Legal Alert
in the field of labour law

19. April 2023

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Amendment to the Labour Code and related changes

On April 18, 2023, the Government submitted an amendment to Act No. 262/2006 Coll., the Labour Code ("**Labour Code**" or "**LC**") and other laws ("**Amendment**") to the Chamber of Deputies under No. 423, which is intended 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 carers 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**"),
- regulate the electronic conclusion of employment contracts, agreements on work performed outside the employment relationship or agreements on the termination of employment or relationships based on an agreement on work performed outside the employment relationship,
- introduce an obligation to allocate working time in the context of relationships based on agreements on work performed outside the employment relationship ("Agreements"),
- modify the rules on teleworking and related compensation; and
- change the rules for delivery of certain labour law related documents.

Please note that the following may still change during the legislative process. However, given that the Amendment is scheduled to take effect on the first day of the calendar month following the date of its publication in the Collection of Laws, it is important to start preparing now, particularly in the area of employee information.

Electronic conclusion of certain agreements and contracts in labour relations

The Labour Code should newly provide for the procedure to be followed in the case of concluding an employment contract, an agreement on working activity, an agreement on the performance of work or amendments thereto, 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.

If any such contracts or Agreements are concluded electronically, the employer will be obliged to send a copy of it to the employee's electronic address which is not in the employer's control and which the employee has communicated to the employer in writing for these purposes (i.e, it is not possible to send these documents to the employee's work address).

Employees will have the right to withdraw from such employment contracts, Agreements or amendments thereto within 7 days from the date of their delivery to the above-mentioned electronic address. A written withdrawal (such action will not be taken in any other form) may be made only until performance has commenced on the part of the employee.

Information obligation on working conditions

The TPWC Directive provides for an expanded scope of the terms and conditions of employment that must be communicated to the employee 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 is provided for in the current regulation. The obligation to inform employees working under Agreements will also be explicitly included and the information will be extended to employees who are posted abroad.

Thus, an employer should inform an employee in writing within 7 days (not one month as before) from the commencement of the employment relationship or no later than on the day the change becomes effective not only about the employer's data, more detailed indication of the type and place of work, the amount and method of determining the length of leave, collective agreements establishing the rights of employees, remuneration, but also about:

a) the duration and conditions of the probationary period, if any,
b) the procedure to be followed by the employer and the employee when terminating the employment relationship, including information on notice periods and the procedure for invalid termination of employment,
c) professional development, if provided by the employer,
d) the fixed weekly working time (now in force), the method of staggering working time (now in force), including the length of the compensatory period (new) if unequal staggering is applied, and the extent of overtime (new),
e) the extent of minimum continuous daily rest and continuous weekly rest and the provision of meal and rest breaks or reasonable rest and meal periods; and
f) the social security body to which the employer pays the employee's social security contributions.

It will be sufficient to refer to the relevant legislation, collective agreement or internal regulation for the information referred to in (a)

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to (f), leave and remuneration.

If the information is submitted electronically, it will need to be accessible to the employee and the employee will need to be able to save or print it. The employer will be required to keep proof of the transmission of the information to the employee. Compliance with the information obligation will apply regardless of the length of the employment relationship.

As part of the obligation to provide information, the employer is also obliged to acquaint employees with the work rules, legal and other regulations to ensure occupational safety and health, the collective agreement and internal regulations when they start work.

The new Section 37a of the Labour Code should provide for a list of information (the state of posting, the period of posting, the currency in which the wages/salary will be paid, the monetary or material benefits provided by the employer in connection with the performance of work, whether and under what conditions the employee's return is ensured) to be provided to the employee when posting to perform work in the territory of another state, unless such information is contained in the employment contract. When posted to another EU State to perform work in the context of the transnational provision of services, the employee shall also be informed of the remuneration for work in accordance with the host State's legislation, the conditions of travel allowances and other benefits provided by the employer in connection with the posting and the link to the official national internet address set up by the host Member State in the framework of the European IMI information exchange system.

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

According to the transitional provisions to the Amendment, employees to whom an obligation was fulfilled before the Amendment came into force will be able to request information in writing within the scope of the Amendment. In this case, the employer will have to comply with their request and fulfil the information obligation in the new scope within 7 days of the request.

Mandatory written form of certain agreements

Fixed-term employment arrangements will have to be in writing, which is already the case now, but a legislative clarification is proposed. If the written form is not respected, the employment relationship will be of indefinite duration.

In the case of an arrangement for shorter working hours (popularly "part-time"), a written form of this arrangement will now also be required, with the proviso that any failure to comply will not affect the extent of the agreed weekly working time, but that such failure will be an offence. Failure to comply with the written form will be punishable by a fine of up to CZK 400,000.

Agreements on work performed outside the employment relationship

Obligation to schedule working hours

The forthcoming Amendment represents the most significant intervention in the regulation of Agreements since the adoption of the current Labour Code. Employees working under Agreements will be obliged to be given a working time schedule or a change thereof by the employer 3 days before the start of the shift or period for which the working time is scheduled or at an otherwise agreed time. Thus, all provisions on working time, including rest periods and obstacles to work on the part of the employee and the employer, will now apply to the Agreements (unless otherwise specified below), meaning that even if the employee does not have work to do, the working time arrangements will apply to the employee.

The scope of the agreement on the performance of work - a total of 300 hours per calendar year - will remain unchanged, but the periods referred to in Section 348(1) of the Labour Code (obstacles to work, holidays, compensatory time off for working on public holidays and overtime, a day when the employee does not work because it is a public holiday and the employee's wage/salary is not reduced) will not be included in this scope.

Remuneration, obstacles to work and compensation

In the case of remuneration, the provisions of Section 110 of the Labour Code (equal pay for work of equal value) will apply to these employees, and they will be entitled to remuneration, compensatory time off or remuneration for working on public holidays, the right to extra pay for night work and work in difficult working environments, as well as extra pay for work on Saturdays and Sundays.

Employees under the Agreements will not be entitled to compensation for remuneration under the Agreements for the duration of other important personal obstacles to work pursuant to Section 199 of the Labour Code (e.g. doctor's visit, wedding, funeral of a family member, etc.) and obstacles to work for reasons of general interest pursuant to Sections 200 to 205 of the Labour Code (e.g. blood donation, leave of absence for conscription), unless otherwise agreed or stipulated by internal regulations.

Employers should have the right to make unilateral deductions from wages under Section 147 of the Labour Code from remuneration

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from agreements as well as from wages.

If the work under the Agreements will be performed remotely, the employer and the employee may agree on compensation.

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 Agreements. This will be the case if his legal relationship based on the Agreements has lasted for a cumulative period of at least 180 days in the previous 12 months. The employer will then be obliged to provide the employee with a reasoned written response within 1 month of receipt of the request.

Holidays

All "contract workers" will now have the right to leave under similar conditions as employees under employment contract. For the purposes of leave, the weekly working time of an employee under the Agreements will be deemed to be 20 hours per week (regardless of the agreed amount). Applying the basic principles of holiday arrangements, this means that in order for a holiday entitlement to arise under, for example, a Performance Agreement, the Agreement will need to last for at least 4 weeks and the employee will need to work at least 80 hours in a calendar year in order to be entitled to holiday.

The right to ask for reasons for giving notice

The Employer will retain the option to terminate the Agreements without giving any reason on 15 days' notice.

However, if the employee believes that he or she has been terminated because

- he/she lawfully sought:
  - the right to information on the conditions of employment (§ 77a, § 77b),
  - the right to advance working time,
  - the right to professional development, or
- the employer has applied for or taken maternity, paternity or parental leave pursuant to section 77(4), for an adjustment of working conditions pursuant to section 241 or section 241a, or has taken maternity, paternity or parental leave, or has cared for or nursed another natural person pursuant to section 191,

such former employee may, within 1 month from the date of delivery of the notice, ask the employer in writing to justify the termination. The employer will then be obliged to inform the (former) employee in writing of the reasons for the termination without undue delay.

Right to information on working conditions

Employers will also have an information obligation towards employees on the basis of the Agreements, in principle within the scope of Section 37 of the Labour Code, however, with regard to working time, the expected amount of working time per day or week, the method of scheduling working time, including the length of the compensatory period pursuant to Section 76(3) (compensatory period for the maximum permitted amount of working time on the basis of the employment agreement) will be indicated. As stated in the explanatory memorandum,

'the *employer's obligation to provide information on the expected amount of daily or weekly working time does not mean that the employer is obliged to schedule and assign work to the employee within that amount. It is only an obligation to provide information to the employee within the meaning of Article 4(2)(l) of the TPWC Directive, so that he can have some basic idea in advance of the approximate amount of time he will be working for the employer*."

The new § 77b provides for an information obligation towards employees under the Agreements if they are posted to the territory of another state.

Any failure to comply with the information obligation is an offence with the possibility of a fine of up to CZK 200,000.

Rest period

The change in terminology is in the case of rest between shifts, which will now be called "continuous daily rest", and the terminological clarification of the employer's obligations. In view of some interpretative problems, the employer's obligation to provide at least 11 hours of continuous daily rest in 24 consecutive hours is now explicitly stated.

Parental leave

Parental leave is provided to the mother of the child after maternity leave and to the father from the birth of the child, to the extent requested by them, but no longer than until the child reaches the age of 3.

The employee will apply for parental leave in writing at least 30 days prior to the commencement of parental leave, and the application must include the duration of the parental leave.

The application should include an indication of the duration. Both the male and female employee will be able to make such a request repeatedly. The amendment does not explicitly address whether employees will be able to request an early termination of maternity leave or whether the employer will be obliged to grant such a request;

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we believe that it is more likely that it will not.

Rights of selected groups of employees

It is already the case that on request:

- an employee caring for a child under the age of 15,
- a pregnant employee,
- employees who can prove that they are long-term carers of a person dependent on the help of another natural person in dependency stages II to IV,

for shorter working hours or other suitable adjustment of working hours, the employer is obliged to comply unless serious operational reasons prevent it. If the employer does not comply with the request, the employer shall give reasons in writing. If the employer does not comply with the request, unless operational reasons prevent it, it is an offence punishable by a fine of up to CZK 300,000.
The above-mentioned employees will then be able to request a restoration or partial restoration of their original working conditions (e.g. increase in hours, change in working time). Reasons must be given for any refusal to grant even this request.

They can now ask for:

- a pregnant employee,
- an employee caring for a child under the age of 9,
- employees who can prove that they themselves are long-term carers of a person dependent on the help of another natural person in dependency stages II to IV,

to work from a place other than the employer's home office. The employer will have to give reasons in writing if the request is not granted.

If the employer does not provide written reasons for not complying with the request, such an action should constitute an offence with the possibility of a fine of up to CZK 200,000.

Telecommuting ("Home office")

Telework will be possible on the basis of:

- a written agreement with the employee (the Labour Code will not provide for mandatory elements), or
- written instructions from the employer provided that the public stipulates so, for the period of time strictly necessary, in accordance with the legitimate interests of the employee and on condition that the place of remote work is suitable for the performance of the work.

A telework agreement can be:

- terminate by agreement on an agreed date, or
- terminate it for any reason or for no reason at all, with a 15-day notice period beginning on the date on which the notice is served on the other party (a different period may be agreed, but it must be the same for both the employee and the employer); both the agreement and the notice must be in writing.

The employer and the employee may agree in the telework agreement that the obligation under the agreement cannot be terminated by either party.

If a written agreement on the conditions of performance of such work is not concluded with an employee who does not work at the employer's workplace pursuant to Section 317(1) of Act No. 262/2006 Coll., as amended before the effective date of the Amendment, the employer shall conclude a written agreement with the employee on the performance of telework within one month from the effective date of the Amendment.

For an employee who will be working remotely and scheduling his/her own hours, the following applies:

- adjustments to working hours, premises and interruptions of work due to inclement weather shall not apply, only the length of the shift shall not exceed 12 hours;
- in the event of other important personal obstacles to work, the employee shall not be entitled to compensation for wages or salary, unless otherwise provided for in the implementing legislation pursuant to Section 199(2);
- for the purposes of providing compensation for wages, salary or remuneration under an agreement pursuant to Sections 192 and 194 and the taking of leave, the fixed shift patterns which the employer is obliged to determine in advance for these purposes shall apply.

Compensation for teleworking costs will be dealt with in the new Section 190a of the Labour Code, under which these costs are:

- reimbursement of expenses incurred by the employee in connection with the performance of telework, which the employee has proved to the employer; or
- a lump sum reimbursement of the costs listed below.

The Labour Code, as amended by the Amendment, expressly permits the employee to agree in writing in advance that he or she is not entitled to reimbursement of expenses in connection with the performance of telework or part thereof.

If this is agreed in writing (with the employee or in a collective agreement) or stipulated in an internal regulation, a lump sum may be provided for each hour of telework (added up over the month),

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which includes the cost of gas, electricity, solid fuels, the supply of district heating and centralised hot water, the supply of water from waterworks and waterworks and the removal of waste water, the removal of waste water and the cleaning of septic tanks and the removal of municipal waste, per adult in an average household in the Czech Republic per hour. This amount is set by the Ministry of Labour and Social Affairs by decree. Employees in the private sector may be granted a higher amount, but with possible tax consequences. The lump sum is payable no later than in the calendar month following the month in which the employee became entitled to it. The amount of the lump sum will vary according to price developments, similar to travel allowances.

For the same types of costs, either a flat rate or actual costs can be provided.

It will also be possible to negotiate the right to expenses for employees working remotely on the basis of Agreements.

Delivery of documents

Special regulations on the service of documents will now apply to documents relating to unilateral termination of employment relationships (i.e. excluding agreements on termination of employment relationships), dismissal or resignation and salary or wage assessments.

The employer will have to deliver the above documents by hand:

- by handing it over at the employer's workplace,
- by handing it over wherever the employee is found,
- via data box,
- through an electronic communications network or service, or
- via the postal service provider.

Delivery by a postal service operator

The employer may deliver a document to an employee through a postal service provider only if delivery at the employer's workplace is not possible.

Refusal to take over

If an employee refuses to accept a document when it is delivered in person, the document will be deemed to have been delivered on the date on which the employee refused to accept it, as is the case today.

Delivery by email and other electronic means

Service by the employer via an electronic communications network or service will only be possible if the employee has consented to it in a separate written declaration in which he or she has also provided an electronic address for service that is not available to the employer.

Before giving consent, the employer will be required to inform the employee in writing of the conditions for the service of a document by electronic communications network or service, including the statutory time limit for deemed service. A document so served will be served on the date on which the employee acknowledges receipt to the employer by data message (email). If the employee does not acknowledge receipt of the document within 15 days of its delivery, it shall be deemed to have been delivered on the last day of that period. It shall continue to be required that the document so delivered be signed with a recognised electronic signature. Consent may be withdrawn.

Delivery via data box

Delivery by the employer to the employee's data box will be possible if the employee has not accessed his/her data box for delivery of documents from "private persons". I.e., no special consent will be required for delivery to the employee's data boxes, it will only depend on the employee's data box settings. If the employee does not log in to the data box within 10 days from the date of delivery of the document to the data box, the document will be deemed to have been delivered on the last day of this period.

Delivery of documents to the employer

On the other hand, the employee will deliver the documents to the employer:

- by personal delivery at the employer's place of business (the employer is obliged to confirm delivery of the document upon request), the document will be delivered by receipt or will be deemed to have been delivered if the employer refuses to accept the document, fails to provide cooperation or otherwise prevents delivery of the document,
- by means of an electronic communications network or service to the electronic address notified by the employer to the employee for this purpose; the document addressed to the employer must be signed by the employee and shall be delivered on the date on which the employer confirms receipt by a data message to the employee. If the employer does not acknowledge receipt of the document within 15 days of the date of delivery, it shall be deemed to have been delivered on the last day of that period,
- via a data box, unless the employer has made it unavailable for delivery of documents from "private persons". If the employer does not log in to the data box within 10 days from the date of delivery of the document to the data box, the document shall be deemed to have been delivered on the last day of that period.

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Change in procedural rules - reversal of the burden of proof in litigation

If a (former) employee alleges in court facts from which it can be inferred that the employer gave him or her notice or immediately terminated his or her employment or any of the Agreements because

- the employee has legally asserted one of his rights:
  - to information at the establishment or change of an employment relationship (Sections 37 and 77a of the Labour Code),
  - the right to information when posting an employee to the territory of another country (Sections 37a and 77b of the Labour Code),
  - the right to the advance scheduling of working time (Sections 74(2) and 84 of the Labour Code),
  - the right to professional development (Sections 227 to 230 of the Labour Code),
- the employee has applied to the employer for employment under Section 77(4) of the Labour Code, or for or has taken maternity, paternity or parental leave, or
- the claimant requested the employer to care for or nurse another natural person pursuant to Section 191 of the Labour Code or cared for or nursed such a natural person pursuant to Section 191 of the Labour Code,

then the employer must prove that the termination or immediate cancellation was for another reason.

Amendment to the Labour Inspection Act

The amendment brings, among other things, changes in the following areas:

- labour inspectors will be able to enter places other than the employer's workplace, with the consent of the employee and other persons concerned who live in the place, if telework is carried out there,
- a new group of offences in the field of telework is introduced, so it will be an offence if the employer:
  - does not conclude in writing a teleworking agreement if teleworking is carried out,
  - breaches its obligations in terminating a telework agreement or telework order,
  - shall not allocate working hours for the purposes of wage compensation, salary or remuneration from an agreement pursuant to Sections 192 and 194 of the Labour Code and the taking of leave of absence established by the allocation of working hours of an employee performing telework into shifts pursuant to Section 317(4)(c) of the Labour Code,

with a fine of up to CZK 300,000

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