

Legal Update

February 2019

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Contents

Legislative amendments

Labour Code amendment - waiting period cancellation

Amendment of the Insolvency Act

Recent case law

Employee liability for damage caused by executing an unlawful employer instruction

Rights of the acquirer of a share in an LLC in view of a General Meeting resolution on profit distribution

Regressive claim of the State against a responsible party

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

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Legislative amendments

Labour Code amendment-waiting period cancellation

On 21 February 2018, a group of MPs submitted a bill amending the Labour Code to the Chamber of Deputies as Parliamentary Bulletin No. 109. The Chamber approved the bill on 31 October 2018. The Senate then rejected it at a session of 20 December 2018. Nevertheless, the Chamber of Deputies again voted on the bill on 22 January 2019 and insisted on its original wording. The President then signed it into law on 30 January 2019.

The amendment cancels the waiting period, which means employees and persons in a service relationship will now be entitled to the compensation of a wage, salary, remuneration or other income for the first three days of temporary incapacity for work.

Under the Labour Code, employees will be entitled to a replacement wage or salary in the same amount as they have been entitled to on other days they were paid by their employer (i.e. 60% of average earnings with defined reduction limits). The Czech Social Security Administration will then continue to pay employees a sickness benefit as of the 15th day of their temporary incapacity for work.

This amendment affects other legislation that in some form references the waiting period or addresses related issues (e.g. the Income Taxes Act, the Government Social Assistance Act or the Civil Service Act).

The Act on Social Security Premiums and the State Employment Policy Contribution is also to be amended; the employer premium will drop from 25% to 24.8% of the assessment base as a consequence of the fact that the part of the premium paid for sickness insurance is to be reduced from 2.3% to 2.1%. For self-employed individuals participating in the sickness insurance scheme, the rate is also dropping from 2.3% to 2.1%. This rate reduction should serve to offset increased employer costs brought about by the amendment.

The amendment's stated objective is, above all, to improve the social situation of low-income and socially disadvantaged individuals and ensure a higher standard of the right of citizens to material security when unable to work (even during short-term illness).

The amendment is due to enter into force 1 July 2019; should a temporary incapacity for work arise before this date, compensation of a wage, salary, remuneration or other income will be subject to the current legislation. i.e. the institute of the waiting period will apply.

Amendment of the Insolvency Act

The Government submitted a bill amending the Insolvency Act to the Chamber of Deputies on 29 January 2018. The Chamber approved the bill on 26 October 2018. The Senate then returned the bill to the Chamber with proposed amendments on 19 December 2018. The Chamber nevertheless insisted on the bill's original wording on 22 January 2019. The President then signed it into law on 30 January 2019.

The key objective of this amendment is to make it possible to use the institute of debt relief for a wider circle of debtors and to address the situation where many of them find themselves in so-called debt traps. This is designed to give debtors the possibility of at least partial satisfaction of their creditor's claims and to provide them with greater motivation, which should help improve the economic environment in the Czech Republic.

The most important change is the abolition of the current minimum satisfaction of unsecured creditors, where a debtor has invoked the institute of debt relief. Instead of the current 30% coverage, it will be necessary to demonstrate the ability to cover the costs of insolvency proceedings and the remuneration of the person drafting and submitting the insolvency petition or the proposal for authorisation of debt relief.

Legal Update

February 2019

However, new conditions have been attached to avoid abuse of the institute of debt relief (e.g. if, via certain methods, a debtor was found to have had dishonest intent within the preceding 5-year period).

Moreover, where reasons for special consideration exist on the part of the debtor, the insolvency court is now given the option to allow unilateral debt relief even in such cases.

Recent case law

Employee liability for damage caused by executing an unlawful employer instruction

(Supreme Court Judgment No. 21 Cdo 3157/2017 of 12 September 2018)

In this workplace dispute, the respondent (employee) took money from the company's cash desk at the behest of the company executive (employer) solely for the executive's personal use.

The courts dealt with whether, in the matter of employee liability for damage to the employer, it is relevant that the employee caused the damage based on an unlawful instruction from a superior.

The court of first instance ruled that since the damage was caused not only by an employee breach of employment obligation, but also by a breach of obligation on the part of the employer, the employee's liability should be limited to half.

The appellate court found the employee to be fully liable based on the fact she was not obliged to act on the superior's unlawful instruction, and so could have avoided causing the damage.

However, the Supreme Court concluded that even though the employee was not obliged to follow the given instruction, her unlawful action was not the sole cause of the damage. Indeed, the employer bore a share of the responsibility for damage for having given the unlawful instruction. The employee's liability should thus be relatively limited because of the employer's co-responsibility for the incurred damage.

Rights of the acquirer of a share in an LLC in view of a General Meeting resolution on profit distribution

(Supreme Court Ruling No. 27 Cdo 1499/2017 of 10 October 2018)

In this case, the applicant sought an order for the annulment of a General Meeting resolution that decided, among other things, on the distribution of profit. The applicant was a shareholder to whom a share in the company was transferred after the given resolution was issued.

The applicant argued there had been a contract on a future share transfer contract between him and the transferor of the share and that the transferor only delayed the moment of the transfer in order to distribute profit before the acquirer became a company shareholder and in so doing to limit the acquirer's share in the company by means of a decision to increase basic capital.

Both the court of first instance and the appellate court found no reason to order the annulment of the General Meeting decision.

Consequently, the Supreme Court dealt with several questions on the basis of which it handed down the following findings.

The validity of a General Meeting resolution can also be called into question on the grounds of possible non-compliance with good morals. It is thus possible to rule a General Meeting resolution invalid if such resolution only seeks to prevent the transfer of a share in

profit together with the transfer of a business share to the acquirer (where under normal circumstances the share in profit would transfer to him) and to reduce his share in the company.

In general, the right to a share in profit is transferred to the acquirer together with a share in the LLC, if the transfer of the share occurs after the issuance of a General Meeting resolution on the distribution of profit, but before it is actually paid.

In addition, the right to seek an order for the annulment of a General Meeting resolution also transfers to the acquirer if the deadline for filing such a petition has not yet elapsed. However, as regards the grounds for invalidity, this right may only be exercised in the scope in which it can also be exercised by the transferor, or the acquirer may object to grounds that were unknowable at the General Meeting.

Regressive claim of the State against a responsible party

(Supreme Court Judgment No. 25 Cdo 5551/2017 of 14 May 2018)

In this case, the Supreme Court dealt with a regressive claim of the State against a directly responsible party. It inferred that if a special legal regulation does not include a treatment of regressive claims that would take precedence over the general treatment set out in the Civil Code, it is possible to claim amounts paid for compensation to an injured party from the directly responsible party under the general Civil Code treatment.

Whether or not the State empowers a regulation in public law to exercise a claim, as this exclusively involves a private law relationship between the State and the directly responsible party in which the State has the role of a legal entity, is not decisive.

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We hope you will find *Legal Update* to be a useful source of information. We are always interested in your opinion about our newsletter and any comments you may have regarding its content, format and frequency.

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