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Labour Code Amendment 2012 – positive changes as well as new demands on employers

The major Labour Code Amendment became effective on 1st January 2012. In many aspects it has brought the expected positive changes for employers. However, this amendment has also placed stricter requirements on employers, established new rights for employees and imposed new obligations on employers. New penalties for non-compliance with these requirements have been regulated in related legislation or the existing fines were increased. In particular, employers should not ignore and underestimate obligations connected with the formation, changes and termination of employment relationships, obligations in the area of working time as well as changes relating to the conception of invalidity of legal actions, in particular with respect to defects in the form of legal actions. Below we sum up the most important changes brought by this amendment:

- There is now the possibility of extending the maximum duration of the probationary period in the case of managerial employees for up to 6 months;

- With fixed-term employment relationships, the maximum duration of the probationary period shall be limited in order to ensure that it does not exceed half of the agreed duration of the employment relationship;

- The form of the termination of the employment relationship during the probationary period has changed;

- The time calculation in the employment relationship has been regulated more precisely (probationary period);

- Fixed-term employment contracts are now permitted; the duration of an employment relationship must not exceed 3 years and may only be repeated twice since the formation of the first fixed-term employment relationship;

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- The possibility of the temporary assignment of an employee for work performance to another employer has been reintroduced; however, it is subject to compliance with certain statutory conditions. These conditions distinguish temporary assignment from agency employment (posting an employee for work performance to the user);

- The possibility of agreeing upon an extension of the notice period has been limited to an individual contract between the employer and the employee;

- A new reason for termination has been introduced in the Labour Code: gross breach of another duty by the employee pursuant to Sec. 301a Labour Code, i.e. the obligation of the employee (an insured person), temporarily incapable of working, to adhere to the regime of a patient in respect to the duty to stay at the place of residence during the temporary incapacity for work and to observe the time and extent of permitted leaves in accordance with the Sickness Insurance Act;

- Severance payment is now differentiated depending on the length of the employment with the employer as follows: if the employment relationship has lasted less than one year, the employee is entitled to severance payment amounting to at least one average salary; if the employment relationship has lasted between one and two years, the employee has the right to receive severance payment amounting to at least two average salaries; if the employment relationship lasted at least two years, the employee is entitled to severance payment amounting to at least three average salaries. If the employment relationship is terminated during a time in which the employee is subject to special procedure with respect to working time account under the Labour Code, the employee has the right to severance payment amounting to the aggregate of three average salaries and the above mentioned sums;

- The courts right to moderate has been reintroduced; in case the court decides on the validity of the termination of an employment relationship, it may appropriately reduce the employer's obligation to pay compensatory wage or salary under specified conditions on the motion of the employer;

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- The maximum scope of work for which an agreement to complete a job ("dohoda o provedení práce") may be concluded has been extended from 150 to 300 hours; now, the time for which this agreement is concluded must be stated in this agreement. The income of employees working under an agreement to complete a job is subject to social security and health insurance contributions in case the income exceeds CZK 10,000 per month;

- A more precise definition of working time has been introduced; the length of a work shift may not exceed 12 hours, flexible organisation of working time has been newly specified. Furthermore, the employer's obligation to prepare a written schedule of weekly working time and to make the employees acquainted with it or its changes shall now cover all employees (including employees having even distribution of working time);

- Stricter requirements concerning the recording of working time have been introduced, now the employers are explicitly obliged to keep records of individual employees, including the beginning and the end of the shift; a special procedure with respect to working time account has been introduced;

- The employer is allowed to agree with the employee a different level of premium payments for working at night, on Saturdays or Sundays, than is stipulated in the Labour Code, i.e. another minimum amount of such premium payments and the way of their determination may be agreed upon;

- The possibility to agree with the employee a salary covering 150 hours of overtime work as a maximum has been introduced (regarding all employees); with managerial employees, a salary covering all overtime work may be agreed upon;

- The amendment has stipulated the employer's obligation to reduce meal allowance if during the business trip the employees are provided with meals for which they do not make any financial contribution; the amounts and the time zones have been changed in the case of meal allowances for business trips abroad;

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- A new method of payment of salary has been permitted – transfer to the employee's account if the operation conditions for the payment of the salary make the payment difficult or even impossible. Otherwise, the salary may be transferred to the employee's account only if agreed upon between the employer and the employee;

- A new regulation of annual leave has been introduced as well as the possibility that the employee may determine the time in which the leave will be taken;

- The regulation of non-competition clause has been changed as follows: a non-competition clause may be agreed upon during the probationary period and the employer's obligation to provide the employee appropriate monetary compensation for each month in which employee complies with non-competition obligation has been reduced from at least one average monthly salary to one half of the employee's average monthly earnings;

- The employer is obliged to provide information and to discuss issues with the trade union, board of employees (the employees concerned) relating to the transfer of rights and obligations arising out of employment relationships at least 30 days in advance;

- The employee's right to terminate his employment relationship by notice of termination in connection with transfer of rights and obligations arising out of employment relationship has been introduced; in this case a different length of notice period has been stipulated so that the employment relationship ends on the day preceding the day on which the transfer of rights and obligations becomes effective at the latest. Furthermore, the employee is entitled to terminate his employment relationship within a 2-month period after the transfer became effective and sue for declaration that the employment relationship has been terminated as a result of deterioration of working conditions in connection with the transfer. On the basis of the final judicial decision on deterioration of working conditions in connection with the transfer the employee may claim severance payment from the employer;

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- The employer's obligation to issue an employment verification at the termination of the employment relationship has been extended as follows: the employer is now obliged to issue an employment verification also in case an agreement to complete a job has been terminated;

- The Labour Office shall no longer decide whether there are reasons for partial unemployment with employers where there is no trade union.

Also, employers should take into account a newly revised definition of dependent work: the amendment distinguishes between basic features of performing dependent work and conditions under which dependent work must be performed. This fact is significant with regard to the amendment to the Employment Act where illegal work has been newly defined; also the performance of dependent work carried out by an individual outside an employment relationship (so-called Svarc system, in Czech švarcsystém) shall be considered to be illegal work. At the same time high monetary sanctions were stipulated both for enabling the performance of illegal work and for its performance. Sanction up to CZK 10 million, CZK 250,000 as a minimum, may be imposed on a legal entity that enables the performance of illegal work. Individuals carrying out illegal work may face a sanction up to CZK 100,000.

The amendment to the Employment Act has brought further duties and obligations of employers, including but not limited to, an obligation of legal entities/individuals to have copies of documents proving the existence of employment relationships at the workplace, as well as documents that these persons are obliged to keep pursuant to Sec. 102 (3) Employment Act.

In connection with the Labour Code Amendment also the amendment to the Labour Inspection Act is to be mentioned in which sanctions for breach of obligations under employment law have been increased and the facts of administrative delicts/transgressions when breaching employment obligations have been newly regulated. If, for instance, a legal entity does not conclude a written employment contract, an agreement to complete a job or an agreement to perform work (dohoda o pracovní činnosti), it may face a fine up to CZK 10 million.

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Latest information concerning the application of judgment NSS 5 Afs 45/2011-94 (tax exemption of unrealized exchange rate gains) in practice

On the basis of the above-mentioned judgment, it is not possible to submit additional income tax returns for previous (not lapsed) tax periods due to temporary effects of the new judicature (with future effects only) since additional income tax return can be filed only in case of new facts according to the Tax Code, whereas a new judgment is not considered to be a new fact. Consequently, the application of the judgment is theoretically possible for the tax period of 2011 at the earliest; nevertheless, in view of the time of publication (May 2012), the taxpayers who submitted their tax returns before 1st April 2012 (i.e. before the judgment was published) would be at a disadvantage. Therefore, under the "same to all" principle it is, in our opinion, practically not possible to apply this judgment earlier than the tax periods starting in 2012.

On the basis of the judgment, tax administration cannot assess additional exchange rate losses claimed in the past by virtue of standard administrative practices (to which reference can be made even if they are unlawful). They can only be changed (i) for rational reasons (for instance on account of this judgment), (ii) pro futuro (i.e. in the future and only with regard to unrealized exchange rate differences of new receivables/liabilities that have arisen during 2012 – i.e. after the judgment was published) or, as the case may be, (iii) when complying with the "the same to all" principle – see above.

For the sake of precision, it should be mentioned that the judgment applies only to such unrealized exchange rate differences that have been subject to an amendment of the accounting standard – i.e. in case of receivables, liabilities and bonds with maturity of more than 1 year. Accordingly, it does not apply to cash, bank deposits and negotiable securities to be revaluated at fair value in the income statement.

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If you wish to apply the judgement to the tax period of 2011, a binding ruling request under Sec. 24a Income Tax Act concerning the accuracy of allocation of unrealized exchange rate gains and losses to taxable and non-taxable income is the only way to do so. Tax administration must also deal in its response with the method of taxation of exchange differences in general. This request can be combined with a request for postponement of deadline for filing the tax return, however, only after the binding ruling decision has been issued. Optionally, an additional tax return may be filed in this case (which is allowed under the Tax Code).

In all likelihood, an amendment to the Income Tax Act will be made in order to make it clear in which cases exchange rate differences shall be subject to taxation (Sec. 18 (1)) by which the problem will be solved.

Neither the General Finance Directorate nor the Ministry of Finance are planning to issue their opinions for the public on this matter for the time being. From this fact it can be concluded that they prefer the existing approach to taxation.

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