LEGAL UPDATE

Amendment to the Labour Code

ČECHOVÁ & PARTNERS

On 29 October 2022, a major amendment to the Slovak Labour Code was published, and it applies from 1 November 2022 (the "Amendment").

The main objective of the Amendment is the transposition of relevant EU directives, namely:

- Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union; and
- Directive (EU) 2019/1158 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

It is intended to increase the predictability and transparency of working conditions so that an employee knows exactly when, to what extent and under what conditions he or she will perform the work. At the same time, the Amendment introduced a few other changes not resulting from the EU directives. Below we briefly summarize some of the relevant changes.

Mandatory Particulars of Employment Contract

Based on the Amendment, the list of mandatory particulars of an employment contract has been updated and simplified. These are (apart from mandatory identification data of an employer and an employee):

- type of work and its brief characteristics,
- place of work (municipality, part of a municipality or otherwise designated place) or places of work, if more than one; or a rule that the place of work shall be determined by the employee,
- date of commencement of work,
- wage conditions.

There has been a small substantive change concerning the place of work (letter b. above), which now explicitly provides for the option of multiple places of work and for the possibility of determination of the place of work by the employee.

Under the previous regulation, the employment contract had to also contain information on other regular components of employment, such as weekly working time, pay day, vacation (how many weeks), termination notice, etc. As regards these components, as of 1 November 2022 an employer can decide, whether:

to notify the employee of them only in form of "information"; or
to include (keep) them in the employment contract.

Summarizing the relevant details only in form of "information" would provide the employer with a greater flexibility, as the employer might be, depending on the wording use in the contract, less flexible to change them unilaterally (without the employee's consent).

Information Duties

An employer must provide the following information in writing to its employees (unless these are included in the employment contract):

- the method of determining the place of work or the designation of the main place of work if several places of work are agreed in the employment contract;
- the weekly working time, the method and rules for the distribution of working time, including the expected working days and reference time periods in case of specific working time distribution, the extent and timing of the provision of breaks from work, continuous daily rest and continuous weekly rest, and the rules for overtime work, including overtime remuneration;
- the length of vacation or the method of determining it;
- information on maturity and payment of wages, including pay dates;
- rules for termination of employment, the length of notice period or the method of determining it, if not known at the time the information is provided, the time limit within which the employee may file a court petition for a declaration that the employment termination employment is invalid;
- the right to training provided by the employer, if any, and its scope.

In case the employee's place of work is abroad and the employee's work abroad exceeds four consecutive weeks, the employer must provide the employee with additional specific information, such as whether the employee's repatriation (i.e., return from abroad) shall be arranged for by the employer, or in which currency the wage shall be paid out. Similarly, additional information duties apply in case of posting of employees abroad.

Providing of Information in Electronic Form

Under the Labour Code, an employer has various information duties towards an employee (e.g., as regards specific components of the employment; see above). Following the Amendment, the employer has newly an option to decide, whether the employer provides the relevant information in paper form or in electronic form. However, in the latter case, the employer can do so only if:

- the employee has access to the electronic form of the information, may save and print it, and
- the employer keeps a proof of its sending or receipt.

In general, most of the information that the employer is obliged to provide to the employee (including responses to complaints or requests of the employee), must be provided in paper form or electronic form, as outlined above. Still, there are a few cases where the employer may provide particular information only verbally.

TO DO LIST FOR EMPLOYERS:
→review the current employment contracts templates;
→decide whether to incorporate the required "information" into the employment contracts or not;
→update the employment contracts template where needed;
→update the existing employment contracts of employees, where needed, on a suitable occasion (e.g., a salary increase);
→prepare templates for "information documents" to be provided to employees (and start distributing the information documents to new employees employed after 31 October 2022);
→decide whether to provide the relevant "information" in paper form or in electronic form.

Timing: employers must comply with the new legal regulation (such as with the information duties) already from 1 November 2022. As regards employees who were employed prior to 1 November 2022, employers must provide them with the relevant information within one month of their request.

Limitation of Probation Periods in Fixed Term Employments

From 1 November 2022, a probation period in fixed term employments must not be longer than one half of the term of the employment (e.g., if the employment shall last 4 months, the probation period cannot be longer than two months).

The maximum length of the probation period that have applied in the past, continues to apply (three months, or in very specific cases six months).

TO DO LIST FOR EMPLOYERS:
→review the current fixed term employment contracts template in case the fixed term is shorter than 12 months;
→check whether the restriction on the maximum probation period is complied with.

Limitation of Time Period for Deposition/Collection of Mail at Post

As regards delivery of important documents concerning creation, change or termination of employment or of the employee's rights and duties, the amendment to the Labour Code has not introduced any significant changes.

The basic principle – that an employer shall deliver such documents to an employee at the workplace, at his/her home or wherever he/she can be found, and only if that is not possible, the documents may be delivered to the employee by registered mail ("*doporučene*") with a delivery receipt ("to own hands" – "*do vlastných rúk*"), by a postal services provider authorised to provide such services – remains.

In the past, it has been, however, disputable, whether – in case of delivery of documents via post – the employer may instruct the post to shorten the time period for a collection of the mail by the recipient – employee (typically, unless shortened, the time period is 15 days). The amended Labour Code now explicitly states the employer may not set the mail deposition period (in which the mail can be picked up at a postal office) shorter than ten days.

Agreements on Work Performed Outside of Employment

In order to ensure more transparency and predictability of work conditions, the Amendment requires that if an employee shall work more than three hours during consecutive four weeks based on so-called "agreements outside of employment" (agreement on student part-time work, agreement on execution of work,

agreement on work activity), the employer must now provide more information to the employee. For instance, the employer must (in general; certain exceptions apply) provide the employee with information (including information on any change or cancellation) on:

- days and time slots on, in which the employer may require the employee to work, and
- a prior deadline, not shorter than 24 hours, within which the employee shall be informed about the required commencement of work.

The employee shall not be obliged to perform work on specific days or in specific time slots, if the employer does not comply with these rules. In addition, if the employer cancels the planned execution of work without complying with the above-mentioned deadline, the employee shall be entitled to wage compensation in the amount of 30% of his/her expected wage.

In addition, if the employee shall work more than three hours during consecutive four weeks, the respective agreement with the employee must contain also the agreed place(a) of work (that was not required so far) or information that the employee determines the place of work himself/herself. Also, in such case, the employer must provide the employee with additional information – the extent and scope of the required information is similar to information provided to (regular) employees working based on employment contracts.

TO DO LIST FOR EMPLOYERS:
→review the current templates of such agreements;
→update such templates where needed;
→update the agreements currently in place where needed;
→prepare templates for "information documents" to be provided to employees;
→decide whether to provide the relevant "information" in paper form or in electronic form.

Timing: employers must comply with the new legal regulation (such as with the information duties) already from 1 November 2022. As regards employees who were employed prior to 1 November 2022, employers must provide them with the relevant information within one month of their request.

Burden of Proof in Court Dispute & Complaints

The Amendment introduces a new explicit rule that if – in court proceedings concerning a labour-law dispute (typically, concerning employment termination) – an employee notifies the court of facts from which it can be reasonably presumed that the employee's employment was terminated due to retaliation, i.e. the employee's exercise of his/her rights under the employment relation (e.g., because the employee submitted a complaint to the employer, or submitted a request for information, etc.), it shall be for the employer to prove that the employment was terminated due to other grounds.

In this regard it is important to note that an employee may submit complaints to an employer, to which the employer is obliged to respond in writing within the stated deadlines. The complaints can concern various topics, including an alleged violation of any employee's rights under labour-law regulations.

TO DO LIST FOR EMPLOYERS:
→monitor the complaints from the employees;
→review the complaint and respond; if applicable – provide for remedy, refrain from the violation, rectify consequences of the violation;
→review the risk of retaliation claim in case of termination of employees, e.g. by reviewing whether a situation giving rise to such claim occurred (similarly to reviewing the risk of whistleblowers protection under the pre-existing legal framework).

Transfer from Fixed-Term or Part-Time Work

In order to ensure a more secure form of employment, an employee with a fixed-term or part-time employment whose employment lasts longer than six months and whose probationary period, if agreed, has expired, may now apply to the employer for a transfer to:

- an indefinite term employment; or
- full working time regime.

The employer shall provide the employee with a reasoned (objective and non-discriminatory) written reply within one month of the date of the request.

That obligation of the employer shall also apply to any further request made by the employee not earlier than 12 months after the previous request. Certain differences

regarding the mentioned deadlines and form of the response apply to employers being natural persons and employers employing fewer than 50 employees.

TO DO LIST FOR EMPLOYERS:
→monitor the requests from the employees;
→review the request and respond (stating objective and non-discriminatory reasons for the chosen response) within the deadline.

Transfer to Home Work/Telework Regime or to Home Office

If an employee permanently taking care of a child younger than eight years of age requests for home work, telework or for home office (temporary, not regular work from home) in order to take care for the child, the employer must either:

- accommodate the request in a reasonable time period; or
- provide the employee with a written reasoned (justified, objective and non-discriminatory) response, unless the employer.

The employer must take into consideration the employer's tasks, and justified interests of the employee.

TO DO LIST FOR EMPLOYERS:
→monitor the requests from the employees;
→review the request and either accommodate the request or respond (stating objective and non-discriminatory reasons for the chosen response) within a reasonable time period.

Paternity Leave

In addition to maternity and parental leave already in place, the Amendment introduces a specific expression "paternity leave" that shall be granted to fathers in connection with a care for a child (pursuant to the previous regulation a father was entitled to "parental leave"; also after 1 November 2022 both female and male employees continue to be entitled to parental leave under the statutory conditions). The paternity leave shall last 28 weeks from the birth of the child, and in case of lone fathers 31 weeks, or 37 weeks in case of caring for two or more children.

Further, in addition to protection of employees against termination of employment during maternity or parental leave (which still applies), a father is protected against

termination of employment from the day he notified the employer about the planned paternity leave – but not earlier than six weeks prior to the expected date of the birth of the child – until the end of the paternal leave. Certain exceptions apply.

Deductions from Wages – Meal Allowance

Until 1 November 2022, an employer needed to enter into an agreement on wage deductions with an employee if the employer wanted to deduct the employer's claims for a return of unsettled advance payments for meal allowances provided to the employee. The Amendment now enables to make these wage deductions without any specific agreement with the employee.

Trade Unions

A trade union organisation operating at an employer is entitled to approach – in a reasonable manner – employees of the employer in order to offer them membership. If the employer and the trade union do not agree on a specific way and manner how to do so, it is up to the employer to inform the employees in writing about the trade union organisation operating at the employer, including specific contact details. The employer must do so within the prescribed deadlines:

- seven days after the trade union organisation starts to operate at the employer;
- seven days after the employment commencement – that applies if the trade union organisation started its operation at the employer prior to the employee's employment commencement;
- seven days after the trade union organisation requests for it due to a change of relevant details;
- once a calendar year but at the latest within seven days after requested to do so by the trade union.

In addition, the Amendment explicitly grants the trade union the right to inform – in a reasonable manner – the employees about its activity. If the employer and the trade union do not reach an agreement on specific details in this regard, the trade union shall be entitled to publish notices about its activity at a place where the employees have access. It is, however, sufficient, if the employer enables the trade union to publish relevant notices in an electronic information system of the employer (intranet).

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3 November 2022. This legal update has been prepared solely for information purposes and it does not contain all comprehensive information. Thus, it shall not be considered as legal advice. For further information or advice on the recent amendment to the Slovak Labour Code, please do not hesitate to approach our experts:

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