

In this issue of HR News the prepared amendment to the Sickness Insurance Act will be examined, which will put **insurance obligations on agreements to complete a job**. Thus, the Government, in accordance with its Statement of Purpose, will increase the maximum extent of work performed on the basis of this agreement to 300 hours per year, but at a relatively high price, including considerably more paperwork for employers. Further, we will focus on the **amendment to the Act on Employment**, which will conversely reduce the administration of employers in connection with reporting of vacancies. However, this amendment also has negative effects, in particular the restraint of employment by agency of third country foreigners.

Also examined in this issue is an interesting decision by the Supreme Court of the Czech Republic, which, after the Labour Code has been in effect for four years, finally decided on the issue whether **it is possible to recall an employee who was appointed to a managerial position under the previous Labour Code**.

On the second page is an invitation to our HR Exchange Meeting in May, this time on the topic "Posting of employees quickly and easily – is it even possible?". We are looking forward to seeing you there!

SICKNESS INSURANCE ACT AMENDMENT

After two years of the Sickness Insurance Act being in effect, MoLSA analyzed its application in practice and prepared an amendment which shall solve problematic issues and bring savings. It is planned that the amendment will take effect as of **1 January 2012**.

The proposal covers practically all parts of the Act and contains both technical changes, consisting in specification and removal of incomprehensible or inapplicable provisions, and fundamental changes, which we follow in this issue of HR News.

Insurance in case of agreement to complete a job

Employers will be most affected by the new participation on sickness insurance of employees working on an agreement to complete a job. However, this will apply *only in calendar months in which their remuneration exceeds CZK 5 000*.

Although we had hoped for the opposite, the sickness insurance payment in case of agreement to complete a job will finally be established in connection with the extension of its scope. However, due to a reasonable limit of the remuneration, its impact will not be such as to deny the sense of these agreements.

At this time, it is not yet certain whether the agreements will also be subject to health insurance. Such a proposal has not yet been submitted, but we cannot exclude that it will be in the near future.

Related changes in the Labour Code

The proposal further contains an important amendment to the Labour Code. On its basis, the agreements to complete a job will now have to include the period of time for which they are concluded. Upon termination of these agreements, the employer will be obliged to issue a confirmation of employment to the employee with all the formalities under Sec. 313 of the Labour Code – this will significantly increase the administrative load of employers.

Employers will also be required to schedule the working hours of an employee working under the agreement to complete a job for the case of temporary incapacity to work and pay him compensation for remuneration under agreement in the first 21 calendar days of incapacity.

However, another measure should lead to an increase in flexibility by allowing employment agencies to temporarily assign an employee working on the agreement to complete a job. However, the proposal does not contain the corresponding amendment to the

Act on Employment, without which the change of the Labour Code would have no practical effect.

Extension of scope of sickness-insured persons

Another significant change is the extension of the scope of sickness-insured persons by the following persons:

- ▲ associates and general managers of limited liability companies,
 - ▲ limited partners in limited partnership companies,
 - ▲ members of co-operatives,
- provided that they perform work for the company (co-operative) outside an employment law relationship for which their monthly remuneration is at least CZK 2 000.

New participants of the sickness insurance system should also be the following persons, if their income exceeding CZK 2 000 per month is subject to natural person income tax under the Income Tax Act:

- ▲ members of collective bodies of legal entities,
- ▲ liquidators and
- ▲ proctors.

The last group of persons newly subjected to sickness insurance should be the heads of organisational units of foreign legal entities who have a permanent place of work in the Czech Republic.

Calculation of sickness benefits and sanctions

Regarding the changes in the calculation of the sickness insurance benefits, days of unpaid time off provided by employers should now be excluded. This should dissolve the unjustified reduction of benefits.

Further, the amendment should also settle the situation when it is not possible to calculate the amount of an employee's sickness benefit, because the Czech Social Security Administration cannot obtain the necessary information from the employer. For these cases, the basis for calculation should be the minimum wage.

The final section of the Act which is amended is offences of employees in sickness insurance. In addition to specifying the sanctions for the breach of the regime of an insured person temporarily unfit to work, a brand new administrative offence will be introduced - the failure to deliver immediately a doctor's certificate to the employer – subject to a fine up to CZK 20 000.

Concurrent functions

The Ministry of Justice has introduced a proposed amendment to the Commercial Code, which should allow the concurrent functions of a statutory representative of a company with an employment law relationship, and deal with its consequences. We will inform you of the details of this proposal in the next issue.

AMENDMENT TO THE ACT ON EMPLOYMENT

In February, MoLSA introduced an amendment to the Act on Employment and related acts. Currently, the comment procedure has ended and the amendment is planned to become effective as of 1 January 2012.

Reduction of the administration of employers

MoLSA laid down as the aim of the amendment the reduction of administrative burdens for employers. In this regard, the *abolition of the employer's obligation to report any vacancy* at the Labour Office is a very positive step. The report will now be voluntary and it will be entirely up to the employer how he wants to choose new employees.

Also, employers will not have to attach the certificate of indebtedness to applications for financial contributions within the active employment policy. This will be obtained by the Labour Office itself.

Shared recruitment

A significant novelty is the so-called institute of shared recruitment. The regional branches of the Labour Office will be able to transfer to an employment agency, on the basis of an agreement, the job mediation for selected job seekers. Such job seekers will continue to be entitled to unemployment benefits and they will not be charged by the employment agency for such job mediation.

Agency employment of foreigners

Also important for employment agencies is the termination of the possibility to assign third country foreigners, who obtain work permits, to a user to perform work. This restriction will also affect companies which employ third country foreigners through employment agencies.

Insurance of employment agencies

The amendment further regulates the scope of compulsory insurance of employment agencies against bankruptcy by cancelling the duty to have such insurance also for the case of the bankruptcy of the user, to which they temporarily assign employees. Although MoLSA has recently published an interpretative opinion, pursuant to which the insurance of the employment agency against bankruptcy includes also the bankruptcy of the user, this legal interpretation is very controversial. In its press release, MoLSA also refers to two insurance companies which already offer an adequate insurance product.

Currently, intensive negotiations regarding the employment agency's insurance are ongoing and it cannot be excluded that we will see more changes in this area in the near future.

Opening of EU labour market to Czech citizens

On 1 May 2011, the transitional restrictions on entry to the labour market will finally end and Czech citizens will be able to work in all EU countries without the need to obtain a work permit. Until now, these restrictions have been used against Czech citizens only by **Austria and Germany**.

Employment of disabled persons

Originally, it was also suggested in the amendment to terminate the possibility of fulfilling the compulsory share of employed disabled persons by buying products or services from employers the majority of whose employees are disabled. This change was strongly criticised in the comment procedure, the result of which being that this compensatory performance will be preserved, but in a limited form. Suppliers will thus be able to provide for each of their disabled employees an alternative performance up to the amount of 36 times the average wage, or approximately CZK 800 000.

SUPREME COURT

The Supreme Court decided in its judgement of 13 March 2011 that an employee, whose employment relationship was established by appointment during the effectiveness of the previous Labour Code, may be recalled even now without any further arrangements.

Case No. 21 Cdo 4897/2009

In this case, a State employee performed a managerial function on the basis of an appointment, which took place under the previous Labour Code. However, the employer recalled the employee after the current Labour Code took effect. Other jobs offered were rejected by the employee and the employer gave him notice due to redundancy.

Consequently, the employee filed a claim for invalidity of the notice. His main argument was that after the current Labour Code took effect (January 1, 2007) his employment relationship is considered to be

established by an employment contract. So it was not possible to recall him from the managerial position unilaterally. Therefore, he could not become redundant.

However, the Court of First Instance, the appellate court and subsequently also the Supreme Court dismissed the employee's action. The main argument of the Supreme Court was the principle of acquired rights in connection with the retroactive effect of laws. The Supreme Court stated that, in the sense of this principle, the right to recall the employee from the managerial position was preserved, although according to new legislation it is necessary to consider his employment relationship to be established by an employment contract.

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