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THE AMENDMENT OF THE LABOUR CODE

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Abstract

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The amendment of the Labour Code, No. 365/2011 Coll., effective as from 1st January 2012, brings some of fundamental changes in labour law. The amendment regulates relation between the Labour Code and the Civil Code; and is also formulates principles of labour law relations newly. The basic period by fixed-term contract of employment is extended and also frequency its conclusion is limited. The length of trial period and the amount of redundancy payment are graduated. An earlier legislative regulation which an employee is temporarily assign to work for different employer has been returned. The number of hours by agreement to perform work is increased. The monetary compensation by competitive clause is reduced. The other changes are realised in part of collective labour law.
The authoress of article notifies of the most important changes. She compares new changes of the Labour Code and former legal system and she also evaluates their advantages and disadvantages. The main objective of changes ensures labour law relations to be more flexible. And it should motivate creation of new jobs opening by employers. Amended provisions are aimed to reduction expenses of employers under the reform of the public finances. Also changes are expected in the Labour Code in connection with the further new Civil Code.

trial period, Labour Code, fixed-term employment relationship, severance payment, agreement on work performance, overtime work

The law No. 262/2006 Coll., the Labour Code came into force on 1st January 2007. The great amendment of the Labour Code, No. 365/2011 Coll., will come into force on 1st January 2012. The amendatory Act responds to a program statement made by the government of Czech Republic in 2010 and accents a general principle of will autonomy of participants of labour relation – employee and employer – under keeping a necessary degree of employee's protection. The amendment brings lots of changes. Principal changes refer to regulation of individual and collective labour relations.[1]

The aim of this contribution is to give notice of the most important changes in the Labour Code, to explain some amended stipulations, to compare them with present valid legal regulation and to evaluate the expected benefit of the changes.

As resources for this contribution, legal regulations and professional literature were used.

RESULTS

Subsidiary force of the Civil Code

The original Labour Code from 1965 did not admit the subsidiary use of the Civil Code for labour relations. The Labour Code from 2006 introduced the conception of delegation (reference) to the Civil Code. The Constitutional Court with its finding – file No. Pl. ÚS 83/06 refused the method of delegation and expressed itself for subsidiary application of the Civil Code to the Labour Code.

The amendment states that labour relations conform to the rules of the Labour Code. If the use of the Labour Code is not possible, relations conform to the rules of the Civil Code and it always in compliance with basic principles of labour relations. Furthermore it is specified what institutes of private law cannot be used in labour law relations

1 section 4 of the Labour Code

at all (e.g. lien, assignment of claim etc.).[2] All direct references concerning the use of the Civil Code are abolished. Subsidiary use of the Civil Code cannot traverse the basic principles of labour law relations, which are specified in the Labour Code.

Basic principles of labour law relations

Disparate group of principles specified in present section 13 of the Labour Code is newly formulated in the way which helps interpretation of law and does not include proclamation wording. That is also the reason why principles find their place in introductory stipulations of the Labour Code. First of all these principles are applied in labour law relations:[3]

a) particular legal protection of employee's position,
b) Favourable and safe working conditions for work performance,
c) Fair remuneration of employee,
d) Proper work performance by employee in compliance with justified interests of employer,
e) Equal treatment with employees and prohibition of their discrimination.

The primary rules are expressed in fundamental principles and labour law relations conform to them. Other principles are stated as special prohibitions, e.g. no employer is allowed to devolve a risk from work performance to an employee.[4]

Nullity of legal act

The amendment of the Labour Code is based on relative nullity of legal act. It is specified that legal act even in spite of its content imperfections is considered to be valid, if the one, who is concerned by such a legal act, does not invoke nullity.[5] Only in enumerative stated cases there are some cases[6] of absolute nullity, when court takes account of nullity of legal act even without a draft. The possibility of rectifying imperfection in the form of bilateral legal act does not refer to unilateral legal acts (e.g. notice) and collective agreement. It comes to absolute nullity here and imperfection cannot be rectified subsequently.[7]

Trial period

While a trial period remains for ordinary workers in the length up to 3 consecutive months after the day of formation of the employment relationship, newly it is extended to 6 months for leading and managerial workers.[8]

A trial period may not be subsequently extended. It may be extended only in the case of all-day obstacles at work and time of all-day holiday. A trial period may not be agreed longer than the half of the concluded time duration of the employment relationship. It will not be possible to agree an employment relationship for a definite period of 3 months and simultaneously include a trial period of 3 months in it. If a trial period of 3 months is agreed, the employment relationship for a definite period shall have to last at least for 6 months.

Fixed-Term employment relationship

A fixed-term employment relationship between the same parties may not extend 3 years.[9] From the day of the formation of the first employment relationship for a definite period may be repeated (or extended) at most twice. Present exceptions were abolished. Only the exceptions for Employment Agencies were retained, during the assignment of an employee to other employer and further on if foreigners are employed.

Also time is extended which must expire, and namely from 6 months to 3 years, so that a previous employment relationship for a definite period is not considered. The length of 3 years seems to be long enough not to come to situations when e.g. Agreements on work performance were closed for the period of half a year. However it is not possible to exclude it for future with regard to a new regulation of this Agreement.

The total time duration of the employment relationship for a definite period between the same participants has made maximum 2 years and the number of repeated extension has not been limited so far. The new regulation makes the basic period one year longer. Simultaneously a new limited rule is stated, the employment relationship for a definite period may be repeated at most twice. It means that the highest allowed time may represent maximum 9 years over the course of 15 years.

The fact that all present exemptions will be abolished (replacement of a temporary absent employee, serious operating reasons, and special nature of work), it will not be possible to employ e.g. seasonal workers repeatedly anymore.

The amendment abolishes the section 70 (4) of the law No. 111/1998 Coll., on higher educational establishments. The existing closed employment relationships for a definite period up to their end conform to the rules of present legal regulations.

2 Jakubka, J. a kol. Zákoník práce. Olomouc: Anag: 2011, s. 6.
3 section 1a of the Labour Code
4 section 346b(2) of the Labour Code
5 section 18 of the Labour Code
6 section 19 of the Labour Code
7 section 20 of the Labour Code
8 section 35 of the Labour Code
9 section 39 of the Labour Code

Temporary assignment of an employee to another employer

An employer may conclude with an employee an Agreement on temporary assignment of an employee to another employer at first after 6 month from the day of the formation of the employment relationship.[10] It concerns the waiting period and an employee may not be temporarily assigned to another employer within this period. Every from the contracting parties may withdraw from the Agreement on assignment of an employee to another employer even before the expiry of its agreed period from any reason or without giving any reason. Notice period in the length of 15 days begins on the day when notice was delivered to a contracting party. A termination of temporary assignment of an employee to another employer is also possible by agreement.

An employer who temporarily assigned an employee shall have to provide this employee with loan or salary, event. with travel expenses. It is not excluded that fulfilment will be provided by a temporary employer (user) or employers may agree on reimbursement of provided fulfilment. An employee is entitled to get the same wage and other conditions which are enjoyed by comparable employees of a temporary employer.

A temporary assignment is not provided with a consideration. The aim of assignment may not be an attainment of profit which is typical for lease of labour force.

New reason for notice of termination

Present reasons for notice of termination are retained. A new reason for notice of termination on the part of employer is a serious breach of regime by a worker who is temporarily unfit for work with reference to new duties of an employee stated in the section 301a of the Labour Code[11]. This stipulation says that employees during their incapacity for work (when an employer provides them with social security in the form of reimbursement of loan) are obliged to keep an ordered regime of an insured worker, who is temporarily unfit for work, namely to stay in the place of abode and to observe time and extent of allowed goings according to the law on sick insurance.[12]

Employer has right to control the conformance with regime stated for workers who are temporarily unfit for work and newly employer shall be entitled to give sanctions for discovered breaches by termination of the employment relationship. A new reason for notice of termination broke the prohibition of giving notice during a protection period, and namely during an incapacity for work. This reason for notice refers only to one month subjective time of extinction from the day, when an employer finds out such reasons. As for a breach of duties from legal regulations, a subjective period is in the length of two months.

The existing minimal notice period of two months is the same for employees and employers. It may be extended only by a written agreement between employee and employer.[13]

Severance payment

An employer is obliged to provide an employee with a severance payment, if the employment relationship ends with notice or agreement arising from organizational reasons in compliance with the section 52 letter a-c of the Labour Code.[14] Former severance payment made a treble of an average monthly earning. Newly a lawful severance payment is conditional on number of worked years for an employer. Severance payment makes minimal one average monthly earning for less than one year of work, a double of an average monthly earning for less than two years of work and a treble of an average monthly earning for more than two years of work. Former employment relationship for the same employer is considered, if the time from its end to the formation of the subsequent employment relationship does not exceed a period of 6 months. Minimal extent of a lawful severance payment gives possibility for further contractual differentiation.

Agreement on work performance

The maximal extent of an employment on base of an Agreement on work performance changes from 150 to 300 hours yearly.[15] This Agreement was not connected with payments for health insurance and social security. Newly this Agreement will be subject to payments for health insurance and social security, if an earning exceeds 10 000 Crowns monthly within one employer. Agreements on work performance with earnings higher than 10 000 Crowns lose their convenience. Employer will be obliged to sign (pull out) an employee as an insured person, provide him with a reimbursement of loan during his incapacity for work.

Working time

The amendment abandons the stipulation on even and uneven schedules of working time. An employer shall draw up a written schedule of working time and decide on the length of a shift,

10 n 43a of the Labour Code
11 section 52(h) of the Labour Code
12 section 56 of the Sickness Insurance Act
13 section 51(1) of the Labour Code
14 section 67 of the Labour Code
15 section 75 of the Labour Code

number of weekly working hours and the length of settlement period. The length of a shift may not exceed 12 hours.[16] As for a flexible schedule of working hours, an employer will be entitled to determine the start and ends of basic and optional working time according to his operational needs. Further changes concern the determination of account of working hours[17] and simplification of keeping account of working hours.

Remuneration

The amendment enables to agree a loan with regard to eventual overtime work as for all employees. If leading and managerial employees are concerned, then only in total extent of 8 hours weekly and as for other employees, then in case of 150 hours overtime work yearly.[18] Wage conclusion of leading and managerial employees takes account of overtime work within the extent of 150 hours of overtime work yearly.

Legal regulation of salary is rigid. Salary may not be determined by any other way, in any other structure and extent than the Labour Code and provisions in execution lay down. That's why the amendment introduces a contractual salary.[19] It refers to a one- component salary, which represents a total remuneration for work. Employee is not entitled to get any other components apart from remuneration and target remuneration. The possibility to agree a contractual salary is admitted for the highest determined work in spheres of public services.

DISCUSSION

Inexplicit regulation of nullity of legal act is in the Labour Code different from the regulation included in civil law. A law-giver could subsidiary use the Civil Code, because the regulations evokes a question, what kind of legal regulation of nullity does it concern.

As for the differentiation of a trial period a law-giver was driven by a consideration that a leading and managerial employee needs a bigger time space for judgement if the concluded employment relationship suits him. A status of a leading and managerial employee varies in various working positions. Subsequently arise a question if every leading and managerial position demands the same requirements for a leading and managerial employee. The differentiation of a trial period for ordinary and leading/managerial employees is a moot question. I do incline to differentiation according to number of worked years.

I assume that a minimal time of duration of employment relationship for a definite period could be set. The amendment fulfilled the measure of the Skeleton Agreement of EC 9.[20] The amendment abolishes the section 70 (4) of the law No. 111/1998 Coll., on higher educational establishments. I hope that employment contracts for a definite period in case of teachers and academic workers of higher educational establishments will accept a new stipulation of the Labour Code. A question remains, in what extent can special laws determine variations from the general regulation included in the Labour Code.

The temporary assignment of an employee to another employer was abolished in 2004. A temporary assignment was possible to carry out only through the Employment Agencies. The practice showed the necessity of this institute. It is a renewal of the former stipulation, but apart from the previous stipulation the stricter rules and essential requirements of an Agreement on assignment are set. Apart from Employment Agencies it represents a non-profit making activity for an employer.

It is problematic to give notice to an employee for breach of public law duties, which does not concern the work performance.[21] The amendment of the Labour Code indicates a breach of regime by a worker, who is temporarily unfit for work, as a other duty of an employee. The existing duties of employees always refer to work performance. It can be expected that the Constitutional Court will examine the excess of a principle "proportionality".

From reasons of flexibility of labour relations a shortening of notice period and its differentiation according to number of worked years for an employer was considered. The differentiation of notice period included in many member states of EU did not get its way in the amendment.

In my opinion, the differences in severance payment according to number of worked years for one employer are featureless. Financial compensation for the loss of employment does not take into consideration, if the employee's employment relationship for the given employer lasted a longer time. A lawful minimal extent of a severance payment does not esteem loyalty of an employee. I assume that this regulation will not motivate employers to create long-term working positions.

Due to frequent misuse of Agreement of work performance, when contractual inappropriate extent of remuneration replaced an employment contract, the determination of a limit of health

16 n 83 of the Labour Code
17 section 86 of the Labour Code
18 section 114(3) of the Labour Code
19 section 122(2) of the Labour Code
20 The Article 5 of Council Directive 1999/70/ES
21 sectiosectioBEZOUŠKA, P. Dlouho očekávaná novela zákoníku práce. Právní rozhledy. 2011, 16, s. 591.

insurance seems to be right. First of all an Agreement should serve for complementary employment, and not as a main source of income.

I assume that overtime work should not be considered as for employees at the low level of directing.[22] The aim of above standard evaluation of an employee by a contractual salary is a stabilization of very capable/qualified employees.

CONCLUSION

The subsidiary use of the Civil Code to the Labour Code is logical because the Civil Code is a general norm for the whole private law.[23] Fundamental principles of labour relations are interpretation rules for application of legal norms of the Labour Code. Relative nullity of legal act is combined with cases of absolute nullity. A trial period for leading and managerial employees is extended from 3 to 6 months. New rules of employment relationship for a definite period are more comprehensive. The aim of regulation is to prevent a frequent purpose chaining of short employment relationship for a definite period and to hinder their misuse by reasonless repeating or extension. It leads to an increased protection of an employee. An advantage of a temporary assignment of an employee to another employer is full use of labour force at the labour market. Its conclusion depends on the consent of all contractual parties. Newly there is a reason for notice on the part of employer – a breach of regime by a worker who is unfit for work. The existing length of notice period was retained. Minimal extent of a lawful severance payment is dependent on number of worked years for an employer. The increase of maximal number of hours up to 300 in case of an Agreement of work performance is sufficient. By the introduction of insurance payments comes to an increased protection of employees. The regulation of working time will enable a bigger freedom of work organization according to employer's operational needs. Remuneration introduces simplification of payments of overtime work. Newly the contractual salary is introduced.

Changes in labour law are necessary to perceive in a positive way. The regulation respects obligations, which result for Czech Republic from the international law. The institute of a temporary assignment of an employee to another employer, extension of a trial period for leading and managerial employees and the regulation of working time for leading and managerial employees mostly correspond to requirement of flexibility. Savings to employers will appear first of all in case of severance payment. Insurance paid for new employees will be higher than expenditure for paid allowances.[24] A lot of changes are brought in the amendment. That is why the amendment is important. I assume changes are more for the benefit of the employers. I presume interpretation issues of some institutes. With the acceptance of the new Civil Code other changes in the Labour Code can be expected to appear.

SUMMARY

The amendment of the Labour Code coming into force on 1st January 2012 brings many essential changes. First of all, the amendment expresses a principle of subsidiary use of the Civil Code towards the Labour Code. Newly fundamental principles of labour relations will serve as basic interpretation rules. The new legal regulation arises from relative nullity of legal act.

The maximal trial period of leading and managerial employees was extended from 3 to 6 months. A trial period of other employees remained unchanged, it means at most 3 months. The length of a trial period of the employment relationship for a definite period may be maximal a half of an agreed time. Employment relationship for a definite period will be newly possible to conclude even up for 3 years in contrast to the existing two years. The same employer can repeat it maximal twice. The amendment abolishes the present exceptions. The aim of this regulation is to prevent a purpose chaining of employment relationships for a definite period, which leads to a higher protection of an employee. Assignment of an employee to another employer is renewed under the conditions stipulated in an agreement of contractual parties. A new reason for notice of termination on the part of employer for serious breach of duties of an employee, who is unfit for work and does not conform to the rules of patient regime while incapable for work, can seem to be problematic. The existing length of notice period of 2 months was retained; however it may be extended by a written agreement. Severance payment in relation to termination of the employment relationship arising from organizational changes will be dependent on the number of worked years for the given employer. The minimal extent of a lawful severance payment provides a possibility for further contractual differentiation. The Agreement on work performance will enable to work even up to 300 working hours yearly for one employer. If an earning reaches 10 000 Crowns monthly, social and health insurance will be paid.

22 RANDLOVÁ, N.: Problémy v novém zákoníku práce. Ekonom. 2011, 37, s. 55.
23 BĚLINA, M.; PICHRT, J.: Nad návrhem novelizace zákoníku práce. Právní rozhledy. 2011, 17, s. 606.
24 Důvodová zpráva č. 411 k návrhu zákona, kterým se mění zákon č. 262/2006 Sb., zákoník práce. s. 106.

Also the changes in working time lead to a flexibility of labour relations. It will be possible to include overtime work in an agreed wage, namely the total overtime work as for leading and managerial employees and maximal 150 hours in calendar year as for other employees. The amendment introduces a new institute of the contractual salary for the highest determined work in spheres of public services.
The aim of the amendment is a flexibility of labour relations and an increase of motivation of employers towards creating new working positions.

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