Legal Alert
in the field of labour law

16 May 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

Changes to work performance agreements – from 1 July 2024 and 1 January 2025

Consolidation package

Act No. 349/2023 Coll., the so-called consolidation package was passed, in order to make changes concerning agreements for the performance of work („PPA") and participation in sickness insurance on the basis of PPA with effect from 1 July 2024. There were to be 2 limits for the participation in sickness insurance for an employee working under a sickness insurance contract (and thus the thresholds for payment of social security contributions). The first limit was set at 25 % of average wages for a single employer's sickness insurance contract and the second at 40 % of average wages for participation in sickness insurance for multiple employers' sickness insurance contracts. If the employee exceeded either limit, a premium would be paid. If the employee was working under a multiple-employer PPA in a calendar month, if the cumulative limit was exceeded, the employee would be liable to pay the premiums. The employer would continue to pay its share of the premium as before.

Amendment proposal

Following an expert discussion, the Senate is now considering (the deadline for consideration is 30 May 2024) an amendment to the consolidation package, made by an amendment to the Investment Companies Act (Senate Document 258) (the „Amendment"), changing the origin of participation in sickness insurance for FSAs and modifying the changes made by the consolidation package described above. If the Amendment is approved in the legislative process, a PPA with an expected income of up to CZK 4,000 will be considered a small-scale employment for the purposes of sickness insurance. If a monthly income of CZK 4,000 (in 2024; for 2025, assumed to be CZK 4,500) or more is agreed for a PPA, this PPA will give rise to participation in sickness insurance on the commencement of employment, even if the amount charged in a given month is less than CZK 4,000 or the amount currently in force.

Registration of all PPAs from 1 July 2024

As of 1 July 2024, a register of all employees working on the basis of a PPA (including those who are not insured) will be created and maintained by the CSSA. Employers will be obliged to report the commencement and termination of employment for all employees on a DPP by the 20th of the following month, and to provide a list of all employees on a DPP, including the amount of their income (regardless of whether it triggers participation in sickness insurance), using the "DPP Statement" form. For the first time, the employer will have to do so for the month of July 2024 by 20 August 2024 at the latest, and thereafter always by the 20th day of the following calendar month.

Employees who started before 1 July 2024 and whose sickness insurance continues in July 2024 will also have to register no later than 20 August 2024. Employers who have previously employed only uninsured employees on sickness insurance will have to register in the register of employers no later than 30 July 2024.

Scheme of notified and non-notified agreements from 1.1.2025

From 1 January 2025, employers will have the option to register the employment of an employee working on a PPA under a special regime called a notified agreement, in which

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the occurrence of participation in the insurance will be treated differently. Participation in insurance for such an employee on the basis of a notified PPA will only arise when the limit of 25% of the average wage is reached after rounding down to CZK 500 (CZK 10,500 in 2024). If the income from all the PPAs of this employee with an employer who has used the notified agreement scheme does not reach the limit of 25 % of the average wage (i.e. CZK 10,500 in 2024), the insurance participation will not arise. If the limit is reached, participation in the insurance will arise. The income limit will be monitored separately each month and in aggregate for the income from all the employee's PPAs with the same employer.

Reservation of a more convenient scheme

The amendment provides that only one employer per calendar month will be able to apply the notified agreement scheme in respect of an employee, namely the employer that has notified the CSSA of its intention to apply the notified agreement scheme prior to the application of the notified agreement scheme. The registration of the application of the intention will be carried out by the CSSA on-line services and the employer will be able to verify that he has sent the intention first by consulting the CSSA e-portal. It will be possible to notify the intention to apply the notified agreement scheme together with the notice of commencement of employment on a prescribed form for this purpose, but no later than the 20th day of the calendar month following the month in which the employee commenced employment.

Unannounced PPA

In terms of participation in sickness insurance, the PPAs concluded by the employee with other employers, which are not in the notified agreement regime, will be in the general regime applicable to all other employment relationships, such as employment agreements, employment relationships, etc., i.e. in the case of so-called small-scale employment, participation in sickness insurance will arise whenever the income exceeds the threshold of CZK 4,000 in a given calendar month (in 2024; for 2025, the assumption is CZK 4,500). For employment relationships that are not small-scale employment, insurance premiums will be paid on any amount earned.

Public health insurance

From the point of view of public health insurance, there are no major changes, since if the income from the PPA in a calendar month gives rise to participation in sickness insurance, then it is also subject to the payment of public health insurance premiums. Nor are there any changes as regards compliance with the minimum assessment base. If the total income from several sickness insurance benefits does not reach the minimum assessment base, the employee who is not exempted from paying the minimum premium will choose an employer who will monitor compliance with the minimum assessment base and, if necessary, pay the premium up to the minimum amount. This additional payment shall be borne in full by the employee.

The newly established limits for participation in sickness insurance will also be taken into account when calculating the tax base when withholding tax is applied to income from agreements that do not give rise to participation in sickness insurance.

Flexible amendment to the Labour Code

The Ministry of Labour and Social Affairs („**MoLSA**") has prepared a so-called „flexible amendment" to the Labour Code, which, according to the submitter, is intended to respond to long-term recommendations of experts, practical suggestions from practice and selected case law of the Czech

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courts and the European Court of Justice. Its aim is to increase the flexibility of the Labour Code in the interests of both employees and employers in response to the development and needs of the modern labour market, to reduce the administrative burden and to continue the trend towards digitisation. The amendment is expected to come into force on 1 January 2025. Please note that the text is in the so-called external comment procedure at the time of publication of this Alert and its final text may differ significantly from the information provided below (this was also the case in the end with the so-called transposition amendment to the Labour Code). The amendment should modify the following:

- introducing the possibility of extending the probationary period from the current 3 to 4 months for ordinary employees and from 6 to 8 months for senior employees, as well as the possibility of an additional extension of the already agreed probationary period during the probationary period, but only within the above-mentioned limits of 4 and 8 months respectively,
- change in the start of the notice period, which will now be linked to the date of delivery of the notice,
- reduction of the notice period to one month for reasons of non-compliance with requirements and breaches of work obligations by the employee under Article 52(f) and (g) of the Labour Code,
- extending the period within which the employer may serve notice of termination for disciplinary reasons under Section 52(g) of the Labour Code from 2 to 3 months for the subjective period (running from the moment the employer becomes aware of the breach) and from 1 year to 15 months for the objective period (running from the moment of the breach),
- merging the grounds for termination related to loss of medical capacity into a single ground of long-term incapacity of the employee, eliminating the risk of the employer's misjudgement of the cause of the incapacity, which according to case law caused the invalidity of the termination,
- the introduction of compensation for non-pecuniary damage in the amount of 12 times the average monthly earnings by the employer's statutory liability insurer instead of severance pay in the event of termination of employment due to an occupational accident or occupational disease; in the event of termination due to reaching the maximum permissible exposure or long-term loss of fitness due to occupational disease, severance pay in the amount of 12 times the average monthly earnings will continue to be payable by the employer and is not covered by statutory insurance,
- he introduction of self-scheduling of working time also for employees working at the employer's workplace, if they agree in writing with the employer,
- the reduction of the continuous daily rest period, if necessary to avert or mitigate an accident, natural disaster or other emergency, to up to six hours in 24 consecutive hours, provided that the subsequent rest period is extended by the period of reduction,
- extending the period for which an employer is now obliged to reinstate an employee returning from maternity leave or an employee after the end of paternity leave or parental leave to the extent of the period for which the employee is entitled to take maternity leave, to her original job and workplace, when the employer will now have this obligation towards an employee returning from parental leave before the date on which the child reaches the age of 2,
- Facilitating the replacement of employees on maternity and parental leave by removing the limit on the number

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of possible extensions of their replacement's fixed-term employment, while maintaining the limit of a maximum of 9 years in total,

- allowing parental leave to coincide with the simultaneous performance of the same type of work for the same employer under one of the agreements on work outside the employment relationship,
- facilitating the delivery of wage and salary assessments or changes thereto in a simplified electronic form, i.e. also within the employer's internal system to the employee's electronic account or to the employee's work e-mail, without this special method of delivering the assessment being subject to the employee's special written consent, as has been the case so far,
- granting the right to leave to an employee in the event of an unfair dismissal in response to recent case law of the Court of Justice of the European Union,
- facilitating collective bargaining by demonstrating the competence of the employer's trade union by means of a notarial certificate,
- allowing the payment of wages in a currency other than the Czech currency for employees with a foreign element,
- clarifying the calculation of average monthly earnings when changing working hours,
- confirmation that the average earnings will be determined at the latest on the date of termination of the employment relationship, i.e. if the employment relationship ends on 30 June, the average earnings as of 30 June will be relevant for wage compensation for untaken leave or severance pay, i.e. it will be determined from the income and time worked for the first calendar quarter (this will eliminate the divergent practice that currently occurs),
- Equalisation of registered partners in the transfer of wage or salary rights upon the death of an employee and extension of obstacles to work on the part of the employee according to Government Regulation No. 590/2006 Coll. to these partners.

Court decisions

Replacement tolls as an employer's expense and invalidity of the related loan agreement

Judgment of the Supreme Court of the Czech Republic (hereinafter referred to as „**SC CR**") of 12 April 2024, Case No. 21 Cdo 1181/2023, dealt with the question of whether an employer who paid a toll in Austria on the basis of a request by the local supervisory authority in connection with a breach of toll regulations by its employee (driver) was fulfilling its own obligation or the obligation of the employee, and whether aloan agreement could have been concluded between the employer and the employee if the money that was to be the subject of the loan was used by the employer to pay the toll.

The factual situation

An employee drove a vehicle entrusted by his employer in Austria during the period in question, during which he failed to notice that the GO-BOX electronic toll payment device in the vehicle was not working properly. As a result, he drove through 40 toll gates without paying the relevant toll. This infringement of the toll payment rules was detected during a roadside inspection carried out by the competent Austrian authorities. The employee received a notice from the Austrian authority to pay a replacement toll of EUR 8 800. The employer paid this amount into the relevant accounts of the toll collector after the employee had contacted it. In connection with the payment of the replacement toll, the employee and the employer signed a loan agreement under which the employer lent the employee

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the sum of EUR 8 800 (equivalent to CZK 229 020) to pay the fine. In 2015, the employee decided to sue the employer for repayment of 36 loan instalments totalling CZK 78 000. The lower courts decided on the claim a total of four times with different assessments of the situation, with the last decision of the Court of Appeal upholding the claim on the basis that the amount of the replacement toll did not constitute a fine imposed on the driver for committing an offence, but was an obligation of the employer as the operator of the vehicle. In that situation, the Court of Appeal held that the loan agreement was void for an impossible purpose.

Assessment of the Supreme Court of the Czech Republic

In assessing the appeal filed by the employer, the Supreme Administrative Court of the Czech Republic recapitulated the established case law relevant to the case at hand, in particular that:

- *„the temporal, local and, in particular, material (internal purpose) relationship to the performance of dependent work also lacks a legal relationship based on the fact that the employer provided the employee with a sum of money to pay a fine imposed on the employee by the competent authority for an offence... even if the employee committed the offence in the performance of his/her work tasks".*

As can be seen from the Austrian legislation governing the payment of tolls:

- both the driver of the motor vehicle and the holder of the registration are liable for the toll; the toll debtors are jointly and severally liable,
- the use of a toll route without payment of the toll (whether dependent on kilometres travelled or on time) is an administrative offence punishable by a fine,
- a fine shall not be imposed if the toll debtor pays the replacement toll.

The employer's payment of the replacement toll on behalf of the driver is a reimbursement of the costs of the dependent work, i.e. the employer's own liability, not that of the employee. The difference between the replacement toll and the normal toll may, however, constitute damage for which the employee-driver is liable to the employer.

As regards the loan, the Supreme Court of the Czech Republic stated that it was null and void, since the employer fulfilled its obligation by paying the replacement toll and therefore could not hand over the object of the loan to the employee at the same time; a loan contract within the meaning of Section 657 of the previous Civil Code (Act No. 40/1964 Coll.) did not arise between the parties at all, and the same would apply under the current legislation.

When it is not necessary to pay a bonus to former employees

In its judgment of 16 April 2024, Case No. 21 Cdo 2392/2023, the Supreme Court of the Czech Republic addressed the question of whether the principle of equal treatment was violated if the employer did not pay an extraordinary bonus awarded for the year in which the employee actively worked for the employer after the termination of her employment.

The factual situation

The employee had worked for the employer since 2020 and her employment ended at her own discretion on 31 December 2021. In March 2022, based on the outstanding performance of the entire group and the parent company's decision, and as a thank you and motivation to continue working, the employer decided to pay an extraordinary one-off cash bonus of EUR 1,000 (CZK 25,000), payable with the May 2022 salary,

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to each employee who had worked at least 3 months in 2021 and was employed by the employer as at 31 May 2022. The former employee was not paid the exceptional lump sum and therefore brought an action for damages for breach of the principle of equal treatment in particular before the courts.

Assessment of the Supreme Court of the Czech Republic

The Court of Appeal stated, inter alia, that:

- *„a component of wages to which an employee is entitled only on the basis of a special decision of the employer to award it, which depends only on the employer's discretion, does not have to be agreed in the contract, determined by the employer's internal regulations or determined by a wage assessment",*
- it is the employer's right to decide whether and to whom (which employees) it grants the exceptional remuneration, but it is obliged to ensure equal treatment under Article 16(1) of the Labour Code,
- the employees who were employed by the employer at the time of the decision to grant the extraordinary lump-sum bonus and who had worked for the employer for at least three months in 2021 and were employed by the defendant on 31 May 2022 were not in the same or comparable position (situation) as the former employees who, although they had also worked for the defendant for at least three months in 2021, were no longer employed by the defendant at the time of the decision to grant the extraordinary lump-sum bonus,
- *'the incomparability of the applicant's position as a former employee of the defendant with that of its current employees is also apparent from the fact that the exceptional lump sum payment was granted to the current employees by the defendant's decision (inter alia) as an incentive for the next period',*
- However, if the employer had also paid the exceptional remuneration to some of the former employees who were in the same or comparable position as the former employee, then there might already be an unjustified distinction between comparable subjects (former employees) in a comparable situation.

Thus, the Supreme Court of the Czech Republic concluded that in the present case there was no violation of the principle of equal treatment in relation to the applicant and that the former employee was not entitled to the payment of the extraordinary lump sum remuneration even on the grounds of compensation.

The representative authorised to decide on the organisational change and any approval of such action by the employer

In the judgment of 29 April 2024, Case No. 21 Cdo 1011/2023, the Supreme Court of the Czech Republic addressed the question whether it is possible to additionally approve the exceeding of the employer's representative's authorisation when deciding on an organisational change.

The factual situation

At a meeting of the employer's management (without the participation of the statutory body) held on 26 May 2021, a decision was taken on organisational change due to the termination of a certain project by the employer's client. The meeting was attended by a female employee of the employer as HR Manager, who was authorised by the employer, inter alia, to conduct the company's business as an employer in all employment relationships. Subsequently, a meeting was held on 28 May 2021 at which the employee was informed of the organisational change and informed that the project had been

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terminated and the employer had no other employment for him, therefore his employment was terminated due to the organisational change.

Assessment of the Supreme Court of the Czech Republic

The Court of Appeal summarized the existing case law that:

- A decision on an organisational change is a so-called de facto act, which is a substantive prerequisite for legal action,
- if there is *„doubt as to whether the employer has taken a decision on organisational changes, the court may only examine whether such a decision has actually been taken and whether it has been made by the employer – a natural person, a competent body of the employer – a legal person, or one who is authorised to do so",*
- The statutory body may delegate employment matters, whether under statutory or contractual representation.

Thus, the Supreme Court of the Czech Republic concluded that:

- *"the employer's representative, both the statutory representative and the representative under a power of attorney agreement, may decide on an organisational change",*
- if the decision on the organisational change is taken by a representative of the employer who has exceeded his/her authority, the employer must additionally approve the overstepping at the latest at the moment when the notice is delivered to **the employee**, regardless of whether it is a legal representative or a representative under a power of attorney agreement.

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