



NEWSLETTER 30 JULY 2020

Novelization of the Labour Code 2020 – part
one

NOVELIZATION OF THE LABOUR CODE 2020

- **As of 30th July 2020 the first part of the novelization of the Labour Code (Act No. 262/2006 Coll.), published in the Collection of Laws on 26th June 2020 under No. 285/2020 Coll., became effective.**
- This part introduces in particular **a new legal regulation of the delivery of documents, further specification of the regulation of the transfer of rights and obligations arising from the labour relations and new conditions for the posting of workers to EU Member States** in accordance with the European legislations.
- The second part of the abovementioned novelization, becoming effective **as of 1st January 2021**, will introduce **shared jobs, new holiday rules** and other changes (e.g. increase in certain types of compensation that the employer is obliged to pay to survivors of the employee who died due to an occupational injury or an occupational disease, or newly to other persons who are affected by very serious injury to the employee's health). This second part of the novelization shall be addressed in our next Newsletter.

New legislation on the delivery of documents

- **The obligation** of the employer **to deliver certain documents**, especially documents concerning commencement, changes and termination of the employment relationship or an agreement on work performed outside the employment relationship, **to the employee in his own hands** (i.e. in person) remains in the Labour Code also after 30th July 2020.
- The employer is therefore still obliged to deliver important documents to the employee primarily **in person into his own hands at the workplace**. Only if this is not possible, the employer is newly allowed to deliver the document to the employee in one of the following ways (without determining their order):
 - (i) wherever the employee is found in person,
 - (ii) through a postal service provider,
 - (iii) via an electronic communications network or service (according to the existing rules pursuant to Section 335 LC), or
 - (iv) via the data box (newly inserted by the amendment – see below).
- It is entirely up to the employer to choose one of the delivery methods mentioned in points (i) to (iv) above.

- Further change is the simplification of the delivery of documents from the employer to the employee **via the data box** (a recognized electronic signature or confirmation of receipt by the employee is no longer required). Only the employee's written consent to this method of delivery shall be required. Then, if the employee does not log in to the data box within 10 days from the date of the delivery of the document to the data box, the document shall be considered delivered on the last day of this period.
- Also the delivery of employer's documents to the employee **through the postal service provider** is newly regulated. The employer shall no longer send documents to the last known address of the employee, but to the address notified to him in writing by the employee. Thus, the employee will be responsible for the accuracy and timeliness of the respective data. Furthermore, the length of the storage period of a document that could not be delivered via the postal service provider has been changed from current 10 working days to 15 calendar days, thus the storage period set by the Labour Code is unified with the period set by the Czech Post. In addition, the postal service provider shall not have to make a written record of the instructions given to the employee and concerning the consequences, if he/she refuses to accept the delivered document.
- Minor changes also concern the delivery of documents from the employee to his employer, e.g. the fiction of the delivery is newly determined in the event that the employer refuses to accept the document or otherwise fails to do so. Furthermore, if the employer agrees, the employee may deliver the document via employer's data box.

Specification of the rules for the transfer of rights and obligations arising from labour relations

- The Labour Code's amendment aims to define this area more precisely and thus to reduce the cases in which a transfer of rights and obligations arising from labour relations occurs.
- The transfer of rights and obligations arising from labour relations during the transfer of the employer's activity or a part of it to another employer shall be newly conditioned upon the **cumulative fulfilment of following conditions:**
 - (i) after the transfer, the transferred activity is performed in the same or similar manner and to the same or similar extent,
 - (ii) the activity does not consist wholly or mainly of supply of goods,
 - (iii) immediately prior to the transfer, there is a group of employees which was intentionally created by the employer for the sole or predominant performance of the transferred activity,
 - (iv) the activity is not intended to be short-term or does not consist of a one-off task,
 - (v) as a part of the transfer of the activity, also the property is transferred, or the right to use it, if such property is essential for the performance of the activity, except where performance of the transferred activity depends substantially only on employees, not on property, and a substantial part of these employees, which the current employer (transferor) used in the performance of the activity, is taken over by the new employer (transferee).
- In order for the transfer to occur, all the conditions listed in points (i) to (v) above have to be met.

- However, the fulfilment of the above stated conditions shall not be required in cases where there is a transfer under another law (e.g. the purchase of a business enterprise or a part thereof or a transformation under the Civil Code, or the Act on the Transformation of Business Corporations and Cooperatives).
- New rules also allow the employee to **terminate the employment relationship** with the current employer (transferor) in connection with the transfer. The novelization distinguishes between the following two situations:
 - (i) the employee was duly and timely informed of the transfer, i.e. as required under Section 339 LC and no later than 30 days prior to the effective date of the transfer, then he/she may give the termination notice to the current employer (transferor) due to the transfer within 15 day from the day when he/she was informed of such a transfer. The employment shall terminate at the latest on the day preceding the date on which the transfer takes effect.
 - (ii) the employee was not duly and timely informed of the transfer (pursuant to Section 339 LC), then the employee may terminate his/her employment as follows:
 - if the notice was given before the date of the transfer effectiveness, the employment shall terminate on the day preceding the date of the transfer effectiveness,
 - if the notice was given within 2 months from the date of the transfer effectiveness, the employment shall terminate upon expiration of the notice period, which shall be 15 days and starts on the day on which the notice was delivered to the employer.

New conditions for posting workers to the EU

- The new legislation is a transposition of the Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting workers in the framework of the provision of services. The novelization is reflected not only in the Labour Code, but also in the Act No. 435/2004 Coll., on Employment, and Act. No. 521/2005 Coll., on Labour Inspection. The deadline for the transposition was set as of 30th July 2020.

- The changes affect **employees of the employer from another EU Member State who are posted to perform work in the framework of the transnational provision of services in the Czech Republic**, and consist mainly of:
 - (i) **Extension of working and wage conditions which the employer is obliged to provide to the posted employee:** in addition to the right to the minimum wage, the relevant minimum level of guaranteed wage and overtime premiums, the posted employee shall be newly entitled to:
 - all other mandatory wage supplements (premiums for night work, for work on public holiday, on Saturdays and Sundays or for work in difficult working environment),
 - reimbursement of travel expenses in the event that the posted employee is further sent on a business trip outside the regular workplace of work in the Czech Republic,
 - accommodation conditions that correspond to the standard set for the accommodation facility by the relevant (construction and hygienic) legal regulations (in case the employer provides the accommodation to the posted employee).

- (ii) **Regulation of the long-term posting**, i.e. posting of employees for a period exceeding 12 months. After the expiration of this period, the rights of posted employees are extended so that they have the same working conditions as domestic employees; however, they are not subject to the regulation of commencement, changes and termination of the employment. In order to prevent circumvention of long-term posting, it is expressly laid down that, if one employee is replaced by another while performing the same work tasks at the same place, their posting periods are added together for the purposes of assessing the long-term posting. If the posting employer notifies the respective Labour Office of the Czech Republic in writing before the expiration of 12 months, the period of posting may be extended to 18 months.
- (iii) **Introduction of an information obligation of an user toward an employment agency, if it sends an agency employee to perform work within the transnational provision of services**. In such a case, the user is obliged to inform the employment agency in advance of the workplace in another EU Member State, work tasks, the date of commencement of work, the expected time of posting and also whether the posted worker replaces another posted worker.
- (iv) **Introduction of information and other obligations of a posting employer toward the Czech authorities**. The posting employer is obliged to inform the relevant Czech Labour Office about the posting of an employee on the territory of the Czech Republic, at the latest on the day of commencement of the work. It is also obliged to have records of posted employees and documents proving their employment at the workplace in the Czech Republic.

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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