# Legal Alert

## in the field of labour law

## 29 February 2024

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Below, we provide a legal alert covering labour law. If you have any questions regarding our alert below, please do not hesitate to contact us.

## Legislative changes and information from the authorities

### Amendment to the Labor Code

The ministry of Labour and Social Affairs submitted to the government a further amendment to Act No. 262/2006 Coll., the Labour Code, as amended (hereinafter referred to as the "**Labour code** "), primarily intended to address:

- The valorization mechanism of the minimum wage within the tranposition of the European Directive on Adequate Minimum Wages in the European Union,
- MultiletTrade union collective bargaining procedures,
- The abolition of written vacation schedules.

Detailed information can be found here.

### Information of the State Office of Labour Inspection on issuing certificates pursuant to Section 324a(8) of the Labour Code

In the January Legal Alert on Labour law, we informed you about **Act No. 408/2023 Coll.,** amending Act No. 435/2004 Coll., on Employment, as amended, and another related acts ("**Amendment**"), which, among other things, introduced into the Labour code the liability of construction contractors for the wage claims of subcontractors employees.

The Amendment also introduced exceptions where this **liability does not arise**. This occurs when a subcontractor provides the contractor, at the commencement of the contractual perfomance:

- Confirmation of "**no debt to the state** ", and at the same time
- Confirmation that **no penalty exceeding CZK 100 000 for the violation of obligations** arising from labour laws was imposed on the subcontractor by the authorities **in the 12 months preceding the commencement of the contractual perfomance for the contractor**.

According to the information published by the State Office of Labour inspection it **is possible to request confirmation** that the applicant has not been fined more than CZK 100, 000 for violation of labour law obligations m, within the specified period (alternatively):

- 12 months preceding the date of submitting the request
- 12 months preceding the date specially provided by the applicant (date, month, year)

The confirmation is issued only by the State Labour Inspection Office headquartered in Opava.

## Judicial decisions

### Possible indirect discrimination against the employee and creation of an obstacle to work on the part of the employer

The judgment of the Supreme Court of the Czech Republic (hereinafter "**SCCR**") of the 19 February 2024, Case No. 21 Cdo 1577/2022, dealt with a situation in which an employee sought an apology for alleged discrimination that the employer may have committed at the time when it was ordered by an extraordinary measure to wear respirator by failing to take appropriate measures for employees with disabilities, and whether in such a case the employee may be entitled to wage compensation on account of obstacles to work on the part of the employer.

#### Factual situation

The employee claimed wage replacement for time the employee did not attend work because he refused to wear a respirator indoors for medical reasons, in accordance with the Department of Health's emergency measure, without meeting the exceptions set forth in that emergency measure. The employee had a medical report stating that, due to a long-standing noninfectious respiratory disease (asthma), the doctor did not recommend covering the airways with any substance. Subsequently, the employee provided a medical certificate stating that he refused to wear a respirator due to psychological difficulties.

The employer required the mandatory wearing of a balaclava or for the employee not to come to work. Thus, at the relevant time, the employee did not attend work and did not produce a decision on temporary incapacity for work, nor did he request leave or unpaid leave. The employer treated the employee's absence from the workplace as leave without pay.

The employee worked in a spacious office with other employees, in which there was no obligation to wear a mask, as the required spacing was observed. He was in contact with other persons or had to leave the office for only 20 % of his workload. The employee was only required to wear respiratory protection on his mouth and nose in corridors and in common areas with other employees.

#### Indirect discrimination for failure to take action

With regard to the claim for alleged discriminatory conduct, the Court of Appeal stated, inter alia, with reference to Section 3(2) of Act No. 198/2009 Coll, on Equal Treatment and Legal Means of Protection against Discrimination and on Amendments to Certain Acts ("**Anti-Discrimination Act**"), that "**discrimination against an employee** *on the grounds of disability consisting in the employer's 'failure' to take reasonable measures ... is where it is (or must be) obvious to the employer* (**even without the employee's request for the adoption of a reasonable measure**), *taking into* **account all**

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**the circumstances of the case, that the employee has a disability** *(a limitation resulting primarily from physical or mental impairments) which, in interaction with various obstacles,* **prevents (may prevent) the full and effective participation of the employee** *concerned in professional life on an equal basis with other employees,* **but the employer nevertheless fails to take any of the reasonable measures to enable the disabled person to access employment, to perform a work activity** *or to advance functionally or otherwise in employment which would* **be reasonable in the circumstances and which do not impose an undue burden on the employer** ... "

In the present case**, the employer had information about a long-term chronic medical limitation** which restricted the employee's ability to perform his work under the new working conditions (the wearing of balaclavas), which the employer had introduced by emergency measure of the Ministry of Health. **Nevertheless, the employer insisted on** *'the employee's performance of work under the conditions laid down by the Ministry of Health, without adopting (attempting to find) a solution (measure) which would enable the applicant to perform her work (under her contract of employment) even with her medical limitation'*.

**According to the Supreme Court of the Czech Republic, it will be possible to determine whether indirect discrimination on the part of the employer occurred only after it has been established whether "the employee's medical limitations actually prevented her from performing work in accordance with the employer's new instruction** with regard to the specific conditions at the workplace, ... and with regard to her health condition (in particular, the necessary period of time for which the applicant would be forced to use the respiratory cover in view of the content of the defendant's instruction, **and whether this period of time could worsen her health condition** ..."

And therefore, alternatively, whether the employer was under a duty to take reasonable steps. Wage compensation on the grounds of employer interference.

### Wage compensation due to obstacles on the employer's side

The Supreme Administrative Court of the Czech Republic summarized the long-held opinion that an obstacle to work on the part of the employer "*within the meaning of Section 208 of the Labour Code"* occurs when the **employer fails or is unable to fulfil the obligation arising from the employment relationship to assign work to the employee** *in accordance with the employment contract* ..., provided that the employee is able and ready to perform this work; it is an obstacle to work regardless of whether the inability to assign work was caused by an objective fact or an accident that happened to the employer or whether the employer himself caused it by his own conduct."

The Court of Appeal concluded that

- **The employer's instruction to wear respirators in common areas was issued in accordance** with the emergency measure and was therefore **lawful**, but the **employee was entitled to refuse to comply with it if he would 'put his life or health in imminent and serious danger',**
- **The employee's refusal** to be instructed to perform work with his respiratory tract covered **is justified if he reasonably believed that the performance of work under such conditions posed an immediate and serious threat to his life or health**, in which case it would not constitute an obstacle to work on the part of the employer under the provisions of Section 208 of the Labour Code, since if the employee, due to his health condition, would not be able to perform the agreed work according to the employment contract and under the conditions set by the employer without endangering his life and health, the prerequisite of an obstacle to work on the part of the employer consisting in the fact that the employee is able and ready to perform the work according to the employment contract which the employer does not assign (cannot assign) to him would not be fulfilled,
- It would be different if the employer had not taken reasonable measures under Section 3(2) of the Anti – Discrimination Act to enable the employee to perform the agreed work even if he or she had a medical limitation. In such a case, the employer's failure to do so would create an obstacle which would prevent the employee from performing the agreed work under the newly established conditions which respect his disability, which would constitute an obstacle to work on the part of the employer within the meaning of Section 208 of the Labour Code. During that obstacle, the employee would be entitled to wage compensation.

### Failure to communicate with the employer as a failure to meet the requirements for proper performance of work and grounds for dismissal

The judgment of the Supreme Court of the Czech Republic of 21 December 2023, Case No. 21 Cdo 3366/2022, dealt with the definition of termination grounds and the difference between the termination grounds listed in Section 52(f) and (g) of the Labour Code and the interpretation of the content of the notice.

The Supreme Court of the Czech Republic found no inconsistency in the Court of Appeal's procedure in assessing the validity of the employee's termination for his "inability to get along with people". The Court of Appeal, on the basis of factual findings where "*it was discussed with the applicant* ... that he ... *lacks the ability and capacity to handle the position he*

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*holds because of poor cooperation and communication, lack of cooperation and willingness on his part, and abuse of his position, and at the same time ways to improve the applicant's attitude and teamwork were discussed with him*", inferred a failure to meet the employer's requirements of such intensity as to warrant termination by the employer under section 52(1)(a) of the Act. (f) of the Labour Code "*for failure to meet the requirements for the proper performance of the job of 'central purchasing officer' consisting of 'communication and cooperation skills'*".

In this case, the job description of the now former employee was to "*coordinate suppliers with feedback to internal customer, select and approve suppliers, contact suppliers regarding deadlines and costs, be responsible for communication with internal customer and external customers as appropriate, support internal department on sustainability project and support suppliers and purchasing, centrally manage supplier process and documentation needs and control standards, ... Day to day communication with internal customer, liaising with the corporate cost department, contractual management of project documentation, ... responding to support requests in a responsive, timely and coordinated manner*".

Regarding the requirements set by the employer for the performance of the agreed work, the Supreme Court of the Czech Republic reiterated that "**the requirements should not be insignificant in their nature and at the same time the absence of the quality of the required facts for a longer period of time must be given**. Although the requirements for the proper performance of the agreed work are set by the employer itself, this is not an unlimited authorisation; the requirements set by the employer must be justified in terms of the performance of the work and justified by the nature of the work activities (objectively speaking)."



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

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