

Legal Update

August 2017

Weinhold Legal

Content

Legislative amendments

Civil Procedure Code amendment

Employment Act amendment

Czech Trade Inspection Act amendment

Recent case law

Employer obligation to offer alternative employment under § 73a (2) of the Labour Code

Additional shortening of a probation period by agreement

The information in this newsletter is correct to the best of our knowledge and belief at the time of going to press. Specific advice should be sought, however, before investment and other decisions are made.

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Legislative amendments

Civil Procedure Code amendment

On 12 July 2017, the Chamber of Deputies of Czech Parliament approved a Civil Procedure Code amendment in its third reading (Parliamentary Bulletin No. 987).

The amendment introduces several changes designed to ease the burden on the courts of final appeal, e.g. by limiting grounds for appellate review.

The amendment is also meant to expand the areas in which the regional court acts as the court of first instance (this should involve demanding or important issues such as the liability of members of corporate bodies for a breach of due diligence or disputes pertaining to disposals of assets comprising an enterprise).

The appeals court should now be authorized to rule that a contested resolution on the imposition of a preliminary injunction is unlawful even though it was cancelled or otherwise rendered obsolete. Consequently, the entity in question should have the option of seeking indemnification of damage caused by the State (which has not been possible to date).

The amendment should also enable a court to impose an obligation to pay default interest while it decides on a maintenance ruling.

No less importantly, there should be an increase in court fees for appellate reviews against decisions of the court of first appeal (for monetary performance to CZK 100,000, a fee of CZK 7,000; for every unit of real estate, a fee of CZK 14,000; for every enterprise, a fee of CZK 28,000 and in other cases, a fee of CZK 14,000).

Employment Act amendment

On 14 July 2017, the Chamber of Deputies of Czech Parliament approved, in its third reading, a bill amending the Employment Act (Parliamentary Bulletin No. 1072) whose primary objective is to bring greater transparency to the employment of persons with disabilities.

As proposed, the system of defining individual protected jobs created by an employer should be replaced by the recognition of an employer as what is known as an "employer on the protected labour market" based on an agreement with the Czech Labour Office for a 3-year period (and for an indefinite period in the case of re-agreement).

As regards the performance of the obligation to employ a certain proportion of persons with physical disabilities by means of what is known as substitution, by which a company may substitute its performance by the purchase of goods from a compliant organisation, it is proposed that the current figure of 36 times the average wage in the national economy for rendered performance be reduced to 28 times.

The amended law should also severely penalize retraining applicants who violate the conditions under which they were granted accreditation. It will not be possible to obtain accreditation within a period of 3 years following the revocation of accreditation for non-compliance with an accredited training program or failure to ensure an adequate level of education.

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Czech Trade Inspection Act amendment

On 1 August 2017, the President signed an amendment of the Czech Trade Inspection Act (the "CTIA") into law. The amendment should primarily act as a response to new forms of sales and strengthen the CTIA authority.

The amendment authorizes CTIA inspectors, where there is warranted suspicion of gross breach of an obligation stipulated by special legislation (typically involving the sale of harmful products endangering the lives of consumers or the sale of counterfeit products at markets), to arrange access to the premises of an entrepreneur (this includes vehicles, but excludes dwellings). An inspector will be authorized to act under an assumed identity and use means of cover (including a false ID) if an inspection requires it and cannot be carried out in any other way.

A CTIA inspector will also be authorized under the amended law to request information about the identity of persons who commit illegal acts online, e.g. who participate in the running of fraudulent e-shops, from any person who has access to such information.

Recent case law

Employer obligation to offer alternative employment under § 73a (2) of the Labour Code

(Czech Supreme Court Decision No. 21 Cdo 5567/2016 of 11 April 2017)

A company (respondent) notified its employee (petitioner) that it was serving him notice pursuant to the Labour Code due to redundancy, as the petitioner had been recalled from his supervisory position (as investment department director) and the respondent had no other available work suited to the employee's state of health and qualifications.

The petitioner sought an invalidity ruling against the notice, alleging the respondent did not have work suited to his state of health and qualifications (the positions of "transportation management section director" and "executive director of business development for the eGovernment and ICT division").

The first instance court ruled the respondent had failed to meet its obligation to offer alternative employment, since it had two suitable positions available. In the court's view, the qualification requirement was met because both positions called for a university degree, though neither the respondent's internal regulations nor any other document stipulated a level of expertise or previous experience for either position, and the petitioner had a university degree of a general nature (Master's program in pedagogy - administrative operations) and a concentration in leadership and managerial positions and experience in lower management. The appellate court upheld the decision of the court of first instance.

According to the Supreme Court, account must be taken not only of knowledge acquired by the employee at university, but

also the skills and professional experience gained in prior professional practice and which, together with theoretical knowledge acquired at university, comprises his qualifications, and the degree of its usefulness for the given work.

Therefore, in addition to focusing on the employee's attained level of education, the nature of his professional practice after completing his education is also important as measured against the focus of his education and professional practice.

As the lower instance courts failed to address the foregoing, the Supreme Court vacated their rulings and returned the case for further proceedings.

Additional shortening of a probation period by agreement

(Czech Supreme Court Decision No. 21 Cdo 1755/2016 of 3 April 2017)

The petitioners were employed by the respondent starting on 4 October 2011. A three-month probation period was agreed in each employment contract, which was later changed to 1 month in an addendum dated 1 November 2011. According to the petitioners, the probation period ended on 4 November 2011. In a letter dated 16 December 2011, the respondent terminated their employment (according to him) during the probation period.

According to the respondent, the Labour Code does not provide for the shortening of the probation period on account of the principle of protecting employee rights, as this could curtail such rights.

In the view of the Supreme Court, the law only excludes the probation period being extended, but not it being shortened; therefore, there is nothing preventing parties to an employment relationship from contractually shortening the original probation period. The general principle of the equality of parties to an employment agreement applies since the parties, by shortening the probation period, lose the option of simply terminating the employment. On the other hand, however, they gain certainty and relative permanence of employment.

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We hope you will find *Legal Update* to be a useful source of information. We are always interested in your opinion about our newsletter and any comments you may have regarding its content, format and frequency.

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