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CZECH REPUBLIC

Trends and Developments

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A long-awaited amendment to the Labour Code was finally approved by the Czech Parliament in late June 2020, marking the first major changes to the Labour Code since 2012.

The amendment took effect on 30 July 2020, except for certain provisions, such as the new concept of annual leave entitlement as well as a new regulation of job sharing (so-called "shared work post"), which will both take effect on 1 January 2021. The atypical effectiveness date of 30 July 2020 was chosen to align with the deadline for implementation of the EU directive concerning the posting of workers within the framework of transnational provision of services.

Below, we summarise the amendment's main changes that will impact employment rights and employers' human resources (HR) systems and operations.

New Annual Leave Calculation
The amendment's primary change will implement a new system for calculating annual leave, effective from the beginning of 2021. As the new system will require changes to employers' internal HR systems, they should start preparing for this change now.

Most significantly, annual leave will be calculated in hours and will be based on the agreed weekly working hours. All employees with the same weekly hours (for example, 40) will have the same holiday entitlement (in this case 160 hours, if the employer provides employees with four weeks of holiday, or 200 hours in the case of five weeks).

Under current law, holiday leave is calculated in days (20 or 25 days per year); its specific extent in hours depends on the employee's actual schedule of working time. Thus the current law can, in specific situations, result in small, unfair discrepancies and leave question marks. This is of particular concern when workers shift from full-time to part-time work (or vice versa) in the course of a year.

Another factor prompting the change is the problem when two employees with the same number of weekly working hours have different schedules. For example, if one has a four-day week and the other works five, this can result in different holiday entitlements in hours, since the calculation depends on the number of hours of each shift missed due to being on leave.

The new system aims to make the rules more transparent, especially when it comes to part-time workers, employees with more complicated schedules (employees who work in irregular shifts) or employees changing their working hours pattern in the course of a calendar year. In respect of standard white-collar (administrative) employees who work from Monday to Friday in eight-hour shifts, the new system will not have much impact. Simply speaking, employees' annual holiday entitlement will be decreased by eight hours (instead of one day) for each day of leave taken.

An employee's holiday entitlement will accrue on a weekly basis – after every worked week (ie, seven consecutive days, not a calendar week) an employee gets 1/52 of the total annual entitlement in hours. The threshold for any holiday entitlement will be that they have worked for four full weeks. The minimum holiday entitlement thus will be 13 hours of holiday (1/52 x 160 x 4 = 12.30 hours, which must be rounded up to full hours). For employees entitled to five weeks of holiday per year this would be 16 hours (1/52 x 200 x 4 = 15.38 hours before rounding up). Under the existing system, employees get 1/12 of their annual entitlement in days (ie, 1.5 days for four weeks' holiday, two days for five weeks' holiday per year) for each fully worked calendar month.

Once the change goes into effect, there will be no negative impact if employment starts after the first day of a calendar month. In other words, employees will not lose any holiday if their employment begins, for example, on 2 January; currently, a common procedure is to sign the employment contract on the first of the calendar month, even though the employee actually starts working after this date, in order not to lose any holiday.

The general ability of employers to reduce an employee's holiday entitlement due to unauthorised absence from a shift is not affected under the new regulation. However, any reduction will newly need to be proportional (1:1); for one shift (usually eight hours), an absentee may lose no more than eight hours of holi-

day. Currently, up to three days of holiday may be deducted for one day of unauthorised absence (the level of reduction is at the employer's discretion, but the Labour Code mandates that all comparable employees need to be treated equally).

Another change will allow employees to carry over to the next year's annual leave, thereby exceeding the current statutory limit of four weeks. The employee will have to request any such carry over in writing. The existing law allows this only if there are obstacles to work on the employee's side (sickness, maternity/parental leave, etc) or if there are urgent operational reasons on the side of the employer. In all other cases, annual leave should in principle be taken in the calendar year it belongs to, which can cause difficulties in practice.

It is important to note that the amount of annual leave entitlement in weeks remains unchanged. In 2021, the minimum entitlement for private companies is to remain at four weeks. However, the formula will change to 160 hours of holiday if an employee works the full calendar year: the basic formula is 40 (weekly working time) x 4 (weeks of holiday). In case of a part-time job, the hourly entitlement will depend on the number of agreed weekly hours – for example, 80 hours of holiday for an employee working 20 hours per week.

However, another amendment to the Labour Code is currently under discussion in the Parliament; it proposes to increase the minimum annual leave for all private-sector employees to five weeks. According to behind-the-scenes information, it is quite likely that this proposal will be adopted by the end of this year. If so, all full-time white-collar employees will be entitled to at least 200 hours of holiday if they work the full calendar year.

Shared Workplace

A "shared workplace" is a completely new HR concept in Czech law that will start from the beginning of 2021. It brings the possibility of concluding a written agreement on a shared workplace with two or more part-time employees with the same type of work. This new job sharing is aimed at parents, usually mothers, of small children who often stay at home for the maximum period of parental leave (until the child reaches the age of three) and who may welcome the opportunity to strike a better work-life balance.

Once the employees have agreed on the shared workplace, they schedule their working hours, without the employer's intervention – ie, they will decide who will work when in the shared workplace. If the employees are unable to agree on a shared schedule, the employer itself may do so. In any case, both parties may at any time terminate the agreement on a shared workplace.

It remains to be seen how this new concept will play out in the workplace, as – practically speaking – it is quite strict and formal, when considering the need of a written agreement and the fact that the maximum weekly working hours for all employees sharing the workplace must not exceed 40 hours per week. However, the Czech government announced that there may be incentives for creating shared workplaces. The conditions for such incentives are not known yet, but such moves on the government's behalf may motivate employers to introduce the concept.

New Rules for Transfers of Undertaking

The amendment introduces – with effect from 30 July 2020 – a new regulation on transfers of undertaking (TUPE), when employees automatically transfer from one employer to another. The previous legal regulation was very broad, and a mere transfer of activity or its part is all that is needed to trigger application of TUPE, without even a transfer of an economic entity retaining its identity consisting of various factors (assets, people, know-how, etc).

The new regulation aims to make the Czech regulation more aligned to the EU Acquired Rights Directive and related case law of the Court of Justice of the European Union and thus strengthens the conditions for TUPE to apply. The amendment stipulates several conditions which must be met in order to apply TUPE principles. In our opinion, the new regulation will have a significant impact on outsourcing projects as well as service providers and their clients in cases of a change of providers, as it will no longer continue to apply in many situations of service provision. However, the problem is that the new conditions listed below, which will need to be met at the same time, are not fully clear:

- the activity is carried out after the transfer in the same or similar way or extent;
- the activity does not consist wholly or mainly in the supply of goods;
- immediately prior to the transfer, there is a group of employees that was intentionally created by the employer for the purposes of sole or predominant performance of such activity;
- the activity is not intended to be short-term or should not consist of a one-off task; and
- property is transferred, or the right to use or exploit it, if this property is essential for its performance with regard to the nature of the activity (asset-reliant activities), or a substantial number of employees used by the current employer to perform the activity is taken over, if this activity depends substantially only on employees, not on property (employee-reliant activities).

At this moment, there are no guidelines available to clarify these conditions, and Czech employers will thus have to search the interpretations of the Court of Justice of the European Union in much greater detail than before. Although the intention to limit TUPE situations may be considered positive, we have concerns that the new regulation will rather result in disputes between involved companies whose interests are often contradictory.

In addition, the amendment limits the possibilities for employees to resign when they do not wish to be transferred. Under the new regulation, they have only 15 days after receipt of the notification of the planned transfer to terminate their employment (and avoid being transferred). Notification must be given at least 30 days before the transfer. Under the previous regulation, the affected employee could terminate employment even on the last day before the transfer becomes effective, so the receiving employer had no guarantee whether the employees would, in fact, transfer until the last day.

Delivery of Important Employment Law Documents
The amendment simplifies the delivery of important labour law documents to employees, namely dismissal documents such as notices of termination. Under the previous regulation, it was hardly possible to meet all statutory requirements, and many dismissals were considered invalid by courts purely on the basis of an incorrect delivery of notice. This would apply in situations when notices were sent by mail and the envelope was returned to the employer as undelivered, due to the fact that the postman could not reach the employee who then failed to pick up the letter at the post office.

We consider the main advantage of the new regulation to be the possibility to omit the mandatory attempt at personal delivery, which under the previous law had to be done before sending any notice by post. As an example, when dismissing an employee for an unexcused absence, it is now possible to send a notice immediately by post without having to chase down the employee for personal delivery of the notice of dismissal.

The amendment also requires employees to notify employers in writing if they move (change of the address at which notice must be delivered by the employer). Under the previous law, it was even possible to notify, for example, a direct manager or HR department about a new address orally. Employers were not able to ensure that notices were sent to the employee's correct address (they were unable to prove whether a new address was notified by the employee).

Posting of Employees
Similarly as in other EU countries, the amendment also includes an adjustment transposing the amendment to the Posting of Workers Directive (96/71/EC). Based on this Directive, the Czech Labour Code contains a regulation providing employees posted from other member states to the Czech Republic with several employment entitlements. The list of the minimum entitlements – if they are more favourable to employees than entitlements under law regulating their employment at the posting employer – will be extended.

Based on the amendment, posted employees are entitled to all salary components mandatory under Czech law, not just premiums for overtime work. Therefore, posted employees should also receive a premium for night work (10% of average earnings), work on weekends (10% of average earnings), work on bank holidays (100% of average earnings, unless paid time off is taken) and a premium for work in an unfavourable working environment, such as in noisy, dusty or warm conditions (10% of minimum salary). However, all these salary entitlements will apply only if the employee is posted for more than 30 days within a calendar year.

In addition, posted workers are entitled to the same conditions of accommodation as those provided by employer to workers away from their regular place of work, as well as to allowances or reimbursement of expenses to cover travel, board and lodging expenses for workers away from home for professional reasons. These Czech entitlements (if more favourable) belong to posted employees even in for employees in short postings.

Finally, the amendment requires that for long-term postings (longer than 12 months) all applicable Czech terms and conditions of employment – except for regulation of the conclusion, amendments and termination of employment – apply to posted employees (on top of all minimum entitlements under the Directive). The period of 12 months may be prolonged up to 18 months in case of a properly reasoned notification of the employer to the relevant Labour Office.

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