

The second issue of HR News in 2010 begins with the **amendment to the Government Decree on Health and Safety at Work**, which brings very practical changes for employers. With a blocked Chamber of Deputies and upcoming elections, only delegated legislation is being approved. Thus the amendments and laws discussed in previous issues (except for the increase in maternity benefits) will not be approved before the election and they will have to be presented to the Chamber of Deputies again in its' next term. For this reason we look at an interesting **Supreme Court decision concerning the transfer of rights and obligations**; this issue still causes Czech employers many problems. We then focus mainly on changes at the European level, where the **European Visa Code** will soon become effective. We also look into **proposals of the European Parliament and European Council on extending maternity and parental leave and introducing paternity leave**.

On page 2 you can find an invitation to our May **Randls HR Exchange Meeting**, titled "How to perform organisational changes correctly? Case law, practice, most frequent mistakes". We look forward to our next meeting with you!

## CHANGES IN HEALTH AND SAFETY AT WORK

Ministry of Health prepared a broad amendment to the Government Decree stipulating the conditions of health protection at work. The Government approved the Decree and it was published in the Collection of Laws as No. **68/2010 Coll.** on 19 March 2010. The amendment becomes effective as of **1 May 2010**.

The aim of the amendment is to simplify the procedures for evaluating risks in working conditions. The amendment further specifies certain parameters and methods of evaluating the risks for selected risk factors and also introduces some new provisions, such as **cleaning and painting of workplaces**.

### **Government Decree amending Government Decree No. 361/2007 Coll., stipulating conditions of health protection at work**

The Decree reduces the administrative and economic burden of employers, so that the employer will be able to measure the heat in the workplace for the purpose of providing protective drinks; currently this can only be performed by authorized and accredited offices. The type of protective drinks will be simplified so that it should be primarily natural mineral water with a medium mineral content or other drinks containing the same amount of minerals. The Decree unifies and clarifies the conditions for workers' entitlement to protective drinks. Further the provisions governing the temperature in the workplace will be clarified.

Other changes brought by this Decree apply to total physical strain, local muscular strain, work position and the manual handling of loads. Hygienic limits for these factors will no longer be bound to the (problematic) characteristic shift, but to the average shift.

The biggest news is the introduction of provisions regulating the frequency of cleaning light sources and the frequency of cleaning and painting the workplace. The Decree will expressly state that *cleaning the facilities, sanitary facilities and auxiliary equipment shall be carried out daily*. It does not set out the extent of such daily cleaning, so it is possible that this measure will again increase employer costs, especially if cleaning is provided by an external company.

Under the Decree, workplaces and auxiliary and sanitary facilities with no technological source of dust, chemicals or other pollution sources must be painted at least once every 8 years. Employers must ensure painting every 6 years, or every 2 years, at workplaces with pollution sources. This is extended by 2 years if the workplace has no more than 5 employees.

## SUPREME COURT

*The Supreme Court issued a decision on 14 January 2010 concerning the transfer of rights and obligations and entitlement to severance pay when the transferor terminates employment of the employee and the employee concludes a new contract with the transferee.*

### **Case No. 21 Cdo 3945/2008**

The Employer (transferor) concluded with another company an agreement on transfer of the wage processing agenda to a new employer (transferee). Within this agreement the parties agreed that the employer would terminate its employment relationships with the employees on the date of the transfer, and transferee would conclude new agreements with them.

One such employee, whose employment contract was terminated and then concluded a new contract with the transferee, filed a suit against the employer, claiming the right to receive severance pay because the actual reason for the agreement on termination was organizational changes. Lower instance courts decided in favour of her and awarded her the severance pay.

The Supreme Court cancelled the previous decisions and ruled that the employee has no entitlement to severance pay. The reasoning was that rights and obligations from employment relationships transfer, among other reasons, if there is a legal act (in this case the agreement on transfer of the wage processing agenda) that under the law results in a transfer of some or all of an employer's tasks to another employer. Then the transfer happens *by law, without consent of the employee, without terminating the employment and concluding a new employment contract*. However, if those legal acts are done redundantly, they cannot rule out the legal consequences of the transfer.

Since severance pay is intended to help employees overcome the complicated social situation of job loss, the entitlement to it does not arise in cases of transfers of rights and obligations, where the employee does not actually lose his job. According to the Supreme Court, this applies even in cases where one employment is terminated and another entered into.

### **Changes in maternity and attendance benefits**

- Senate returned on 24 March to the Chamber of Deputies, Deputies will vote again after 13 April
- increase of maternity benefits to 2009 level + state will pay difference from 1/2010 until effective date
- payment of attendance allowance again from the 1<sup>st</sup> day, not from the 4<sup>th</sup>

## EUROPEAN VISA CODE

*On 5 April 2010 a key legal instrument regulating the visa policy of the Schengen area countries will enter into force - the Visa Code.*

### **Regulation of the European Parliament and the Council No. 810/2009/EC of 13 July 2009 establishing a Community Code on Visas**

The Visa Code will be binding for all Schengen countries. It will regulate only short term visas in the Schengen area not exceeding 90 days within 180 days.

The most significant changes for Schengen visa applicants will be:

- ▲ the introduction of a general right to appeal (including giving grounds) against visa denial;
- ▲ a broader category of applicants who pay no or reduced visa fees;
- ▲ obligatory issuance of a multiple-entry visa under the fulfilment of certain conditions;
- ▲ more extensive consular coverage in third countries by mutual substitution of EU countries;
- ▲ decisions on visa applications within 15 days; in complicated cases up to 30 or 60 days.

The Visa Code also contains a regulation on collecting biometrical data in the visa process. In addition to a photograph visa applicants will also be obliged to provide their fingerprints.

Regarding practical changes, as of 5 April 2010 the EU member states will no longer issue type B transit visas and domestic long-term visas valid concurrently as short-term D+C type visas. Instead of these visas, unified type C visas or long-term type D visas will be issued. Type B transit visas and D+C visas already issued to foreigners will remain valid for the time stated in these visas.

## MATERNITY AND PARENTAL LEAVE IN THE EU

*Within Europe employees' minimum entitlements to maternity, paternity and parental leave and other provisions to better harmonise professional and family life are a current topic.*

### **Proposal on extending maternity leave and introducing paternity leave**

The Women's Rights Committee of the European Parliament approved on 23 February 2010 a proposal to extend paid maternity leave to 20 weeks with full financial compensation. Mothers shall be obliged to take at least six weeks of maternity leave after birth.

### **No refund of insurance for the 1<sup>st</sup> half of 2007**

- Regional Court ruled in favour of a company which did not pay social security contributions since the law provided no definition of the assessment base
- Supreme Administrative Court reversed decision
- CSSZ will now refuse requests to return insurance

The proposal should also introduce the right to two weeks of fully paid paternity leave for fathers.

The currently valid Directive No. 92/85/EEC regulates a minimum entitlement to 14 weeks' maternity leave with a financial compensation not lower than the compensation provided to the employee in cases of sickness in the same member state. Paternity leave is not yet regulated at the European level.

The European Parliament shall vote on the proposed legislation in May 2010. Afterwards, it must be reviewed by the member states and eventually again by the European Parliament. The process could take some 18 months.

### **Extending parental leave**

The European Council adopted a new Parental Leave Directive on 8 March 2010, superseding the former Directive No. 96/34/EC, which stipulated 3 months of guaranteed minimum parental leave for each parent. Member states will now have 2 years to transpose the new Directive into national law.

The new directive increases the minimum parental leave to 4 months for each parent (i.e. 8 in total). At least one month cannot be transferred to the other parent

or it lapses; this is to encourage fathers to take leave.

## OTHER REGULATIONS UNDER DISCUSSION

*The following regulations will not be adopted during this term of the Chamber of Deputies:*

### **Wage compensation in the first three days of sickness**

Parliamentary documents 788 and 945

### **Abolition of maximum assessment bases**

Parliamentary documents 793 and 798

### **Amendment to the Bank Holiday Act**

Parliamentary document 707

### **Proposed new Act on Family Support**

Parliamentary document 863

### **Proposed new Civil Code and Commercial Code**

Parliamentary documents 835 and 836

### **Conceptual amendment to the Labour Code**

### **Amendment to the Act on Employment**

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