Legal Alert
in the field of labour law

20 September 2022

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On 12 September 2022, the Ministry of Labour and Social Affairs forwarded to the external comment procedure material No. MPSV-2022/111094-521/2 on the amendment to Act No. 262/2006 Coll., the Labour Code ("**Labour Code**" or the "**LC**") and other acts ("**Amendment**"), which aims to:

- transpose Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and caregivers and repealing Council Directive 2010/18/EU ("**WLB Directive**") and Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union ("**TPWC Directive**"),
- to regulate the electronic conclusion of employment contracts, agreements on work outside the employment relationship or agreements on the termination of employment or relationships based on an agreement on work outside the employment relationship,
- to introduce an obligation to schedule working time in the context of relationships based on agreements on work outside the employment relationship ("**the Agreements**"), and
- to regulate the delivery of certain labour law acts.

Below we summarise selected proposed changes. However, please note that the following may still change during the legislative process. The Amendment is scheduled to take effect on the first day of the calendar month following the date of its publication in the Statute book.

Electronic conclusion of certain agreements and contracts in labour law

The Labour Code should newly regulate the procedure to be followed pon theu conclusion of an employment contract, an agreement to complete a job, an agreement to perform work or amendments to them, or an agreement on the termination of employment or agreements on the termination of relationships based on agreements via an electronic communications network or service.

In such a case, the employer would be obliged to send a copy of such contracts to the employee's own electronic address, which the employee has provided in advance in writing to the employer for such purposes.

The employee will have the right to withdraw from the Agreements and contracts establishing a basic employment relationship concluded in this way no later than seven days from the date of their delivery to his own electronic address. Such withdrawal in writing (such action will not be taken into account in any other form) may only be made up to the point teh employee's performance has started.

Information obligation on conditions of employment

The TPWC Directive provides an extended scope of the terms and conditions of employment that the employee has to be informed about at the beginning of the employment relationship or when they are changed, as well as a shorter period of time to comply with this obligation than the current regulation.

The employer would have to inform the employee in a written form within seven days (not one month as now) from the beginning of the employment relationship or no later than on the day the change takes effect, not only about the employer's details, the type and place of work, the amount and method of determining the length of holiday, collective agreements setting out employees' rights, remuneration, but also about:

a) the duration and conditions of the trial period,
b) the procedure to be followed by the employer and the employee in terminating the employment relationship, including information on notice period and the procedure for invalid termination of the employment relationship,
c) any professional development provided to the employee,
d) the weekly working time (already applicable now), the expected weekly working time for work under the Agreements (new), the method of scheduling working time (already applicable now), including the length of the compensatory period (new) if irregular scheduling is applied, and the extent of overtime work (new),
e) the minimum daily and weekly uninterrupted rest periods and the provision of meal and rest breaks or reasonable rest and meal times; and
f) the social security body to which the employer shall pay the employee's social security insurance contributions.

It will be sufficient to inform about the particulars mentioned under a) to f), about holiday and remuneration by reference to the relevant legislation, collective agreement or internal regulation.

If the information is to be provided electronically, it will have to be accessible to the employee, who will have to be able to save or print it. The employer will have to prove that the employee received the information. Compliance with the information obligation will apply regardless of the length of the employment relationship (exception for employment relationships of less than one month).

The new Section 37a of the Labour Code should set out the list of

Legal Alert
in the field of labour law

20 September 2022

Weinhold Legal

information to be provided to an employee when sent to perform work in another state.

Failure to comply with the above information obligations will constitute a new offence in Act No. 251/2005 Coll., on Labour Inspection, as amended, with a fine of up to CZK 200,000.

Agreements on work performed outside the employment relationship

Obligation to schedule working time

The upcoming Amendment represents the most significant intervention in the regulation of Agreements since the adoption of the current Labour Code. The employer will be obliged to schedule the working time of employees who work under the Agreements one week before the beginning of the period for which the working time is scheduled or at a differently agreed time. All provisions on working time, including rest periods and obstacles to work on the part of the employee, will now apply to the Agreements. So even if the employer does not have work for the employee, the working time schedules will apply to the employee.

In the case of remuneration, the minimum wage provisions will apply to these employees and they will be entitled to remuneration, compensatory time off or pay for work on public holidays, the right to additional pay for night work and work in difficult working conditions, as well as additional pay for work on Saturdays and Sundays.

Holiday

All "agreement workers" will now have the right to holiday under similar conditions as employees with an employment relationship. For the purposes of assessment and determination of entitlement to holiday, the weekly working time of an employee working under an agreement to perform work will be considered to be the agreed scope of work pursuant to Section 76(4) of the Labour Code (a maximum of 20 hours per week) and for an employee working under an agreement to perform work it will in any case be 10 hours per week. Applying the basic principles of holiday arrangements, this means that in order for a holiday entitlement to arise under an agreement to complete a job, the agreement will have to last at least four weeks and the employee will have to work at least 40 hours in a calendar year in order to be entitled to holiday.

The right to request a reason for giving notice

The Employer will remain free to terminate the Agreements without giving reasons. However, if the employee feels that he/she has been terminated because he/she has lawfully claimed or exercised his/her rights under Sections 35, 37, 37a, 47, 74, 77, 110, 191 to 199, 207 to 209, 227 to 235 and 241 of the Labour Code, he/she shall have the right to ask the employer for written explanation of such termination. The employer shall be obliged to inform the employee in written form about the reasons for the termination. In the event of a legal dispute, the reversed burden of proof may then be applied in foreseeable situations.

Right to apply for employment

An employee working for a longer period of time under the Agreements will be able to make a written request to the Employer for employment under the employment contract. This will be the case if the legal relationship based on the Agreements has lasted for at least six months in the previous 12 months in total. The employer will then be obliged to provide the employee a reasoned written response no later than 1 month after receiving the request.

Parental leave

The employee will apply for parental leave in written form at least 14 days before the start of the parental leave. The request should also include an indication of the duration. Both the employee and the female employee will be able to make such a request repeatedly.

Rights of selected groups of employees

It is already the case that on request:

- an employee taking care of a child under the age of 15,
- a pregnant employee,
- employees who can prove that they themselves provide long-term care for a person dependent on the assistance of another person in levels II to IV,

for shorter working time or other suitable modification of working time, the employer is obliged to accept the request if there are no serious operational reasons against it. However, such employees could now request a restoration of the original working conditions (e.g. an increase in working time, a change in the working time schedule).

The above-mentioned groups of male and female employees could also now request to work from a place other than the employer's desgnated workplace ("home office"). The employer would be obliged to grant this request if there are no serious operational reasons or the character of the work to be performed is not against.

The above changes would be agreed in written form in accordance with Section 80 of the Labour Code (shorter working time) or Section 317 of the Labour Code (home office). If the employer does not accept the above request, the employer would have to give reasons in written form for

Legal Alert
in the field of labour law

20 September 2022

Weinhold Legal

refusing the request.

If the employer does not accept the request without the legal conditions being met, such action would constitute an offence with the possibility of a fine of up to CZK 300,000.

Home office

Home office will be possible on the basis of:

- written agreement with the employee, or
- a written instruction from the employer only if a provision of a public authority so provides, for the time strictly necessary, in accordance with the legitimate interests of the employee and under the condition that the place of home office is suitable for the performance of the work.

The home office agreement or home office order should include:

a) the place or places of working from home office,
b) the method of communication between the employee and the employer, the method of assigning the work and controlling the work,
c) the extent of the home office to be carried out and the detailed conditions for the scheduling of working time,
d) the method of compensation of costs incurred in the performance of home office by the employer,
e) the period for which the home office agreement is concluded,
f) the method of ensuring safety and protection of health at work by the employer, including its control, and the possibility for the employer to enter the place of work in order to clarify the cause and circumstances of the work accident.

The employer or the employee may unilaterally terminate the home office agreement in writing for any reason or without giving any reason, with a 15-day notice period starting on the date on which the notice is delivered to the other party. If the home office agreement was concluded pursuant to Section 241(3) of the Labour Code (the selected groups of employees mentioned above), the employer could only terminate the agreement for serious operational reasons or if the character of the work performed did not allow it.

Although this has now been deduced from the general provisions of the Labour Code, the Amendment would explicitly set the obligation for the employer to compensate the costs incurred in the performance of home office by the employee; this would be in addition to the wages/salary/remuneration from the agreement.

For each hour of home office, a lump sum compensation would be paid for each hour of home office, which includes the costs mentioned in the Act, and this amount should be at least CZK 2.80 per hour (in the private sphere, it will be possible to provide a higher amount). The amount will be subject to change in the light of price developments. Costs not listed in the Act will be paid at the amount proven.

Employees working from home office cannot be denied contact with other employees.

If the home office is to be carried out using electronic communications networks,

- the employer should provide the hardware and software, except where the employee performs the work using his own equipment, and ensure, in particularly as to the software, the protection of data and data processed by remote transmission between the employee and the employer,
- in contrast, the employee should be obliged to act in such a way as to protect data and data relating to the performance of his work.

If the employee schedules his/her own work, the current version of Section 317 of the Labour Code will apply to him/her (i.e. the regulation of the scheduling of working time or certain obstacles to work will not apply to him/her).

In principle, every employee should be able to request to be allowed to work from home office. If the employer decides not to accept such a request, the employer should give reasons in written form for the refusing the request. However, in the case of employees referred to in Section 241(3) of the Labour Code, it will only be able to refuse such a request on the grounds set out therein.

Delivering

The special regulation on the delivery of documents will now apply to documents relating to the termination of employment relationships, with the exception of agreements on the termination of employment relationships, withdrawal or resignation, salary or wage assessments and breaches of the temporary incapacity for work.

The employer will be required to deliver the above-mentioned documents (i) in the employee's own hands at the employer's workplace or (ii) via an electronic communications network or service or (iii) via a data mailbox (if the employee has accepted in a written form to be delivered to the employee's own electronic address or data mailbox). If it is not possible to deliver the document by one of the above methods, the employer may proceed to delivery via the postal service provider or wherever the employee can be reached.

Legal Alert
in the field of labour law

20 September 2022

Weinhold Legal

Where delivery is made by electronic communications network, it will no longer be necessary for the employee to confirm the effectiveness of the delivery by a data message signed with his/her recognised electronic signature, but only confirmation by a data message should be sufficient. If the employee does not confirm acceptance of the document within 10 days from the date of delivery, it would be presumed to have been delivered on the last day of that period.

When delivering a document to an employer, employees would no longer need the employer's consent for delivery by electronic communications network or service or by data mailbox.

The effect of delivery by electronic communications network or service is to take effect on the date on which the employer confirms acceptance by a data message to the employee. If the employer does not confirm acceptance of the document within 10 days of its delivery, it shall be presumed to have been delivered on the last day of that period, unless the document which was sent to the electronic address is returned as undelivered.

If the document is delivered to a data mailbox, it should be presumed to have been delivered when the addressee logs in to the data mailbox or on the 10th day following the delivery of the document to the data mailbox.

Other

Employment relationship for a fixed period of time as well as shorter working time will have to be concluded in writing.

The amendment contains minor wording changes in the area of working time.

Change in procedural rules - reversal of the burden of proof in a dispute

If a (former) employee claims in court facts from which it can be deduced that the employer gave notice or immediately terminated the employment relationship because the employee lawfully asserted one of his/her rights under Sections 35, 37, 37a, 47, 74, 77, 110, 191 to 199, 207 to 209, 227 to 235 and 241 of the Labour Code, the employer will be obliged to prove that the notice or immediate termination of the employment relationship was for another reason. This should similarly apply in the case of termination or immediate termination of a relationship based on the Agreements.

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