NEWSLETTER 19.9. 2023

2023 Amendment to the Labour Code

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- **On 19 September 2023, an amendment to the Labour Code** was published in the Collection of Laws, i.e. Act No. 281/2023 Coll., amending Act No. 262/2006 Coll., the Labour Code, as amended, and certain other acts (hereinafter also referred to as the "**Labour Code**"). As a whole, the amendment will **come into force as of 1 October 2023**, and in the part concerning holidays as of **1 January 2024.**

- It is a transposition of **two European directives**, namely:
  - Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers (**the Work-life Balance Directive**),
  - Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparental and predictable working conditions in the European Union (**the so-called TPWC Directive**).

- The **main changes** introduced by the amendment to the Labour Code include:
  - introduction of the possibility of electronic conclusion of certain employment documents,
  - the extension of the employer's information obligation in relation to employees,
  - provision of greater protection for employees working on the basis of an agreement to complete a work (hereinafter also referred to as "DPP") or an agreement on work performance (hereinafter also referred to as "DPČ"),
  - establishing new rules for teleworking (home office),
  - regulation of the delivery of documents by the employer to the employee,
  - other minor changes: parental leave, shorter working hours, uninterrupted rest.

I. ELECTRONIC CONCLUSION OF BILATERAL DOCUMENTS IN LABOUR-LAW RELATIONS

- The amendment to the Labour Code allows for certain bilateral legal acts establishing, amending or terminating employment relationships to be concluded using an electronic communications network or service, specifically for the following documents:

  - **employment contracts, agreements on work performance (DPČ), agreement to complete a work (DPP) and amendments thereto, and**
  - **agreements on the termination of employment** pursuant to Section 49 of the Labour Code **and agreements on the cancellation of an agreement on work performance or an agreement to complete a work** pursuant to Section 77(5)(a) of the Labour Code.

- The relevant document will be concluded electronically if the employer sends a copy of it to an **electronic address of the employee that is not in the employer's possession and that the employee provides to the employer in writing for this purpose** (e.g. to the employee's private email). In any case, it cannot be the employee's work email. The amendment to the Labour Code does not require a specific type of electronic signature on such a document. With regard to the relevant legislation (i.e. Act No. 297/2016 Coll, on trust services for electronic transactions and Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market - i.e. eiDAS Regulation), as well as the existing case law of the Czech courts, it should be at least a guaranteed electronic signature, which usually meets the requirements for a written form, both on the part of the employer and the employee (i.e.

commercial contracting tools such as DocuSign will suffice, on the contrary, e.g. a scanned copy of a document with handwritten signatures of the contracting parties will not be sufficient).

- The employee will have the right to withdraw from the electronically concluded employment contract, agreement on work performance, agreement to complete a work or amendments thereto from the moment of their conclusion, but no later than 7 days from the date of delivery of their signed copy to the employee's electronic address. The condition for this is that the employee has not yet commenced performance (e.g. the employee has not yet started work, has not yet started performing the new type of work agreed in the amendment to the employment contract from which he/she is withdrawing). The resignation will have to be made in writing, otherwise it will not be taken into account.

II. INFORMATION ON THE CONTENT OF THE EMPLOYMENT RELATIONSHIP

- The amendment also modifies the employer's information obligation under Section 37(1) of the Labour Code by:
  - **reducing the time limit** for fulfilling this obligation from 1 month **to 7 days** from the commencement of the employment relationship; and
  - **extends the scope of information** that the employer is obliged to provide to the employee in writing. Under the new regulation, all of the following information shall be covered (*the information added by the amendment is underlined below*):
    i. name and registered office of the employer - legal person, name, surname and address of the employer - natural person,
    ii. a more detailed indication of the type and place of work,
    iii. the amount of leave and the method of determining the length of leave,

iv. the duration and conditions of the probationary period, if agreed,
v. the procedure to be followed by both the employer and the employee in terminating the employment relationship, the duration and length of the notice period,
vi. professional development of the employee, if the employer provides it,
vii. the weekly working time, the method of its distribution, including the length of the compensation period if the working time is distributed unevenly, and the extent of overtime work,
viii. the extent of the minimum daily and weekly uninterrupted rest periods and the provision of meal and rest breaks,
ix. the wage, its due date, the date of payment of wages, the place and method of payment of wages,
x. collective agreements and the identification of the parties thereto,
xi. the social security body to which the employer pays social security contributions in connection with the employment of the employee concerned.

- The employer may fulfil the information obligation in the same way as before, i.e. by providing the mandatory data directly in the **employment contract** or in a separate **written information pursuant to Section 37(1) of the Labour Code**, which the employer is entitled to unilaterally amend, unlike the employment contract. Certain information (points iii. to ix. and xi. above) may be replaced by a reference to the relevant legislation, collective agreement or internal regulation.

- The employer is obliged to inform the employee in writing of a change in the information referred to in Section 37(1) of the Labour Code without delay, no later than **on the day the change takes effect.**

- The employer may provide written information pursuant to Section 37(1) of the Labour Code to the employee **in paper or electronic form** (e.g. on the Intranet). The information in electronic form must

be accessible to the employee and the employee must be able to save or print it. The employer is obliged to keep proof of the transmission of the information to the employee.

- **The employer's information obligation in relation to employees posted to the territory of a foreign country** is newly regulated in a separate provision of Section 37a of the Labour Code. The scope of information to be communicated is also extended. The employer will be obliged to provide the employee with information about the country in which the work is to be performed, the expected duration of the posting, the monetary or material remuneration in connection with the performance of the work and also information about whether and under what conditions the employee's return from abroad is assured.

III. AGREEMENTS ON WORK PERFORMED OUTSIDE THE EMPLOYMENT RELATIONSHIP (DPP/DPČ)

- Labour-law relationships based on an agreement on work performance or an agreement to complete a work will henceforth be subject to certain rules that have so far applied only to the performance of work under an employment contract, and which are intended to ensure greater transparency and predictability in these relationships, in line with the requirements of the TPWC Directive. In particular, the following rules will apply:

  - **for scheduling working hours**. The employer is newly obliged to **schedule working hours in advance in a written schedule** and to inform the employee of the schedule and any changes to it at least 3 days in advance, unless they agree on a different period of notification (i.e. shorter or longer),

- **on any obstacles to work**. Since the employee will be scheduled to work, there will be no reason why he/she should not be entitled to rights in connection with obstacles at work, however, if there are other important personal obstacles at work according to § 199 of the Labour Code (e.g. medical examination, wedding, death, etc.) or for general interest reasons pursuant to Sections 200 to 205 of the Labour Code, the employer shall only be obliged to provide the employee with time off work and not with compensation (unless agreed with the employee or provided for by an internal regulation). In the case of other obstacles at work (e.g. temporary incapacity for work, quarantine), the employee will be entitled to both time off work and compensation.
- **for providing extra pay** or compensatory time off for working on public holidays, night work, work in difficult working environments and work on Saturdays and Sundays.

- **Transition to employment relationship**. An employee whose labour-law relationships based on agreement to complete a work or an agreement on work performance work that have lasted for at least 180 days in the preceding 12 months in the aggregate with the same employer may apply in writing to the employer for employment relationship under an employment contract. The employer is obliged to provide the employee with a reasoned written reply within 1 month at the latest (but not necessarily to comply with the request).

- **The right to a statement of reasons**. If the employee considers that he or she has been dismissed because he or she has asserted or exercised his or her rights in a lawful manner (e.g. the right to information at the commencement or change of his or her labour-law relationship, the right to schedule working hours in advance or the right to professional development, or the right to apply for employment

under an employment contract), he or she may, within 1 month from the date of delivery of the notice, request in writing that the employer provide **a written justification for the dismissal.** In such a case, the employer must inform the employee in writing of the reasons for the termination without undue delay. If the employer fails to do so, it may be **fined up to CZK 200,000.**

- **The employer's information obligation upon the establishment or change of a legal relationship based on an agreement to complete a job or an agreement to perform work.** The scope of the information obligation is contained in Section 77a of the Labour Code and is similar to that of an employment relationship. In addition, the employee must be informed of the expected amount of working time per day, eventually per week. (However, this does not necessarily mean that the employer is obliged to allocate the employee's working time within this scope).

- **Right to annual leave.** With effect as of **1 January 2024,** the same rules for the accrual, calculation and use of annual leave will apply to employees working on the basis of agreements on work performed outside the employment relationship (DPČ/DPP) as to employees in an employment relationship under an employment contract. Therefore, if an employee working on the basis of an agreement on work performance or an agreement to complete a work meets the statutory conditions, he/she will be **entitled to annual leave**, whereas for these employees, **the weekly working hours for the purposes of annual leave will be 20 hours,** regardless of the actual amount of working hours agreed and worked under the agreement.

IV. TELEWORK (HOME OFFICE)

- According to the amendment, **telework** will only be possible on the basis of a **written agreement** between the employer and the employee. The mandatory elements of the agreement are not stipulated by the law, but it will be left entirely to the parties to agree on the content of the agreement (e.g. the place of remote working, the scheduling of working hours, the principles and provision of occupational health and safety, the method of reimbursement of expenses when working remotely).

- The telework agreement can be **terminated:**
  - by written agreement on an agreed date or
  - by written notice for any reason or without stating a reason, with **15 days' notice period** to commence on the date on which it is served on the other party. However, the parties may agree on a different length of the notice period. The notice period must be the same for both the employer and the employee. The employer and the employee may also agree in the agreement that the obligation under the agreement cannot be terminated by either party (so-called non-contractible agreement).

- **Telework order.** An employer will be allowed to order an employee to telework only if a public authority so provides under another law (e.g., the Crisis Act, the Public Health Protection Act), and only for a strictly necessary period of time, if the nature of the work to be performed allows it and provided that the place of telework is suitable for the performance of the work. The employee is obliged to designate the place of remote work in writing at the employer's request or to inform the employer that he/she does not have such a suitable place. No agreement shall be concluded in the case of a telework order.

- The new legislation regulates the following methods of **reimbursement of costs when performing telework**:
  - as before, the employer shall reimburse the costs incurred by the employee in connection with the performance of telework and which are proven by the employee (i.e**. actually proven costs**), or
  - the employer now pays the costs in a **lump sum.** This will be possible if it is agreed in writing or set out in an internal regulation. The employee will be entitled to compensation for each hour of teleworking at the rate set out in the Ministry of Labour and Social Affairs' decree. If the costs are reimbursed in a lump sum, the lump sum will cover all the costs incurred by the employee in carrying out the telework.
  - **the employer and the employee may agree in advance and in writing that the employee shall not be entitled to reimbursement for expenses in connection with the performance of telework.**

- Employees will have **the right to request telework.** In addition, if a pregnant employee, an employee caring for a child under the age of 9, or a dependent, does so, they will have the **right to a written justification** if the employer refuses their request.

- If the telework agreement was only negotiated orally before the amendment came into force, the employer is obliged to negotiate it in writing **within 1 month** of the amendment's coming into force.

- **For offences in the field of telework** (e.g. failure to conclude a telework agreement in writing), the employer may be fined up to **CZK 300,000.**

V. DELIVERY

- **The rules of delivery pursuant to Section 334 et seq. of the Labour Code** will continue to apply to the delivery of termination notices, immediate dismissals, probationary dismissals and other documents relating to the termination of labour-law relationships (so-called qualified notifications), as well as to the removal or resignation of a managerial employee from his/her position and to the delivery of a wage assessment, but no longer to the delivery of an agreement on termination of employment relationship pursuant to Section 49 of the Labour Code or an agreement on the termination of an agreement on work performance or an agreement to complete a work pursuant to Section 77(4) of the Labour Code.

- The Employer shall deliver the above documents in the employee's **own hands**, namely
  - by handing them over at the employer's workplace,
  - by delivering them wherever the employee is present,
  - by data mailbox,
  - via an electronic communications network or service, or
  - via the postal service provider (if delivery at the workplace is not possible).

- Delivery via an electronic communications network or service will be possible if the employee consents to it in a **separate written declaration**, stating an electronic address that is not available to the employer (e.g. private email). Before giving consent, the employer must inform the employee in writing of this method of delivery, including the 15-day period for confirmation. If the employee does not

acknowledge receipt of the document within this period, it shall be deemed to have been delivered on the last day of this period. However, the employee needs no longer confirm receipt by his recognised electronic signature. The employee may withdraw his / her acceptance in writing at any time. On the contrary, the employer must continue to sign the documents referred to in Section 334 of the Labour Code with his recognised electronic signature.

- **Delivery to the employee's data mailbox** will now be possible if the employee does not access it for delivery of documents from the data mailbox of a natural person, an entrepreneurial natural person or a legal person pursuant to Section 18a of the Act on Electronic Acts and Authorised Conversion of Documents. If the employee does not log in to the data mailbox within 10 days from the date of delivery of the document, the document shall be deemed to have been delivered on the last day of this period. The employee's consent will no longer be required for delivery to the data mailbox.

VI. SUMMARY OF THE EMPLOYER'S NEW OBLIGATIONS

- The amendment to the Labour Code introduces a number of innovations that imply new obligations for the employers, **especially with respect to employees on DPP/DPČ** (e.g. the obligation to schedule working hours, to provide annual leave, to justify in writing the termination of employment at the employee's request, to respond in writing to a request for employment in an employment relationship). Increased costs may be incurred by employers not only due to the obligation to provide annual leave, but also extra payments for working on public holidays, nights or weekends.

- In connection with the **extension of the information obligation,** employers will be obliged to modify their employment documents, i.e. in particular employment contracts and written information pursuant to Section 37(1) of the Labour Code, as well as agreements on work performed outside the employment relationship (DPP/DPČ) and the new written information pursuant to Section 77a of the Labour Code so that for employees commencing employment after the amendment takes effect, i.e. after 1 October 2023, they already contain all the information required by the amendment. If the employer is requested to provide the information in the scope of § 37(1) of the Labour Code or § 77a of the Labour Code by its existing employees who joined the employer before the amendment came into force, the employer is obliged to provide them with the information within 7 days of receiving the request.

- **Telework agreements** must be converted into **written form** within 1 month of the amendment coming into force, and the method of reimbursement of expenses (e.g. by a lump sum) should be reviewed and, if necessary, adjusted.

We hope the above summary will ease your orientation in the new legislation. We are available for any of your additional requests or information or legal assistance in this area.

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