Legal update

May 2020

Weinhold Legal

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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 investment decisions are made.

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News in legislation

Amendment to the Labor Code

In the Chamber of Deputies, the expected extensive amendment to Act No. 262/2006 Coll., The Labour Code ("**the Amendment**") is awaiting discussion in its 3rd reading. The amendment brings a number of changes, the most significant of which will be described below.

The first important change is the change of the concept of determining the right to leave of absence and its length. The amendment is to abolish the type of leave determined by days worked. Thus, in terms of types, the leave will be divided only into leave per calendar year or its proportional part or additional leave.

A fundamental conceptual change will bring the abolition of the condition for entitlement to leave consisting in the obligation to work sixty days and the length to be derived from the number of calendar months. Instead the new concept is based on the employee's weekly working hours worked, from which his/her right to leave is derived and the length of this leave is also measured (while respecting the amount of leave determined in weeks of leave per calendar year). By amending this part of the Labor Code, the submitter responded to long-term criticism from employees and the professional public and tried to find a fairer approach to taking leave.

A reduction of leave is possible only in the event of an unexcused missed shift by the employee. It will be possible to shorten the leave only by the number of unexcused missed hours (so far it has been possible to shorten the leave by 1-3 days for one unexcused shift), the unexcused parts of individual shifts can be counted up.

Furthermore, the possibility of transferring part of the leave to which the right arose in the relevant calendar year and which exceeds 4 weeks to the following year, based on a written request from the employee, is to be introduced.

The most novel reform is the introduction of the so-called shared position. It is a fundamental breakthrough in the rule that employee shifts are determined by the employer. Thanks to the institute of a shared position, the employer can conclude agreements with two or more employees for the same type of work with shorter working hours, on the basis of which employees on the shared position will schedule their working hours by mutual agreement so that each of them fulfilled the average weekly working hours in the four-week balancing period at the latest.

The amendment will also significantly affect the concept of the transfer of rights and obligations from employment relationships, which is now very broad, and will bring the regulation closer to EU legislation, which will make it possible to build more on European case law. The transfer of rights and obligations from employment relationships will take place only if the transfer of activities cumulatively fulfills the newly established characteristics, which can be described as the definition of an economic unit.

Other changes are related to the delivery of documents. The obligation to deliver to employees personally will be given only at the employer´s workplace. Furthermore, the Amendment also stipulates a certain degree of employee responsibility in the area of written notification of changes of his/her current delivery address. It is also proposed to lay down special conditions for delivery to a data box, although only with the written consent of the employee.

Last but not least, the Amendment implements EP and Council Directive (EU) 2018/957, which deepens the rights of posted workers, especially in the case of long-term posting (12 and 18 months, respectively) and cross-border posting of agency workers.

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New case law

Obligations of employers

(Judgment of the Supreme Court of the Czech Republic of October 22, 2019, 21 Cdo 252/2019-243.)

In this case, the Supreme Court dealt with the definition of the institute of temporary assignment, its differences compared to agency employment and with the conclusions arising from that. The dispute arose when a Polish citizen (" plaintiff") sought compensation for an accident at work, followed by almost two years of incapacity for work, at a Polish company which, through its Czech branch, hired miners.

The most problematic aspect of the case appeared to be the fact that there was no mine at the agreed place of work, so in fact the employees of the Polish company worked almost exclusively in the mines of OKD a.s. (through the temporary assignment institute) and also that, in contrast to the employees of OKD a.s. they received a significantly lower wage (which also became the core of this case, as the amount of compensation for an accident at work was also calculated from the wage).

The lower courts first ruled in favour of the plaintiff when upholding the compensation calculated on the basis of the average salary of OKD a.s. employees in a comparable position. They assumed that, even if the employee had only been temporarily assigned to work for another company, the wage conditions could not be worse than they were or would have been for a comparable employee of the employer to whom the applicant was temporarily assigned.

An extraordinary appeal was filed by the defendant against the judgment of the Regional Court in Ostrava, which upheld the first-instance judgment. The Supreme Court granted the extraordinary appeal, set aside the judgments of the lower courts and returned the case to the district court. Its argument was based on the fact that lower courts had not dealt with the question of for whom the plaintiff actually performed the work, who assigned the work tasks to plaintiff, who organized, managed and controlled his work, who created favourable working conditions etc.

In conclusion, the Supreme Court described the key differences between temporary assignment and agency employment. Only after a thorough assessment and distinction of these two institutes in each specific case is it possible to find out between which parties there is an employment or other relationship and what follows from that relationship for each party.

Concurrence of the immediate termination of employment and a notice of termination of employment for the same act

(Judgment of the Supreme Court of the Czech Republic of December 11, 2019, 21 Cdo 3541/2019-197.)

In a judgment from the end of 2019, the Supreme Court ruled on the question of the possibility of concurrence of the immediate termination of employment and a notice of termination of employment for the same act – a breach of employment obligations. The core of the dispute lay in an action for annulment of two legal acts of the employer against the employee. The employee was said to have breached legislative duties in a particularly serious manner by instructing his subordinates to register fictitious orders in the employers internal systems in order to win an internal company competition on the basis of the highest number of services ordered from others branches of the employer.

The employer responded to this by delivering to the employee at the same time an immediate termination of employment and a notice of termination of employment. The employee invoked the invalidity of these legal actions of the employer, referring to the fact that they are mutually conditioned and also to the fact that each has different consequences for him and therefore he does not know which of them will apply to him.

The lower courts dismissed the action on the ground that the immediate termination of the employment relationship was valid and that the question of the validity of the notice of termination of employment was not relevant. The Supreme Court also agreed with this, stating that in the given circumstances the employment relationship of the plaintiff terminated on the basis of a valid immediate termination and so that the validity of the notice of termination of employment could no longer be examined. The Supreme Court did not even conclude the uncertainty of the employer's legal conduct, because the employer's will, although manifested in a non-standard way, was obvious and unambiguous, i.e. to terminate the employment relationship.

The Supreme Court concluded that the validity of the employer's legal action aimed at terminating the employment relationship by immediate termination remained unquestioned, as the plaintiff did not state any reason for invalidity other than uncertainty in the extraordinary appeal. The validity of the dismissal, according to which the employment relationship should be terminated later, could be examined only if the applicant had an urgent legal interest in such a determination, which was not the case.

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