Client Alert

September 2023

Czech Republic: Amendment to Labor Code

In brief

The long-awaited Amendment to the Labor Code was published in the Collection of Deeds on 19 September 2023. This Amendment primarily implements Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and caregivers, and Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, but also facilitates significant progress in the digitization of labor law documents and changes the method of their delivery.

Most of the changes introduced by the Amendment will become effective on 1 October 2023 (some of the changes will not become effective until 1 January 2024). Below is a brief summary of these changes

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In depth

Information about content of employment relationship

The information duty towards employees has been substantially extended. As before, it will be possible to replace specific information with a reference to an internal policy or collective bargaining agreement. It will also be possible to replace specific information with a reference to the relevant legal regulation (Labor Code). The information duty also arises in case an employment relationship lasts less than one month.

The time limit for providing information is also significantly shorter – 7 days from the commencement of the employment relationship, thereafter no later than the effective date of the changes.

There is a new possibility of providing information electronically – an employee must be able to save and print the information, and the employer is obligated to retain proof of the transmission of the information to the employee.

The scope of the information duty is as follows (new information to be provided to an employee is in bold print):

- Name and address of the employer;
- Detailed specification of the type and place of work;
- Amount of vacation;
- Duration and conditions of a probation period;
- The procedure for termination of employment and the commencement and duration of the notice period;
- Professional development;

- Weekly working time, method of working time scheduling, extent of overtime work;
- The extent of uninterrupted daily rest and uninterrupted weekly rest and the provision of meal and rest breaks;
- Wages, due date of wages, wages pay date, place and method of payment of wages;
- Collective bargaining agreement and identification of the contractual parties;
- The social security authority to which the employer pays social security contributions.

There is also a substantial extension of the information duty in respect of employees seconded to another country.

How to inform existing employees:

For new employees starting their employment during September 2023, the "broader" information required by the Amendment (see above for the scope) must be provided.

For the other existing employees, the "broader" information under the Amendment (see above for the scope) only needs to be provided upon written request of the employee within 7 days of the delivery date of the request.

An employee under an agreement on performance of work/agreement on work activity who started working before the Amendment came into force must only be provided with "broader" information under the Amendment upon a written request of the employee within 7 days of the delivery date of the request.

Recommendations:

- Modify the written information for employees to include the information according to the Amendment (see above for the scope);
- Consider where to include the information: in the employment agreement; in separate written information; in an internal policy; or by reference to a legal regulation;
- Set processes to reflect the new, shorter deadlines for compliance with information duties.

Changes to Agreement on Performance of Work/Agreement on Work Activity

Working time schedule

The employer is obligated to schedule an employee's working hours in advance in a written working time schedule. The duty arises to acquaint the employee with the working time schedule at least three days before the start of the shift or the period for which the working time is scheduled, unless another time is agreed for the employee to become acquainted with the schedule.

Vacation

As of 1 January 2024, employees working under an agreement on performance of work and an agreement on work activity will be entitled to vacation. The vacation is not included in the maximum scope of work under the agreement on performance of work. For an employee working under an agreement on performance of work or an agreement on work activity, the weekly working time for vacation purposes is 20 hours per week.

There are general conditions for vacation entitlement for employees under an agreement on performance of work and an agreement on work activity – both conditions must be met:

- The labor-law relationship must continue without interruption for at least four weeks
- An employee must work at least four times the notional working time (4*20 = 80 hours).

The fulfillment of the conditions shall be assessed separately for each agreement; however, if these agreements directly follow one another, they shall be considered as continuous for the purposes of the vacation.

Obstacles to work on the part of an employee

Employees working under an agreement on performance of work and an agreement on work activity are subject to the provisions on obstacles to work on the part of an employee.

Employees working under an agreement on performance of work and an agreement on work activity are not entitled to compensation of remuneration under the agreement for the duration of other important personal obstacles to work pursuant to Sec. 199 of the Labor Code (e.g., a doctor's appointment, wedding, death in the family) and obstacles to work for reasons of general interest pursuant to Secs. 200 to 205 of the Labor Code (e.g., blood donation, performance of civic duty or public office), unless otherwise agreed or stipulated by an internal policy.

In the event of other obstacles to work on the part of an employee (e.g., temporary incapacity for work), employees under an agreement on performance of work and an agreement on work activity are entitled to compensation of remuneration under the agreement if employees in an employment relationship are entitled to it.

Informing an employee working under an agreement on performance of work and an agreement on work activity

There is a duty to inform an employee about the content of their agreement on performance of work and agreement on work activity. A similar scope of information and time limits are stipulated as for employees in an employment relationship.

Application for employment in an employment relationship

If an employee whose legal relationships established by an agreement on performance of work and agreement on work activity with the employer in the preceding 12 months have lasted for at least 180 days in total requests in writing to be employed by the employer in an employment relationship, the employer must provide a reasoned written response (which does not have to be the employer's consent) within one month, at the latest.

Duty to state reasons for giving notice

If an employee believes that the employer has terminated their agreement on performance of work or agreement on work activity because the employee has:

- Lawfully exercised their right to information, right to have their working time scheduled in advance or right to professional development
- Requested the employer to employ them in an employment relationship, adjust their working conditions or take maternity, paternity or parental leave, or has taken such leave, or has cared for or nursed another individual

And within one month from the delivery date of the termination notice requests the employer to provide a written reasoning for the termination, the employer is obligated to inform the employee in writing of the reasons for the termination without any undue delay.

Surcharges

Employees working under an agreement on performance of work and an agreement on work activity are newly entitled to these surcharges:

- Work on a public holiday
- Night work
- Work in a difficult working environment
- Work on Saturdays and Sundays.

Recommendations:

- Prepare for less flexibility of employees working under an agreement on performance of work or an agreement on work activity
- Reflect in internal calculations the increase in the costs of these employees due to vacation entitlements, obstacles to work and surcharges.

Request for parental leave, rights of employees caring for children

Request for parental leave

An employee shall submit the request at least 30 days before taking parental leave, unless serious reasons on their part prevent this. The request must specify the duration of the parental leave.

The request may be submitted repeatedly.

Adjustment of the employee's working time

This option applies to the following employees:

- A pregnant employee
- An employee caring for a child under 15 years of age
- An employee who predominantly themselves care in the long term for a person considered to be dependent on the assistance of another individual.

The employer is obligated to accommodate the above employee's request for shorter working hours or other suitable adjustment of the fixed weekly working time, unless serious operational reasons prevent this.

There is a new duty for the employer to provide a written reason if the request is not accommodated.

If an employee requests in writing that the scope of their original weekly working time be restored or partially restored and the employer does not accommodate the request, the employer must provide a written reason of its refusal.

Recommendations:

- Review the individual positions and consider whether or not operational reasons allow you to accommodate the employee's request for shorter working hours;
- Prepare a justification as to why such requests cannot be accommodated with respect to specific positions - this must not be discriminatory and specific operational reasons must be stated.

Remote working

The Labor Code newly establishes rules for remote working (working from an agreed place other than the employer's workplace).

Remote working will continue to be possible only on the basis of a written agreement between an employee and the employer. The Labor Code does not stipulate any mandatory requisites of such an agreement. Both the employer and the employee may terminate the remote working agreement at any time for any reason or without giving any reason with a 15 days' notice. The parties may expressly agree that the remote working agreement may not be terminated by either party.

It will also be possible to order the performance of remote working unilaterally if a public authority's measure so requires, provided that the nature of the work to be performed permits this and the place is suitable for remote work.

Existing employees who work from a location other than the employer's workplace and do not have a written remote working agreement must conclude such an agreement within one month of the Amendment taking effect, i.e., by 1 November 2023.

If (i) a pregnant employee, (ii) an employee caring for a child under the age of nine, or (iii) an employee who predominantly themselves care in the long term for a person considered to be dependent on the assistance of another individual under a special legal regulation and the employer does not accommodate the request to work remotely, the employer must provide a written reasoning for the refusal.

Another important change is the explicit regulation of the reimbursement for costs incurred by employees in connection with remote working. In addition to the reimbursement for costs actually proven by an employee to the employer, it will now be possible to provide the employee with lump-sum reimbursement for costs. Employers shall regulate the payment of the lump sum reimbursement in an internal policy or by an agreement with the employees. The amount of the lump sum shall be set by a Decree of the Ministry of Labor and Social Affairs. Employers in the private sector may provide a higher amount of reimbursement, with the difference between such higher amount and the lump sum set by the Ministry of Labor and Social Affairs being considered as income of the employee for tax purposes.

The employer and an employee may agree in writing that the employee is not entitled to reimbursement of all or part of the costs incurred in connection with the performance of remote work.

On the other hand, employees working under an agreement on performance of work or an agreement on work activity will only be entitled to reimbursement of expenses for working remotely if this is expressly agreed.

Recommendations:

- If remote working is not covered by agreements with employees, conclude such agreements by 1 November 2023
- Revise existing remote working agreements, regulate the possibility of termination and compensation for costs

- Consider whether and how you will reimburse employees for costs related to remote working (actual costs, lump sum, no reimbursement) and amend the relevant documentation
- Consider whether or not you will allow remote working for specific positions; if not, prepare a justification.

Electronic signature of agreement

The Amendment to the Labor Code governs a situation when selected documents are concluded via an electronic communications network or service, namely:

- Employment agreement, agreement on performance of work, agreement on work activity or amendments thereto
- Agreement on termination of employment, agreement on performance of work and agreement on work activity.

The employer is obligated to send a copy to the employee's electronic address which is not in the employer's possession and which the employee has communicated in writing to the employer for these purposes.

An employee has the right to rescind in writing the employment agreement, the agreement on the performance of work, the agreement on work activity or amendments thereto, which are concluded via an electronic communications network or service, within seven days from the delivery date of a copy of the agreement to the employee's electronic address. Rescission is not possible if the employee has begun working, nor is it possible to rescind the termination of an employment agreement, an agreement on the performance of work and an agreement on work activity.

Recommendations:

- If you are considering the possibility of concluding agreements via an electronic communications network or service, you need to choose a method that provides sufficient proof of the employee's identity
- Bear in mind the possibility of the rescission of a concluded agreement or amendment.

Delivery

The Amendment to the Labor Code changes the rules on delivery. The strict rules for delivery under the Labor Code will now apply to a narrower group of documents - in particular unilateral acts aimed at termination of an employment relationship or an agreement on the performance of work and agreement on work activity, removal from or resignation from the position of a management employee, and wage assessments.

When delivering the above documents, the employer may choose between equivalent methods of delivery, namely by:

- Handing over the document at the employer's workplace
- Handing over the document wherever the employee may be reached
- Sending the document through a data mailbox
- Sending the document via an electronic communications network or service.

The employer may only deliver documents via a postal service provider if service at the employer's workplace is not possible (for example, in the situation where the employee works permanently remotely).

The Amendment will also simplify the delivery of documents via a data mailbox or via an electronic communications network or service. Delivery via a data mailbox will be possible without the express consent of the employee or the employer, and the fiction of delivery will apply - if the addressee does not log in to the data mailbox within 10 days after delivery, the document shall be deemed to have been delivered.

If the employer plans to deliver documents to employees via an electronic communications network or service, it needs the employee's express written consent to do so, in which the employee provides an electronic address for service that is not in the employer's possession. Before giving consent, the employer must inform the employee in writing of the conditions for delivery of the document by the electronic communications network or service, including the statutory time limit for the deemed delivery. An employee may withdraw their consent at any time. The employer must sign the document with a qualified electronic signature, and the document is deemed delivered on the date on which the employee acknowledges receipt to the employer by a data message (a qualified signature on the acknowledgement is no longer required). If the employee does not acknowledge receipt of the document within 15 days of delivery, the document shall be deemed to have been delivered on the last day of that time limit. Delivery of a document by an electronic communications network or service shall be ineffective if the document is returned as undeliverable.

Recommendation:

- Carefully consider the method of service chosen - the employer bears the burden of proof that a document was delivered to the employee
- Prepare written information for employees on the conditions for delivery of a document via an electronic communications network or service, including the statutory time limit for deemed delivery
- Record employee consents and any revocations thereof.

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