Legal Alert

In the field of labour law

September 7, 2022

Weinhold Legal

Below is a summary of some of the changes in labour law and related areas that have taken place this summer or are due in the coming period. You may also find interesting certain labour law court decisions that we believe are important.

Legislative changes and proposals

Regulation on adjustment of compensation for loss of earnings

Considering the inflationary environment, the government further increased average earnings for the purpose of providing compensation for loss of earnings (the last time this was done by Government Regulation No. 138/2022 Coll. effective from June 1, 2022). Government Regulation No. 256/2022 Coll. regulates an increase in the average earnings relevant for the calculation of compensation for loss of earnings by 5,2 % according to the implementing labour law regulations. A similar adjustment also occurs in the area of compensation for maintenance costs of a deceased's survivors, with the fact that the average earnings decisive for the calculation of compensation for maintenance costs for survivors increases by 5,2 %. The right to an increase for those eligible is due from September 1, 2022. In the same way, the average earnings for the purposes of calculating allowances and maintenance costs will also increase if the right to them arises in the period from September 1, 2022 to December 31, 2022.

Meal allowance adjustment

Decree No. 237/2022 Coll. establishes, with effect from August 20, 2022, new a meal allowance rate for business trips for 2022 (amends Decree No. 511/2021 Coll., as amended). Employees in the private sector are now entitled to a minimum meal allowance of:

- CZK 120, if the business trip lasts 5 to 12 hours,
- CZK 181, if the business trip lasts longer than 12 hours, but no longer than 18 hours,
- CZK 284, if the business trip lasts longer than 18 hours.

Public sector employees are now provided with a meal allowance of:

- CZK 120 to CZK 142, if the business trip lasts 5 to 12 hours,
- CZK 181 to CZK 219, if the business trip lasts longer than 12 hours, but no longer than 18 hours,
- CZK 284 to CZK 340, if the business trip lasts longer than 18 hours.

The adjustment of these amounts also affects the maximum admissibility of the employer's costs for meal vouchers or the meal voucher flat rate, this amount has increased to CZK 99.40.

Adjustment of the rate of the average price of petrol for the purpose of providing travel allowances

Decree No. 237/2022 Coll. also establishes, again with effect from August 20, 2022, a new average price for 98-octane automobile gasoline for travel allowance purposes, established for 2022 by Decree No. 511/2021 Coll., being:-:

- CZK 44,50 for 1 liter of 95 octane car gasoline,
- CZK 51,40 for 1 liter of 98 octane car gasoline,
- CZK 47,10 for 1 liter of diesel,
- CZK 6,00 for 1 kilowatt hour of electricity.

Discounts on the insurance premium paid by the employer for certain groups of employees

In our June issue we informed you in detail about the upcoming discounts on social security premiums (pension insurance premiums and sickness insurance premiums) and contributions to the state employment policy (hereinafter referred to as "insurance premiums").

Discounts on insurance premiums will be available from 1 February 2023, under the conditions set out in Act No. 216/2022 Coll., which amends Act No. 589/1992 Coll., on social security premiums and contributions to the state employment policy, as amended, and other related laws.

When assessing the possibility of applying a discount, it will be necessary to take into account groups of employees, their working hours and actually worked time, as well as the amount of earnings.

Case law

Case law

Dealing with private matters during working hours

Judgement of the Supreme Court File No. 21 Cdo 424/2021, of 20th May 2022

The employee in this case did not mark his early departure

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from work in the attendance sheet, he marked his departure at 4:15 p.m., although he was demonstrably out of the workplace at 3:59 p.m. (he delivered a postal item to the post office addressed to the deputy mayor of the municipality where he was employed, which contained a costume of prison pajamas with an adhesive prison number). He left the workplace at least 16 minutes before the end of working hours, it was proven that he did not perform work or any other activity for the employer, but he claimed remuneration for this time. For this action, the employee was terminated in accordance with § 52 letter g) the Labour Code. In addition to the dispute over whether the notice was given in time, the gravity of the breach of duty was also addressed here. The court of first instance and the court of appeal came to the conclusion that the above-mentioned violation does not reach the level of a serious violation of obligations arising from legal regulations and other regulations related to the employee's work.

Such an assessment of the intensity of the violation appeared to the Supreme Court to be contrary to the aforementioned principles of jurisprudence.

„In particular, the finding that the plaintiff tried to cover up his actions with false information about leaving the workplace speaks against such an evaluation (the court's finding that the plaintiff did not exhaust his entitlement to 2.5 hours of "paid time off" appears to be outside the scope of the matter discussed in this context, because the plaintiff decided not to use this benefit), further the finding that the plaintiff used this time to (planned) defame an official (representative) of the municipality where he was employed. Against the conclusion about the lack of intensity of the plaintiff's actions also speaks the findings about the plaintiff's person (his previous approach to the fulfillment of work duties), i.e., "remarks of a sluggish approach when handing over documents to the personal file", a warning "about the performance of unsatisfactory work results", although it may not have been in the statement directly mentioned.“

Supreme Court also referred to the previous case law, where *„an attack on the employer's property (even if indirect, including pretending to perform work) represents, in terms of the intensity, such conduct, for which it is possible to terminate the employment relationship with the employee (also) by immediate cancellation in accordance with the provisions of § 55 letter b) of the Labour Code; it is not a priori significant what values (to what extent) were threatened or affected by the attack (compare, for example, the judgment of the Supreme Court of 21 January 2014, file no. 21 Cdo 1496/2013)."*

Supreme Court confirmed, that using working time to deal with private matters and reporting this time as working time constitutes an attack on the employer's property.

Termination due to long-term loss of ability to perform current work

Judgement of the Supreme Court File No. 21 Cdo 2964/2021, of 25th May 2022

In the case under consideration, the employee was given notice pursuant to § 52 letter e) of the Labour Code, because according to the medical opinion of 24 August 2017, she had, in the long term, lost the ability to perform her previous work. The long-term loss assessment did not determine whether it was due to general illness, a work-related injury or occupational disease. The absence of information in the report should have caused the dismissal to be invalid, because

„it was not clear for what reasons she was unfit to perform the work in question for a long time, and it is therefore possible to replace the reasons for dismissal according to § 52 letter d) and letter e) of the Labour Code.“

On December 4, 2017, the (former) employee was issued a medical report on the recognition of an occupational disease, from which it follows that the plaintiff was diagnosed with an occupational disease on September 4, 2017, and she was also issued a report on disability with the onset of disability on July 24, 2017, when it was possible to conclude from the medical documentation that the plaintiff was unable to perform the work of a production worker on the day of the termination.

The general courts came to the conclusion that if the notice was given for loss of medical capacity on August 30, 2017 and the occupational disease was not recognized until September 4, 2017, it was a valid notice.

As part of the appeal, the question of the significance of determining the date of

"discovery of an occupational disease" in the employee's medical fitness assessment for the purpose of establishing the fulfillment of the conditions for terminating the employment relationship was resolved in accordance with the provisions of § 52 letter d) of the Labour Code."

The Supreme Court stated, that

„for the validity of a termination of employment pursuant to the provisions of § 52 letter e) [or letter d)] of the

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Labour Code, is decisive an objective finding, that the employee was unable due to the long-term incapacity for work [because of a general illness (for a reason for termination according to the provisions of § 52 letter e) of the Labour Code) or because of the consequences of an occupational accident or occupational disease or threat of this disease (for a reason for notice according to the provisions of § 52 letter d)] of the performance of work according to the employment contract, regardless of the conclusions of the medical opinion, which was used by the employer to prove the existence of a reason for dismissal, or (even) regardless of the conclusions of the decision issued in the review procedure according to the provisions of § 46 ZoSZS or the provisions of § 47 of the ZoSZS."

As the Supreme Court deduced from the evidence provided that the employee was already suffering from an occupational disease on the day the notice was delivered, while the disease was formally diagnosed only 6 days later, the court of first instance and the appellate court did not make the correct decision and their judgments were annulled.

It can therefore be recommended, if the employer is aware of facts that indicate that the employee is suffering from an occupational disease, to delay giving notice for long-term loss of medical capacity. Alternatively, if he has already given notice due to the loss of long-term medical capacity due to a general illness according to § 52 letter e) of the Labour Code and subsequently the employer was delivered a certificate of recognition of an occupational disease, when it will be possible to conclude from the circumstances that the employee was already suffering from an occupational disease on the day of giving notice, to proceed yet with the notice pursuant to § 52 letter d) the Labour Code.

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