Randls HR News

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This early autumn issue of Randls HR News is focused on what the amendment to the Sickness Insurance Act will mean for employers. Although at first glance the changes might seem to be of a formal nature only, we believe they may affect the HR practice quite significantly. You will see for yourself. We also focused on a project introduced by the Labour Office called FLEXI Programme, the brief description of which has probably landed in your employers' data box in recent days. We elaborated and explained the individual options the FLEXI Programme offers. Last but not least, we addressed a ruling of the EU Court of Justice on the issue of working hours and rest periods. It is really very interesting and could influence a big part of the HR practice.

Your Randls employment team

NEWS IN SICKNESS INSURANCE

Act no. 330/2021 Coll., amending Act no. 187/2006 Coll., on Sickness Insurance, was published in the Collection of Laws. The change concerns paternity leave, nursing allowance and long-term nursing allowance.

The so-called ***paternity leave***, ***nursing allowance*** and ***long-term nursing allowance*** are two of the social security benefits stipulated by the Sickness Insurance Act. Paternity leave consists in the possibility for new fathers to take some time off during the first six weeks after the birth of their child, during which they receive sickness pay, which aims to ensure that mothers and children have sufficient support. Nursing allowance and long-term nursing allowance exist for cases where an employee decides to stay at home and take care of a sick loved one.

Change of paternity leave

The legislators have decided to help parents and **extended the length of the support period from one week to two weeks** which should enable fathers to partake in the care of the child and in the running of the household.

Further, it was decided to extend the six-week period following the birth of the child by the potential period of hospitalization of the new-born (both due to the health of the child and the mother).

What undoubtedly motivated the legislators was probably the threat of sanctions from the EU since the current legal regulation was in conflict with Directive (EU) 2019/1158 of the European Parliament and of the Council, which requires Member States to have paternity leave of at least 10 days.

According to transitional provisions, these changes shall apply **only to children born in the period of 6 weeks prior to the date of effectivity of the amendment**, i.e. approximately on November 20, 2021.

Change of nursing allowance

Previously it was possible for the employee to get the benefit only if the employee was sharing a common household with the person being cared for (with the exception of own children). Now, this condition applies only if the person is not the employee's **direct relative, sibling, husband/wife, registered partner or parent of the employee's husband/wife/registered partner**. For persons sharing a common household, no relationship is required.

Change of long-term nursing allowance

The change basically consists in easing the conditions for getting a long-term nursing allowance:

- possibility to **apply even after discharge from hospital (up to 8 days)** with attending physician,
- the **period for which the treated person must be hospitalized was shortened** from 7 to 4 days,
- **condition of hospitalization for care of people in end stage of incurable disease** was deleted**.**

RANDLS TRAINING
Autumn 2021

We would like to invite you to attend our upcoming Randls Training workshops:

18.10.2021	Trade unions *Nataša Randlová*
21.10.2021	Working hours *WORKSHOP* *Michal Peškar*
5.11.2021	Labor Law Inspection – step by step *Aleš Kalvoda*

More information, including the program, available at **www.randlstraining.com**.

FLEXI PROGRAMME

The Labour Office introduced a new instrument of active employment policy. It addressed all employers through a written offer delivered to data boxes in which it briefly outlined the details of the programme. However, the information is scarce, so let us take a closer look at the project.

According to the Labour Office, **FLEXI Programme** supports flexible forms of employment with the main goal of promoting greater harmony between private and professional life and facilitating entry into the labour market, especially for people who, for various reasons (health, family), cannot be employed full time. The target group includes:

- people with disabilities,
- people over 60 years of age,
- people caring for a child under 10 years of age,
- people caring for a person with some degree of dependency,
- people unable to work full time for objective cause.

To ensure these goals, the Labour Office created three forms of support:

(1) shared work position,
(2) socially purposeful job – generational tandem,
(3) training.

Their common denominator is the condition to enter into an employment relationship with a so-called *job-seeker* (or *a person interested in a job*) registered at the Labour Office who joined the FLEXI programme. The employer also signs up for the programme – all the necessary forms are available on the Labour Office website.

(1) Shared work position

The employer establishes cooperation with the Labour Office for the FLEXI project and creates **a shared work position pursuant to § 317a of the Labour Code**. The Labour Office then recommends suitable candidates from among the job seekers who signed up for the programme, and if an employment relationship is concluded, the employer may apply for a contribution.

The contribution of the Labour Office consists in the reimbursement of salary costs; the maximum using period is **12 months** and the maximum contribution is **CZK 15,200** per shared work position. The number of shared work positions is not limited but there can be 4 employees maximum in each shared position (the minimum workload is 25 % of the total weekly working hours) out of whom at least one must be a job seeker. The contribution is reduced by each employee who does not belong to the target group.

Example: there is one employee in the shared position with 50% workload; the employer hires two job-seekers from the Labour Office, both from the target group and each for 25% workload – the contribution shall amount to CZK 7,600. If the current employee also belonged to the target group (e.g. an employee on paternity leave), the contribution would remain unreduced.

(2) Generational tandem

This form of support has two goals – on one hand **to keep a person of almost retirement age in an employment relationship** (the person must be a current employee of the employer who will be entitled to pension in no more than 36 months) and on the other hand **to increase qualifications of a job-seeker** (under 30 years of age) whom the employer hires.

Under the generational tandem, the employer receives a contribution both for the trainer's salary costs (up to CZK 24,000 per month) and for the salary costs of the newly hired employee (up to CZK 20,000 per month). The contribution can be received for **6-12 months**. At the same time, the employer undertakes that the trainer's employment does not end earlier than six months after the end of using the contribution.

(3) Training

The contribution for training already existed in the past, but it was re-introduced together with the FLEXI Programme, probably because it pursues similar goals.

The contribution is provided to employers who **conclude employment with a job-seeker to whom the Labour Office *gives increased care*** for reasons of health, age, caring for a child or other serious reasons.

The maximum using period is **3 months** and the maximum amount of the contribution is **½ of the minimum salary per month**. The contribution must be applied for before concluding the employment relationship and it cannot be combined with the previous two FLEXI instruments.

CJEU ON WORKING HOURS AND REST PERIODS

During the proceedings before the Czech courts in the case of firefighter vs. Prague Public Transit Company, an issue was raised regarding the application of EU law. The District Court for Prague 9 therefore stayed the proceedings and referred questions to the EU Court of Justice concerning working hours and rest periods.

The firefighter was employed by Prague Public Transit Company. He had two half-hour breaks during his shifts, but he still had to have a walkie-talkie with him so that he could be warned that an emergency vehicle would pick him up within two minutes. The firefighter did not like the fact that the break was rewarded only if the emergency actually took place - in his opinion, it was such an interference with his free time that these breaks should have been considered working hours.

Proceedings before Czech courts

The lower courts ruled in favour of the firefighter, stating that the firefighter could be recalled at any time during breaks, which they found to be a very intense mental and physical constraint, regardless of the frequency of interventions. The employer did not deal with the substitutability of firefighters and it was clear that unpredictable work performance was not ruled out in any section of the worker's shift.

The Supreme Court, on the other hand, saw a difference between a continuous process that cannot be interrupted and requires constant checking and employee activity (e.g. an employee supervising boilers who cannot leave the boilers' proximity for more than 5 minutes due to technical requirements of the boilers), and the firefighter's work who has regular breaks scheduled and only rarely and randomly interrupted. He added that the opposite approach, i.e. that random occurrences are crucial for determining rest periods as working hours, could be applied, for instance, to cases of fulfilment of employees' obligation to actively prevent harm to the employer's property in case of some impending damage (Section 249 par. 2 of the Labour Code) – then, all employees would perform continuous and uninterrupted work.

Proceedings before CJEU – case C-107/19

The EU Court of Justice held that with view to the fact that the firefighter was not replaced during the breaks and was equipped with a walkie-talkie to warn him about a sudden emergency, **he was on standby**.

The Court stated that in case of standby, it is necessary to check whether it constitutes working hours or not, especially on the basis of the intensity of disruption of the worker's ability to manage his free time.

In the present case, the CJEU ruled that **periods of standby during which the time-limit to resume work performance amounts to few minutes only, must be generally considered as working hours in its entirety**. Further, the fact that the worker is called upon during standby only rarely **may not lead to the conclusion that such period is to be considered as rest period**.

The final assessment of the intensity of the restrictions to which the firefighter was subjected (whether the violation was such that it objectively and in a very significant way limited his ability to freely manage time to engage in activities of his choice) is now up to the District Court for Prague 9. The court is bound by the opinion of the CJEU, not the Supreme Court.

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