

November 2010

We are proud to announce that Randl Partners have been chosen as **Law firm of the year 2010 in the employment law category!** This is the second time we have won this award and we would not have ever achieved it without you, our clients. We would like to take this opportunity to thank you for all of your support. It has been a pleasure to cooperate with you and we hope this feeling is mutual!

This issue of HR News includes developments in planned **budget savings in the competence of the Ministry of Labour and Social Affairs** and we briefly present a proposal of the **Act on the Employment Office of the Czech Republic**. As well, **two new important court decisions** are analyzed on the second page.

**Plan of HR Meetings for the next year** is on page 2 – we are looking forward to meeting you there regularly.

## BUDGET MEASURES / EMPLOYMENT OFFICES

**On 2 November 2010 the Chamber of Deputies and on 12 November 2010 the Senate approved budget cuts** in the competence of the Ministry of Labour and Social Affairs. There were no important proposed amendments within the proceedings; only the cancellation of social allowance for parents who care for long-term sick and disabled children was postponed. Other information on this matter described in the last HR News remains valid.

In the current session of the Chamber of Deputies, a proposed act introducing a **central Employment Office of the Czech Republic** was also debated. This would be a major innovation in the organization of employment offices.

### **Proposed Act amending certain acts in connection with budget measures in the competence of the Ministry of Labour and Social Affairs (MoLSA)**

The adoption of the draft bill in the Chamber of Deputies has been difficult, and was debated in a summary procedure during the “legislative emergency regime”. The coalition of governmental parties realized that otherwise it would probably have been impossible to pass the act by the end of the year, particularly as regards the outcome of Senate elections where the opposition gained a majority. This would mean an infringement of the approved state budget for 2011.

However, using the system of emergency legislation in this situation seems to be problematic. The opposition has already stated that they will contest approval of this proposal at the Constitutional Court, calling on it to repeal the Act, since the conditions which allow the declaration of legislative emergency were not met. The opposition sees this government step as an abuse of this measure. There is quite a significant risk that the Constitutional Court will agree to the motion and thus the whole approval process will have to be repeated.

### **IMPORTANT**

Based on the above is not possible to say for sure how long the Act will be in effect and the budget cuts in MoLSA competence (especially the changes in the Labour Code or the Act on Employment) will show in practice.

### **Proposed Act on the Employment Office of the Czech Republic**

The aim of this amendment is to change the structure and legal status of Employment Offices in order to strengthen their control function and to achieve savings in service costs and greater flexibility of the Employment Offices in the labour market, which are the main goals of MoLSA Minister Drabek.

Currently, each of the Employment Offices' 77 departments has a legal personality as a separate organizational unit of the state. This amendment should merge all existing Employment Offices and create only one organizational state unit – Employment Office of the Czech Republic, subordinated to MoLSA. Internally, the Office would consist of regional branches and, as necessary, would create contact sites (gradually 226 contact sites should be created in the so-called 3<sup>rd</sup> grade municipalities). Further, the general management of the Office would be located in MoLSA buildings. The administrative procedure in the first instance would be executed by the Employment Office of the Czech Republic (in limited cases through regional offices), while appeals would be decided by MoLSA.

Hopefully this reorganization of state administration will be positive for HR managers and the declared benefits will be realized!

### **MATERNITY AND PATERNITY LEAVE IN THE EU**

*The European Parliament decided on the extension of the minimum length of maternity leave to **20 weeks at 100% of monthly salary or the average salary before leaving on maternity, as well as on the introduction of a new two-week paternity leave.***

### **Proposed amendment of the Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding**

After first reading the decision of members of the European Parliament must be referred to the European Council. The Council can approve it, or supplement motions to amend, which is more probable. We will inform you about any progress on this amendment.

The purpose of the amendment is to establish basic EU-wide rules. If member states apply their own more favourable provisions for employees, their further use will not be affected by the new regulation.

The adjustment of maternity leave to 20 weeks would not influence Czech legislation (the Czech Labour Code stipulates 28 weeks of maternity leave), but the changes would mainly impact the monetary contribution, which under Czech law is currently well below 100% of average earnings. At this time of budget-cutting we can hardly imagine that the state would pay employees 100% of their average earnings for 20 (or even 28) weeks of maternity leave. In our opinion this financial burden will be laid on employers again, at least in part.

The introduction of paid paternity leave is an innovation ensuring that fathers get 2 weeks of paternity leave at 100% of salary during maternity leave. This innovation is also new to Czech law.

## NEW COURT DECISIONS

*The Czech Supreme Court resolved on 12 October 2010 the issue of when an employee may immediately terminate his/her employment relationship for non-payment of salary.*

*The Constitutional Court addressed in its decision of 16 September 2010 the interpretation of the term "continuous operation" in relation to work breaks.*

### Supreme Court Decision No. 21 Cdo 2242/2009

In July 2007 the employee was paid CZK 3,000 in lower salary than what he was entitled to. Regardless of this fact, the employee gave notice to the employer in August and only after that (3.9.2007) he immediately terminated his employment because of the non-payment of part of his salary. The employer brought an action seeking cancellation of the immediate termination for an exercise of right contrary to good morals, because it failed to pay the salary by mistake and after the delivery of immediate termination it forthwith paid off the debt.

The Supreme Court's conclusions in this case were:

- ▲ the employee cannot be justly expected to further work for the employer, which failed to pay his/her salary even in the additional 15-day period,
- ▲ for the employee to act contrary to good morals, it must be proven that his/her action was directly intended to cause harm to the employer,
- ▲ it is not important whether the unpaid amount represents the entire salary or only a part of it,
- ▲ the fact that the employer subsequently paid the salary has no influence on the possibility of immediate termination.

However, for the employee to use the right to immediately terminate the employment relationship, the statutory period (15 days after maturity day) must be fulfilled. The Supreme Court pointed out that the maturity day must be distinguished from the pay day.

*The maturity day* is defined in the Labour Code and occurs the latest day in the calendar month following the month in which the employee's right to salary arose. *The pay day* is determined by the employer, at the latest on the maturity day.

In this case the employee could have immediately terminated the employment relationship 15 days after the maturity day (31.8.2007), not after the pay day (16.8.2007), which means not before 16.9.2007.

### SUMMARY

The employee may immediately terminate his/her employment with entitlement to 3 months of severance pay for non-payment of even a small part of salary or salary compensation, if the employer doesn't pay it within 15 days after the maturity day.

The salary is mature either on the last day of the following calendar month or on an earlier day the parties agreed on or the employer set. The pay day is not relevant for immediate termination of employment.

### Constitutional Court Resolution No. III. ÚS 2387/10

The employee worked in an operation which was designated as "uninterrupted" by the employer in an internal regulation – the operation required work to be performed 24 hours a day, seven days a week. Within 12-hour shifts 2 work breaks for food and rest were stipulated.

The employee alleged that because of the continuous operation and because he was on the night shifts alone, he could not draw work breaks. According to his opinion, he was only given a *reasonable amount of time for food and rest*, which is included in the working hours as opposed to *work breaks*. The employee requested the unpaid salary for unused work breaks in night shifts from his employer in court.

The court of first instance awarded the salary to the employee, but the Court of Appeal changed the decision with the reasoning that the possibility of interruption of the work depends only on the nature of performed work, not on the operation (dis/continuous).

The employee filed a constitutional complaint against this decision. The Constitutional Court refused the complaint and in its judgment confirmed:

- ▲ the obligation of the employer to provide the employee with work breaks for food and rest even in a continuous operation, if the nature of employee's work enables it,

- ▲ the necessity of each employer to acknowledge the fact that an employee taking a work break for food and rest is not obliged to work or even stay at the workplace.

Like the Court of Appeal, the Constitutional Court concluded that if the employer ordered the

employee working in a continuous operation to draw work breaks in a specified timeframe and the employee didn't use them, he cannot request reimbursement of such breaks.

### SUMMARY

As regards providing work breaks, it is not relevant in which kind of operations the employee works, but what kind of work he/she actually performs. Only where the employee performs work that cannot be interrupted (not automatically all works in continuous operations), he/she must be given a reasonable time for food and rest. Such time shall be included in the working hours (contrary to work breaks).

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