



NEWSLETTER 7/2017

Novelization of the Employment Act 2017

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- **The novelization of the Employment Act**, i.e. the **Act No. 206/2017 Coll.**, by which the Act No. 435/2004 Coll., the Employment Act („the **EA**“), is amended, became effective as of **29th July 2017**.

- **The most important changes**, introduced by the new law, relate especially to following areas:
 - (i) regulation of conditions of so-called agency employment by employment agencies;
 - (ii) mandatory employment of disabled persons via so-called substitute performance;
 - (iii) performance of so-called non-conflicting employment;
 - (iv) protection of employee's privacy.

- The novelization also **modifies other legal regulations**, especially the Act No. 262/2006 Coll., Labour Code, the Act No. 251/2005 Coll., Labour Inspection Act, and the Act No. 634/2004 Coll., Administrative Fees Act.

I. AGENCY EMPLOYMENT

Aims of the new legislation:

- a stricter **regulation of the agency employment market** with the aim **to reinforce the position of the employment agencies that perform their activities in compliance with the law**, and on the contrary to eliminate activities of those employment agencies that violate the legal regulation, as well as the limitation of agency employment without any valid authorisation (so-called **covered agency employment**);
- **tightening of conditions for obtaining an agency employment licence** pursuant to Section 14 (1) (b) EA, i.e. licence to employ individuals for further employment by another legal entity or an individual (employer), who then assigns the work and supervises its performance, and **implementation of new sanctions** in case of a breach of the statutory duties;
- **reinforcement of the position of the temporarily assigned employees** with the aim to secure that **the working and salary conditions of such employees may not be worse than those of similar level employees** of the employer to whom they are temporarily assigned.

Stricter rules for granting an agency employment licence

- **Each applicant who** applies for the agency employment licence under the Section 14 (1) (b) EA is **newly obliged to prove its financial capacity by paying a statutory security deposit in the amount of CZK 500,000.**
- The existing licenced employment agencies **are obliged to pay the above mentioned security deposit within the period of 3 months** from the effective date of the novelization, i.e. **by 29.10.2017**, otherwise their licence will expire.
- **The licence** will be still granted by the General Directorate of the Labour Office (the „**GDLO**“) on the basis of an application. Nevertheless, the new legislation does not any more distinguish among (i) the permit to agency employment within the territory of the Czech Republic, (ii) the permit to agency employment for foreign nationals within the territory of the Czech Republic, or (iii) the permit to agency employment abroad. As of now only one type of licence will be granted. However, it does not automatically mean that the employment agencies with the existing licences that do not include a permission to employ foreigners, will be newly entitled to do so.
- In relation to **foreign nationals**, the new legislation reacts to the current demand for some professions on the labour market and **Cancels the existing prohibition** by which the employment agen-

cies were not allowed to assign the work to an employee with an employee's card, blue card or with a work permit (these employees should be primarily employed directly by the employers). However, as stated above, according to the GDLO only the employment agencies with the explicit permission to employ foreign nationals will be allowed to do so.

- **The agency employment licence pursuant to Section 14 (1) (b) EA** will be issued for the term of **3 years**. After the elapse of the initial period, and based on next application, the new law expressly enables to issue the new licence for an **indefinite period** of time.
- **The administrative fee** for the licence pursuant to Section 14 (1) (b) EA **is increased to the amount of CZK 25,000**. The administrative fee for a repeated licence is set in the amount of CZK 15,000.
- The new legislation also establishes **new statutory grounds for a licence withdrawal** - in case the employment agency does not assign any employee during a period of 2 years, or provided if certain obligations set by the Labour Code are violated (e.g. Section 307b LC – see below).
- The novelization also modifies **the function of the responsible proxy** of a legal entity applying for the licence. Newly this position must be performed only on the basis of **an employment relation-**

ship with minimum weekly 20 working hours. The above requirement does not need to be met if the responsible proxy is also a statutory body of the applicant.

- The existing licence holders or applicants must adapt its relationship with the responsible proxy according to the new legislation **within the period of 3 months** from the effective date of the novelization, i.e. **by 29.10.2017.**

Implementation of new and unambiguous sanctions

- The novelization embodies **two new offences** into the Employment Act:
 - (i) **so-called covered agency employment**, which is defined as lease of work force to another employer without respecting the conditions for the agency employment pursuant to the Section 14 (1) (b) EA (i.e. without valid licence or in breach of it). In this case the Labour Office is entitled to impose a fine up to CZK 5,000,000 (on a natural person) or up to CZK 10,000,000 (on a legal entity or a natural person - entrepreneur);
 - (ii) **breach of the obligation to document the arranged insurance** to GDLO within the term of 2 months from the licence issuance effective date. The fine for this offence is set down in the amount up to CZK 20,000.

- The novelization **embeds the co-responsibility of an employer (client)**. According to the new provision of the Labour Code (Section 307b LC) not only the employment agency, but also its client should secure that an employee of the employment agency will not be temporarily assigned to the client (i) with whom she/he is concurrently employed on the basis of the basic employment relation; or (ii) for whom she/he has performed work in the same calendar month on the basis of the temporarily assignment realized by another employment agency.
- A breach of the obligation pursuant to Section 307b LC is an **offence** or an **administrative tort** in the field of the agency employment according to the new **Labour Inspection Act**, for which can be imposed a **fine up to CZK 1,000,000**. The violation of the provision under the Section 307b LC may also result in the mandatory **licence withdrawal** (see above).
- **The employer (client)** will also commit an **offence** or an **administrative tort**, if he does not secure that the agreement on the temporarily assignment does not contain information about working and wage conditions of a similar level employee of the client or if he does not provide correct data in this respect. The relevant **fine** may be imposed up to the amount of CZK 1,000,000.

II. MANDATORY EMPLOYMENT OF DISABLED PERSONS BY SO-CALLED SUBSTITUTE PERFORMANCE

- Implementation of a **unified register of the substitute performance** with the aim to **enable the effective control of respecting the mandatory statutory limit of the substitute performance**.
- **All employers employing over 25 employees are obliged to comply with statutory limits for employment disabled persons.** The statutory limit for employment of disabled persons to the total number of the employer's employees is 4 %.
- The Employers might comply with this obligation also by **so-called substitute performance, i.e. by:**
 - (i) purchasing products or services from employers whose workforce includes more than 50% of disabled employees;
 - (ii) awarding orders to these employers;
 - (iii) purchasing products or services from disabled persons who are self-employed and do not employ any other employees, or
 - (iv) awarding orders to these persons.
- **The reason for the implementation of the unified register is** to gain an overview about transacted purchases (supplies) and have the opportunity to effectively control whether the statutory limit of the substitute performance is observed.

- **The statutory limit of the substitute performance** is set as the 36 times of the average wage in national economy for the first to third quarter of the preceding calendar year for adjusted employee with disability employed in the previous calendar year. In 2016 it was the sum of CZK 932,508.
- **Suppliers** are obliged to put data about purchases (supplies) into the register. They are also liable for correctness of the inserted data. **Purchasers** are liable for the fact that the purchases are contributable to the substitute performance. However, as **contributable** will be regarded **only such performance** that will be **registered within 30 calendar days** from the realization date.
- The effective date for the registration of the mandatory data (for the period of the respective calendar year till the effective date of the novelization) is **60 days**, i.e. data must be registered **by 27.9.2017**.
- The register will be held **in the electronic format by the Ministry of Labour and Social Affairs**.

III. PERFORMANCE OF SO-CALLED NON-CONFLICTING EMPLOYMENT

- The novelization **cancels the possibility to perform the so-called non-conflicting employment on the basis of an agreement to complete a job** (*dohoda o provedení práce*) with the aim to support the unemployed to look for a permanent employment.
- According to the new legislation it will be allowed to include and manage in the unemployed register only those applicants, who perform their activities on the basis of **an employment or service relationship**, provided their monthly remuneration does not exceed half of the statutory minimum wage, or applicants who perform activities on the basis of an **agreement on work performance** (*dohoda o pracovní činnosti*), provided that the monthly remuneration or average monthly remuneration for the time worked does not exceed half of the minimum wage (**so-called non-conflicting employment**).
- **Performance of activities on the basis of an agreement to complete a job** will no longer be classified as non-conflicting employment and on the contrary it will represent an **obstacle** for the registration of the applicant in the unemployed register. **The reason** for this change is the fact that the performance of so-called non-conflicting employment on the basis of an agreement to complete a job became excessively frequent and in most cases it did not lead to finding a permanent employment.

IV. PROTECTION OF EMPLOYEE'S PRIVACY AND EMPLOYEE'S PERSONAL RIGHTS

- The new law classifies **new** types of **offences and administrative torts** in the field of the protection of employee's privacy and employee's personal rights into the amended Labour Inspection Act.
- The respective authorities are entitled to impose a **pecuniary penalty** on the employers who break their obligations set by the Labour Code (Section 316 LC) in order to protect the employee's privacy.
- **The fine up to CZK 1,000,000** might be imposed on an employer, who:
 - (i) encroaches upon employee's privacy at workplaces and in the employer's common premises (e.g. by open or concealed surveillance (monitoring) of employees, interception and recording of their telephone calls, checking their electronic mail or postal consignments), or
 - (ii) requires from an employee information that does not directly relate to performance of work (e.g. information about pregnancy, family and property situation).
- **The fine up to CZK 100,000** might be imposed on an employer who in compliance with the Labour Code introduces the surveillance (monitoring) of his employees (where is a serious cause consisting in the nature of the employer's activity), but who at the same time violates his obligation to inform the employees about the scope and methods of its implementation.

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 the area.

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