

## NEWSLETTER ON CHANGES TO THE LABOUR REGULATIONS

On its day of session of July 4, 2011, the Hungarian Parliament passed Act CV of 2011 on the modification of certain acts with labour law subjects and other related acts for legal harmonization purposes (the “Act”), which **will enter into effect** – apart from a few exceptions<sup>1</sup> – on the first day of the month following its proclamation (July 19, 2011), that is, **on August 1, 2011**.

### **(1) The Act in general**

The Act modifies several legal regulations:

- Act IV of 1991 on Job Assistance and Unemployment Benefits;
- Act XXII of 1992 on the Labour Code (the “Labour Code”);
- Act XXXIII of 1992 on the Legal Status of Civil Servants;
- Act XXXVIII of 1992 on State Finances;
- Act III of 1993 on Social Administration and on Social Provisions;
- Act XCIII of 1993 on Labour Protection;
- Act LXXV of 1996 on Labour Review (the “Act on Labour Review”);
- Act LXVII of 1997 on the Legal Status and Remuneration of Judges;
- Act CLV of 1997 on Consumer Protection;
- Act XXVI of 1998 on the Rights of Disabled Persons and Ensuring Them Equal Opportunities;
- Act LXXXIV of 1998 on Subsidizing Families;
- Act CI of 2001 on Adult Education;
- Act XXI of 2003 on the Establishment of a European Works Council or a Procedure for the Purposes of Informing and Consulting Employees;
- Act XCII of 2003 on the Rules of Taxation;
- Act CXXIX of 2003 on Public Procurement;
- Act C of 2001 on Acknowledging Foreign School Reports and Diplomas;
- Act CXXXIX of 2005 on Higher Education;
- Act I of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence;
- Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals;
- Act LXXXIV of 2009 on Dialogue Committees at Sectoral-level and Certain Issues of Middle-level Social Dialogue;
- Act LXXV of 2010 on Simplified Employment (the “Act on Simplified Employment”);
- Act XXIII of 1992 on the Legal Status of Public Servants.

In this Newsletter, we will deal with the modifications of the Labour Code, the Act on Labour Review and the Act on Simplified Employment in detail. However we would like to note that, on the one hand, the Act contains modifications for legal harmonization purposes, thus it serves for compliance with:

- the Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment<sup>2</sup>, the so-called “EU Blue Card Directive”<sup>3</sup>;
- the so-called “Sanctions Directive”<sup>4</sup> on providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals;
- the recast “European Works Council Directive”<sup>5</sup>;

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<sup>1</sup> For example, the legal regulations connected to staffing services will enter into effect on December 1, 2011.

<sup>2</sup> Council Directive 2009/50/EC of 25 May 2009

<sup>3</sup> By the adoption of the Directive, third-country nationals may be employed in Hungary not only with a work permit issued by the state employment organ, but also with a permit issued for the purpose of employment requiring high qualifications (EU Blue Card).

<sup>4</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009

<sup>5</sup> Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009

- the “Temporary Agency Work Directive”<sup>6</sup>.

On the other hand, the Act contains modifications for the purpose of easing the administrative obligations of employers and promoting employment flexibility.

## **(2) Modification of Act XXII of 1992 on the Labour Code**

### **(2.1) Information obligation**

It is a new rule that if there is no works council at an employer then the employer should inform the trade union also of the number of hired-out employees and the names of their positions at least once every six months.

### **(2.2) Method of reporting the collective agreement**

Section 41/A of the Labour Code provides for the requirement of reporting the collective agreement for the purpose of registration. The Act supplements section 41/A of the Labour Code in such a way that the parties concluding the collective agreement shall fulfil the notification requirement via the electronic registration system by filling in and sending an electronic form. Thus, the possibility of sending the data sheet on the notification of the collective agreement by post ceases to exist.

### **(2.3) Unified term for the election of the works council and the labour protection representative**

The Act unifies the terms of the election of the works council and labour protection representatives at an employer; they shall be elected for 5 years.

The mandate of a works council elected within three years before the entering into effect of the Act shall be lengthened to the next date determined by the Act on Labour Protection in respect of the election of the labour protection representative.

After the entering into effect of the Act, a new works council must be elected for the first time by the expiry of the mandate of the labour protection representative acting at the date of the commencement of the Act, according to the rules of the Act on Labour Protection effective on the date preceding the entering into effect of the Act, but within four years from the commencement of the Act, at the latest.

### **(2.4) Probationary period**

On the basis of the new rules of the Labour Code on the probationary period, a 6-month probationary period may even be stipulated when concluding an employment contract but only in the case where there is an authorization for this in the collective agreement effective at the employer. At the same time, it is not sufficient to prescribe 6 months in the collective agreement: it must also be indicated in the employment contract.

### **(2.5) Agreement on increasing working time**

The Act permanently implements the rule determined by section 117/C of the Labour Code, which is currently effective for a transitional period – with regard to the economic crisis - until the end of 2011, according to which working hours unused due to a temporary reduction of the normal working hours may be regrouped for a longer period in such a way that, later, employees may also work 44 hours a week, for a wage due for 40 hours per week.

This possibility exists only as an exception: employing for a longer working time may only take place for a maximum of one year; in the case where this period is exceeded, the employee shall be entitled to triple wages.

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<sup>6</sup> Directive 2008/104/EC

Based on the new section 117/C of the Labour Code, no agreement may be concluded until January 1, 2012 by an employer and an employee between whom an agreement was concluded earlier according to the text of section 117/C of the Labour Code effective until December 31, 2010.

Agreements concluded by an employer and an employee according to the text of section 117/C of the Labour Code effective until December 31, 2010 are not affected by its modification introduced by the Act.

#### **(2.6) New rules in connection with paid annual holidays**

- In the case of an employee's illness or any other unavoidable hindrance affecting him, the employer shall allocate the holidays within thirty days calculated from the cessation of the hindrance; if the period of hindrance reached or exceeded a consecutive period of 183 days, then the employer shall allocate the holidays within 183 days calculated from the cessation of the hindrance, if the year when holidays are due has already passed.
- An employee shall be entitled to paid annual holidays not in respect of the first year, but only in respect of the first six months of unpaid leave due for the period of receiving the maternity allowance or child care benefits.
- The Act provides the possibility for allocating vacation time in more than two instalments not only at an employee's request, but also when it is justified by the employer's important business interests or a reason affecting its operation. Nevertheless, also in this case, at least 14 consecutive calendar days of absence from work must be ensured in a year. All circumstances by the occurrence of which allocating the paid annual holidays completely in the year when they are due would influence the employer's operation detrimentally in a decisive manner shall be deemed to be especially important business interests.
- It will become possible to redeem unused vacation partly financially also in the case of an employee's return from an unpaid leave of absence taken for the nursing or care of children (while receiving the maternity allowance), if the employee agrees to this.

The rules for periods entitling an employee to paid annual leave must be applied in the case of unpaid leave that has commenced after the entering into effect of the Act.

An agreement on redeeming the unused vacation due for the first six months of an unpaid leave of absence taken for the nursing or care of children may be concluded at the cessation of the unpaid leave expiring after the entering into effect of the Act.

#### **(2.7) Return of an employee from an unpaid leave of absence taken for the nursing or care of children**

If an employee wishes to interrupt his/her unpaid leave taken according to the above, he/she must notify the employer of his/her intention to interrupt in advance. The employer must comply with its employment obligation:

- within a maximum of thirty days following the notification, if the employee wishes to start work before the expiry of six months calculated from the starting date of the unpaid leave;
- within a maximum of sixty days following the notification, if the employee wishes to start work at the expiry of six months calculated from the starting date of the unpaid leave or even after that.

#### **(2.8) Time off in lieu of a wage supplement**

The Act provides the possibility that neither the agreement between the parties nor a provision of the collective agreement will be determinative, but an employer may unilaterally decide whether it will give time off in lieu of a wage supplement for the employee's extra work performed.

### **(2.9) Executive employees**

Pursuant to the former section 190(2) of the Labour Code, an employer does not have to give reasons for the termination of the employment of executive employees by ordinary dismissal. Due to legal harmonization reasons<sup>7</sup> it will be stipulated that an employer shall be obliged to give reasons for the termination of employment by ordinary dismissal according to the general rules in the case of an executive employee during the period of the beginning of her pregnancy until the end of her maternity leave.

### **(2.10) Temporary work placement agency**

- Section 193/B of the Labour Code will be modified, stipulating that the special rules relating to temporary work agency deriving from the Directive must be applied both in the case of full-time and part-time employment, furthermore not only in the case of employment for an indefinite period, but also for a definite period.
- The concept of being a “temporary” worker had not previously appeared in the labour regulations; now, the Act defines this concept: *hiring-out will be temporary: “if the period determined in the agreement between the placement agency and the hired-out worker – with regard to the nature of the work to be performed at the user of the placement service, the working conditions, the earlier declarations of the parties, the rights and obligations arising from the employment relationship between the parties – is a period extending to a maximum of five years”*.
- Section 193/D(2) of the Labour Code will be supplemented with an additional case where it is forbidden to hire out employees when the period of the hiring out exceeds the definition of temporary employment.
- The Act stipulates that the placement agency may also be a business entity having its seat in an EEA member state which may pursue hiring-out services according to the law applicable to it.
- The Act prohibits the payment of consideration (an agent’s fee) by the hired-out worker for the hiring-out.
- The Act stipulates that certain fundamental work and employment conditions must be at least at the same level as if the user of the placement service had employed the workers directly. In the interests of compliance with the principle of equal treatment to be ensured for the hired-out worker, the Act extends the scope of cases where the hired-out worker is entitled to the same rights as the employees of the user of the placement service: that is, the protection of pregnant women, women breastfeeding and young employees, the rules relating to working time and rest periods, the amount and the protection of wages, as well as the requirement of equal treatment. As opposed to the regulation effective earlier, the principle of equal wages for equal work must be applied from the beginning of the placement. According to the main rule, the principle of equal wages shall be applied in respect of each element of the wage from the first day of the placement. But the principle of equal wages for equal work or the principle of remuneration due for work acknowledged to be of equal value do not have to be applied in exceptional cases, e.g. in the case of employees who have concluded employment contracts for an indefinite period with the placement agency and receive remuneration also in those periods when they are not hired out.
- The Act defines more accurately than before that in relation to the above work conditions, not only the legal regulations, but also the collective agreement or other internal rules effective at the user of the placement service, are applicable to the hired-out worker.
- In respect of the termination or cessation of the employment, an agreement based on which the placement agency receives a proportionate amount of remuneration from the user of the placement service for taking over the hired-out worker into its own employed staff shall not qualify as a

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<sup>7</sup> See Council Directive 92/85/EEC concerning the implementation of measures to encourage improvements in the safety and health of pregnant workers, workers who have recently given birth and women who are breastfeeding

restriction from the perspective of the prohibition or restriction of establishing employment relationships between the placement agency and the user of the placement service.

- The user of the placement service must notify the works council and/or the trade union having representation rights of the vacant positions regularly, but at least once every six months, and it must notify the hired-out workers it employs of the vacant positions continuously in the manner customary at the given workplace.

The modified provisions must be applied for the first time to employment relationships established after December 1, 2011. In the interests of the execution of these provisions, collective agreements must be reviewed by December 31, 2011, at the latest.

### **(2.11) Special rules on employment relationships between school cooperatives and their members**

The Labour Code will be supplemented with a new Chapter XII/A, which determines the special rules of work performance (e.g. definite term, elements of an employment contract, the requirement of the so-called foreperson) relating to the work performance of members of school cooperatives with third party employers.

This work performance qualifies as personal cooperation according to the Act on Cooperatives, thus in this case, it is not a temporary work agency relationship. In this case the parties conclude a kind of framework employment contract with each other, which will be completed with concrete contents by the supplementary agreement preceding the commencement of work performance.

In the interests of the protection of students and pupils, and the scope of work they will undertake, the lower limit of the later concrete personal wage must be agreed in advance, and the representative of the school cooperative must ensure – in the interests of students and pupils – the possibility of cooperation with a third person. In the case of pupils under the age of 18, employer's instructions may be given only through the foreperson provided by the school cooperative, who will guarantee that the rules on work performance are observed.

For any damage caused to a member during work performance, the employer and the third person shall bear joint and several liability on the basis of the rules on employers causing damage.

### **(3) Modification of Act LXXV of 1996 on Labour Review**

Main changes:

- Simplified employment must be deemed to be an employment relationship also from the perspective of labour review.
- Labour inspectors are entitled to check whether an employer has copies of the valid residence permits of the third country nationals it employs.
- Work performance by a member of a school cooperative for a third party shall not be reviewed on the basis of the rules on temporary work agency.
- There is a new sanction that if an employer employs third country nationals having no work permit – including the EU Blue Card –, the employer, after having received a notice, must pay an amount to the central budget. The Act determines the amount payable to the central budget due to the unlawful employment of a third country national to be the amount of the minimum wage determined for a month.
- The rules on levying a fine bound to assessment and also its mandatory rules have been modified. Thus the new section 6/A partly narrows, but partly also supplements, the scope of the breaches of law involving mandatory fining. Unreported employment and employment without taking into consideration the age rules (child labour) will remain the most serious breaches of rules which infringe the fundamental guaranteed rights of employees and thus involve mandatory fining. It is

also unchanged that unlawful temporary work agency and an employer's breaches of law connected to wages will fall within such mandatory fining. However, the rules on omitting mandatory fining are also supplemented in the case of breaches of law connected to wages. Thus no labour fine may be levied if an employer pays the wages it has not paid to the employee, within the period set during the procedure.

- In the case of medium and small enterprises and private individuals as employers the measure taken by the labour inspectorate must be – in the case of breaches of law committed for the first time – sending a notice even if the levying of a fine was mandatory in the case of part of the breaches already on the first occasion in the case of employers not belonging to this category of employers. It is important that in the case of enterprises having several business premises, a breach of law committed at any of the premises or a breach of rules affecting several premises detected in one procedure will qualify as a single breach of law.

#### **(4) Modification of Act LXXV of 2010 on Simplified Employment**

- The Act contains a simplification that the number of employable casual workers, as a basis of comparison, does not have to be re-established every month, but the employer must take into account the six-month average statistical number of staff preceding the first and the seventh months of the subject year.
- Based on the Act, *agricultural seasonal work* is: work performance in the sector of plant production, silviculture, animal husbandry, fishing and hunting, furthermore the conveyance and packaging of agricultural products – except for reprocessing – produced by a producer, a producer group, a producer organization and their associations, provided that the term of the employment for a definite period between the same parties does not exceed one hundred and twenty days within one calendar year; and *seasonal work* is work complying with the conditions set out in section 117(1) point j) of the Labour Code. In the case of agricultural seasonal work, work must be deemed connected to a given period or date of the year which can only be performed in that specific period or at that specific date due to the biological characteristics of the plant or animal produced.
- In respect of incorporating employment contracts in writing, the Act makes it mandatory only to name the parties and write down the agreement of the parties on the content elements of the employment contract by the date of the commencement of work performance, which means a reduction of the administrative burden considering the fact that the personal data – thus date and place of birth, identification numbers, place of abode and seat – may be filled in by the end of the day of commencing work.
- From among the rules of the Labour Code applicable to simplified employment, the application of the rules on the allocation of vacation time is not mandatory, but possible.
- In addition to this, in the case of work for a short period, the Act makes it possible for the obligation to keep a separate work time register and to issue payslips to be replaced by a written employment contract, since in this case the wage elements and the time worked forming a basis of the wage payable generally agree with the wage and the work time contained in the contract.

*The contents of this newsletter have been prepared for information purposes only, and as such, cannot be considered to be a comprehensive analysis of the modifications of the labour rules. This newsletter cannot therefore be treated as a legal opinion or advice given on a specific matter under any circumstances.*

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