Randls HR News

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With the coming of tropical heat and frantic pre-holiday time, we bring you our refreshing employment law news. This time, we shall start with the **government decree on the amounts exempt from garnishment** which should motivate those in debt to increase their income in order to satisfy the creditor as well as draw debtors form the shadow economy. Next, the necessary **implementing law concerning GDPR** was finally adopted but as we have already discussed, it shouldn't affect the world of HR much.

Of course, we will have a look at the new case law – particularly two very interesting decisions of the **Supreme Court** - the first concerns **non-competition clause** while the second discusses **aspects of dependent work and the difference between employees and contractors** – and one decision of the **Constitutional Court** concerning **admissibility of using CCTV as an evidence of a breach of employees' duties**.

Your Randls employment law team

AMOUNTS EXEMPT FROM GARNISHMENT – WORK MOTIVATION FOR DEBTORS?

While the amendment to the Insolvency Act is being prepared, a discussion on the so-called "amounts exempt from garnishment" arose. These are amounts which can't be deducted from an employee's salary. At the beginning of April, an Amendment Decree No. 595/2006 Coll., on amounts exempt from garnishment was published, becoming effective on June 1, 2019.

The amount exempt from garnishment is too low in comparison with inflation, experts say. The current amount which can be deducted from a salary doesn't motivate the debtor to increase their income in order to pay their debts. This leads to the debtor escaping to the shadow economy where they can actually boost their income.

What changed then? And will it work?

Lawmakers to change the method of calculating this amount. So far, the non-deductible amount consisted of the living wage and normative housing costs. Now, after the Amendment, this amount will be doubled, making for a rather significant change. This development is welcomed mainly by organizations focused on helping people in need (primarily, helping them financially); the Czech Association of Creditors also considered the change as a positive one. Debtors admitting their income truthfully should be left with much more money now and they should be more motivated to earn more – the author of the Amendment expects debtors to take more demanding and more rewarding jobs, to work more of them, to work over-time or at night etc. However, it still remains to be seen whether those who already are a part of the shadow economy will be motivated enough to change their ways. Many would prefer some kind of a proportionate amount rather than this fixed one.

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13.6.2019	Amendment to the Slovakian Labor Code in practice *Dušan Nitschneider*
17.7.2019 18.7.2019	SUMMER SCHOOL in July *Nataša Randlová / Michal Peškar / Hana Habartová / Alexandra Knoblochová*
28.8.2019 29.8.2019	SUMMER SCHOOL in August *Nataša Randlová / Michal Peškar / Hana Habartová / Alexandra Knoblochová*

The above workshops are held in Czech, but **if you would like to hold a workshop in English for your company, please contact us**!

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GENERAL DATA PROTECTION REGULATION

In connection with the General Data Protection Regulation and the Directive 2016/680, the new Act No. 110/2019 Coll. was adopted and at the same time entered into force on April 24, 2019 – almost 11 months after the GDPR took effect

The Act doesn't include the articles of GDPR (as the GDPR is directly applicable anyway), though it adjusts certain aspects which the GDPR allows member state lawmakers to adjust. For instance, it mentions some exceptions from the obligation to inform and the obligation to notify, an adjustment of a child's capability to agree with the processing of their personal data or exceptions from the obligation to notify of a breach of security of personal data.

Among other things, there is an interesting, yet controversial, adjustment ruling that the Data Protection Authority shall not impose a fine if the controller (or the processor) of the personal data belongs to a public authority. This leads to an imbalance between private subjects whose fines can be as high as EUR 20 million (or 4% of their annual revenue if the company in question is active internationally), and public subjects who shall not be fined at all.

The Act also sets conditions under which the Office for Protection of Competition shall operate, thereby cancelling current Czech law – Act No. 101/2000 Coll., on personal data processing. You may remove any reference to this act from your documents concerning personal data protection (e.g. information for employees, internal rules on personal data protection etc.).

NON-COMPETITION CLAUSE

Supreme Court ruling File No. 21 Cdo 5337/2017

Description of the case

An employer and an employee agreed on a non-competition clause. **The employee was therefore bound not to perform work which would be the same as the one he performed or which would pose competition for his former employer**. However, the employee started to work for a different company whose object of activity was the same as that of the employee's former employer who then claimed that the clause was therefore breached.

Decision of the Supreme Court

The Supreme Court decided that **the fact that the employee performs work for an employer whose object of activity is the same as of the former employer, doesn't automatically mean that the employee actually performs work matching the employer's object of activity**. Therefore, it isn't a breach of the non-competition clause if the employee performs work unrelated to the object of activity of his new employer, meaning he can't utilize the information or technological procedures he learned from the former employer.

In practice, this decision may unfortunately affect employers negatively – following non-competition clauses had already been hard enough for employers to monitor. Now it is not enough to prove that an employee works for a company of the same object of activity – employers will now have to prove that the actual performance of work is identical; this kind of detective work may prove impossible.

PERFORMING WORK OUTSIDE THE CONTRACT

Supreme Court ruling File No. 1 Ads 437/2017

Description of case

The company offered its employees work outside their existing employment relationship. They used work contracts, underlease or loan agreements. This resulted in the Labour Inspection fining the company for illegal work. The Inspection found that the employees didn't perform the work freely but only at the company's command. Moreover, the company provided capital, equipment and conditions for the work – therefore the requirements and characteristics of dependent work were met.

Decision of the Supreme Court

The Supreme Court agreed that it is not only the form of contract that should be investigated – in addition, it is crucial to look into the actual character of the work performed. From the Inspection's findings, the Court concluded that the persons presenting themselves as contractors were, in fact, employees of the company. There was no difference whatsoever between workers employed and workers under work contracts or other agreements; none of them had work hours set for them. In conclusion, it is not enough to put the work performed for the company under different types of agreement. On the contrary, the work performed must not bear aspects of dependent work which can be performed only by employees.

CCTV EVIDENCE AGAINST EMPLOYEE

Judgment of the Constitutional Court I. ÚS 3900/18

Description of case

An employer decided to fire an employee for a systematic failure to comply with duties related to the work performance. The employee sought annulment of the termination at court but without success. The primary evidence against the employee was the surveillance system in the store where she worked. The records showed the employee spending more time chatting with acquaintances rather than working. However, the employee claimed those records where illegal and should not be relevant in a court.

The decision of the Constitutional Court

The Constitutional Court did not find the records to pose breach of constitutionally guaranteed rights. It held that the lower courts have already solved the case by ruling the same – the records were legal.

CJEU – FIXED VS. ROLLING REFERENCE PERIOD

A major change in our understanding of the so-called "reference period" is brought by the judgment C-254/18 of the Court of Justice of the European Union.

The judgment discusses interpretation of certain articles of a European regulation concerning working hours. This regulation sets the maximum average daily working time to 48 hours and allows the member states to lay down a reference period to determine the average daily working time. This reference period shall not exceed 4 months (or 6 or 12, in certain cases). According to the Czech Labour Code, this should be about 26 weeks (or 52 in certain cases). The question was whether these reference periods shall be determined on a fixed – with clear beginning and ending date – or on a rolling basis – the period's beginning and end would move with time.

The Court held, among other things, that the articles "…must be interpreted as **not precluding national legislation which lays down, for the purpose of calculating the average weekly working time, reference periods which start and end on fixed calendar dates, provided that that legislation contains mechanisms which make it possible to ensure that the maximum average weekly working time of 48 hours is respected during each six-month period straddling two consecutive fixed reference periods**."

This judgment will affect Czech employers greatly. To follow this ruling, employers will have to check the average daily working hours every week, when using the reference periods, instead of monitoring only a certain period, e.g. from January 1 to July 1. This will be a major obstacle, especially for areas focusing on seasonal work where the common practice is to compensate periods of no work whatsoever with periods consisting of intense work. This will be no longer possible.

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