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LABOUR SHOOTER

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UPCOMING CHANGES AND CHALLENGES

Revisions of existing legal framework became already the order of a day, and not only in Hungary. Governments try to adapt to new market circumstances, new society requirements and tougher financial boundaries, to be able in the end to improve life of its citizens. In order to avoid unpleasant outcomes and to have control over the situation, it is vital to have the necessary information about the upcoming crucial changes of the legislation.

As we see our main goal to keep our valued partners informed about the current legal status, we prepared a special newsletter edition, devoted to the most important changes in the Hungarian Labour Code, which will soon enter into force.

And as before, we remain at your constant disposal, should you have any questions or requests.



Dr. Arne Gobert
Managing Partner

BE PREPARED FOR LABOUR LAW CHANGES

Basic provisions of Hungarian Labour Law from 1st of July 2012 in 12 points

In the course of 2011 the Hungarian parliament adopted several significant new acts and the entire legal system faced notable revisions. In particular the Parliament approved the so called Basic Law which is the new constitution of Hungary as from 1 January 2012.

Among other changes (like new Criminal Code, new Data Protection Act, draft of the new Civil Code) the parliament adopted a new Labour Code effective from 1 July 2012, namely: Act No I of 2012 ("NLC"). The NLC in general is more favorable for employers and provides a more flexible civil law relationship between employers and employees. We must note that some parts of the NLC are currently reviewed by the European Commission, by International Labour Organization and by the Hungarian Constitutional Court.

The main concerns are whether the NLC restricts the fundamental rights of employees and of trade unions / works councils. It is, however, unlikely that the entire NLC might be cancelled by the Constitutional Court, therefore employers must be prepared for the new requirements and proper information must be provided to all employees in a clear and understandable way. On another hand a new legislation is always a good business opportunity to revise the provisions of employment contract and to encourage the employees to sign a contractual amendment. Thus, a general overview and legislative changes may serve as a basis for a general contractual review.

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FIRM NEWS

- **OUR MAILING ADDRESS CHANGED TO:**

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1. Territorial scope

Generally, if the workplace is "regularly" in Hungary, Hungarian law shall apply to the employment relationship. The parties may stipulate another jurisdiction, however with stringent conditions. Provision of the European Decree, Rome II. shall apply to such provision.

2. Type of Agreements

It is important that not only the employment relationship may be governed by the NLC. Free lance agreement or other atypical relationship ship also fall under the NLC (except for that of the public sphere which is also governed by a new act entering into force from 1 March 2012).

Separate rules apply for distance working, juveniles, executives or for "on call duty" employees. The latter is a new type of atypical employment relationship and may serve as a practical solution for those companies who do not have constant workload.

From 1 July 2012 it is also possible to hire employees jointly with other employers which can be a good opportunity for holding companies.

Simplified employment will still be considered a good solution for small and medium sized companies.

More clear rules apply for employees with limited abilities under the new legislation, however there is no automatic tax deduction.

3. Recruitment

Although there are no specific provisions in the NLC regarding recruitment, the changes of the data protection legislation significantly change the recruitment process. In any kind of candidates' data processing shall be registered at the so called NADI (National Authority for Data Protection and Information Freedom). Also proper and voluntarily signed consents shall be obtained from each candidate. Background check and collecting sensitive information are not allowed. Special rules apply for the filing of criminal records. No questions can be asked from candidates which may violate their human dignity (such as questions regarding family status, pregnancy or even smoking).

4. Entering into an employment relationship

The NLC contains the mandatory minimum provisions of employment contracts, which is different from the previous requirements. It is therefore essential that all employees change their employment templates. It is also important that deviations are allowed from the mandatory provisions only in favor of the employees. No less than the following shall be in the employment contract: data of the parties (including tax and social security number), base salary, position, term of employment, probation period up to the maximum of three months, consent for data processing. In addition to these the employer shall provide necessary information regarding the basic characteristics of employment (e.g. work time, date of payment, vacation days, notice period, collective bargaining agreements).

5. Rights and obligations of employees and employers

There is no significant change in the main principles, the parties shall always act in good faith and the employees shall comply with the basic provisions of the employment relationship. Unique in the NLC that the employees may not violate the interests of the employers beyond or after working hours which might result in lawful social media regulations or dress code regulations

Pursuant to an expressed provision of the NLC the employers may restrict the fundamental rights of employees provided that the restriction is regulated and necessary for the employer. This may result in lawful drug/alcohol tests and monitoring of employees.

6. Vacation

The system of calculating vacation days will remain the same. Vacation days consist of the following:

- basic vacation days which is both under the old and the new legislation is 20 days.

- additional days for example for executives, for parents, for juveniles and for those working under special health conditions. Further there is are additional vacation days depending on the age of the employee.

There is a significant change in the calculation of additional vacation days after children from 1 January 2012. Based on the provision of Act No. CXCI. of 2011 (entered into force on 29 December 2011 and amended the current Labour Code), both parents (*per capitam*) are entitled for the additional vacation days after children. For example, if a family has 2 children, each working parent gets 4+4 additional days for each calendar year from 1 January 2012.

As from 1 July 2012 the new labour code is applicable. Although and unfortunately there are no rules for the entry into force, it is very likely that the provisions regarding vacation days are relevant only for year 2013. As was noted before it is expected that there will be an act/decree on the interim period and it is expected that there might be special regulation on for example the calculation of the vacation days.

There will be no change in calculation the basic days and the additional days depending on the age of the employees. However, certain rules changed regarding other additional days:

- days after children: remain the same (i.e. 2 days after 1 child, 4 days after 2, 7 days after more). This is calculated per capitam, i.e. each parent is entitle to 4-4 days if they have 2 children;

- days after disabled children: each employee receives additional 2 days after a disabled child;

- days after giving birth: fathers receive 5 days after the newborn, in case of twins: 7;

- days for juveniles: 5 days;

- days for special work conditions: 5 days (underground work or ionisation);

7. Working hours and overtime

The regular working hours in Hungary remain the same: 40 hours/week.

Under the NLC the criteria of shift work and the conditions of the entitlement for shift allowance have been changed. Pursuant to the NLC the employer is qualified as an employer hiring employees in shifts if the business operation of the employer exceeds the 80 hours/week (current LC does not stipulate such provision). Regarding the entitlement for shift allowance the following conditions must be met:

- regularly change of the starting time of the employee's scheduled daily working time;

- performance of the work between 18:00 pm and 6:00 am.

In respect of the amount of shift allowance the NLC does not distinguish between night and afternoon shifts, but stipulates 30 per cent shift allowance for the work performed between 18:00 pm and 6:00 am.

In case of continuous work the shift allowance shall be also 30 per cent.

An employee may be required to work not more than total 250 hours in any given calendar year in overtime. In case of collective agreement the hours of overtime may exceed 250 but shall not exceed 300 hours.

8. Liability

As under the old system the employees are liable for the gross negligence and for intentionally caused damages. The maximum of liability for gross negligence is 4 months worth distance payment.

Separate rules apply for inventories, but it is worth to note that in order to hold the employees liable, employers shall prepare detailed regulations for inventory.

Damages up to the 3 months worth mandatory minimum wage can be requested by the employer without turning to labor tribunals by the use of instant payment orders (issued by notaries).

9. Termination

There are several reasons which automatically terminate an employment relationship (without any action), such as death of the employee or cancellation of the employer. Please note that reaching the retirement age does not automatically terminate the employment relationship.

There are the following possibilities for the employer to terminate the employment agreement:

- ordinary terminations (termination for convenience): it shall provide valid and clear reasoning and the employee is entitled for notice payment and severance payment;

- immediate termination (termination for cause): no severance shall be paid but the employer must prove that the employee (i) conducted

a material breach or (ii) it is impossible to maintain the employment relationship.

- Free negotiated mutual termination agreements (compensation agreement).

The NLC (with a minor difference) contains the same amounts in case of termination as of the old. The main difference is that the New Labour contains a calculation with the absence fee.

The employee whose employment relationship is terminated with termination for cause after 1 July 2012 are entitled to the following amounts:

(i) base salary for half of the termination period (which is 15 days at least if the notice period is 30 days);

(ii) absence fee for the second half of the termination period (garden leave period);

(iii) severance payment in case the employee is entitled to such;

(iv) payment of the pro rata unused vacation days.

The length of the notice period under the New LC is the following:

0-3 years	30 days
after 3 years up to 5 years	35 days
after 5 years up to 8 years	45 days
after 8 years up to 10 years	50 days
After 10 years up to 15 years	55 days
after 15 years up to 18 years	60 days
After 18 years up to 20 years	70 days
After 20 years	90 days

The parties may agree in a longer notice period but the maximum of the length of the notice period is 6 months.

The amount of severance payment under the New LC is the following:

after 3 years up to 5 years	1 month
after 5 years up to 10 years	2 months
After 10 years up to 15 years	3 months
after 15 years up to 20 years	4 months
After 20 years up to 25 years	5 months
After 25 years	6 months

Please note that certain employees as protected employees are entitled to higher amount of severance. I.e. new parents until the 3rd anniversary of their child and those who have less than 5 years to the retirement age are entitled to additional 1-3 months worth severance (depending on the length of their employment relationship)

We note that the list of protected employees is shortened in the NLC, for example those under sick leave are no longer protected during that period.

10. Employment Litigation

Under the old system separate employment tribunals are responsible for labour disputes at each county (including Budapest). At first instance procedures, a judge and two civil person make the decision acting as a council. In case of unlawful termination employees may claim the loss salaries up to 12 times of the absence fee and for the damages proven by the employees suffered as a result of the unlawful action.

As distinct from the old legislation, reinstatement can be requested only in limited cases (for example if equal treatment was not respected).

11. Non-compete covenants

The rules regarding non-compete covenants changed significantly. The maximum period is 2 years and the minimum payment is one third of the base salary. Under the new regime it will be a question whether the employers may stipulate penalties in the non-compete agreements. Compare to the old legislation there is no expressed provision allowing penalties by the employers.

12. Binding Corporate rules – Data transfer

Data protection is still a key issue for employers in Hungary. Rules under the new data protection act however still do not allow the possibility of binding corporate rules and any transfer to third countries, even for pay-roll purposes or to the respective group of companies may require special consent from each individual employee.

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Please note that the above is based on the legislation published in the official journal. It is expected that a separate act will enter into force regarding the regulation of the ongoing employment relationship, and at the time of the entry into force of the new act may require the revision of the above.

Please do not hesitate to contact our employment department if you have any question or if you wish to obtain more detailed information.

At your request we are pleased to organize trainings for the local HR staff or for the executives in order to be prepared for the upcoming changes.

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OBLIGATORY REGISTRATION OF BUSINESS ORGANIZATIONS AT CHAMBERS

The Hungarian Parliament has passed a new bill on 21th November 2011 on the amendment of certain tax acts and other related acts, which includes the amendment of the Act No. CXXI. of 1999 on the economical chambers (further referred to as Act). The Act contains three important changes:

On the base of the new regulation, which enter into force with the effect of 1th January 2012, the business associations are obliged:

- to initiate their registration at the chambers,
- to pay the contribution in the amount of HUF 5000 yearly for the public service of the chambers. In case of the voluntary members, the amount of this contribution shall be deducted from the membership fee.

In its turn, the Chamber is obliged to provide to them the services which are defined in the act for free of charge (advising in economic, financial, taxation and potential credit related questions; business partner searching and tender monitoring).

The amendment of the Act does not concerns the agriculture, namely the effect of the Act does not extends to the enterprises, the main activity of which is agricultural activity, or agricultural manufacturer and agricultural chambers.

Remarkable fact that **the membership of the chambers will remain voluntary**, accordingly, **the registered business associations will not become members of the chamber with their registration.**

The **single and joint enterprises**, which are established after the effect of this Act **shall require their registration** within 5 days, meanwhile the operating companies within 60 days, but until **1 March 2012 the latest at the regional chamber of commerce and trade, which is competent upon their seat address.**

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