from **1 January 2024**. On the other hand, the liability for wage claims in the case of transnational posting of employees, as provided for in Article 319(3) of the Labour Code, is abolished without compensation until 31 December 2023.

- ▶ **Construction entrepreneurs are liable for wage claims of the subcontractor's employees up to the amount of the minimum wage** (the law does not specify whether for each month or just in total).
- ▶ Liability is imposed on the supplier when its **direct subcontractor** has failed to satisfy the wage claims of its employees and on the so-called "**general contractor**".
- ▶ Employees must submit their claims within a maximum of **3 months after the wages are due (forfeiture period)** and they have to provide the guarantor with information which is relevant for making statutory deductions and deductions from wages...
- ▶ In this context, the employer – subcontractor has to **inform its employees about the liability, the identities of the guarantors and their changes, deadlines and procedures for exercising the right against the guarantor, prior to commencing work on the contract.**
- ▶ The guarantor is obliged to **satisfy the wage claims** of the subcontractor's employees **within 10 days of receiving the demand.**
- ▶ **Liability does not arise** if the subcontractor has provided the supplier with a certificate of "**no debt to the state**" at the commencement of the contractual performance **and at the same time the subcontractor has not been legally fined more than CZK 100,000 for breach of obligations arising from the labour legislation in the 12 months preceding the commencement of the contractual performance.**

Employees who have already started contractual work before 1 January 2024 must be **informed within 1 month of the date of this Act coming into force of the existence of the liability** and how they can exercise their rights. The guarantee does not apply to wage claims arising before 1 January 2024.

#### Amendment to the Labour Code - working hours in healthcare

Act No. 413/2023 Coll. amending Act No. 262/2006 Coll., the Labour Code, as amended, and Act No. 281/2023 Coll. and certain other acts.

This amendment allows for the collective agreement or internal rules of an employer without a trade union to stipulate that the length of an employee's working time in continuous operation associated with the provision of health services by an inpatient care provider or an ambulance service provider may be up to **24 hours during 26 consecutive hours**. However, application to a specific employee will require an **individual agreement with the employee**.

Further agreed work in healthcare is cancelled.

#### Amendment to the Employment Act Change of the definition of illegal work

According to Section 5(e) of the Employment Act, illegal work is to be understood as work that has the characteristics of dependent work as defined in the Labour Code, regardless of its duration (case law previously assumed the necessity of continuous performance of illegal work) and which is performed by:

- ▶ a natural person outside an employment relationship or other form permitted by law;
- ▶ a foreigner in violation of an issued employment permit/employee card, intra-corporate transferee card or blue card or without such permit/card if required under this Act (except for the performance of other work under Section 41(1)(c) of the Labour Code);
- ▶ a foreigner for a third person without a valid residence permit in the Czech Republic, if required.

The liability for the payment of fines imposed for illegal work of foreigners without a residence permit in the Czech Republic (Section 141a of the Employment Act) is extended.

#### Changes to agency employment

The amendment has also significantly affected the regulation of agency employment:

- ▶ The permitting agenda is transferred from the General Directorate of the Labour Office to the Ministry of Labour and Social Security.
- ▶ **The annual information obligation** of employment agencies is **extended** (Section 59 of the Employment Act).
- ▶ Recognition of professional practice for responsible representatives is tightened – Professional practice is now understood as the **continuous personal performance of activities in the field of employment mediation or in the field for which employment mediation is to be authorised by a natural person for at least 20 hours per week**. Professional



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experience must have been acquired by the natural person within the **10 years immediately preceding the application** for the employment mediation permit.

- ▶ At the time of application and throughout the duration of the permit, the employment agency must not be indebted to public authorities (tax, social security and health insurance). **The absence of debt will be submitted every 6 months**, unless the employment agency releases the competent authorities from confidentiality in this respect. Existing employment agencies must **prove that they are debt-free by 31 March 2024**, otherwise their authorisation to provide employment will expire by that date.
- ▶ The **deposit** provided by an employment agency temporarily assigning its employees to users is increased from CZK 500,000 to CZK 1,000,000. **Existing** employment agencies must increase their deposits **by 31 March 2024** or their employment agency permits will expire by statute.
- ▶ The grounds for withdrawal of the employment mediation permit are also subject to change.

### Further changes

- ▶ Reporting of posted persons during transnational provision of services by their posting employers to the State Labour Inspection Office (Section 101a of the Employment Act).

### Amendment to the Labour Code – agency employment

The user is now obliged to deliver his/her unilateral declaration of termination of the temporary assignment to the agency worker as well, whereby the temporary assignment will end no earlier than the 14th day following the delivery of this declaration.

### Increase in the minimum wage and certain levels of the guaranteed wage

Government Decree **No. 396/2023 Coll.**, amending Government Decree No. 567/2006 Coll., on the minimum wage, on the lowest levels of guaranteed wages, on the definition of a difficult working environment and on the amount of a wage supplement for work in a difficult working environment, as amended, increased the minimum wage rate and the lowest level of guaranteed wages for certain categories of **work**.

The base rate of the minimum wage and the lowest level of the guaranteed wage for the first categories of work will increase from CZK 17,300 to **CZK 18,900** from the New Year, i.e. by CZK 1,600. The minimum hourly wage thus increased from CZK 103.80 to CZK 112.50. Furthermore, the lowest level of the guaranteed wage for categories 1, 2, 3 and 8 (from CZK 34,600 to CZK 37,800) has been increased.

The change in the base rate of the minimum wage affects the amount of the supplement for work in a difficult working environment as well

as, for example, the amount of insurance premiums paid by persons without taxable income or the minimum health insurance premiums for employees.

### Domestic meal and travel allowances for 2024

The Decree of the Ministry of Finance published in the Collection of Laws under **No. 398/2023 Coll.** determines for the year 2024:

- ▶ rates of base compensation per 1 km of travel for:
  - single-track vehicles and tricycles CZK 1.50,
  - passenger road motor vehicles CZK 5.60;
- ▶ private sector meal allowances of at least:
  - CZK 140 if the business trip lasts anywhere from 5 to 12 hours,
  - CZK 212 if the business trip lasts longer than 12 hours, but no longer than 18 hours,
  - CZK 333 if the business trip lasts longer than 18 hours;
- ▶ public sector meal allowance of:
  - CZK 140 to CZK 166 if the business trip lasts anywhere from 5 to 12 hours,
  - CZK 212 to CZK 256 if the business trip lasts more than 12 hours but no longer than 18 hours,
  - CZK 333 to CZK 398 if the business trip lasts longer than 18 hours;
- ▶ the average price of fuel:
  - CZK 38.20 per 1 litre of 95 octane petrol,
  - CZK 42.60 per 1 litre of 98 octane petrol,
  - CZK 38.70 per 1 litre of diesel fuel,
  - CZK 7.70 per 1 kilowatt-hour of electricity.

### Fixed amount of teleworking reimbursement for 2024

Decree No. 397/2023 Coll. establishes, with effect from **1 January 2024** in connection with Section 190a(4)(a) of the Labour Code, the amount of the fixed amount of reimbursement of costs for teleworking at the rate of **CZK 4.50 for each initiated hour of work**. The hours of teleworking in a calendar month shall be summed up for the purposes of the fixed amount and the fixed amount shall be payable no later than in the calendar month following the month in which the entitlement arose.

### Court judgment

#### Entitlement to vacation leave even during the period of the dispute over the invalidity of the employment contract

The judgment of the Court of Justice of the EU ("CJEU") of October 12, 2023 in the case C-57/22, MK vs. Ředitelství silnic a dálnic ČR, was issued on the basis of a preliminary question referred by the Supreme Court of the Czech Republic as to whether Article 7(1) of

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Directive 2003/88 must be „interpreted as precluding national case-law by virtue of which a worker who was unlawfully dismissed then reinstated in his or her employment, in accordance with national law, following the annulment of the dismissal by a decision of a court, is not entitled to paid annual leave for the period between the date of the dismissal and that of the reinstatement in his or her employment on the ground that, during that period, that worker did not actually carry out work for the employer, also in cases when ... the worker who has been unlawfully dismissed and who has without undue delay informed his or her employer in writing that he or she insists on being employed, is entitled to wage or salary compensation in the amount of average earnings from the date when he or she informed the employer that he or she insists on the continuation of his or her employment until such time as the employer allows him or her to carry on in his or her work or his or her employment relationship is validly terminated?“

The CJEU held that „**Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as precluding national case-law by virtue of which a worker who was unlawfully dismissed and then reinstated in his or her employment, in accordance with national law, following the annulment of his or her dismissal by a decision of a court, is not entitled to paid annual leave for the period between the date of the dismissal and the date of his or her reinstatement in his or her employment on the ground that, during that period, that worker did not actually carry out work for the employer as the latter did not assign him or her work and as he or she is already entitled, under national law, to wage compensation during that period.**“

The above means that an employee who insisted on continued employment and whose termination was invalid will also be entitled to holiday leave for the period during which he was not assigned work and was entitled to wage compensation.

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For further information, please contact the partner/manager whom you are usually in contact with.



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