

The “legislative storm” planned for the next year continues and – to be honest – even we are getting confused by all the amendments. Of course, the amendment of the Labour Code is still the most important item and despite the Senate veto it is almost certain that it will become effective as of 1.1.2012. However, in the shadow of this amendment’s run through the media, there are **several amendments to the Act on Employment** passing through the Parliament, which will also strongly affect employers’ everyday life. We will try to summarize the most important changes in this issue of HR News. Further, there was some room left for an important case concerning the **termination of employment relationship by agreement due to organizational changes**. We hope many of you will feel relieved when reading it, because in this respect an invalid termination does not constitute a threat.

The last **HR Meeting** of 2011 will take place on 16.11.2011. We are looking forward to seeing you there!

AMENDMENT TO THE EMPLOYMENT ACT

On 9.9.2011, the amendment to the Act on Employment was passed in the Chamber of Deputies. During the debate several significant amendments to this draft were adopted.

The amendment should be read by the Senate in its 12th plenary session which started on 6.10.2011. If the legislative process continues as expected, the amendment will come into effect on 1.1.2012, i.e. at the same time as the Labour Code.

Sanctions for illegal employment

The original wording of the amendment included only minor adjustments of the penalty rates under the Act on Employment. However, during the reading in the Chamber of Deputies the changes were significantly extended, particularly the penalties for performing illegal work. Now, a penalty of up to CZK 100 000 can be imposed on the “employee” and a penalty from CZK 250 000 to CZK 10 million could be imposed on the “employer”.

The concept of minimum penalty is very unusual in Czech law. A *minimum penalty rate of CZK 250 000* will have to be imposed even in cases of trivial events or minor mistakes. However, the major question is what stance the Constitutional Court will take towards such provisions, as it has previously cancelled similar ones.

IMPORTANT: Illegal work will now also contain “dependent work performed by a natural person outside of an employment relationship” or “*svarcsystem*”. In combination with the minimum penalty, employers must begin reconsidering their contractors for the next year. Any mistake in this respect is a major financial risk.

SUMMARY OF OTHER CHANGES

- cancellation of the duty to announce free workplaces to the Labour Office – less administration
- cancellation of “persons with a health disadvantage” – decisions recognizing this status valid until 1/1/2015, until then employers may also count them into the obligatory number of disabled persons
- possibility to fulfil the obligatory number of disabled persons by buying goods or services only up to the amount of CZK 830 000 per year for each disabled person employed by the supplier – problematic control – we advise to review the contractual documentation so that the fulfilment is guaranteed
- cancellation of the sheltered workshops support
- if the Labour Office offers public service from the 3rd month of unemployment, the job seeker must accept it, otherwise he/she won’t receive unemployment benefits or the benefits in material need

Changes in agency employment

The original proposal should have removed the possibility of employment agencies temporarily assigning foreigners from third countries to work for clients. Despite large protests, this provision stayed in the amendment and, in addition, temporary assignment of disabled persons will be prohibited as well.

Within the legislative process, the institute of shared employment mediation has also changed. It will now allow closer cooperation between the Labour Office and the employment agencies when searching for work for job seekers registered at the Labour Office. Further, specific amounts of contributions which might be granted to the employment agencies doing the shared employment mediation were implemented.

The legislator also answered the calls to present a more complex regulation of obligatory bankruptcy insurance of employment agencies (so far it has been regulated by only two sentences). It will now be explicitly provided that the bankruptcy insurance in the case of the agency’s bankruptcy might be effected only in case that an employee’s salary was not paid to him. Such employee has the right to address his/her claim directly to the particular insurance company.

AMENDMENT TO THE EMPLOYMENT ACT - EU

Originally, a separate act on measures against natural and legal persons who employ illegally residing foreigners from third countries was proposed. In the meantime, it was transformed into another amendment to the Act on Employment, with the “EU” attribute.

Conceptually, it is still the same transposition of the so-called “sanction directive” of the EU and basically contains the same provisions about which we informed you in the February issue of HR News.

In particular, the draft regulates:

- ▲ the obligation to have documentation about each employee (not only about foreigners) which proves the existence of an employment relationship (copies of employment contracts, agreements) at the work place and to archive these for 3 years after the termination of employment
- ▲ extension of the obligation to notify the Labour Office about commencement of the employment relationship to all foreigners, including EU citizens
- ▲ a penalty of up to CZK 10 million for facilitation of illegal employment of a foreigner, and in addition the obligation to pay out the owed salary to the employee, as well as social and health insurance
- ▲ a person, for whom an employer performed as a sub-supplier, is liable for paying the penalty and salary if he/she should know and could know about the illegal employment

- also the work performed without a valid residence permit will be considered as illegal work – possible sanction will be withholding of benefits under the Act on Employment and exclusion from participation in public procurement for 3 years

DECISIONS OF THE SUPREME COURT

On 14.7.2011, the Supreme Court delivered a judgment according to which not stating the reason for termination of employment in the agreement on termination cannot cause its invalidity, even if the employee explicitly asked for a statement of the reason. Also stating reasons which are not true will not make the termination agreement invalid.

Judgment No. 21 Cdo 1779/2010

The employer (defendant to the case) agreed on the termination of an employment relationship with its employee. However, this agreement did not include a reason for such termination, even though the employee explicitly asked for it. The reason for termination was due to organisational change – the cancellation of the employee's work position resulting in her redundancy.

The employee brought a legal action seeking invalidity of the agreement. As a reason for the invalidity, she presented the absence of the reason for termination of the employment relationship. Another reason consisted in the fact that although the employer had informed her about the cancellation of her work position, the type of work she was performing was only moved within the employer's organisational structure.

Further, the employee objected (conflict with good morals). In her opinion, the employer intentionally misled her by concealing the creation of a new work position with the same or at least in content comparable job description as she was performing and so she did

More trouble with budget savings of MoLSA

- passed in 2010 (sickness benefit from the 22nd day, changes in unemployment benefits, etc.)
- the Constitutional Court cancelled as of 1.1.2012
- MoLSA proposed again, Chamber of Deputies passed it, Senate turned back on 7.10.2011

Enacted amendments to the draft:

- employee doesn't receive severance pay on the pay-day after the termination => the Labour Office will pay out a financial compensation in the amount of 65% of the employee's net salary multiplied by the period of severance pay
- the Labour Office will reclaim the compensation from the employer, even though it might have already paid the severance pay (e.g. due to agreement on later payment) => the employer pays twice!!!, the amendment is incomplete
- postponement of the unemployment benefit linked to the payment of severance pay or compensation

not have the opportunity to apply for this position. Beside this, the employee saw the conflict with good morals in the fact that she was acquainted with the organisational change as late as with the proposal of the termination of her employment relationship.

The case came before the Supreme Court, which confirmed the judgment of the Court of Appeal stating that the agreement on termination of employment relationship was valid.

Although the reason for termination of the employment relationship must be included in the agreement if the employee asks for it, according to the Court, stating the reason is not an essential requirement. It represents only a fact (an inducement) why the employee agreed with the employer on termination of the employment relationship.

If the employee accepted and signed the agreement without any reason for termination, such agreement cannot be considered as invalid.

In addition, the Court stated that if there was another reason which would not correspond to the real cause of the termination of the employment relationship, the agreement would be (unlike a notice of termination) invalid.

The Court did not agree even to the question of the conflict of morals. The employer did not have the obligation to offer the new work position to the employee.

According to the case-law, acquainting the employee with organisational change in connection with the proposal to the termination of employment relationship is not immoral either, and vice-versa, it is a fully sufficient and normal practice.

LESSONS LEARNED

If the employee requests it, there must be a reason for the termination of employment relationship included in the agreement on termination. Yet, if you do not provide the reason in the agreement, it will still be valid because the reason is not an essential requirement for the agreement.

Besides, if the agreement is concluded for an organisational reason which did not really occur, the employment will be validly terminated.

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