Legal Alert

July 2020

Weinhold Legal

Amendment to the Labour Code

On June 26, 2020 Act No. 285/2020 Coll., amending Act No. 262/2006 Coll., the Labour Code, as amended, and some other related acts, was published.

This important amendment to the Labour Code affects a number of areas of Labour law, responding to the requirements that come out of practice, to the Czech and CJEU case law and it implements European Union regulations .

Most of new rules will be put into practice from July 30, 2020, while provisions relating to leave and some others will come into force on January 1, 2021.

Leave – comes into force on January 1, 2021

The most anticipated change, affecting all employers are the new conditions for calculating the right to leave. While the basic amount of leave remains the same (at least 4 weeks in the private sector), days worked will no longer be relevant for calculating leave entitlement, but hours or weekly working leave. Newly, only leave for a calendar year or for its proportional part and additional leave will be provided. Leave per days worked is repealed.

A fundamental conceptual change brings about the abolition of the condition for entitlement to leave consisting of the obligation to work sixty days and of the condition to derive the length of leave from the number of whole calendar months of employment. Instead, the new concept is based on the employee´s weekly working hours worked (regardless of when the employment begins or ends), from which his/her right to leave is derived and against which the leave taken is measured (while respecting the amount of leave stipulated in the weeks of leave per calendar year). The Ministry of Labour and Social Affairs thus responded to long-term criticism from employees and the professional public and sought to find a fairer approach to taking leave.

Employees´ right to leave already arises if they work four times their weekly working hours. If an employee works 52 times his/her weekly working hours, he/she is entitled, for a calendar year, to leave within the scope of his/her weekly working hours x the amount of leave allowed in weeks, to which the employee is entitled in the relevant year. For the purposes of the right to leave, overtime work is not taken into account and, on the contrary, a number of other facts are considered as a work performance (e.g. leave - see Section 348 (1) of Labour Code), while some obstacles at work are considered just up to the amount of 20 times of weekly working time if other conditions are met.

E.g. With a holiday period of 5 weeks and a 40-hour weekly working time, the leave for a calendar year is in the range of 40 x 5 = 200 hours, for an employee with a weekly working time of 25 hours it is 25 x 5 = 125 hours.

For each weekly working time worked in the relevant calendar year, the proportional part of the leave is 1/52 of the employee´s weekly working time multiplied by the amount of leave to which the employee is entitled in the given calendar year.

E.g. The employee terminated his/her employment during the probationary period. His/Her weekly working hours ("WWH") was 40 hours and the holiday period was four weeks. If the employee has worked 152 hours, then he worked less than 4 x WWH (152 : 40 = 3.8) and his/her right to leave did not arise, as the condition of Section 213 (3) of the Labour Code as amended from January 1, 2021 was not met (work performance in the range of at least 4 x WWH). However, if the employee has worked 160 hours, he/she fulfilled the condition of 4 x WWH and the leave belongs to him/her in the range (40 x 4): 52 x 4 = 12,3, that is 13 hours of leave as leave for the relevant calendar year is rounded up to whole hours.

If the scope of an employee´s weekly working hours in a calendar year changes, he or she is entitled to leave for that year in a proportion which corresponds to the length of individual periods with different lengths of weekly working hours. The calculation

can be done in two ways, (i) you can calculate the right to leave for each period or (ii) use the average weekly working hours.

E.g. The employee has worked 40 hours a week from 1.1. to 30.9. and has worked 1560 hours. From 1.10. to 31.12. he/she had agreed to have shorter working hours of 25 hours per week and has worked a total of 330 hours. The area of leave is 5 weeks. There are two ways to calculate.

Method A:

- *Holidays for the period from 1.1. to 30.9. He/She worked 1560 hours.*
  - *1560: 40 = 39 times the WWH*
  - *(40 x 5): 52 x 39 =* ***150 hrs***
- *Holidays for the period from 1.10. to 31.12. He/She worked 330 hours.*
  - *330: 25 = 13.2 times the WWH*
  - *(25 x 5): 52 x 13 = 31.25 hrs*
- *The right to leave for a calendar year arises in the range of 150 + 31.25, after rounding it is 182 hours.*

Method B:

- *Finding out the average length of weekly working hours x the leave measurement.*
- *[(40x39) + (25 x 13)] : 52 x 5 weeks = 181.25 (after rounding 182 hours)*

The right to leave for the period from 1.1. to 31.12. is 182 hours.

The reduction of leave is adjusted only in the event of an employee´s unexcused missed shift; unexcused shorter parts of individual shifts can be added up. It will be possible to reduce the leave only by the number of unexcused missed hours (so far it was possible to reduce the leave by 1-3 days for one unexcused shift).

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

Leave to which the right arose before December 31, 2020 will be transferred and taken per days, even after January 1, 2021.

Delivery of documents – comes into force on July 30, 2020

Practical problems with the delivery of documents to employees and surprising court decisions have resulted in at least a partial change in the regulation in this area, which should speed up the delivery and make it more efficient. Thus, after an unsuccessful attempt to hand over a document into the employee´s own hands directly at the workplace, the employer can proceed to other methods of delivery (it is therefore not necessary to "chase" the employee outside of the workplace, as indicated by court decisions) which are added as equal ways, namely (i) personally wherever the employer reaches the employee, (ii) through the postal service provider, (iii) through the electronic communications network or service, or (iv) into the employee´s data box. The employer thus no longer has an obligation to attempt to deliver documents to the employee´s apartment or to another place where he/she might be reached.

In the case of delivery by post, the employer will deliver the documents to the address communicated to him/her by the employee in writing, not to the last known address; the storage time for sending by postchanges and the delivery person´s obligation to make a written record of the instruction is repealed.

It will be possible to deliver to the employee´s data box with the employee´s prior written consent. The general rules will apply, i.e. the documents will be delivered when the employee logs in to the data box. Alternatively, the fiction of delivery will apply if the employee does not log in to the data box within 10 days from the date of delivery of the document to the data box.

If the employer refuses to accept the document delivered by the employee, does not provide co-operation or makes the delivery impossible otherwise at the place of its registered office or business (e.g. no one is available at the registered office who

would accept the document, etc.), then the document will be considered delivered.

With the consent of the employer, the documents can also be delivered to his/her data box, here it will apply that the document is delivered to the employer on the day of delivery of the documents to the data box.

Shared workplace – comes into force on January 1, 2021

Another novelty is the introduction of the so-called shared workplace. The amendment introduces rules for cases where one job position will be shared by more employees with shorter working hours and the same type of work. These employees will schedule their working hours by mutual agreement so that each of them, on the basis of a common schedule of working hours, will complete the average weekly working time no later than in the four-week compensation period. Employers will inform the employer at least one week in advance about the written schedule of working hours and obligatorily notify the employer at least two days in advance of any changes, unless they agree on another time of notification.

Within the framework of the job sharing agreement it is possible to arrange the representation of an absent employee in the same shared workplace, or representation can be requested, only if the employee has given his/her consent in a specific case.

Transfer of labour relations rights and obligations – comes into force on July 30, 2020

The current regulation of the transfer of rights and obligations in the case of the transfer of the employer´s activities or the employer´s tasks in the Labour Code did not correspond to the requirements of EU law. The transfer of rights and obligations from employment relationships will continue to take place in cases where this is stipulated by a special law, such as in the case of transformations of legal entities, purchase or lease of a plant or public auction of a plant. However, cases of transfer of activities not regulated by special laws will result in the transfer of rights and obligations from employment relationships only if the transfer of activities cumulatively fulfills the newly established features that can be described as the definition of an economic unit.

The right of employees to give a notice in connection with the transfer is also newly regulated. If they are informed properly and on time, they can only give notice within 15 days after receiving the information, so employers should be sure which employees will transfer. However, this will not apply if employers do not fulfill the information obligation pursuant to Section 339 of the Labour Code properly and in time.

Stricter rules for the posting of workers from Member States – comes into force on July 30, 2020

Another change, reflecting the requirements of EP and Council Directive (EU) 2018/957, is the extension of regulation of working conditions according to Section 319 of the Labour Code, which are to apply to workers posted in the Czech Republic, if they are more favourable, by:

- all mandatory wage and salary supplements;
- accommodation conditions; and
- reimbursement of travel expenses.

All rights of employees under the Labour Code will apply to posted employees in the so-called long-term posting (over 12 months and when announcing the reasons for extending the employment contract to up to 18 months), if they are more favorable for the posted employee, with the exception of provisions concerning creation, change and termination of employment. The time when the worker is posted in the same place is also included.

An information obligation of the user in the so-called double posting (Section 309a of the Labour Code) towards the em-

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ployment agency is introduced.

Damage compensation – comes into force on January 1, 2021

The possibility is introduced for close relatives (spouse, partner, child, parents, family persons in similar relationship who suffer the employee´s harm as their own harm) to claim a one-time compensation for non-pecuniary damage in case of particularly serious injury to the employee; the amount is determined by the court.

There is also an increase in the one-time compensation for bereaved persons , from CZK 240,000 to at least 20 times the average wage in the national economy. The circle of persons who are entitled to this amount is extended, and so except for the spouse and partner, it is received by all children (not just the dependent), parents (even if they do not live in the same household), or persons in a family or similar relationship, if this relationship is proved.

Other changes introduced by the amendment

The employer´s obligation to issue a certificate of employment for work agreements that did not establish participation in health insurance is abolished.

In response to the case law, clarification has taken place and the possibility to arrange a revocation in the private sphere is only possible in cases of exhaustively listed senior positions. For all revocable employees, the performance of work on the senior position ends on the day of delivery of the revocation or resignation of the job, unless there is a later effectiveness specified in the revocation/resignation.

The list of situations where flexible working hours arrangements do not apply (e.g. even during leave) is extended.

The Civil Code will not be applicable to the running of time under the Labour Code, so that the time limit for invalidity of termination of employment will no longer be extended if the employee was unable to exercise his/her rights or the parties negotiated out of court. The time limits shall be extended by 10 days if, after the obstacle has ceased, less than five days remain until the expiry of the time limit.

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