



# Labour Law Insider

**WEINHOLD LEGAL**

**EY LAW**

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### WL Labour Law Team:

Michael Shaheen  
Veronika Odrobinova  
Iva Soukalova  
Tatiana Mrvova  
Monika Fejgerlova

The information in this newsletter is correct to the best of our knowledge and belief at the time of going to press. Specific advice on items contained in this newsletter should be sought, however, before investment and other decisions are made.

### INTRODUCTION

*Welcome to Labour Law Insider (LLI), our regular source of labor law tips, information and alerts from the Weinhold Legal Labour Law Group tailored especially for Human Resources Executives. The LLI is designed to be brief, easy-to-read with examples of everyday HR issues, many of them taken from actual situations. We are always looking for new examples, so please feel welcome to send us any real-life cases you might have in your own business that you feel worth sharing with HR colleagues --- of course, any contributions will be kept anonymous.*

*Today's LLI discusses two real-life examples from supreme court cases. In the first, a woman sued over the employer changing her place of work without her consent. In the second, we look at an example where an employee is terminated for refusal to take a breath test.*

### TERMINATING FOR CAUSE: BREACH OF WORK DISCIPLINE

#### *Employee's Consent Required for New Work Place*

In this case, Ms. X, the company's personnel director, was surprised to find when she came to work that the company had assigned her a different office. The new office was in the same building as her original office, but on the 2nd, rather than the 5th, floor. Technically, the new office did not belong to the company but to another related entity.

Ms. X did not like the new office, it looked out on a different street and neighbored an office with smokers. She therefore refused to work there but insisted that she be assigned to her original work place on the 5th floor. When the employer refused, she left the premises. Ms. X would arrive in the morning, demand her new office, be refused, and then leave. After a handful of these encounters, the employer terminated Ms. X's employment for gross breach of work discipline, i.e. for failure to perform work during working hours. Ms. X challenged the termination as





invalid, arguing that under the Labor Code her consent was required for a change of work place.

The Supreme Court agreed with Ms. X and confirmed that the termination was invalid. Under Section 38(3) of the Labor Code, employee's consent is required for a change of work place outside of what was agreed on in the Employment Contract and to the extent required for operational reasons. In this case, the place of work was identified as being with the company, and the court held that a shift to the office of another company (even if in the same building) was invalid, moreover the employee's consent was missing in this case. As the company refused Ms. X's demand that she be returned to her original work place and insisted that she work in the office of the other company, her termination was invalid.

(Case No. 21 Cdo 98/2004, details at [www.nsoud.cz](http://www.nsoud.cz))

## REFUSAL TO TAKE BREATH TEST CAUSE FOR TERMINATION

Mr. Tavič, a smelter, refused to take a breath test for alcohol ordered at the work place and, as a result, his employer terminated him by written notice for serious breach of work discipline. Mr. Tavič argued that because the test was ordered on the basis of an anonymous tip it did not serve the "strategic goal of maintaining work discipline" and therefore constituted an illegal abuse by the employer of its rights which was prohibited by the then-applicable Section 7(2) of the Labor Code. The Regional Court agreed, and the employer appealed.

In overturning the lower court, the Supreme Court emphasized that the Labor Code sets out a categorical and unconditional obligation for the employee to submit to breath tests and that refusal to do so may be considered a serious breach of work discipline. In determining whether activities constitute a serious or gross breach of work discipline, the court has broad discretion and may

consider various factors, including the intensity of the breach of discipline in relation to the employee's function, his attitude to the performance of work, the time and situation in which the breach took place, the extent of the employee's guilt, the damage caused to the employer, etc. The Supreme Court ordered the Regional Court to re-visit its decision and to consider the totality of the circumstances such as what position Mr. Tavič had in the work area and under what circumstances he refused the breath test to judge whether termination was justified. The court did not rule out the possibility that the test and subsequent termination was an illegal abuse of the employer's rights, however it held that the mere fact that the test was required based on the anonymous tip was not sufficient; other circumstances showing abuse would need to be found for such a finding.

(Case No. 21 Cdo 2667/2003, details at [www.nsoud.cz](http://www.nsoud.cz)).

Founded in 1996, Weinhold Legal today has over 40 professional staff in our Prague and Bratislava offices, including 24 Czech, Slovak and foreign qualified attorneys.

This publication has been carefully prepared but is intended for general guidance only. On any specific matter, reference should be made to the appropriate adviser. Please visit [www.weinholdlegal.com](http://www.weinholdlegal.com) for information about Weinhold Legal services.

Weinhold Legal v.o.s.  
[michael.shaheen@wl.eylaw.com](mailto:michael.shaheen@wl.eylaw.com)  
Tel: +420 225 335 502

Karlovo nám. 10  
120 00 Prague 2

