Randls HR News

November/December 2011 – SPECIAL CHRISTMAS DOUBLE ISSUE

The long-promised double issue of HR News regarding the **amendment of the Labour Code with effectiveness as of January 1, 2012** is finally here, and we hope that it will help you face some problems that this new regulation will bring. Since it is a more extensive document, this is the last issue of HR News of this year.

We thank you for the trust you gave us this year, and we wish you a Merry Christmas and best wishes for 2012. We hope to be of assistance next year and also that we will meet regularly at our HR Meetings.

Your Randl Partners employment law team

Regular workplace for the purpose of travel allowances

In accordance with the amendment, it will apply that the place of work is considered as a regular workplace for the purpose of travel allowances, unless a specific arrangement sets it differently.

If the place of work is agreed to be wider than one municipality, the municipality in which the employee's trips for the purposes of work performance (i.e. no longer business trips) most often begin is considered as regular workplace for the purpose of travel expenses. What is meant by the "trip" is not defined and it cannot be excluded that it could be also the everyday trip to work – so the regular workplace could thus be a municipality where the employee resides.

Also the provision, which clearly states that the regular workplace cannot be wider than one municipality, may be problematic. The question is whether under the new legislation, it would still be possible to arrange for two time-defined places of work corresponding to two time-defined regular workplaces. For example, from Monday to Wednesday the place of work would be Prague with the regular workplace in Prague, and the Thursday to Friday place of work would be Brno with the regular workplace in Brno.

Trial period

In the context of increasing the flexibility of employment relationships, *the maximum length of the trial period for managerial employees* (i.e. employees who manage and control at least one subordinate employee) will be extended from 3 to 6 months. For other employees the trial period remains unchanged, i.e. it cannot exceed 3 months.

Furthermore, limitation of the length of the trial period will be set in the case of employment for a definite period. The trial period cannot exceed half of the agreed period of employment.

With regard to this restriction, problems in determining the half of the duration of the employment relationship can arise in practice. For example it is questionable whether the duration of the employment relationship in the case of an odd number of calendar months shall be recalculated based on the number of calendar days, or whether to use the legal definition, according to which half of the month corresponds to 15 calendar days.

For the avoidance of doubt, it can be recommended to set the duration of the trial period unambiguously in the agreement, for example by setting a specific date of its termination. Also it is possible to arrange for a trial period in months and then half of the calendar month will be considered to be 15 days.

Employment for a fixed term

After a long period of ambiguity, during which several different options were considered, the rules regarding fixed-term employment will be modified. The maximum duration of employment for fixed term will be determined *for 3 years with the possibility of maximum 2 repetitions*. Any prolongation of the employment relationship is considered also as a repetition for this purpose. The only restriction to this rule is a provision that the previous employment for fixed term which ended more than 3 years ago shall be disregarded.

For example it will be possible to conclude the employment relationship for a period of 1 year, in 2012, to extend it twice for one more year in 2013 and 2014. Next employment for a fixed term will be possible to conclude in 2018, three years after the end of the previous repetition of employment for a fixed term. The maximum length of each section will be 3 years, so in the extreme case it will be possible to conclude the employment relationship for a fixed term of a triple 3 years, but then a pause in the extent of 3 years has to be respected, and only after that will it be possible to conclude the employment for fixed term again.

If the employment for a fixed term is concluded in accordance to the current legislation and the duration of such employment continues in 2012, according to the new legislation this period is already included in the new rules and therefore it will be possible to extend the employment for fixed term only twice.

From the current exemptions, to which the restrictions of the fixed term employment do not apply, remains only one - cases of agency workers.

Randls HR Exchange Meetings

Also in 2012 we are preparing for you our regular HR Exchange Meetings, where we'll be together dealing with problematic areas of labour law and related disciplines.

Planed dates HR Meetingů:

January 18, 2012 - Kempinski

March 14, 2012 - PricewaterhouseCoopers

May 16 2012 - Plzeňský Prazdroj

- location in Pilsen

September 12, 2012 - Olympus

November 14, 2012 - L'Oréal

Withdrawal from a contract of employment

The amendment brings also minor adjustments in the possibility of withdrawal from an employment contract. Still, the legal reason for withdrawal from an employment contract is the fact that the employee does not start to perform work, without an impediment to the work, or the employer is not informed about such impediment within a week. There is a minor change compared to the current legislation, so the employer can be informed about the impediment in any way and it is not necessary for the employee to inform the employer directly in person.

A more significant change is represented by the statement that withdrawal from the employment contract is possible only until the employee appears at work.

Temporary assignment

In this area, the amendment partially returns to the previous legislation and it will be possible again to temporarily assign the employee by the employer to perform work for another employer, without requirement of employment agency license.

The temporary assignment will be concluded on the basis of a written agreement with the employee and with the condition of at least 6 months of the previous duration of employment.

Furthermore, the employee must be provided with comparable salary and working conditions of employees of the receiving employer and the temporary assignment shall be carried out free of charge. Only the salary and travel allowances can be refunded in accordance with the law, Nevertheless, we believe that by an extended interpretation it will be possible to also refund the related social, health and accident insurance, salary compensation and remuneration for being on call.

Agreement to complete a job

The amendment extends the maximum extent of employment on the basis of the agreement to complete a job from the current 150 hours per one calendar year for one employer to 300 hours. Thus, the Government fulfilled its Statement of Purpose.

However, a substantial "price" for this change is the fact that the full amount of income of the employee from the agreement to complete a job shall be subject to obligatory health and social insurance contributions, providing that such income exceeds CZK 10,000 in the given calendar month. The obligation to register the employee to the competent authorities shall arise only after the abovementioned limit is exceeded.

There are also additional related obligations of the employer as regards employees with agreements to complete a job. Employers will be required to determine the schedule of the weekly working hours for the purposes of the compensation of remuneration in the event of temporary incapacity to work, and also issue a confirmation of employment for these employees in case of termination of the agreement.

IMPEDIMENTS TO WORK AND ANNUAL LEAVE

Also the institute of partial unemployment will be modified, i.e. the possibility to provide employees with lower salary compensation (min. 60% of average earnings) in the case of impediments to work on the employer's part due to a reduction of sales of products or services. Employers without a trade union established will be able to decide themselves about the partial unemployment in the form of an internal regulation. Now this is decided by the Labour Office.

In the area of impediments to work on the side of the employee, the possibility of loss of entitlement to salary compensation in case of unexcused absence shall be repealed. This is an excess penalty (possibility of reduction of the annual leave is preserved) and its applications, for example, in the case of salary compensation in case of temporary incapacity for work, is problematic.

REDUCTION LIMITS 2012

MoLSA stipulated new amounts of reduction limits in 2012 for calculation of benefits from sickness insurance and salary compensation during employee's temporary incapacity to work. New limits for calculation of salary compensation will be as follows:

1. CZK 146,65,
2. CZK 219,98 and
3. CZK 439,95.

Annual leave

In the field of annual leave, there are very significant changes, which are caused also by pressure from the EU, which has criticized the current Czech system. The new system shall not distinguish between the minimum legal entitlement for annual leave (4 weeks) and the premium annual leave.

The basic rule will be to take all annual leave in a given calendar year, provided that there is no impediment to work on the side of the employee or serious operational reasons. *If the annual leave is not taken until June 30 of the following year, the right to determine the annual leave shall arise also for employee,* and he/she will be able to decide about taking annual leave. The important thing is that the entitlement of the employer to determine the annual leave will not be cancelled, so, for example for operational reasons, it will be possible to change the employee's decision.

Entitlement for annual leave will not expire, possibly resulting in accumulation of annual leave for several years. NOTE: Failing to determine annual leave in a given calendar year will still be an administrative offence, for which sanctions may be imposed on the employer.

WORKING HOURS AND REMUNERATION

In the area of working hours a *unification of the conditions for even and uneven schedule of working hours shall occur*. Under the new legislation, the maximum length of the shift will be 12 hours regardless of the type of schedule (currently in case of even schedule the limit is 9 hours).

Also, regardless of the type of schedule the employer will be required to inform the employee about weekly schedule of working hours at least 2 weeks before the beginning of the period for which the working hours are scheduled (formerly applied only in case of uneven schedule), as well as before any change. The possibility to agree on shorter acquaintance period remains, but the so-called other distribution of working hours is abandoned because it becomes redundant due to the release of working hours regulation.

Flexible working hours

There is also a substantial *release of regulation in the area of flexible working hours*. According to the current regulation, there must be always one section of basic working hours inserted between two sections of optional working hours. However, such regulation will be refrained from, and employers may freely combine the basic and optional working hours. For example, it is possible in some days to combine "basic x optional x

basic", in some days "basic x optional", or "optional x basic" etc. It will depend only on the employer's decision, what combination it will choose, in order to meet its operational needs; of course, it should take into account the needs of its employees as well.

Substantial change for flexible working hours regards the length of the compensatory period. While the current Labour Code restricts the employer and sets up a maximum 4 weeks of this compensatory period, the amendment very flexibly extended such period up to 26 weeks, and in case of a collective agreement even up to 52 weeks.

Accounts of working hours

Very substantial amendments relate to accounts of working hours. It will be stipulated that in the event a trade union is established at the employer, the accounts may be introduced only by means of a collective agreement (now it is possible in an internal regulation).

The removal of unnecessary administrative burden in the form of the employer's obligation to show the difference between the full-time and actual working hours each week is of course a positive change.

If the account of working hours is established by a collective agreement, it will now be possible to negotiate the transfer of overtime work in the extent of up to 120 hours into the following compensatory period. This will increase the flexibility of accounts, for which the representatives of the employers have asked. Although similar institute of the transfer of worked time between compensatory periods is used for example in Germany, it is still not entirely clear whether such a possibility is in accordance with the EU directive on working hours.

In the event that the transfer of overtime work is used, following protective measures will apply:

- restriction to the possibility to order work on non-working days - not more than twice in a period of 4 weeks,
- increase of the minimum amount of permanent salary from 80% to 85% of the average earnings,
- increased severance pay (4 to 6 monthly earnings according to seniority) in the case of termination by agreement due to organisational reasons.

An employee working in the night

After a long period of unclear interpretations, also the "employee working in the night" shall be uniquely defined. The amendment stipulates that it should be an employee who works during the night at least 3 hours of working hours at least once a week in average during a period defined by the employer - maximum 26 weeks.

Slightly problematic, however, may be the fact that for the determination of the employee as the employee working at night the "regularity" is not required, as it has been in accordance to current legislation, and therefore overtime work shall be included in this context. From this perspective, it will be necessary to monitor the average worked night hours for the future, according to the schedule of working hours, and also backwards with regard to overtime work.

Records of working hours

The amendment of the Labour Code brought to the employers the tightening of their obligation to record working hours. It is now expressly stipulated that employers are obliged to indicate the beginning and end of work shift, overtime work, night work, being on call and performance of the work during being on call within the records of working hours.

This obligation shall improve the control of the Labour Inspection whether the employers comply with the obligations to provide continuous rest periods between shifts and during the week, breaks for lunch and rest, work in the non-working days, night work, etc.

Extra pay for night work and work on the weekend

The amount of the extra pay for night work and for work on Saturday and Sunday will be possible to be agreed differently (even in a lower level than provided by the Labour Code) on the basis of an individual agreement with an employee. Currently it is possible only on the basis of a collective agreement.

The agreement on salary taking into account the overtime work

There is a significant extension of the possibility to agree the salary already taking into account the possible overtime work. For managerial employees it should be from the current 150 to 416 hours (the maximum limit of agreed overtime work) and for ordinary employees from 0 to 150 hours (the maximum limit of ordered overtime work) – within the year.

However, it is important to remember that this option can be applied only in cases where the salary is agreed (not determined for example in a salary assessment).

Catering fee and foreign catering fee

Significant changes to the rules for the granting of catering fees and foreign catering fees concern the possibility of a reduction in the case of the provision of free meals. Currently it is only the entitlement of the employer, but from 2012 this reduction will occur automatically by means of law. If the employer provides the catering fee in a non-reduced amount, it will be considered as the employee's income with all tax and insurance consequences.

As for the foreign catering fee, the catering fee rates will be adjusted on the basis of the duration of the foreign business trip. The base rate will belong to the employee for trips over 18 hours, 2/3 of the basic rate for trips from 12 to 18 hours and 1/3 of the basic rate for trips under 12 hours (but at least 1 hour or 5 hours if entitlement to domestic catering fee occurs).

Now, the employee won't be entitled to a foreign catering fee, providing that he/she gets 2 free meals (trips of 5-12 hours), or 3 free meals (trips of 12-18 hours) during the foreign business trip. However, in our opinion, actual free meal has to be provided, not a refreshment in the form of a biscuit, bagel, fruit, etc.

TRAVEL ALLOWANCES 2012

MoLSA has prepared a draft regulation, by which the average fuel prices for purposes of provision of travel allowances in 2012 will be stipulated as follows:

- petrol 95 octane – CZK 34,90 per liter,
- petrol 98 octane – CZK 36,80 per liter,
- diesel – CZK 34,70 per liter.

Minimum **rates of catering fee** for employees during the domestic business trip shall be also slightly increased:

- business trip which lasts 5 - 12 hours – CZK 64,
- business trip over 12 hours – CZK 96,
- business trip over 18 hours – CZK 151,

for each calendar day of the business trip.

Furthermore, the Ministry of Finance has prepared a regulation stipulating **rates of foreign catering fee** in foreign currency for each country in year 2012. For the most frequently visited countries there is no change and the rates remains the same, for:

- Germany and Austria – EUR 45 per day,
- Poland and Hungary – EUR 35 per day,
- Slovakia – EUR 30 per day.

TERMINATION OF EMPLOYMENT

A whole new ground for notice of termination will be *especially gross breach of the regime of temporary work incapable employee* (i.e. the obligation to stay in the place of residence and to comply with the time and the scope of permitted absence from home) in the period of the first of 21 calendar days of temporary incapacity of the employee. However, the employer will be able to apply this ground for notice only until 1 month from the date on which it was informed about such breach (in other cases of breach of obligations the limit is 2 months), and no later than 1 year from the date on which the reason for termination appeared.

Although this ground for notice looks attractive for employers, its use will be risky until the time when some case law appears. Especially gross breach was always perceived as something extraordinary, crossing the boundaries of morality, and the immediate termination of employment was related to such breach in accordance to the law. But what will be meant as an especially gross breach of the therapeutic regime, we might only say after a few years on the grounds of case law of the Supreme Court of the Czech Republic.

The notice period

In the area of the length of the notice period it will be unequivocally stipulated that a longer notice period can be negotiated only on the basis of an individual agreement with an employee. Therefore, it will no longer be possible to negotiate a longer notice period within the framework of a collective agreement.

Severance payments

The legal regulation of severance pay will be also changed. The amount of severance pay will depend on the length of duration of employment of the employee. In the event of termination of employment due to the so-called organisational reasons, employees will be entitled to severance pay as follows:

- less than 1 year = 1 average monthly earnings,
- at least 1 year and less than 2 years = 2 average monthly earnings,
- at least 2 years = 3 average monthly earnings.

In the case of severance pay for termination of employment due to a work injury or an occupational disease, the amount of severance pay will not change and it remains in the amount of 12 average earnings.

The abovementioned limits of severance pay are determined as a minimum, the employer may of course always provide more. In this relation, we recommend employers to review current collective agreements or internal rules.

Severance pay also newly doesn't belong to employees who immediately terminate their employment. They will be provided with salary compensation corresponding to the unrealized notice period.

Moderation by the court

The amendment also brings the reintroduction of court moderation in the case when an employee seeks salary compensation in connection with the invalidity of a termination of employment by the employer. If the duration for which the compensation should be granted is over 6 months, the court may, on employer's proposal, take into account any other employee's employment during this period, and reduce the compensation as appropriate.

Non-competition clause

In the field of non-competition clauses severe changes were prepared, but after long negotiations the intention was abandoned and as a result the amendment does not contain a large number of changes compared to the current legislation.

Only the minimum amount of financial compensation will be reduced to half of the employee's average earnings and non-competition clause will be possible to conclude during the trial period. The other rules relating to the non-competition clauses shall remain unaffected.

TRANSFER OF RIGHTS AND OBLIGATIONS

In the rules relating to the transfer of rights and obligations under employment law relationships will be newly established, that the rights and obligations from the collective agreements shall transfer to a new employer only for a period of effectiveness of the collective agreement, but no longer than until the end of the following calendar year.

Also the information obligations of the employer to the employees' representatives (in the absence of the representatives to individual employees) about the upcoming transfer will be specified. The employer must meet such obligation no later than 30 days prior to the day of effect of the upcoming transfer. In the event that the representatives of employees are not established at the employer, the employer has only the information obligation, not consultation obligation.

Termination of employment in relation to the transfer

The length of the notice period in the event of termination of employment by the employee in connection with the transfer of rights and obligations will be specific. In these cases, it is established that the employment relationship will end no later than on the day preceding the effective date of the transfer; in other words, employment of the employee concerned will end so that the employee does not transfer to the new employer. So in some cases, notice period may be shorter than the minimum 2 months.

The amendment also introduces the possibility of the employee, whose employment was terminated within 2 months from the date of the effectiveness of the transfer, to claim in court that the reason for termination is a significant deterioration in working conditions due to the transfer. If the court finds such claim justified, there will be fiction that the termination of employment is due to organizational reasons, and the employee will be entitled to severance pay.

Randl Partners
advokátní kancelář attorneys at law

City Tower
Hvězdova 1716/2b
140 78 Prague 4

Ius Laboris Global Human Resources Lawyers

Tel.: +420 222 755 311
Fax: +420 239 017 574

E-mail: employment@randls.com
Internet: www.randls.com

This issue of HR News was prepared for you by:
Natasa Randlova / Ondrej Chlada / Barbora Sucha

© Randl Partners – all rights reserved

The information included in this material is for informational purposes only and is not intended to and does not constitute legal advice. Before applying this information to a specific case, we recommend seeking an independent lawyer.