

In this issue of HR News we examine the proposal of the **Act on Specific Health Services** as its regulation of occupational medical care will affect all employers. We also briefly look at legislative developments in connection with the planned **substantive amendment to the Labour Code**, which we described in the March issue of HR News. Further we examine **two important court decisions**, including a judgement of the Czech Supreme Court dealing with the question of concluding working hours in employment agreements and a very interesting decision of the Czech Constitutional Court which addressed the place of work and the extent to which it can be agreed.

We would also like to invite all Randls clients to a special HR Exchange Meeting which will be held on 14 September 2011 on the topic "**Amendment of the Labour Code - pros and cons**". Details can be found on page 2 of this issue or at our website www.randls.com.

PROPOSED ACT ON SPECIFIC HEALTH SERVICES

The Ministry of Health has prepared a draft of the Act on Specific Health Services and comments to this proposal from the discussion phase are currently being processed. This act would regulate **occupational medical care** as one of the health services. Currently, this service is regulated as company preventive health care in the Act on Public Healthcare and Act on Public Health Protection.

Occupational medical care and its reimbursement

The proposal of the new act more precisely defines what is meant by occupational medical care. It further obliges employers to pay all the expenses for this care (with the exception of assessment of occupational diseases). These costs will be tax-deductible for employers.

The proposal also regulates the issue of ascertaining the health capability of job applicants which is not covered by occupational medical care, but such exams will in principle be governed by the same principles. Should the applicant refuse *an entry preventive care check-up*, he/she will be considered medically incapable to work. The costs of this check-up will be paid by the applicant, if not agreed otherwise with the prospective employer.

Occupational medical check-ups

A significant segment of occupational medical care is preventive medical check-ups; its current legal regulation is not clear and out-of-date. Therefore a positive change will be a new *implementing statutory instrument to the amendment, which will specify occupational medical check-ups* - types, frequency and content, process of their provision, extent of specialist's examinations etc.

The act itself will explicitly define obligations of the employer to send employees to an extraordinary occupational medical check-up in case the employee requests it and also the right of the employer to send the employee to such a check-up in case the employer has doubts about the employee's medical capability to work (the fact that this right is not stipulated by law causes problems in practice).

The employers of employees performing work only within the least health-risk category (the first category) will be entitled to provide occupational medical check-ups by the employee's own doctor based on a written request. However, if there is also health-risk work performed at the employer, the obligation of the employer to conclude an agreement on provision of occupational medical care for all its employees will remain applicable.

Medical opinion reports

Within the occupational medical care the proposed act will provide a complex set of regulations as it concerns medical opinion service in employment law relationships. This shall hopefully improve the current situation of employers often receiving medical opinion reports with no clear conclusions or conclusion that are useless in employment law practice.

The act stipulates grounds on the basis of which the opinion is issued, its elements, term in which it must be issued, from when it is effective and its legal consequences, duration of its validity and how it can be contested. The implementing statutory instrument shall stipulate conditions necessary to issue the medical opinion report, as well as duration and conditions of its validity including conditions under which it will be possible to request new opinion of health capability.

SUBSTANTIVE LABOUR CODE AMENDMENT

In May the prepared substantive amendment to the Labour Code passed the comment procedure and negotiations between the stakeholders about its final wording took place until the very last moment (as described below, in some cases its wording significantly differs from the original proposal). In the end, in some cases it was left to the decision of the Government as to which version of the changes will apply.

Invalidity of employment law acts

The question of invalidity of law acts in employment law relationships is still not solved. The proposal includes a version which would preserve the current status of relative invalidity. It also includes a version which, in some cases, would explicitly stipulate the principle of absolute invalidity (i.e. some law acts would be invalid without necessity to contest their validity).

Employment relationship for fixed term

The provisions on fixed-term employment relationships also remain in the form of two possible versions, which however do not differ greatly. Both of them count with the extension of the limitation on the length of the employment relationship duration of a maximum of 3 years with the possibility of two repetitions (as repeating will be also considered extension of the current employment relationship).

As regards the first version, repeating would be considered within a 15-year period (therefore it would be possible to conclude three fixed-term employment relationships each for up to three years within a 15 year period). The second version would not take into account fixed-term employment relationships that terminated three years previously. The exception to these limitations shall be preserved only for employment agencies.

Grounds for notice

In the end, there will be no change to the currently applicable grounds for notice, however a new notice on grounds of breach of the regime of a temporarily incapable employee shall be introduced.

Non-competition clause

Final version of the proposal only brings the decrease in adequate amount of financial compensation which should correspond to at least one-half of the average monthly earnings and a possibility to conclude the non-competition clause during a probationary period.

SUPREME COURT

The Supreme Court decided in its judgement of 10 May 2011 on the invalidity of summary dismissal due to a gross breach of employee's obligations. It should have consisted in not complying with the schedule of working hours, though this schedule was contrary to the employment contract.

Case No. 21 Cdo 1395/2010

In the amendment to the employment contract the employee had concluded irregular distribution of working hours with a three-shift work regime and continuous work regime of 37.5 hours per week at maximum. In March 2006 the employer announced to the employee that her work regime would be scheduled as a two-shift work regime. With reference to the agreement in her employment contract the employee refused to follow this new schedule and had continued to perform work according to the original schedule.

Consequently, the employer summarily dismissed the employee due to repeated absence in the newly-set working shifts. The employee filed an invalid dismissal claim reasoning that the employer had not been entitled to unilaterally change the conditions mutually agreed in the employment contract, including working hours.

The dispute reached the Supreme Court, which, without denying employer's right to schedule working hours, stated that it is not possible to unilaterally change conditions on working hours agreed between both parties in the employment contract and that such a change could only be possible based on an agreement.

The Supreme Court concluded that the employee was entitled to request to perform work for the employer in the working hours agreed in the employment contract and, at the same time, refuse to work in the two-shift regime, which was not in line with her employment contract. Therefore, it was not possible for the employee to breach her work obligations and there was no ground for dismissal.

SUMMARY

Employers should properly consider if they agree on working hours (or shift regime) directly in the employment contract. If they do so, they can change it only with the employee's consent. Even agreeing on 40 working hours per week makes it impossible for the employer to schedule employee to work in a two-shift, three-shift or uninterrupted work regime.

CONSTITUTIONAL COURT

The Constitutional Court issued a resolution of 12 May 2011 in which it confirmed the existing decisions of the Supreme Court addressing the extent of stipulating the place of work in employment contracts. The place of work can be agreed as a particular workplace but can also be defined using a wider agreement - i.e. a municipality, a region or the entire Czech Republic.

Constitutional Court Resolution No. III. ÚS 3616/10

In this case, the employee, a single mother of a child under 15, had agreed the place of work in her employment contract as "the company's operations within the Czech Republic". The employer dissolved its branch in Prostějov in which the employee performed work and ordered the employee to perform work in its branch in Plzeň. However, the employee did not come to work in the new location and therefore the employer dismissed her summarily.

The employee contested this dismissal in court stating that the employer wasn't entitled to agree the place of work in such a wide extent. The dispute reached the Constitutional Court, which decided that such agreement is valid. The Constitutional Court emphasized that the employee had freely agreed with the employer on the place of work. The fact that this agreement was not in her favour as a single mother does not constitute vagueness or invalidity of this agreement.

It is necessary to point out that one of the judges of the Constitutional Court

expressed an alternative opinion in the resolution. He stated that such agreement on place of work is vague. According to his opinion, the problem was not in the extent of the place of work itself but in the fact that the number and location of branches had been changed constantly. Due to this, at the moment of conclusion of her employment contract the employee could not have understood the real extent of the place of her work.

SUMMARY

As regards the place of work, employers are only limited by the fact that the agreement in the employment contract must be certain (concrete) but not by its extent. Employees should agree only on such place of work in which they are able to comply with their obligation to perform work for the employer.

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