Legal Alert
in the field of labour law

27 March 2024

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Below is the latest information on employment law. If you have any questions about the below, please do not hesitate to contact us.

Legislative changes and information from the authorities

Extension of temporary protection

Act 454/2023 Coll. extended temporary protection status until **31 March 2025** for relevant persons affected by the Russian Federation‘s invasion of Ukraine on 24 February 2022.

Affected foreigners were required to register electronically for temporary protection by 15 March 2024. The confirmation of registration includes the date and the workplace where the foreigner is to appear for the extension of temporary protection in the form of a visa tag. If the electronic registration has taken place, temporary protection is extended automatically to 30 September 2024, by which date the foreigner must report to the Ministry of the Interior's workplace to have the visa sticker stamped. If this is not done, the temporary protection will expire, otherwise it is valid until 31 March 2025.

An foreigner who has not so registered by 15 March 2024 shall lose the temporary protection on 31 March 2024. That person may submit a new application for temporary protection.

Businesses employing Ukrainians with temporary protection will need to check:

- whether the person has been electronically registered with the Ministry of the Interior by 15 March 2024 (e.g. by electronic verification of registration, which can also be verified on the official website for foreigners); if not, the person cannot be legally employed from 1 April 2024 and
- whether the foreigner has had a visa sticker stamped on his/her travel document by 30 September 2024.

Draft Law on Integrative Social Enterprise

The Ministry of Labour and Social Affairs has submitted to the Government a draft law on an integrative social enterprise, which will be defined as a person employing on average at least 30% of people with special needs out of the total number of its employees.

The integrative social enterprise is entitled to an incentive allowance for successful work integration of people with specific needs (the person has been employed by an integration social enterprise for at least 1 year, after the end of the employment relationship he/she starts working at a job with at least half of the established weekly working hours, and no incentive allowance has been provided to this person in the last 10 years).

A person with special needs is a physical person who:

- has been registered as a jobseeker with the employment office on the day immediately preceding the start of the employment relationship with the integrating social enterprise (for at least a total of 12 months in the last 24 months) and also has at least on eof the following characteristics:
  - a person personally taking care of a physical person in dependency level II, III, IV or
  - a person who has not completed any level of secondary education or
  - by a person within 2 years of completing continuous training for a future profession or
  - a person who has been granted an asylum or subsidiary protection or

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- a person against whom enforcement of a judgment or execution for financial performance is being conducted, or
- is at least 55 years old,

- is a person with a disability under Section 67 of the Employment Act,
- has been provided with a social prevention service under the Social Services Act in the 12 months prior to employment with the integration company,
- a homeless person on the date of employment with the integration company,
- who is a person who has completed a custodial sentence or has been released from protective custody, or
- is a person up to 10 years after the end of institutional (protective) education or the provision of institutional education (children's home).

The status is likely to be granted by the Ministry of Labour and Social Affairs, after other conditions are met by the employee, such as the performance of continuous economic activity, integrity, debt-free status, a seat in the Czech Republic or a branch of an employer in the Czech Republic from the European Economic Area, the United Kingdom of Great Britain and Northern Ireland or the Swiss Confederation. It will also be examined whether the employee is bankrupt (certified by a final court decision) and others. The application for the status will include an activity project, which will include, among other things, a description of how to strengthen the social competences of employees who are people with specific needs and how to provide support for their integration into the labour market, initial diagnosis of barriers to entering the labour market or support from a social worker.

Level of incentive allowance:

- first payment - twice the average wage in the national economy, if the integrated person's employment relationship with the new employer or in total with several new employers lasted at least six months on the date of application,
- second payment - three times the average wage in the national economy, if the integrated person's employment relationship with the new employer or in total with several new employers lasted at least 12 months on the date of application.

Rights and obligations of an integrating social enterprise:

- will not be able to distribute more than 50% of its profit after tax,
- there will be a record-keeping obligation regarding its employees with special needs, including details of their previous applicant record,
- will have to prepare an activity report and submit it to the Ministry,
- will have the right to use the labels integrative social enterprise and social farm.

Government Regulation on the maximum amount of the contribution to support the employment of people with disabilities in the sheltered labour market

At its meeting on 20 March 2024, the Government approved a draft Government Regulation on the maximum amount of the contribution to support the employment of people with disabilities ("PWD") in the sheltered labour market.

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With effect from 1 April 2024, the maximum amount of the contribution to support the employment of PWD will be CZK 15,700 (previously CZK 12,800). The allowance will be used to reimburse the actual wage or salary costs in the monthly amount of 75 % of the actual wage or salary costs for an employee who is PWD, including statutory insurance paid by the employer who has concluded an employer recognition agreement with the Labour Office, up to a maximum of CZK 15,700.

Information of the State Labour Inspection Office ("SLOI") on the inspection plan for 2024

The State Labour Inspection Office has published its programme of inspection activities for 2024. The Labour Inspectorate plans:

- increased activity in control activities aimed at detecting illegal employment and disguised mediation,
- checks on the working conditions of foreigners, including temporary protection holders from Ukraine,
- inspections focused on compliance with the legal conditions of agency employment,
- Targeted checks on working time and remuneration,
- inspections of the causes and circumstances of accidents at work and inspections targeting workplaces with an increased risk of accidents at work,
- monitoring of the issue of injuries not reported by employers, which the labour inspectorates learn about from other entities (Police, media, inquiries from consultancy), followed by a consistent comprehensive inspection procedure,
- Involvement in joint inspections and activities of the European Labour Affairs Authority (ELA).

The Labour Inspectorate plans to carry out 19,200 inspections (8,700 inspections focused on compliance with workplace safety and safe operation of dedicated technical equipment, 3,800 inspections on compliance with labour relations and working conditions, inspections to detect illegal employment and 6,700 inspections in the area of employment).

Court decision

Circumstances in which a physical assault on another employee does not constitute grounds for immediate termination

The judgment of the Supreme Court of the Czech Republic ("SCCR") of 28 February 2024, Case No. 21 Cdo 1915/2023, dealt with a situation where the court found that physical assault of another employee was a breach of duty that did not reach the intensity of a particularly gross violation and was therefore not an eligible reason for immediate termination of employment.

State of facts

The employee worked for the employer as an orderly. According to the employer's communication, the employee's work performance had long exhibited *"significant deficiencies, forgetting work assignments, he did not complete his work tasks or completed them with insufficient quality, and the work had to be completed or redone by other employees."* The employee reacted inadequately when communicating shortcomings in his work, was often verbally abusive and repeatedly made his colleagues feel threatened by gesticulating. Complaints about his behaviour and work performance were repeatedly addressed by the head nurse. A conflict with a female colleague was probably also the

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cause of a physical assault of an employee by the husband of a colleague. Approximately 14 days after the physical assault on the employee, the workplace conflict between the employee and his 3 female colleagues occurred again. Another colleague asked the employee to discuss the employee's inappropriate behaviour towards his female colleagues, which the employee refused and wanted to leave the room where they were all present. The colleague prevented the employee from leaving the room. When the employee attempted to leave, the colleague grabbed him under the neck, so the employee punched him in the face with his fist to get out of the nurses' station. The colleague did not suffer any injuries and the staff member immediately reported the incident to the head nurse. The employer first served the employee with a letter of reprimand (16 March 2021) about a week after the incident, assessing the incident as a serious misconduct, then served the employee with an immediate termination for the same reason (19 March 2021).

Assessment by the general courts

The Court of First Instance found the immediate annulment invalid, in particular because:

- The employee had a reasonable concern of physical assault in light of previous events and chose to respond disproportionately,
- The situation at the workplace (covid unit) was exacerbated during the peak of the COVID-19 epidemic,
- A colleague was not injured.

The Court of Appeal dismissed the action because, in its view, physical assault of one employee by another (without just cause) cannot be tolerated in employment relations.

Assessment of the SC of the CR

In the opinion of the SC CR, when assessing the intensity of the breach of work duties, the courts should have taken into account the following:

- the circumstances of the conflict that took place in the nurses' station (staying in a closed room, being physically prevented from leaving by a colleague and being assaulted by the colleague's husband shortly before the incident in question), which to some extent reduces the intensity of the employee's breach of work duties, as well as
- The escalated situation at the workplace (covid unit), which led to a serious disruption of interpersonal relationships, increased demands on employees - wearing protective equipment all day, demanding care of a number of seriously ill and dying patients affected the psychological resilience of individual employees,
- The employee immediately reported the incident,
- The assault on a colleague did not require medical treatment or incapacity for work.

Thus, in this case, the SC CR did not assess the physical assault as a violation of work duties in a particularly gross manner.

"Lippy clerk" - is that grounds for termination of employment?

In its judgment of 21 February 2024, Case No. 21 Cdo 3701/2023, the Supreme Court of the Czech Republic reviewed the termination of the employment of a clerk on the grounds of inappropriate behaviour towards clients, which the employer assessed as a failure to comply with the requirements of Section 52(f) of the Labour Code. The SCC addressed the question of whether the failure of

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a local government official to observe the rules of decorum could be considered grounds for termination of employment based on the employee's failure to meet the requirements for the proper performance of the agreed work under the provisions of Section 52(f) of the Labor Code or grounds for termination under the provisions of Section 52(g) of the Labor Code.

State of facts

The reason for the dismissal was the applicant's failure to observe the basic rules of good conduct in her work as a clerk at the Chomutov City Hall during four official meetings with clients between September 2019 and July 2020. The failure to observe the rules of good behaviour consisted in the fact that she did not greet the clients at all, addressed them with the words 'what do you want', gave orders in an unpleasant manner instead of politely asking and requesting the production of documents, made it clear to the clients that they were essentially harassing her, acted 'arrogantly and unpleasantly', used the language of a tongue-twister even towards adults, and referred to an applicant for a motorcycle licence as 'another organ donor'. The complaints described her behaviour as " outrageous".

Assessment by the general courts

The trial court ruled that the termination was invalid because it held that the failure of "*the local government official to observe the rules of decorum 'should be addressed' under Labor Code section* 52(g), which requires prior notice of the possibility of termination for violation of a statutory duty."

The Court of Appeal dismissed the action for annulment of the dismissal, stating that "the provisions impose on public officials *'requirements for the manner of conduct and dealing with clients which are not to be confused with the requirements for the performance of the job of that official'" and that "the internal regulations of the Municipality then reflect the specific conditions of the particular Municipality and its ideas of what should be imposed on the employee who performs a particular type of work (function)"*. The Court found that the misconduct did not translate into work performance and therefore there was no need to call on the applicant to remedy the unsatisfactory work performance.

Assessment of the SC CR

"Failure by an official to observe the rules of good conduct *in official conduct constitutes* a breach of this fundamental duty of the official, *which arises from a legal regulation relating to the work he performs, and may therefore - if caused at least negligently* - be grounds for dismissal *from the employment relationship given by the employer to the official under the provisions of* Section 52(g) of the Civil Service Act. Labour Code. *Failure by an official to observe the rules of good conduct in official conduct* cannot be regarded as a failure to fulfil the conditions *laid down by law for* the performance of the agreed work *within the meaning of section 52(f) of the Labour Code. Labour, since* the prerequisites for the performance of the work of an official of a local authority are laid down in section 4(1) of the Officials Act."

"The obligation of an official to observe the rules of decorum in official conduct is not even a requirement for the proper performance of the agreed work within the meaning of section 52(f) of the Act. It is not a requirement laid down by the employer (the local authority) itself, which reflects primarily the particular conditions of the employer and its ideas about the demands to be made of an employee who performs the work of an official, but an obligation laid down by the Civil Servants Act."

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The Constitutional Court on so-called "true concurrences"

The ruling of the Constitutional Court of the Czech Republic ("**CC CR**"), Case No. III ÚS 410/23, dated 17 January 2024, once again addressed the relationship between members of statutory bodies and companies and the limits of contractual freedom in this area.

Factual Background

The complainant served as the Chairman of the Board of Directors of a trading company from 1 January 1998 to 18 December 2008 and was also its Chief Executive Officer. He was removed from both positions in December 2008. In January 2009, the complainant was dismissed from his 'employment' by the company on the grounds of redundancy; after his dismissal, the company had no other employment for him. Following these events, a series of legal proceedings took place in two separate 'branches'.

The first branch concerned a claim by the company for reimbursement by the complainant of the sum of CZK 1 320 000, including interest, which had been paid to him as part of the remuneration for his activities as CEO (the variable part of the remuneration paid for 2008). The company considered that the 'management contract', concluded for the performance of the function of CEO under the Labour Code, was invalid. It therefore sought reimbursement of the remuneration paid to the complainant on the basis of the right to unjust enrichment.

The second branch, on the other hand, concerned the complainant's claim for compensation for remuneration ("wages") in the amount of CZK 602,549.50, plus accessories, for the period of February and March 2009, when the "notice period" of his "employment relationship" in force. In the complainant's view, an 'obstacle to work' had arisen on the part of the company (as his 'employer') and he was therefore entitled to compensation for his remuneration ('wages'). In the context of disputes which have passed through the court system several times, the development of the decision-making practice of the SC CR in relation to concurrency has also been reflected.

Assessment of the Constitutional Court

The Constitutional Court of the Czech Republic pointed to the legal opinion contained in the judgment of the Grand Chamber of the Civil and Commercial Chamber, Case No. 31 Cdo 4831/2017, dated 11 April 2018, where the Supreme Administrative Court of the Czech Republic stated, among other things, that *"the relationship between a member of the statutory body and a commercial corporation, the subject of which is the performance of activities falling within the competence of the statutory body, may also be subject to the Labour Code, without, however, becoming an employment relationship. However, the mandatory provisions of corporate law shall continue to apply. Therefore, a "management contract" between a corporation and a member of the statutory body must be regarded de facto as an appendix to the contract of office and subject to the* same formal requirements as the contract of office itself, including the obligation to have it approved by the competent authority." This view has been reviewed in the past by the Czech Constitutional Court, which did not find grounds for cassation intervention**. In the present case, the CEO's "management contract" had not been approved by the general meeting and therefore did not take effect and the remuneration agreed therein did not accrue.**

"The limit of autonomy of the will in corporate law includes the rules defining the basic legal nature of the relationship

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between a member of an elected (statutory) body and a business corporation." This is primarily the rule of due care (loyal and diligent performance of duties*), "as well as the regulation* in Section 54 et seq. of the Business Corporations Act dealing with conflicts of interest." The protection of the rights of shareholders (partners) is then represented by the approval of the contract on the performance of duties and remuneration of members of statutory bodies by the highest body of the company. If the contractual arrangement of remuneration is not approved, such contractual arrangement is ineffective, not invalid.

The Czech Constitutional Court stated, with reference to previous decisions, that the right to fair remuneration within the meaning of Article 28 of the Charter of Fundamental Rights and Freedoms must be interpreted more broadly, i.e., that it does not apply only to dependent activities, but this right was not violated in this case either.

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