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This year's fourth edition of our HR News is devoted to a brief summary of the amendment of the Act on Public Health Protection concerning the areas of OSH and Occupational Medical Services (OMS), the changes in deductions from severance payment of the employee, prolongation of the Antivirus program A and B, and introduction of regime C. You may further find information about the new Labour Office program on support of employment which may benefit both employees and employers and also some interesting case-law.

Your Randls employment law team

AMENDMENT OF THE ACT ON PUBLIC HEALTH

During the corona-crisis, a little amendment of the Act No. 258/2000 Coll., on Public Health Protection, has run through the legislative process (becoming effective as of 1 May 2020) – it concerns the areas of OSH and OMS. Some changes may interest you although not being of major importance.

Protective equipment

Before the amendment, it was already possible to penalise the employer for not providing protective equipment to the employees. Newly, **specifically washing, cleansing and disinfection agents and protective drinks** are included, and their non-provision may be **penalised by amount of up to CZK 100.000.**

Measuring risks in connection with work categorisation

Local muscular burden is considered as one of the most high-risk factors in the workplace. However, both organisation and execution of its measuring are very demanding for the employer. Because of this, it will newly be possible to **replace such measuring with so-called expert evaluation issued by an accredited person** in case of a second category of work risk caused by physical burden or work position.

However, should any occupational disease (or an exposure to risk of occupational disease) for such risk factor later occur at the employer, it is the employer's obligation to submit the protocol on measurement of such risk factor to the respective authority of public health protection, no later than 6 months from the approval of (exposure to risk of) occupational disease.

New offences

A fine of up to CZK 1 million may be imposed upon the employer for not allowing the authority of public health protection to carry out focal disinfection, disinsection or deratisation. The same fine can be imposed upon anybody (including the employers) also for not implementing the protective measures issued by the Ministry of Health in order to avoid the introduction and spread of highly infectious diseases. Employers who will not ensure the supervision of OMS provider in the workplace or who will not duly keep

OMS records may be fined by amount of up to CZK 500.000.

Regional Public Health Offices will newly be allowed to control the OMS providers, but only in respect of performing their legal obligations, not in respect of the quality control or expert procedure.

DEDUCTIONS FROM SEVERANCE PAYMENT

As of 24 April 2020, "Lex Covid" (Act No. 191/2020 Coll.) became effective which has introduced several

measures regarding persons taking part in court proceedings in the light of the pandemic impact. At the same time, it partially amended the Insolvency Act and the Civil Procedure Code. In the labour law perspective, the most important part is devoted to the execution of judgement in the form of salary deductions, resp. the deductions from severance payment.

The character of severance payment in respect of salary deductions has not been clear for a long time. On the one hand, the severance payment is paid as a one-time amount, on the other hand, the employee does not receive unemployment benefits for certain period of time after being paid severance.

Such issue has been already solved by the Supreme Court (Case No. 853/2016), according to which the severance payment stands for the employee's income for several months after termination of employment and therefore serves for his/her alimention. According to the

Supreme Court, the severance payment should be regarded as the payment of due salary for several months paid at once.

The new legal regulation mostly accepts such interpretation. **Deductions are being calculated separately from each multiple of average salary, but only from the legal minimum.** Should the employer agree with the employee on higher severance payment for unrealised notice period (i.e. 3 + 2), the postponed deductions shall apply only to the legal minimum.

There is an exemption: If employee, after termination of employment, finds either new occupation or is entitled to other incomes according to Sec. 299 of the Civil Procedure Code (pension, sickness or maternity benefit), the severance will be considered as one-time income.

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ANTIVIRUS PROGRAM

Regimes A and B prolonged by the governmental decrees

Within the regime B of the Antivirus program, the employers who have economic troubles effected by the coronavirus epidemic may apply for a state contribution. The employers hereby mostly use the contribution for salary remuneration provided during the so-called partial unemployment.

Under regime A falls the imposing of quarantine due to coronavirus or obstacles to work consisting mainly in closure of operation due to exceptional and crisis measures.

Both programs have been **prolonged until the 31 August 2020**.

New regime C

Taking into account that the Chamber of Deputies has voted down the amendatory proposal of the Senate and the president has signed the bill, regime C will run in its original form.

The basic limitative condition is the maximum number of 50 employees in the employment relationship by an employer. Further there will be a number of other conditions (maximum percentage of decrease of the total number of employees and level of paid salaries). Unfortunately, the stipulated conditions bring a lot of interpretation problems.

However, if an employer meets the conditions, he will be **exempt from contribution to insurance payments on social security and state employment policy on employer's side**. Such savings will amount up to 24,8% from the paid gross salaries, limited by income amounting to 1,5times the average salary per one employee.

Regime C is approved for the period of 3 months from June to August 2020.

OUTPLACEMENT PROJECT

At the beginning of June, the Labour Office launched so-called Outplacement Project which **helps the employees to find new job already during the notice period or even in cases where their employment is threatened** (employment for definite period of time, termination agreement, employees on Agreements). The employees register with the Labour Office as employment applicants and the Office then arranges employment for them or provide them with trainings in the field of labour law, financial literacy, soft skills, or requalification courses.

On the other hand, those employers who decide to employ dismissed employees shall receive benefits for the employees' salaries from the Labour Office or the possibility to further educate these employees.

The project shall last until 30 June 2022 at least. Further information can be found here: <https://www.uradprace.cz/web/cz/outplacement-out->

TO LIE LIKE A GASMETER

Constitutional Court Decision No. IV. ÚS 850/20

Contrary to internal regulations of the employer, the employee was lending the company car to his wife and using it also for other personal purposes.

In the journey log, the employee marked his personal

trips as business and by this means he enriched himself at the expense of the employer. The employer immediately terminated the employee's employment.

In court, the employee defended his acts saying that they were not of sufficient severity regarding also the length of his employment and the damage caused to the employer amounting only up to CZK 2.000.

The court, however, considered essential that the employee lied repeatedly to the employer, acted non-transparently and tried to cover his illegal acts, including the above stated manipulation with the journey log. Employee's acts therefore can be regarded as a gross breach of his work duties and the employer was entitled to terminate his employment relationship immediately.

Decision of the Constitutional Court

Also the Constitutional Court approved such conclusion according to which it is possible to terminate employment relationship immediately despite low amount of damage. **When trying to cover up his acts, the employee had broken confidence between him and the employer irrevocably.**

WORSENING OF WORKING CONDITIONS AFTER TRANSFER OF UNDERTAKINGS

Judgement of Supreme Court No. 21 Cdo 1148/2019

The purpose of the legislation on transfer of rights and obligations under labour-law relationships according to Sec. 338 et seq. of the Labour Code is to preserve the position and rights of the employees who (regardless of their will) transfer to another employer.

Should the employee's working conditions in this respect worsen significantly, he/she can give the employer a notice of termination during the following 2 months and also claim a severance payment according to Sec. 67 of the Labour Code. Up until now, however, it was not clear **what can be included in these working conditions**.

The Supreme Court was dealing with a case in which the employee gave his new employer notice of termination for various reasons including change of communication language from Czech to Polish, more overtime work, change of workload and correspondent responsibility and introduction of a video surveillance system. The Supreme Court agreed with the employee that the work conditions in this respect cannot be reduced only to those expressly stated in the Labour Code (i.e. type and place of work, remuneration). It concluded that **anything perceived by the employee in the workplace can be considered as working conditions. However, all these facts must be objectively perceived as having a negative impact on quality of the employment relationship, i.e. employee's subjective perceiving does not matter.**

Needless to say that each case is specific and only the court will have the final word.

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