



LEGAL UPDATE

WEINHOLD LEGAL

Contents

OVERVIEW OF
LEGISLATION PUBLISHED
IN THE COLLECTION
OF LAWS

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.

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LABOUR LAW

ACT No. 52/2010 Coll., on amending and supplementing Act No. 5/2004 Coll. on Employment Services and on amending and supplementing certain acts, as amended, and on amending and supplementing certain acts

The amendment of the Act on Employment services (the "Act") relates to the "Proposal of measures aimed at mitigating the effects of the global financial and economic crisis on employment", which was adopted by way of government resolution No. 100 of 2 February 2009, on the basis of which several labour law and social security related acts were amended over the last year. While the active labour market measures adopted during last year were primarily aimed at creating legislative conditions for maintaining the employment level or fostering job creation, including the support of self-employment, on a State-wide level, the current amendment foresees the introduction of a new contribution aimed at the support of regional and local employment.

The amendment mainly stipulates the conditions under which a job applicant who is registered with the job applicants' register can perform an economic activity (as one of the measures for preventing illegal work), as well as introduces a new contribution aimed at fostering growth of regional and local employment. The purpose of this contribution is to support the entry and the repeated entry of selected groups of disadvantaged job applicants into the labour market, as well as to foster growth of regional and local employment, with limited force until 31 December 2011.

Furthermore, the amendment amends several acts, such as Act No. 511/1992 Coll., on Administration of Taxes and

Levies, Act No. 82/2005 Coll., on Illegal Work and Illegal Employment) for the purpose of broadening the scope of measures aimed at the persecution of the illegal employment. In this respect, the amendment widens the scope of powers of the Office of Labour, Social Affairs and Family to notify repeated violations of the illegal employment ban to the respective authorities for the purpose of withdrawing a trade license; stipulates the obligation of the Central Office of Labour, Social Affairs and Family and of the Offices of Labour, Social Affairs and Family to impose fines for violating duties according to the Act and for illegal employment, while at the same time stipulates the minimum amount and increases the maximum amount for fines as regards illegal employment. Furthermore, during the transitive period until 31 December 2010, the amendment enables for repeated performance of work activation via minor community services, aimed at the support of continuously maintaining the work habits of long-term unemployed citizens, who receive social welfare contributions, for the purpose of increasing their readiness for re-entry into the labour market.

The amendment became effective on 1 March 2010, apart from certain provisions that will become effective on 1 September 2010.

CHEMICAL INDUSTRY

ACT No. 67/2010 Coll., on Conditions for Marketing of Chemical Substances and Chemical Mixtures, and on amending and supplementing certain acts (the "Chemical Act")

The existing system of classifying, labeling and packaging of chemical substances was stipulated by Act No. 163/2001 Coll., on Chemical Substances and



Chemical Preparations as amended, and in decree No. 2/2002 set forth by the Ministry of Economy of the Slovak Republic. As a result of the adoption of Regulation (EC) No. 1336/2008 by the European Parliament and the Council of 16 December 2008 on classification, labeling and packaging of substances and mixtures, and on amending, supplementing and cancellation of regulations (EC) No. 648/2004 and No. 1999/45 and on amending and supplementing the Regulation (EC) No. 1272/2008 ("CLP regulation"), the amendment will nullify the existing act.

The amendment guarantees free movement of substances and mixtures that are in accordance with the provisions of the CLP regulation, while the possibility of addressing the risks to human health and the environment is safeguarded; the obligations according to the Chemical Act and the CLP regulation apply to the marketing of substances and mixtures.

According to the Act, a dual system of classifying, labeling and packaging may be used during the transition period – prior to 1 December 2010; substances (and mixtures prior to 1 December 2015) can be classified, labeled and packed both according to the existing law, and according to the CLP regulation.

According to the CLP regulation, the Member-States must adopt all necessary measures so as to ensure due performance of the CLP regulation; in particular, they have to establish bodies responsible for the performance and enforcement of the CLP regulation. The system of authorities in charge has not undergone changes when compared to the previous legal regulation. The primarily responsible bodies are: the Ministry of Economy, the Ministry of Healthcare acting in cooperation with the National Toxicological Information Centre, the Ministry of the Environment, the Ministry of Agriculture and the Centre for Chemical Substances and Preparations *inter alia*. To a minor extent, the amendment has added certain powers in respect of selected public authorities as a result of the provisions of the CLP regulation.

With respect to the fact that according to the CLP regulation the Member-States are obliged, within their territories, to

ensure the supervision of all obligations imposed on industry in a full extent, the regulatory offences and sanctions for failure to comply with provisions of the Act and the CLP regulation and other chemical safety related regulations were stipulated.

The amendment became effective on April 1 2010, apart from certain provisions that shall become effective on 1 December 2010 and 1 June 2015, and from those that became effective as of the date of publication, i.e. 27 February 2010.

ADMINISTRATIVE LAW

A C T No. 9/2010 Coll. on Complaints

One of the reasons for adopting the new Act on Complaints was the aspect of numerous legislative changes, which have occurred since the enactment of the former Act on Complaints in 1998. Nevertheless, the aim of the new Act remains the same, i.e. the protection of natural and legal persons' rights when harm is caused by the activity or inactivity of a public authority or other authority of the Slovak Republic.

The new act defines the range of authorities that are obliged to act in accordance with the Act. These include public authorities, e.g. governmental authorities and organizations established by governmental authorities, municipal authorities and organizations established by municipal authorities, and persons who, where empowered by law, to decide on other persons' rights and legally protected interests or duties. The new Act may also apply to other authorities if provided for by a special regulation.

The Act stipulates the definition of a complaint as a natural or legal person's filing which focuses on (i) the endeavoring for the protection of rights and legally protected interests, which such person believes have been harmed by the activity of a public authority, and (ii) specific shortcomings, particularly a breach of the legal regulation, the rectification of which falls within the powers of the public authority. As regards activity, the new Act also considers the inactivity of the said authorities.

On the other hand, pursuant to the Act a filing, which has the character of an inquiry, statement, opinion, application or motion and lacks specification of sought protection of rights or legally protected interests, is not deemed as a complaint. Moreover, a filing that has a focus on such specific shortcomings concerning the activity of a public authority, the rectification of which is dealt with in a different legal regulation (e. g. Code of Civil Procedure, Code of Criminal Procedure, Cadastral Act, Act on Consumer Protection, etc.) is not considered as a complaint according to the new Act. Further, a filing which qualifies as a complaint pursuant to a special regulation (e. g. the Act on State Service, the Execution Code, the Act on Administration of Taxes and Fees, etc.) or which is aimed at a public authority's decision issued in a proceeding based on a different regulation (e. g. pursuant to administrative or tax regulations), can neither be deemed as complaint.

The Act enables filing of a complaint in writing, verbally on record, by way of fax or email. When a complaint is filed by fax or email, it is considered as filed in writing, however, only if the person making the complaint supplements the complaint with their signature within 5 working days; otherwise, the complaint will be disregarded. The period for answering the complaint (60 days) starts to lapse on the first working day following the day when the written complaint was delivered. Naturally, if the complaint was filed with a secured electronic signature, it is deemed as a written complaint.

The protection of personal data is to be achieved by way of a new provision stipulating that the information contained in the complaint documentation is not subject to disclosure under the Act on Free Access to Information. The new Act gives the person making the complaint the right to request confidentiality of their identity. Furthermore, the Act stipulates a confidentiality duty for the person handling the complaint with regard to all facts which they became acquainted with during the whole procedure; such person may be relieved from such duty, however, only by the person whose interests are being protected via the said duty.



The competent authority for settling the complaint is the public authority holding jurisdiction in matters involving the activity, which the person making the complaint considers to be harmful with respect to their rights or legally protected interests. If the complaint is filed with the incompetent authority, such authority must forward the complaint to the competent authority within 10 working days.

The new Act stipulates that the complaint may not be assigned to the person against whom it is aimed or to an employee under such person's supervision. Also excluded are persons who have participated in the activity, which is the subject-matter of the complaint.

The public authority is authorized to request (in writing) of the person making the complaint for their co-operation in a necessary extent. If the person making the complaint denies co-operation without reasonable grounds, their complaint will be disregarded.

The course of settling the claim involves investigation, execution of a written record, consultation on the record and briefing the person making the complaint on the result of the investigation with a statement as to whether the complaint was substantiated and what measures were adopted. The person making the complaint can express their disapproval of the complaint's settlement or discontinuance by way of filing a new complaint; such new complaint is not considered as a repeated complaint.

The Act became effective as of 1 February 2010.

TELECOMMUNICATION

ACT No. 56/2010 Z.z. amending and supplementing the Law. 610/2003 Z. z. on electronic communications, as amended

Amendment to Act No. 610/2003 Coll. on Electronic Communications, as amended (the "Act on Electronic Communications") constitutes a legal basis for ensuring the provision of subsidies by the Ministry of Transport, Post and Telecommunications from the state budget in order to support research and development in electronic communications and

the transition to digital terrestrial broadcasting.

The amendment, in response to criticism by the Commission of the European Union, strengthens the independence of the officials of the Telecommunications Office of the Slovak Republic with regards to the grounds of their repeal.

The amendment also introduces technical-regulatory changes resulting from the amendment of Regulation (EC) No. 717/2007 on roaming on public mobile telephone networks within the Community; and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services; and amending Directive 2002/21/EC, which establishes a common approach to users of public mobile communication networks when travelling within the Community, so that they do not pay excessive prices for roaming services throughout the Community in comparison with competing domestic prices. The regulation of voice roaming services has therefore been extended to SMS roaming and data roaming services.

The amendment became effective on 1 April 2010.

MISCELLANEOUS

DECREE OF THE MINISTRY OF HEALTHCARE OF THE SLOVAK REPUBLIC No. 74/2010 Z. z., Stipulating the details of the indirect dispensation of medicines and medical devices

The purpose of the decree is to stipulate the details of the indirect dispensation of medicines and medical devices in accordance with last year's amendment of the Act on Medicines that introduced the possibility of indirect dispensation of medicines and medical devices, (i.e. primarily over the Internet), into Slovak law.

The decree regulates the location requirements for the indirect dispensation of medicines and medical devices; the manner of publishing the information about the indirect dispensation; the manner of packing and transporting of the shipment; the method of filing complaints, and the procedure of separately storing returned medicines and medical devices that were dispensed indirectly.

For example, the activities that represent the indirect dispensation of medicines and medical devices are stipulated: publishing information about indirect dispensation, placing orders, registration of orders, packaging orders and arranging for its transport, handling complaints and returned medicines and medical devices; the decree inter alia stipulates the obligations for a holder of a pharmaceutical dispensing permit to display the permit (for indirect dispensation) on a visible location of the pharmacy, as well as on the main website of the pharmacy.

The decree became effective on 15 March 2010.

ACT No. 101/2010 Coll. on evincing of the origin of property

The Act on evincing of the origin of property (the "Act") forms a legal basis for a special procedure brought against those whose income is disproportionate to their property. The Act governs the competence of the financial police, prosecutors and the court in proceedings that may result in forfeiture of property by a person. The Act follows the parallel amendment to the Constitution of the Slovak Republic, which laid down the basis for such an encroachment on the constitutional right to property.

Written notifications from individuals or entities on a reasonable suspicion that the property was acquired from illegal sources of income are received by the financial police; notifications may not be anonymous as any anonymous notifications will not be dealt with by the financial police. The financial police can also take action on its own initiative.

The financial police are entitled to request an explanation from anyone who can help to clarify the value and manner of acquisition of the property. The duty to provide explanations may be rejected by those who would cause himself or his close relative either a risk of prosecution or risk of being punished for a misdemeanour. After examining the income, property value and manner of acquisition of the property of the person concerned, the financial police may submit a motion to the prosecutor for the initiation of court proceedings, seeking a declaration that the property value is by an amount of at



least 1,500 times the minimum wage higher than the verifiable income of the person concerned.

The prosecutor shall file the respective action with the court, seeking a declaration on the manner of acquisition of the property from illegal sources of income if, on the basis of the facts, reasonably concludes that the value of property of the person concerned exceeds by at least 1,500 times the minimum wage its verifiable income that the person concerned could have attained, while at the same time the person concerned fails to provide a reasonable explanation of the above facts, or if such explanation is considered insufficient by the prosecutor.

If in the court proceedings initiated by the prosecutor, it is proven by the prosecutor as to the existence of the difference of at least 1,500 times the minimum wage between the proven income of the person concerned it could have attained and its actual property, the court decides that the property, in the amount of the difference, was acquired by such person from illegal sources of income, and it shall subsequently be forfeited to the State. If the person proves to the contrary, the court shall reject the claim.

This Act shall become effective on 1 January 2011.

ACT No. 57/2010 Coll. on amending and supplementing Act No. 528/2008 Coll. on help and support provided from the funds of the European Community, as amended by Act. No. 266/2009 Coll., and on amending and supplementing certain acts

The Amendment affects the operating programs in the sphere of transport, employment and social inclusion, fishing and the operation program, Interact, and deals with regulation in the area of financial management of providing help and support. The Amendment also supplements certain stipulations regarding the execution of project supervision by managing bodies.

The verification of funds from the European Community and other foreign funds

intended for project financing on the

basis of international treaties binding the Slovak Republic is subject to governmental audits pursuant to Act 502/2001 Coll. With respect to the fact that the amount of verified funds will increase (in the period from 2004-2006; it was mandatory to verify at least 5 % of the declared costs, whereas in the period from 2007-2012 it is ca. 15-20 % of declared costs per year, using the method of random statistical selection), it is necessary so that the Ministry of Finance of the SR, as the auditing body, has the possibility, if needed, to delegate the execution of a governmental audit onto other legal persons equipped with the required professional, personal and material means.

Hence, the Amendment amends the former provisions describing the definition of the auditing organ as a basic term, the execution of a governmental audit by another legal person and the fulfillment of special qualification prerequisites of such legal person for executing governmental audits. The Amendment also supplements the provisions regulating the rights and duties of persons called in during the execution of a follow-up supervision and governmental audit.

The Amendment distinguishes between project supervision, administrative supervision and on-the-spot-supervision. The supervision is conducted by the so-called managing organ which is the central organ of state administration designated by the government for executing the operating program. During the project supervision the managing body verifies the fulfillment of conditions for the help and support provision, compliance with payment and related documentation of the special regulation (e. g. with the Act on Public Procurement), international treaties binding the Slovak Republic, on the basis of which foreign funds are provided and contracts concluded under the Civil Code or Commercial Code, further the efficacy, efficiency and reasonableness of using help and support. Administrative supervision is a supervision that is executed by the managing body verifying the written documentation produced by

the supervised subject. On-the-spot-supervision is only conducted by the managing body's employees and called-in persons on the basis of a written authorization to execute on-the-spot-supervision, issued by the designated foreperson of the managing body.

The Amendment became effective as of 1 April 2010.

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