



From the whole team of Randl Partners, we wish you a **merry Christmas and best wishes for 2011**. We look forward to seeing you, not only at our HR Exchange Meetings.

If you need our assistance during the holidays, our office will be open and at your service, except on 31 December 2010, but in case of urgent matters, you can reach us at employment@randls.com.

NEW AMENDMENT TO THE LABOUR CODE

The Ministry of Labour and Social Affairs prepared a basic concept of the substantive amendment to the Labour Code. This is in response to both the 2008 Constitutional Court judgement which cancelled some provisions of the Labour Code as well as the program of the new government to bring greater autonomy of the parties to the employment relationship.

The proposed alternatives with their advantages and disadvantages have been summarized in a Final Report assessing the impact of the regulation in accordance with the General Principles, which the Ministry submitted for comments to labour law experts. The amendment, subdivided into sections, will be drawn up after this so-called RIA Process. It should then pass through the comment procedure and other stages of the legislative process.

The proposed conceptual changes should be concerned with the following areas:

- ▲ relationship with the Civil Code;
- ▲ basic principles of employment relationships;
- ▲ reintroduction of the principle of absolute invalidity of employment-law acts;
- ▲ introduction of a new category, the so-called "key employees";
- ▲ fixed term;
- ▲ transfer to a different work;
- ▲ reintroduction of the possibility of temporary assignment of the employee to another employer without the necessity of obtaining an authorization of the employment agency;
- ▲ graduation of severance pay according to the number of years worked for the employer;
- ▲ length of the notice period;
- ▲ possible simplification of the notice reasons;
- ▲ transfer of rights and obligations;

The first collective book by RANDLS

On 6 December 2010 the Randl Partners Employment Law team published its first collective book – **50 Questions and Answers from Employment Law Advice**. The publication was created as a collection of answers to the questions of employees and employers sent to the internet employment law advice of Novinky.cz. The answers have been updated according to the legal status of January 1, 2011.

The book may be [ordered](#) from the publishers Wolters Kluwer CR, a.s. and is also available in regular bookstores.

- ▲ agreement to perform work;
- ▲ working hours;
- ▲ leave;
- ▲ some issues relating to employees' representatives.

At this time it is therefore not yet possible to predict which changes will actually be approved and what will appear in the final proposed amendment. In our view, we hope that the Ministry will consider the reintroduction of court discretionary power, modification of problematic institute of delivery and other contentious issues resulting from the current Labour Code.

BUDGET MEASURES OF THE MINISTRY

We have previously informed you about this planned amendment in past issues of HR News. At the present time, the legislative procedure has been completed and the Act was promulgated in the Collection of Laws on 8 December 2010.

Act No. 347/2010 Coll. amending certain acts in connection with budget measures in the competence of the Ministry of Labour and Social Affairs

The Act will take effect, as was planned, on 1 January 2010. Nevertheless, some unclear or problematic areas remain in the wording, in particular concerning the planned changes in the Act on Employment.

Delay of unemployment benefit payments

An explanatory note to the Act stated that the delay in payment of unemployment benefits will not relate to severance pay increased in a collective agreement or internal regulation. However, it remains unclear whether this delay will also not apply in the event of increased severance pay agreed in an employment contract or in an agreement on the termination of employment relationship. Hopefully, it is only an error in the explanatory note and this delay will not apply to any increased severance pay.

According to the actual wording of the Act, unemployment benefit payments should be delayed on the basis of the *entitlement* to severance pay (not on the basis of its payment). This concept is

very problematic, since a situation may arise when an employee is entitled to severance pay, but the employer doesn't pay it, for example due to insolvency. In this case, the employee, without fault, may find him/herself without financial resources during the time of delay.

Providing of the reduced unemployment benefits

In the case of termination of an employment relationship by the employee or by an agreement without so-called serious reasons, the unemployment benefit will be paid to the employee at the reduced rate.

The system should operate in such a way that the employer confirms these serious reasons in the form for the Employment Office. The problem is that by this confirmation the employer is responsible for the accuracy of the statement, although often he/she is not entitled by law to find out such facts from employees. This relates for example if serious reasons lie in religious and ethical reasons, type of spouse's work etc.

If the employer confirms these serious reasons without verification and consequently the Employment Office finds that there are no such reasons, it cannot be excluded that the employer is required to pay part of the unemployment benefit to the Employment Office, which has been wrongly paid.

To avoid such risk, the employer should specify that he/she only received knowledge of the serious reasons of termination stated by the employee and that he/she has not verified them – excluding health reasons and custody of a child younger than 4 years old, which the employer can verify. This statement of the employer shall probably not be enough for the Employment Office to pay the full rate of unemployment benefit and the employee will have to prove these serious reasons directly to the Employment Office, which can verify these reasons.

Objections of the Ombudsman

The above changes in the Act on Employment were commented by Ombudsman of the Czech Republic in the regular report on his activities, expressing doubts whether they are in violation of constitutionally guaranteed rights or not. In the Ombudsman's opinion the delays in unemployment benefits payments are contrary to the function of severance pay as a form of satisfaction for trouble connected with employment termination.

In case of assessment of serious reasons for termination, the Ombudsman sees the possibility for the arbitrariness of Employment Offices. The payment of lower unemployment benefits could constitute possible discrimination of those employees who decide to terminate the employment themselves (e.g. on the grounds of workplace bullying) as opposed to employees whose employment relationship was terminated due to a breach of their duties.

Risk of cancellation of the Act

The Act was discussed in the state of legislative emergency, although it is not sure whether there were reasons presumed for it by law. Due to this fact and in connection with the above-mentioned problematic aspects, the Act has already been contested in the Constitutional Court and may be cancelled.

Thus, instead of the planned advantages, this Act may bring even more problems to employers.

TRAVEL EXPENSES 2011

Decree No. 377/2010 Coll., changing for the purposes of travel expenses the rate of basic compensation for use of motor vehicles and catering fee and specifying the average price of fuel

In accordance with Sec. 189(1) of the Labour Code, the Ministry of Labour and Social Affairs issued the Decree specifying the rate of basic compensation for use of motor vehicles, average price of fuel and the amount of catering fee for the year 2011. The Decree will also cancel the valid Decree No. 462/2009 Coll.

The rate of basic compensation for the use of motor vehicles would be reduced in the case of one-track vehicles from 1.10 CZK to 1 CZK per kilometre and in the case of passenger cars from 3.90 CZK to 3.70 CZK per kilometre. The average price of all types of fuel would be on the contrary significantly increased.

The minimum rates of catering fee provided to employees in the business sphere by inland business trip, under the Sec. 163(1) of the Labour Code, should be slightly increased.

Decree No. 350/2010 Coll., laying out rates of foreign catering fee for the year 2011

The Ministry of Finance, on the grounds of authorization in Sec. 189(4) of the Labour Code, prepared a Decree laying out

rates of the foreign catering fee in foreign currency for each country in the year 2011 and repealed the Decree No. 459/2009 Coll.

Compared with 2010, nothing has changed in the most visited countries. For example, in Germany and Austria, the daily subsistence rate is henceforth 45 EUR, in Poland and Hungary 35 EUR and in Slovakia 30 EUR.

TRAVEL EXPENSES REVIEW 2011

Basic compensation passenger car – 3.70 CZK/km

Average price of 95 octane fuel – 31.60 CZK/l

Average price of diesel – 30,80 CZK/l

Catering fee for calendar day on business trip:

- 63 CZK, if trip takes from 5 to 12 hours,
- 95 CZK, for more than 12, maximum 18 hours,
- 149 CZK, for more than 18 hours.

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