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THE LATEST CHANGES IN THE LABOR LAW 2011, WHICH YOU SHOULD NOT MISS

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1. Changes in the labor law

With effect from 1 January, 2011, the existing Labour Code has been amended by two significant changes:

a) the duty to conclude agreements to undertake a job (up to 150 hours) (in Czech "dohoda o provedení práce") in written form, and

b) the employer's duty to pay a wage refund to an employee during the first 21 (instead of 14) calendar days of the employee's temporary incapacity from working or quarantine.

It is the common practice of employers in the Czech Republic to use temporary workers for short-term jobs up to 150 hours per calendar year based on an agreement to undertake a job. This is very convenient and administratively a low-maintenance labour relationship as the agreement to undertake a job could have been made orally, unlike a contract for work which must be in writing. In order to establish a valid employment relationship upon an agreement to undertake a job, it was enough when an employee came to his/her workplace on an agreed day and the employer assigned him/her a work task. There was no need of any written contract such as the case of an employment contract or contract for work. Since 1 January, 2011, however, the Labour Code stipulates the mandatory written form also for an agreement to perform a job under the sanction of invalidity. All other terms and conditions regulating the agreement to perform a job remain unchanged. So far, the aforesaid increase to 300 hours per calendar year discussed by politicians has not been implemented.

Within the scope of austerity measures of the current government, the state extended the duty of employers to provide a wage refund from the existing 14 days to 21 days. The change is temporary and limited only for the years 2011 to 2013. This is associated with several other changes which are closely related. The employer is obliged to monitor whether or not the employee on temporary sick leave observes the sick leave regime in the first 21 calendar days, i.e. the duty to stay at home and observe the time and scope of permitted outings. As of 1 January, 2011, through to 31 December, 2013, the employer must also not terminate the employment of a person who is on the probation in the course of the first 21 calendar days of sick leave. What remains unchanged is the extension of the probation period by the length of the temporary sick leave. Even the employee who works on the so-called contract for work (not the

contract to perform job!) is eligible to receive a wage refund in the 21 calendar days instead of the original 14 calendar days.

2. Changes to the Employment Act

At first glance, the new changes to the Employment Act in effect from 1 January do not apply particularly to employers but to the newly unemployed. However, the consequences of the changes from January are far-reaching, as is obvious already in the very first weeks of the effect thereof.

Deferred provision of unemployment benefit: if the employee is eligible for severance payment, the unemployment benefit is granted only upon expiry of the period covered by the severance payment (usually a 3-month period) This period is determined on the basis of the respective multiple of average monthly wage used for the determination of the amount of severance payment of the departing employee.

Non-existing option to earn extra income while being on social welfare: the applicants for employment now lose the option to earn extra income while receiving social welfare benefit. Before 31 December 2010, the applicants for employment could have earned extra income without any limit; under the new regulation, they lose the title to social welfare if they perform any of the activities listed under Section 25 ss. 3 of the Employment Act. In such case, they can only be registered as the applicants for employment.

Change in the amount of unemployment benefit: whereas the percentage rate of the unemployment benefit has not changed, as of 1 January, 2011, job agencies granting unemployment benefits take into account how and for what reason the last employment of an applicant was terminated. If the applicant terminated his/her employment contract by himself/herself or by agreement without having a serious reason, he/she is then eligible to a reduced unemployment benefit equal to 45% of his/her average net wage or assessment base.

In practice, this regulation proves to be very problematic for employers: if the employer wanted to part with an unsuitable employee but the grounds of terminating his/her employment were ambiguous or the risk was inadequate in terms of time and costs, the best solution was to offer him/her notice of termination by agreement under Section 49 of the Labour Code. However, owing to the changes in the Employment Act, this option becomes hardly applicable as the employees who are aware of the amendment will no longer be motivated to make such a move. Employers will be forced to take more risk when terminating employment contracts and will prefer a unilateral notice of termination. This will lead to an increase in litigation as many employers may have problems with the correct application (or substantiation) of the grounds of employment termination. Just to remind you: There is a risk that in case of invalid notice of termination, the employer will be forced to compensate the employee for lost wages for the entire period of litigation. Such litigation may also take years!

3. Monitoring of Employees'

In January 2011, the District Court in Jindrichuv Hradec passed a breakthrough ruling (still subject to appeal) upholding the

force of the notice of termination given to an employee who would spent most of his working hours (up to 65%) by performing non-job related activities, such as surfing the internet, checking his personal e-mails, etc. The notice of termination was substantiated by an overview obtained from the monitoring software, which did not in any way trespass the employee's privacy (i.e. it did not record the contents of private e-mails or browsed internet web sites). The employee concerned appealed the notice. We will continue to monitor the case.

The employees' monitoring represents a new topic on the Czech labour market with no fully established practice. The employer may monitor the usage of computers during working hours under very restricted conditions, i.e. he must not trespass the employees' privacy and obtain their personal data, e.g. inspect the contents of sent/received messages or copy passwords. It is recommended to notify the employees of the intention to monitor computers by an internal guideline stipulating the basic principles of safe internet usage. If you are interested to learn more about the current issue of employees' monitoring, please do not hesitate to contact us. We will be happy to provide you with more details concerning the options of employees' monitoring performed in compliance with law.

4. Changes in travel allowances

As of 1 January, 2011, the rates in travel allowances have changed again. It applies not only to the boarding fee but also to the average fuel prices and refund rate per kilometer. The new rates are stipulated in Decree no. 377/2010 Coll. issued by the Ministry of Labour and Social Affairs on 13 December, 2010.

a) Refund for 1 km of fare

The rates for refunds were the only ones to slightly reduce. The rate of the basic refund of 1 km of fare under Section 157 ss. 4 of the Labour Code is the following:

i) the minimum of CZK 1.00 for single-axle vehicles and tricycles,
ii) the minimum of CZK 3.70 for passenger vehicles.

b) Average fuel price

The average price of 1 liter of fuel under Section 158, ss. 3, third sentence, of the Labour Code is:

i) CZK 31.40 for 91 octane vehicle fuel,
ii) CZK 31.60 for 95 octane vehicle fuel,
iii) CZK 33.40 for 98 octane vehicle fuel,
iv) CZK 30.80 for diesel fuel.

Although the prices of fuel have experienced remarkable increase, the new changes of refund rates are anticipated to take place from 2012.

c) Boarding fee

ca) Provision of *boarding fee in the private sector*

The employer shall grant to the employee a boarding fee for each calendar day of business trip under Section 163 ss. 1 of the Labor Code in the minimum amount of:

i) CZK 63.00 for a 5 to 12-hour business trip,
ii) CZK 95.00 for a 12 to 18-hour business trip,

iii) CZK 149.00 for a business trip exceeding 18 hours.

Another novelty is Decree no. 350/2010 Coll. issued by the Ministry of Finance on 26 November, 2010, providing for the rates of boarding fees applicable to business trips abroad. The basic rate is distinguished based on the individual destinations. However, given the extent of itemization for determination of the correct basic rate, we recommend referring to the Decree directly.

5. Changes in the Foreigners' Residence Act

Many employers solve difficult situations in the Czech job market by importing workers from abroad. As of January 2011, the changes to law providing for the conditions of a foreigners' stay in the Czech Republic is to aggravate the work force import from non-EU member states (both qualified and unqualified) to a great degree.

The main change consists of a new system of issuing long-term and permanent residence permits. Foreigners' residence permits will newly contain biometric data collected during the application procedure; also, the applicant will have to undergo the procedure in person and will not be allowed a proxy. The amending act also does not deal with the language barrier between the foreigner and the officer; therefore, we recommend that the applicants bring in a person fluent in both languages concerned.

The amending bill also changes the organization of residence permits issuance by moving the entire foreign police administration over to the Ministry of Interior, which also changes the venue of filing applications. The sudden transfer of the administration caused only slight problems in the first weeks of the year.

Another complication for applicants from non-EU countries is also the duty to file an application for long-term visa only with the Embassy of the foreigner's home state or the Embassy which issued his/her passport or the Embassy of the state in which the applicant has the long-term residence permit (unless the Czech Ministry of Interior stipulates otherwise). Unlike before, unless the application for a visa is complete on the date of filing thereof, the office will reject the application without the option to amend the application. The applicant will thus have to go through the entire process of filing the application again.

The amending bill also stipulates an increase of the health insurance limit from the existing EUR 30,000.00 to EUR 60,000.00, whereas the insurance now must include overall health care. Moreover, according to the new wording of Section 107 of the Foreigners' Residence Act, an employer is obliged to pay health insurance for a laid-off employee for the period of his/her departure or for the entire planned employment period until he/she finds a new job.

The new year also introduces the institute of the so-called "Blue Card", which is to mean to ease obtaining a residence permit by highly qualified individuals who wish to work in the Czech Republic. Only the future will show whether or not the Blue Card concept survives or will be used only seldom just like the so-called "Green Card".

6. Expected reform in the field of Labour law

We continue to influence the current legislative process leading to an extensive reform of Labour Law which the government promised to perform and we will keep you updated. However, the reform cannot be expected earlier than in autumn 2011, and therefore, we shall take it into account rather for 2012.

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