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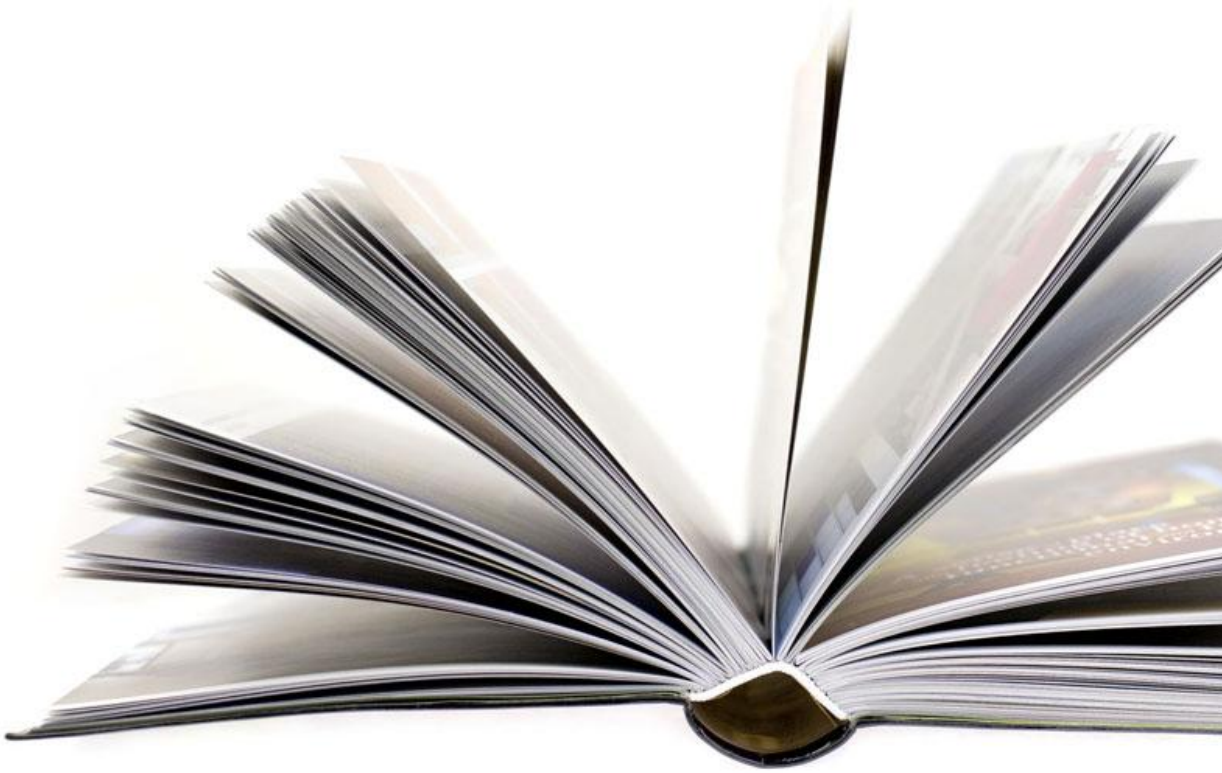
A new Labour Code in the making
Legal Newsletter



31 August 2011

A new Labour Code in the making

The Ministry for National Economy has recently published on its website the consultation draft of the new Labour Code which is expected to be passed during autumn and enter into force as of next year; this draft version has not yet been officially debated by the Government.

In this edition of our newsletter we would like to inform you about recent developments which are likely to have a significant impact on regulations concerning employment relationships, and for which changes it is recommended to start preparing as soon as possible. We will advise you on the details of the final provisions of the act once the new Labour Code is published.

Of the provisions of the new draft Labour Code, the following ones are highlighted and discussed in detail in this newsletter:

- **labour regulations would follow the logic of civil law in that they would allow more negotiations between the parties and the rules concerning employees' liability for damages would also approximate the liability rules of civil law;**
- **the new Labour Code would introduce new rules regarding the termination of employment relationships and, at the same time, would clarify a number of issues surrounding the application of the current regulations;**
- **atypical forms of employment which have been successfully applied in foreign countries would be adopted to help develop flexible employment relations.**

„… there is an effort to ensure that the new labour code basis on the grounds of civil law, thereby allowing employers and employees to negotiate on a more or less equal playing field.”

Harmonisation with market conditions

The draft would introduce a number of new regulations (both among general rules and as part of the detailed rules) which would improve the position of employers.

- Employers have always been allowed to supervise the work of their employees; however, the new regulations would permit employers to oversee their employees even outside their working hours, provided that the employer informs the employee about the means of such supervision (and, in our opinion, the details thereof to avoid any legal dispute).

- A considerable change which stirred up controversy in the press was to re-instate the old concept of "disciplinary action" in Hungarian labour law. Under the new draft regulations, the collective agreement or the employment contract could specify legal sanctions for a breach of duties under the employment relationship, including a pecuniary penalty of up to 6 months' base salary. Launching such a procedure would be at the discretion of the employer and could be based, amongst others, on the breach indicated as the reason for the termination of the employment relationship.

- In addition to the above described liability, the rules concerning employees' liability for damages would also become more stringent. Similarly to the „market" conditions, the proposed rules would not specify an upper limit as to an employee's liability for damages; instead, it would be possible to make employees liable for the entire damage.

Termination of employment relationships – major amendments

The bill introduces fundamental changes in connection with the termination of an employment relationship.

- A relief for employers is that it would be possible to serve notice of ordinary termination even during the termination protection period and the notice period would commence on the first day following the end of the protection period. This means that the two current rules (that notice may not be served before the day when an employee resumes work and that the notice period commences on the 15th or 30th day following the day when the employee resumes work) would be abolished.

- The option of ordinary termination would be available to the parties in the case of fixed-term employment relationships; for instance, employers would be able to exercise this option in case of a long-term disability of an employee. On the other hand, employees would be allowed to terminate their fixed-term employment relationship if maintaining such relationship is not reasonably possible or would result in disproportionate damage considering the circumstances.

„The bill introduces fundamental changes in connection with the termination of an employment relationship."

- In the case of ordinary termination, an employee would only be eligible to severance payment if the requirements for eligibility to severance payment have already been met by the time the employer serves the notice of termination and if the reason for such ordinary termination is not an employment-related conduct by the employee or a medical disability of the employee.

- From now on, if the parties were to terminate an employment relationship in an illicit manner, the following legal consequences would apply:

    - the termination of the employment relationship would become effective when the notice is served and not at the effective date of the binding order of the court confirming the illicit conduct;

- employers would only be required to re-hire an employee under the employment contract in special cases only;
- the obligation to pay any unpaid salary and other remuneration would be abolished, precisely because of the way the date of the termination of the employment relationship is determined;
- in case of proven damages, the employer would be obliged to provide up to 18 months' absentee pay – the employer's obligation to pay a flat restitution equivalent to 2 to 12 months' average salary would be abolished;
- if the employee was to terminate the employment relationship in an illicit manner (if, for instance, the employee fails to assign his/her work responsibilities as prescribed), then an amount equivalent to the absentee pay for the applicable notice period would be payable in the case of an indefinite-term employment contract and a flat restitution equivalent to 3 months' absentee pay would be payable for a fixed-term employment contract.

Codification of the current practice

The draft contains a number of detailed rules which are partly or completely missing from the current version of the Labour Code but have already been resolved in practice, for example by way of judicial interpretation.

- A positive change is that the bill is expected to regulate the methods and forms of making representations in a transparent manner. It would designate the so-called employer's code (a set of rules developed unilaterally by the employer) which, provided that it is published by the employer through means which are customary and generally known in the local environment, would have to be regarded as communicated to all employees. A significant new element in the draft is that representations made by a person other than one who exercises the employer's rights would still be valid, subject to the approval of the person holding such rights.
- Another potential relief is that representations made by way of an identifiable and retraceable electronic document would have to be considered as being made in writing. Although the draft does not explicitly provide so, we believe that this regulation may also apply to electronic messages (emails) to which an appropriate electronic signature and timestamp is attached.
- The new draft clarifies a number of concepts, including clear and detailed definitions of working time and rest time. The new regulations would partly modify the definition of shift work and would introduce the concept of flexible working schedule designed partly by the employee; in addition, the „payroll period" system would be adopted in accordance with the European practice, which would allow employees to work the time for the given week in a longer period of time based on the schedule determined by the employer. However, the new rules on working

schedules would not replace the category of timeframe work; instead, the latter would see the introduction of further detailed rules, including the description of the rules of procedure to be followed when an employment relationship is terminated before the end of the timeframe is reached.

„The success of the regulations depends on the harmony of the background laws (e.g. those on social security and work safety) and the availability of any government support (e.g. preferential contribution rates for the above atypical forms of employment)...”

- The issues concerning the selection of the currency in which base salary is calculated and paid out would be resolved since, in the case of foreign employment, the draft would allow salaries to be calculated and paid out in a foreign currency. A future administrative relief would be that employers would be required to provide payroll information in writing only once a year and upon the termination of the employment relationship, unless the employee specifically requests monthly reports.

- The draft would limit employers' liability for damages in several cases; for instance, an excuse would be the lack of supervisory right and, consistent with the new draft of the Civil Code (which is currently being developed and has not yet been published), liability for damages would be conditional on foreseeability, which means that employers would not be required to compensate for damages which are proven to have been unforeseeable at the time such damage was caused. In contrast, the rules regarding employees' liability for damages would become more stringent as the previous upper limit on the amount of compensation would be abolished and employees would be fully liable for foreseeable damages resulting from a breach of duties under the employment relationship (such liability is based on civil law).

Introduction of new legal categories for a more efficient work schedule

The proposed new labour code introduces a number of atypical forms of employment into the Hungarian legal system. Special forms of part-time work include on-call work, the division of responsibilities, and employment relationships with multiple employers.

- Popular in many countries, on-call work would allow employees to comply with their work responsibilities as they become due.

- The division of responsibilities would differ from pure part-time employment in that multiple employees could carry out the same activities under a single employment contract in which these employees would agree to ensure that at least one of them performs the work required.

- On the other hand, employment relationships with multiple employers involve more than one employer and employees would have to carry out the same activity for multiple employers.

The success of the above regulations depends on the harmony of the background laws (e.g. those on social security and work safety) and the availability of any government support (e.g. preferential contribution rates for the above atypical forms of employment), but would definitely increase the number of flexible employment forms.

All in all, the draft addresses a number of issues which often occur in practice and clarifies concepts whose clear interpretation is essential for the regulation of employment relationships. There is clearly an effort to ensure that the new labour code basis on the grounds of civil law, thereby allowing employers and employees to negotiate on a more or less equal playing field, keeping in mind the special nature of employment relationships. However, both parties need to make progress to achieve this freedom: employees must be aware of their rights and employers must use their opportunities properly. By re-regulating old categories and introducing new schemes already used in Western Europe, the draft provides an opportunity for employers to re-think their employment structures and create more efficient, competitive and at the same time more employee-friendly working conditions. To achieve this, employers should revise their current work schedules and remuneration systems and should comprehensively re-organise their employment contracts and internal policies.

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