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MAJOR AMENDMENT TO LABOUR CODE 2020

Dear Clients and Partners,

In this newsletter, we would like to provide you with a comprehensive overview of the major changes introduced by an amendment to the Labour Code (hereinafter the „LC“) adopted under Act No. 285/2020 Sb., which has been recently published in the Collection of Laws (hereinafter the „Amendment“). The Amendment will become effective in two stages – the first part of the Amendment became effective already on **30 July 2020**, while the rest will only become effective next year, more precisely on **1 January 2021**.

In the first part of our newsletter, we would like to introduce you to changes which have already become effective. In the second part of our newsletter, we would like to provide you with more information on changes which will become effective at the beginning of next year. At the end of the newsletter, you will find information on other (intended) changes to employment legislation which have not been included in the current amendment and which will first need to go through the legislative process – we would however like to inform you of these intended changes already today, since, if adopted, they might have a significant practical impact on employers.

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A. CHANGES EFFFECTIVE FROM 30 JULY 2020

1. DELIVERY OF DOCUMENTS

The Amendment is supposed to tackle problems employers often face in practice when they are required to deliver documents directly to the employee's attention. Such documents are listed in Section 334(1) of the LC and include documents related to the creation, modification and termination of employment (typically termination notices, summary dismissals or dismissals in probationary period), notices of removal from a senior position, salary statements and records of employee's failure to comply with the terms of a temporary sick leave.

Employers will continue to be obliged to strive to primarily deliver such documents to employees **in person at the workplace; however, if such an attempt proves for any reason impossible, employers will be able to use alternative delivery methods** – personal delivery at any place where the employee may be reached, delivery via providers of postal services, delivery via electronic communication networks or services and **delivery via a data mailbox** (see below), which is a new option introduced by the Amendment. There is no prescribed hierarchy between these alternative delivery methods.

This does away with the current practice of employers being required to always try to deliver documents in person, even in cases when personal delivery at the workplace is impossible (e.g. due to the employee's leave or sickness). Employers are no longer obliged to try to catch the employee in person outside the workplace (for example at the employee's place of residence), which was a costly and time-consuming solution with an uncertain outcome.

Delivery via providers of postal services has also been simplified. Employers do no longer need to actively look for the employee's last known address and are instead allowed to **deliver documents to an address which the employee provided for such purposes in writing**. It is therefore now the employee's responsibility to inform the employer of his/her current address and any changes thereto.

Employers may also benefit from the change of the statutory time period required for a document to be placed at the post office if the employee is not reached at the address provided from 10 working days to **15 calendar days** (which is compliant with the delivery terms of Česká pošta) and the removal of the *de facto* impossible requirement for postal service workers to make a written record that the employee was informed of the consequences of his/her refusal to accept the delivered document; from now on, a document will be deemed delivered if the employee refuses to accept it even if the employee was not informed of the consequences of such a refusal.

A brand-new provision of Section 335a of the LC then provides for an option to deliver documents to the **employee's data mailbox**. This delivery method is however only available in cases when the employee expressly granted his/her consent with this method of delivery (whether in general or for a specific case). A significant difference from the original regulation of delivery via electronic communication networks or services consists in the fact that now, **the document will be considered delivered if the employee fails to log in to the data mailbox within 10 days from the delivery of the**

document to the data mailbox. It is no longer required that an employee shall actively confirm the delivery of the document, which rendered electronic delivery useless in practice. The requirement however remains for electronic delivery of documents via any other channel than a data mailbox.

Delivery of documents **by employees to employers** also underwent certain changes. Section 337(3) of the LC deems a document delivered if the employer refuses to accept the document, fails to provide necessary assistance or frustrates delivery at the address of its registered office or place of business. This change targets unfair employers and employers who cannot be physically reached at the address of their registered office, which has previously caused problems for, among others, employees on a long-term leave (for example maternity or parental leave).

The delivery of documents by an employee to the employer's data mailbox will now also be easier.

2. TRANSFER OF EMPLOYMENT RIGHTS AND OBLIGATIONS

It has been a long-established rule that when an employer's activities are entirely or partly transferred to another employer, the new employer assumes the original employer's employment-related rights and obligations in their entirety. The original employer's employees are automatically **transferred to the new employer with all rights and obligations arising out of their employment**, including rights and obligations based on collective agreements, if applicable (however, rights and obligations arising out of collective agreements last only as long as agreed in the respective collective agreement and in no case longer than until the end of the following calendar year). This regulation naturally gives rise to a number of practical issues and leaves a wide space for potential disputes.

The Amendment defines in more detail the range of situations which result in the transfer of employment-related rights and obligations. The old legislative definition was very wide and the transfer of employment-related rights and obligations often occurred in situations when it was hardly justified and when none of the parties involved expected it – e.g. in case of a mere change of supplier of a certain service or in some cases of outsourcing.

Transfer of employment-related rights and obligations will be governed by Section 338(3) of the LC primarily if it is expressly set forth by applicable legislation. This includes mergers or de-mergers under Sections 178 and 179 of the Civil Code and sale and lease of business under Section 2175 and Section 2349 of the Civil Code, which is no different from the previous regulation.

In other cases, the transfer of employment-related rights and obligations may occur only if the employer's „economic unit" has indeed been transferred to the new employer, i.e. **if the following five conditions have been met at the same time**:

- after the transfer, employer's activities are carried out in the same or similar way and in the same or similar scope,
- the activities do not consist solely or primarily in the delivery of goods,

- prior to the transfer, there is a group of employees intentionally created by the employer for the sole or prevailing purpose of the conduct of the given activities,
- the activities are not of a short-term or one-time nature, and
- if certain property is crucial for the conduct of the activities, this property, or a right of use thereto, is being transferred too; if the conduct of the activities to a large extent depends on certain employees, a significant part of these employees is being transferred to the new employer.

The transfer of employment-related rights and obligations is related to employees' right to terminate their employment in a shorter-than-regular termination period under Section 51a of the LC. The respective provisions have also been amended in order to tackle the practical issues often connected with their application.

It the employer properly meets its obligation to inform the affected employees about the transfer of rights and obligations at the latest 30 days prior to the effective date of the transfer, the affected employees are entitled to terminate their employment as of the date preceding the effective date of the transfer, however, **only if their resignation is delivered to the employer within 15 days from their being informed of the intended transfer**. Otherwise, the standard termination period set forth in Section 51 of the LC will apply. The purpose of this change is to prevent the affected employees from waiting until the last moment before the effective date of the transfer to hand in the resignation, which made it impossible for the new employer to plan which employees it will continue to employ.

If the employer fails to properly or at all inform employees as described above, different rules will apply. If an employee resigns at any time before the effective date of the transfer of rights and obligations, his/her employment will terminate on the date preceding the effective date of the transfer. If an employee resigns only after the effective date of the transfer and no later than two months after the effective date, his/her employment will end in a 15-day termination period starting upon the receipt of the resignation by the employer.

In the context of transfer of employment-related rights and obligations, it is necessary to mention a recent decision of the Supreme Court, no. 21 Cdo 1148/2019, which dealt with **aggravation of working conditions after transfer**. The decision clarified under which conditions an employee, who terminated his/her employment only after the effective date of the transfer, may, under Section 339a of the LC, sue the employer for termination for significant aggravation of working conditions and for payment of severance under Section 67(1) of the LC. The Supreme Court has ruled that this option does not apply only to the aggravation of working conditions expressly stated in the employment contract or the Labour Code, but also to other circumstances which affect the employee's work, such as the demands and quantity of the work, the quality of working environment, social relationships at the workplace or organizational changes. Even if the negative changes affect only these areas, the employee may be entitled to severance. Conclusions made by the Supreme Court in the decision are expected to be fully applicable even after the effective date of the Amendment.

3. REMOVAL OF EMPLOYEE FROM SENIOR POSITION

The Amendment reacts to several decisions issued by the Supreme Court (in particular decision no. 21 Cdo 1073/2017), which in principal allowed employers to agree the possibility of removal from a senior position (and resignation from such a position) with any employee at senior positions.

The Amendment now expressly states that such a „removal clause" may be agreed **only with employees occupying senior positions listed in Section 73(3) of the LC**, i.e. senior positions reporting directly to governing bodies, and also senior positions reporting directly to senior employees who themselves report to the governing bodies, provided that (an)other senior (i.e. not regular) employee/s report to the employee with whom the removal clause has been agreed. It is no longer possible to extend this statutory definition by an agreement between the parties.

Section 73a(1) of the LC also underwent a minor change. This provision now states that in case of a removal of an employee from a senior position (or in case of an employee's resignation from a senior position), the work at the given position terminates **already on the day of the delivery of the notice** (or resignation letter) to the other party. Previously, the work ended only on the day following the delivery of the notice by the other party. That posed certain risks as a freshly removed senior employee had one more day to make last-minute, possibly undesirable, decisions.

4. CROSS-BORDER POSTING OF EMPLOYEES FOR THE PURPOSE OF PROVISION OF SERVICES

In this area, the Amendment implements European Directive No. 2018/957, which governs the terms of cross-border posting of workers in all EU member states.

The new wording of Section 319(1) of the LC slightly extends the scope of conditions of employment set forth by Czech employment law as a minimum applicable to workers from another EU/EEA member state posted in the Czech Republic, unless they are less favourable than the terms guaranteed by the workers' local law.

As for remuneration, not only the Czech minimum and guaranteed minimum pay and overtime pay do now apply to such workers, but also the rules applicable to all other salary components. Posted workers are required to be reimbursed for travel expenses (their regular workplace being defined as their usual place of work in the Czech Republic) and if the employer provides lodging, Czech standards (which are however not set forth in employment legislation but in general construction law legislation, in particular the Construction Act and Decree No. 268/2006 Sb.) will apply.

A brand-new institution is the distinction between **short-term posting and long-term posting**, which occurs after 12 months of posting (or, in certain justified cases, after 18 months). Long-term posted workers are subject not only to basic employment conditions listed in Section 319(1) of the LC, but also to all other Czech employment legislation, except for the rules which apply to the creation, changes and termination of employment. It is necessary to mention that if a foreign employer posts several

employees in the Czech Republic **to perform the same tasks at the same place after each other, their posting terms add up**.

The most important information for Czech employers is the fact that the above European Directive provided each member state with a certain space for implementation. In other words, local regulation may differ from member state to member state, and if a Czech employer considers posting its employees abroad, it will be required to learn about the minimum employment standards applicable in the employees' country of destination. This may be difficult in practice as these standards are sometimes governed not only by generally applicable legislation, but also by high-level collective agreements etc.

5. OTHER CHANGES EFFFECTIVE FROM 30 JULY 2020

Certificate of employment

The Amendment attempts to release employers from the administrative burden consisting in the obligation to issue a certificate of employment (*zápočtový list*) to employees employed under an agreement to perform work (*dohoda o provedení práce - DPP*). Employers will now be obliged to only issue certificates of employment to employees with *DPPs* who participate in the sickness insurance system (i.e., their income exceeds CZK 10,000 a month) and employees whose income paid under a *DPP* is garnished under an order issued by a court or by a licensed enforcement officer.

All certificates of employments (i.e. not only certificates issued for employees employed under *DPPs*) must from now on state which body (e.g. exactly which court) issued the garnishment order.

Lapse of time

The Amendment also addressed the often-disputed regulation of **limitation and prescription periods** in employment law. It was previously possible that if such a period was stayed due to an occurrence foreseen by the Civil Code (typically out-of-court negotiations between the parties or force majeure), Section 652 of the Civil Code applied and the limitation/prescription period, if resumed, ended no sooner than in 6 months from the moment it was resumed.

This was problematic for instance in cases of termination of employment by the employer disputed by the employee. Under Section 72 of the LC, an employee is given a (preclusive) period of 2 months to sue for unfair dismissal at court. However, if the employer and employee initiated out-of-court negotiations (which failed), the employee gained further 6 months to file the lawsuit for unfair dismissal against the employer.

A brand-new provision of Section 332 of the LC therefore addresses the above issue and states that **reasons for stay of the limitation/prescription period have on their own no impact on the duration of the limitation/prescription period which, in principal, cannot be extended**. However, if the period is resumed less than 5 days before its expected expiration, it will not expire before the 10th day after it

was resumed. In the above case, the period to file a lawsuit for unfair dismissal would be two months irrespective of any possible stay, but, should the prescription period be resumed only very shortly before its expiration, the employee would be provided with additional 10 days to file the lawsuit.

Multiple-shift operations

The definition of shift operations has also been amended. The „three-shift" operations defined in Section 78(1)(e) of the LC have been replaced **by multiple-shift operations**. The Labour Code therefore expressly allows that employees change in more than 3 shifts within 24 hours – for example in four 6-hour shifts, which are already used in practice. The regulation of two-shift operations as well as 24-hour operations remain unaffected.

Time off for long-term carers

Section 191a of the LC has been rephrased to include an obligation to excuse employee's absence from work for as long as the employee provides long-term care to other persons as defined in the Sickness Insurance Act, unless such absence is impossible for serious operational reasons on the part of the employer. Employer's written consent with the absence will no longer be required.

B. CHANGES EFFECTIVE FROM 1 JANUARY 2021

6. LEAVE

Most likely the most discussed section of the Amendment which will, at least to a certain extent, affect all employers and employees, is the new regulation of annual leave. The Amendment attempts to make the calculation of annual leave **easier** by completely **abandoning calculation of leave on the basis of completed working days**, and **fairer**, in particular for employees with irregular working hours.

The most important conceptual change is the **calculation of leave in hours**, and not in calendar days. The annual leave entitlement will continue to be set in **weeks** (the minimum leave entitlement remaining unchanged), but the duration of a specific employee's leave will now be counted in hours, i.e. for example 160 hours instead of 20 calendar days. The duration of the leave will be **rounded up to whole hours**, which is favourable for the employee.

The regulation of leave has undergone several other changes, including the possibility to treat absence from work as performance of work for the purposes of calculation of the duration of the employee's leave or the change in rules applicable to the scheduling of leave.

6.1. ANNUAL LEAVE AND ITS PROPORTIONATE PART

If an employee employed under an employment contract worked for the employer for an entire calendar year, he/she is entitled to annual leave in the duration of the **annual leave entitlement**

multiplied by the employee's standard weekly working hours, or possibly reduced weekly working hours (hereinafter jointly the „WWH").

Employees with WWH of 40 hours and annual leave entitlement of 5 weeks will be entitled to annual leave of 40 × 5 = 200 hours.

Change of weekly working hours

Should an employee's WWH change in the course of a calendar year, the employee's leave will be prorated accordingly.

If an employee's (entitled to 5 weeks of leave) WWH were 30 hours in the first half of the year (first 26 weeks of the year) and 40 hours in the second half of the year (second 26 weeks of the year), the duration of the employee's leave will be calculated as [(26/52) × 30 × 5] + [(26/52) × 40 × 5] = 75 + 100 = 175 hours.

Employees who did not complete an entire calendar year at the employer's

If an employee did not complete an entire calendar year at the employer's, he/she will be entitled to a proportionate part of annual leave if he/she completed **at least four times his/her WWH** in the given calendar year. Per every completed WWH, the employee will be entitled to **1/52 of the annual leave multiplied by his/her WWH.**

An employee who, during a calendar year, completed 16 WWH (of 40 hours a week) at the employer's and is entitled to 4 weeks of annual leave, will be entitled to (16/52) × 40 × 4 = 49,23 → 50 hours of leave.

For the sake of clarity, we would like to mention that from now on, the number of completed calendar months which the employee completed at the employer's will no longer be relevant. **The relevant parameter will be the total completed working hours.**

If an employee completed more than 52 times the WWH in a calendar year (however not due to overtime hours, but only during his/her regular shifts – e.g. in case of irregular working hours or a working hour account), such an employee would be entitled to 1/52 of the annual leave entitlement per each WWH completed on top of the 52 units of WWH – e.g. (55/52) × 40 × 5 = 211,54 → 212 hours of leave.

6.2. ADDITIONAL LEAVE

Additional leave, which belongs to employees who carry our **particularly demanding work**, will also be calculated in hours on the basis of the employee's respective WWH. The annual additional leave entitlement equals the employee's WWH; if an employee carries out particularly demanding work only for a part of the calendar year, such an employee will be entitled to 1/52 of his/her annual additional leave entitlement per every completed WWH of particularly demanding work. The decisive parameter

is whether the employee indeed carried out work under particularly demanding conditions. In case of additional leave, the requirement of having completed at least 4 times the WWH does not apply.

The Amendment also **extends the types of work**, which give rise to the entitlement for additional leave. Such types of work will now also include the cleaning of sewer and waste systems and operation of sewage treatment plants during which employees are exposed to biological agents and increased risk of infectious diseases.

6.3. TAKING OF LEAVE AND TRANSFER OF LEAVE TO THE FOLLOWING YEAR

The calculation of leave in hours however does not apply to the actual taking of leave. To take a leave shorter than the employee's regular shift may be ordered by the employer only exceptionally and is subject to the employee's consent; even in such a situation, the leave taken must be of **at least one half of the duration of the employee's shift**. The only exception is the taking of the remaining hours of the leave which may be shorter than the employee's regular half-shift.

Taking leave on holidays

The Amendment also tackles some problems which would previously occur in connection to the impossibility to take leave on a holiday if an employee's shift fell on such a holiday. It is now **expressly allowed** to take leave on a holiday, provided that the leave is taken by the employee at the employee's own request.

Transfer of leave to the following year

One of the most frequently violated provisions of the Labour Code, i.e. Section 218(1) which provides for an employer's obligation to order the employee to take leave so that all leave is taken within the calendar year in which the leave entitlement arose (unless prevented by employees' sickness, parental leave etc. or important operational reasons), has also been modified. The above rule (including potential sanctions which employers may face from the Labour Inspection) will now apply only to the first 4 weeks of annual leave (6 weeks in case of school workers), **while the remaining part of the leave** (i.e. in case of employees who are entitled to 5 weeks of leave – 1 week) may, **upon employee's written request** and considering his/her legitimate interests, be **transferred to the following calendar year**.

6.4. TREATMENT OF EMPLOYEE'S ABSENCE FROM WORK AS PERFORMANCE OF WORK AND LEAVE REDUCTION

The Amendment significantly changes the treatment of employee's absence from work as performance of work for the purposes of calculation of leave. Until now, employee's absence from work due to a number of personal reasons on the part of the employee (typically absence which was not caused by an occupational injury or illness, or absence due to quarantine or parental leave) was not considered performance of work and resulted in the reduction of leave entitlement by the employer to an extent permitted by the law.

The Amendment has opted for a different approach and **does consider the above reasons as performance of work, however, only up to the limit of 20 times the WWH in each calendar year**, and only on condition that the employee did complete at least 12 times the WWH at the employer's in the given calendar year (absence due to the above reasons does not count to this limit). However, the significantly longer list of reasons for absence from work which do count as performance of work without any limits (e.g. maternity leave, occupational injury or illness) remains unchanged.

The above is offset by **stricter rules for leave reduction** by the employer. The employer will now be entitled to reduce the leave exclusively due to **employee's unexcused absences**, and only up to the number of missed hours which were not excused. Employers will no longer be entitled to reduce employee's leave at their own discretion of up to 3 days per each missed shift.

7. COMPENSATION FOR DAMAGE AND IMMATERIAL HARM

The Amendment introduces a brand-new institution of one-time compensation for **particularly severe personal injury suffered by an employee**. This one-time compensation will belong to the employee's spouse, civil partner, child and parent, as well as other persons related or similarly connected to the employee who would consider employee's harm as their own harm. The exact amount of compensation or the guidelines for its calculation are not set by the law, courts will therefore have discretion in this matter.

The institution of one-time compensation for immaterial damage suffered by surviving relatives in case of an employee's death (until now provided for under the definition of „one-time compensation for surviving relatives") has also been changed. Most importantly, the range of persons entitled to the compensation will be extended and will include children who are no longer dependent on the deceased and other **persons related or similarly connected to the deceased, who would consider employee's harm as their own harm**. The minimum one-time compensation will no longer be set as a fixed amount (CZK 240,000), but as **twenty-times the average salary nation-wide** (applicable in the 1st to 3rd quarter of the preceding calendar year).

A similar change has affected reimbursement of reasonable expenses of funeral, which instead of a fixed amount of CZK 20,000 will be calculated as 1,5 times the average salary nation-wide.

8. SHARED POSITION

A new institution which the Czech law did not previously recognize, is a shared position (Section 317a of the LC). A shared position is established by the employer making written agreements with two or more employees to share the same type of work with reduced working hours. The working hours will be **scheduled by the employees themselves**, so that each of them would, during the reference period of maximum four weeks, fulfil their average weekly working hours. The total duration of the working hours of all employees sharing one working position cannot exceed the standard weekly working hours at the employer's.

The clear advantage of this solution from both the employers‘ and the employees‘ perspective is its flexibility – employees have an opportunity to schedule their shifts themselves according to their own preferences and the employer does not need to deal with back-ups in case of absence, leaves etc. A certain challenge may be seen in the transfer of tasks between employees sharing one position, which may prove difficult, and also in the increase of administrative burden for employers.

Employees sharing one position are obliged to provide the employer with a **joint schedule of their working hours** at least one week before the start of each reference period. If they fail to do so, the schedule will be drawn by the employer. Changes to the schedule must be announced to the employer at least two days in advance, unless agreed otherwise.

An agreement on a shared position may be terminated by a mutual agreement between the employee and the employer or by a 15-day notice given by either party, with or without reason. The agreement may be terminated at any time independently of any other agreements – even if the undertaking on a shared position was part of the employment contract (or an amendment thereto).

If the agreement on shared position ceases to exist for at least one of the employees sharing the position, the remaining employees will continue with the shared position only until the end of the given reference period.

9. TIME-OFF GRANTED TO EMPLOYEES ORGANIZING EVENTS FOR YOUTH AND CHILDREN

The right to take time off from work in order to work as a supervisor at a youth camp will be extended to **sports training events for youth and children**. The maximum duration of the time-off granted for this purpose is 3 weeks per calendar year.

Under the new Section 203a of the LC, employees are entitled to paid leave of at most **1 week per calendar year** if they participate in an event for youth and children organized by a legal entity which has been registered in the respective public register for at least 5 years and the work with youth and children is its principal activity. The employer will be **reimbursed for the pay provided to such employees from the state**, via the respective social security office.

C. OTHER CHANGES TO EMPLOYMENT LEGISLATION (NOT INCLUDED IN THE AMENDMENT)

On the top of the changes introduced by the Amendment to the Labour Code described above, we would like to inform you of two other intended changes to employment legislation which, if adopted, may affect a number of employers.

Unlawful provision of employment intermediary services – user's liability

The current governmental proposal to amend the Asylum Act includes provisions amending the Employment Act (No. 435/2004 Sb.) which **extend the definition of the administrative offence of providing unlawful employment intermediary services**, i.e. the provision of workforce to another person without meeting the conditions set forth by the laws which regulate agency employment and temporary assignment of employees. The range of possible perpetrators of the offence is to be extended to include not only the person who offers such employment intermediary services, but **also the person who makes their use possible**, i.e., the employer who uses such employees. Both persons could face penalties of millions of CZK. The governmental bill will however first need to pass through the entire legislative process and, if adopted, will most likely not be effective before **1 July 2021**.

Employer's obligation to provide storage place for employees' bicycles

Another legislative development, which may be of interest to a number of employers, is the intended change of the Labour Code which should be adopted via an amendment to the Roads and Traffic Act. The amendment intends to oblige all employees with at least 10 employees **to ensure a safe storage place for employees' bicycles** if the employees use their bicycles to get to and from work. This bill, sponsored by individual members of the Parliament, has been submitted to the government for comments. A preliminary effective date of the amendment is expected to be **1 January 2021**.

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We believe that our newsletter will help you navigate the extensive changes made to the current employment legislation and the options and challenges which the new legislation entails. We will be happy to provide you with detailed information on any of the new aspects of employment law and to help you find the right solution in any new situation.

Kind regards,

Your LTA team