Legal update

May 2021

Weinhold Legal

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The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics listed in this bulletin should be consulted before any decisions are made.

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Compensation Bonus Act for 2021

Conditions of entitlement for an LLC member

Act No. 95/2021 Coll., On the compensatory bonus for 2021, was published in the Collection of Laws on 26 February 2021. The government bill reflects the state of emergency and follows on Act No. 159/2020 Coll., On the Compensatory bonus in connection with crisis measures in connection with the occurrence of coronavirus SARS CoV-2, as amended, and Act No. 461/2020 Coll., on a Compensatory bonus in connection with the prohibition or restriction of business activities in connection with the occurrence of coronavirus SARS CoV-2, as amended.

In comparison with the older regulation there is a change in a broader definition of the circle of beneficiaries and the amount of support provided. Below we will describe the conditions for the right to a compensation bonus for members in limited liability companies.

The compensation bonus will apply only to those companies that have a maximum of two natural person members, a higher number is accepted only in the case of members of one family. The subject of the compensatory bonus for limited liability companies cannot be the executive director of this company, unless he/she is also a member. Another condition is that the members' shares must not be in the form of equity certificates. Entitlement to the compensation bonus is not limited if the member as an employee of this company is covered by health insurance. Neither is the bankruptcy of a member an obstacle to obtaining the bonus.

Nevertheless, the fact that the company is in bankruptcy or liquidation is an obstacle to the payment of the compensation bonus. Also, a member will not be entitled if the company's turnover has not exceeded CZK 180,000 in any of the previous completed tax periods.

In order for the bonus to be used, it is necessary that the company's activities are significantly affected as a result of the health threats associated with the coronavirus epidemic or as a result of the adoption of crisis measures. Whether these facts can be qualified as a significant impact on the company's activities is assessed according to **the test of income decline** using the comparison period - this can be either the previous calendar month or 3 consecutive months (with the same names as the months for which support is requested) in the period from 1 November 2018 to 31 December 2020. The decrease in income must be by 50% of the average income over the reference period.

Where the member is in quarantine or isolation, the affectedness is not determined, but during this period the activity is automatically considered to be significantly affected for the purposes of the member's entitlement to the compensation bonus. Therefore, if the other conditions are met, the member is entitled to a compensation bonus even without the income decline test.

Another test that must be met is **the test of the majority income** from the activity significantly affected. This can again be done in the comparative period mentioned above, the second option being the relevant period, which means the period from 1 June 2020 to 30 September 2020. The condition is met if the company's income from its own activity, but also her members income in comparison to the comparative, or. decisive period, is prevailing. This second test is performed only if the result of the first test is positive.

The amount of the compensation bonus is CZK 1,000 per calendar day of the bonus period. In the case of quarantine or isolation of a member, the compensation bonus is CZK 500 per calendar day of the bonus period.

Current Case Law

Transfer of an employee to another position after prior notice

(Judgment of the Supreme Court file no. 21 Cdo 836/2019 of 29 January 2021)

The plaintiff was to perform activities for the defendant, his employer, in the position of production preparer, consisting of processing orders in a computer program

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according to customer instructions, developing technological and work procedures for the realization of these orders.

By letter dated 24 March 2017, the defendant terminated the plaintiff's employment relationship for a systematic less serious breach of obligations pursuant to Section 52 letter g) of Act No. 262/2006 Coll., the Labor Code, as amended in the period from 28 February 2017 to 30 June 2017. The breach of the plaintiff's obligations was non-compliance with and defiance of the manager's instructions, as well as in repeatedly incorrect performance of tasks (specifically, bad conversions of area units, incorrect filling in of data when entering production, non-ordering of material for production, which could have endangered the flow of production). The plaintiff received two admonitions for these offences, dated 7 March and 10 March 2017. The plaintiff was subsequently transferred to the position of dispatcher. However, he disagreed with the transfer to another type of work, attending work during working hours, but did not perform any activity. Following this, the defendant delivered to the plaintiff by letter dated 13 April 2017 an immediate notice of termination pursuant to Section 55 Letter. b) of the Labour Code because he refused to perform the work.

The plaintiff considered the notice of termination as invalid, therefore refused to transfer to another position, and also considered the immediate termination of the employment relationship to be invalid. For those reasons, the defendant stated by letter of 27 April 2017 that he insisted on further employment.

The plaintiff therefore filed an action with the District Court of Plzeň - město for a declaration as to the invalidity of the notices of termination (both notice of termination and immediate termination) and compensation for wages in the amount of almost CZK 36,000. The court rejected this action and did not award the plaintiff compensation. However, the court considered invalid only the notice of termination of 24 March, as it was given to the applicant on the basis of two admonitions, which were identical in content. After the transfer to another job, the defendant had the shredding of documents in the job description, which was part of his job even before the transfer. However, because he refused the reassignment, he violated his duty and the immediate termination of the employment relationship was valid.

The plaintiff subsequently appealed to the Regional Court in Pilsen. He upheld the judgment of the court of first instance. However, unlike the court of first instance, he did not find the notice of termination invalid. He found that, although the plaintiff's errors were the same (which were repeated over time), they were separate acts. He further mentioned that if the notice of termination was invalid, the transfer to another job and the subsequent immediate termination would therefore be invalid too.

The plaintiff appealed to the Supreme Court. The court paved the way for a review of the plaintiff's question as to what matters are relevant to the conclusion that the employer made the reason for the dismissal for employment due to a persistent, less serious breach of duty, which is seen in the shortcomings of the work performed. The court explained that the Labour Code divides violations into serious and particularly gross and systematic less serious (here, the employee must commit at least three violations of his work duties).

According to the Supreme Court, the Court of Appeal should therefore have examined whether the applicant's conduct showed signs of a continuous breach of duty. He did not consider that it had been established from the findings of fact that the applicant had committed a culpable breach of duty. In particular, the Supreme Court referred to the defendant's claim that the errors were known to its senior staff, it had to be rectified by other staff and that the plaintiff had not sought redress. The Supreme Court ruled in favor of the plaintiff that the court, based on the statements of co-workers and superiors, respectively from their satisfaction with the applicant's performance, it is incorrect to conclude that these are decisive factors for assessing the applicant's breach of duty.

If the court declares the dismissal invalid (dated March 24), it has retroactive effect. In that particular case, that would mean that the transfer to another position and the subsequent immediate termination of employment (on the ground that the applicant had refused to perform another job) could not be valid either. In this case, therefore, the fact that the employee refused to carry out the work to which he was transferred was not a reason for immediate termination of employment.

For these reasons, the Supreme Court annulled the decision and returned it to the district court for further proceedings. The Court will have to deal with the validity of the termination in the next proceedings.

Liability for defects caused by high humidity of the substrate

(Judgment of the Supreme Court file no. 33 Cdo 772/2019 of 27 January 2021)

The defendant laid a vinyl floor for the plaintiff for the price of CZK 73,050 on the basis of a work contract. Immediately after laying, "roofs" began to form on the floor and the plaintiff (as the client) immediately blamed the defendant for the defects. She rejected the complaint based on an argumentation that the vinyl covering was in order. The measurements showed that the reason for the formation of "roofs" was the high humidity of the substrate, upon which it is not possible to lay vinyl strips. The defendant proposed an amendment to the contract to change the type of covering. The plaintiff disagreed. The plaintiff subsequently withdrew from the contract for its material breach.

The District Court upheld the action on the ground that the plaintiff legitimately expected the defendant to proceed with the care of a professional. And that the withdrawal from the contract cancelled the obligation and the plaintiff is entitled to a refund of the price of the work.

The Regional Court of Appeal in Prague decided otherwise. According to him, the defendant is not responsible for the defect caused by the humid environment, according to him it would have to be the result of a faulty installation procedure. According to the court, the plaintiff is responsible for the readiness of the document.

The applicant lodged an appeal against that decision. Although the contractor could be released from liability for defects caused by the handed over vinyl strips by the customer if he warned of its unsuitability in advance, in this situation this rule does not apply, as the defendant did not warn in advance of humidity, and therefore unsuitability. Despite the note in the order: "*laying on own substrate - ready for laying glued vinyl*", it cannot be assumed that the customer would declare any qualities of the substrate. Given that the client assumed the professional approach of the contractor, the contractor had to assess the suitability of the substrate. For this reason, the assessment of the case by the Regional Court in Prague was incorrect, the Supreme Court annulled it and returned it to this court for further proceedings.