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**Labour Code as amended by Act. No. 348/2007 Coll.**

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*The information in this newsletter is correct to the best of our knowledge and belief at the time of publication.*

*However specific advice on items contained in this newsletter should be sought before making decisions on investing and other decisions are made.*

On 28<sup>th</sup> June 2007, the National Council of the Slovak Republic passed a government proposal on act No. 348/2007 Coll. (hereinafter referred to as "the Amendment") amending act. No. 311/2001 Coll. the Labour Code (hereinafter referred to as "the Labour Code"). Amendment described by the presenters as the "law of the year" set out a goal to strengthen the legal regulations concerning dependent labour and to secure the protection of employees from dismissals without reason from the employment relationship and to harmonize the legal regulations of the Slovak Republic with the laws of the European Union by projecting new directives as well as the practices of the European courts in the area of labour law.

A discussion of experts as well as the lay public was due to the fact that labour law relations were long and turbulent. Over and against the substantial amendment of the Labour Code in year 2003, the three party negotiations were this time were mainly accompanied by employer protest associations, expressing the opinion that the amendment brings a decrease in the flexibility of the labour market and subsequently deteriorating the Slovak business environment.

In this special edition of Legal Update, you will find the brief characteristics of the most substantial changes reflecting the final form of Labour code as effective from 1st September 2007.

We believe the selected areas of labour law regulation shall earn your attention.

As always, we are interested in your comments or possible proposals.

**PRIVACY PROTECTION**

The amendment by the newly added Article 11 of the Fundamental principles introduced into the employment relationships concerning the principle of protection of personal data not relevant for the executed work as well as the principle of workplace privacy protection. Privacy in the workplace may be disturbed through observation without notification only in the case where important reasons arise from peculiarities of the activities conducted by the employer and the employee must be informed of the extent and method of such supervision.

**DEPENDENT LABOUR**

One of the main goals of the changes in the Labour Code was to restrict the considerably widespread practice of employers who instead of employment relationships in order to carry out their activities enter into civil and commercial law relationships with tradesmen or so-called forced trades.

In this connection, in order to distinguish between employment law and commerce law (civil law) relations, the term "dependent labour" has been introduced, replacing the existing term "employment".

As a dependent labour, executed in relation of superiority of the employer and subordination of the employee shall be considered exclusively personal execution of work for the employer, according to his instructions, under his name, for compensation or an award, during working time at the expense of the employer, by

means of employer production and under his liability if the execution of work consists predominantly of repetition of defined activities.

Conducting business or other gainful activity based on a civil or commercial law relationship shall not be deemed to be dependent labour.

The Labour Code as amended no longer requires the employers to ensure performance of their tasks in particular by employees in employment relationships or similar relationships.

### **FIXED-TERM EMPLOYMENT**

In the interest of protecting employees against the so-called chaining of fixed-term employments and the prolonging or concluding of a fixed-term employment anew is only permissible once within a three-year period. Fixed-term employment may be prolonged or concluded anew within three years or over three years only in case of

- a. replacement of an employee
- b. work performance for which there is a substantial increase in the number of employees which is required for a transitional period, however, not exceeding eight months in a calendar year
- c. work performance depending on the change of seasons taking place each year but not exceeding eight months in a calendar year (seasonal work)<sup>1</sup>
- d. agreement in the collective contract

Even without the existence of the above-mentioned reasons, employment may be prolonged or concluded anew with certain groups of employees e.g. an

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<sup>1</sup> Before the effectiveness of the Amendment: c) fulfillment of a task limited in its result.

employee who is a statutory body or a member thereof.

The above-mentioned restrictions do not apply to temporary employment agencies.

In the case that an employment relationship is being concluded anew, it is impossible to agree upon a probationary period.

### **WORKING TIME**

The amendment has limited the average weekly working time of an employee, which subsequently may not exceed 48 hours including overtime. The only exception applies to employees in the healthcare industry, e.g. doctors. Subject to the consent of such employee, the extent of weekly working time during a period of four consecutive months at maximum shall not exceed an average of 56 hours.

Stand-by work can be with regard to the fact whether the employee remains at the workplace and is ready to perform work or actually performs work, which is divided into the following:

- **inactive part**

– in case the employee remains at the workplace, the stand-by work shall count towards time worked and he shall be entitled to compensation for the period of stand-by work in the amount of at least the minimum hourly wage claimed in SKK for work which is classified in the first degree of difficulty;

– in case the employee remains somewhere other than the workplace, the stand-by work shall not count towards time worked and he shall be entitled to compensation for the period of stand-by work in the amount of at least 20 % of the minimum hourly wage claimed in SKK for work which is classified in the first degree of difficulty.

- **active part**

– the time when an employee actually performs the work is deemed as overtime work

### **TERMINATION OF AN EMPLOYMENT RELATIONSHIP**

In case of immediate termination of an employment relationship on the part of employer, the amendment has increased the existing one-month period for such termination to two months. As protection against the frequent practice of non-observance of statutory notice period by the employees, the amendment has introduced a monetary compensation to the employer in the amount of one average monthly earning of the respective employee, which can be agreed upon in writing in the employment contract.

An additional important change in the Labour Code is the severance allowance at a minimum sum of a two-fold the employee's average monthly earnings to which the employee is entitled in the event that the employment relationship is terminated by means of notice or agreement for the following reasons:

- a. should the employer or part thereof be wound-up or relocated,
- b. should an employee become redundant by virtue of the employer or competent body upon issuing a written resolution on a change in duties or technical equipment,
- c. a reduction in the number of employees with the aim of increasing work efficiency, or on other organizational changes,
- d. Should an employee, with regard to his/her state of health according to an expert medical opinion, lost his/her long-term capacity to perform the work performed hitherto.

An employee who has worked for the employer for at least five years

shall be entitled to a severance allowance in the sum of at least three times his average monthly earnings.

Should the reason for termination of the employment relationship be a work-related accident, a disease resulting from an occupational hazard or danger of such disease, or due to the fact that the employee has reached the maximum allowed level of exposition, therefore he is entitled to a severance allowance in the sum of at least ten times his average monthly earnings.

### **COLLECTIVE REDUNDANCY**

The amendment further specifies the informational and consulting duties of an employer emerging from a collective redundancy. In case there are no employee representatives established within the firm of the employer, the informational and consulting duties are to be carried out towards the respective employees who are subsequently affected by the collective redundancy.

### **DAMAGE RECOVERY**

The amount of compensation for damages caused by an employee due to negligence (including the production of a reject) shall not exceed the sum equal to four times his average monthly earnings.

### **AGREEMENTS ON WORK PERFORMED OUTSIDE EMPLOYMENT RELATIONSHIP<sup>2</sup>**

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<sup>2</sup> An employer may, in order to discharge its tasks or for securing its needs, exceptionally conclude with natural persons agreements on work performed outside an employment relationship (work performance agreement, work activity agreement and agreement on temporary job of students), if concerning work that is limited in its result (work performance agreement) or lies only in occasional activity defined by the nature of the work (work activity agreement and agreement on temporary job of students).

Work performed on the basis of agreements on work performed outside the employment relationship may no longer be performed with the assistance of family members as stipulated in the agreement.

Once again, the amendment introduces the agreement on work activity. Work activity may be performed in the extent up to 10 hours per week. Should the means of termination of the agreement not be stipulated therein, it may be terminated by agreement of the parties as to the day agreed upon or unilaterally by means of a notice (without reason) with a notice period of 15 days commencing on the day of the notice delivery.

### **THE EMPLOYEES REPRESENTATIVES<sup>3</sup>**

For the purposes of the Labour Code, the employee representative for safety and health protection at work shall also be deemed an employee representative.

The amendment introduced a requirement for preliminary consent of members of the representative body to dismiss a member thereof. In case such consent is not granted, the employer has an option to seek out a court decision.

As of the effectiveness of the amendment, the employee representatives, for the purposes of performing an appointment, shall have an additional right to time off with wage compensation to the extent of 4 to 16 hours depending on the number of employees.

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<sup>3</sup> Trade union body, Works council, Works trustee.