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PETERKA & PARTNERS

Advokátní kancelář, Law Offices, Cabinet d'avocats

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[POST LETTER]

THE NEW CZECH LABOUR CODE

PETERKA & PARTNERS v.o.s., Prague,
Czech Republic

by Michaela Vondrakova

THE NEW CZECH LABOUR CODE

PETERKA & PARTNERS v.o.s., Prague, Czech
Republic

by Michaela Vondrakova

A new labour code, which has recently been passed by Parliament to take effect as of January 1, 2007, after long and stormy discussions, along with some other related new Acts (namely the Act on health insurance and the Act on employee injury insurance, which will probably take effect one year later), will bring the first changes to labour law since 1990.

However, the new Labour Code has come under fire in that it appears neither to simplify nor make the law any clearer.

The new Labour Code repeals 58 legal regulations. As such, it now makes up the entire legislation governing labour relationships (including the regulation of salaries and wages and compensation for travel expenses, which are currently regulated under separate legislation).

EUROPE

THE NEW CZECH LABOUR
CODE

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NO. 85/2006, SPECIFIC
MODALITY OF ENTERING
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The most striking new feature, in contrast to the present legislation, is that the new Labour Code formally declares the principle "*what is not prohibited by law is permitted*". This means that currently employers may enter into agreements with employees that are not exclusively defined by law; however, such agreements may not be contrary to its content and purposes. However, this principle is very limited (mainly to enable employees to negotiate more favourable terms).

SOUTH AMERICA

THE BOLIVIAN
NATIONALIZATION OF
HYDROCARBONS PROCESS

Changes in dismissals

The new Labour Code has not brought about the expected changes in the possibilities to unilaterally dismiss an employee.

As before, an employer may only dismiss an employee on one of the grounds stipulated in the Labour Code.

The notice period has been unified to **two months** (under the previous legislation the notice period for so-called *organisational reasons* totalled three months, in the case of other reasons for termination only two months). Simultaneously, the redundancy payment to be paid by an employer to a dismissed employee has been increased from the original twice the average monthly salary to three times (the period during which an employer is obliged to pay salary to a redundant employee remains unchanged and totals five months).

In contrast to the present situation, **an employer will no longer be obliged to offer to an employee another suitable position** within their enterprise before the employee is dismissed, an obligation which has so far been a condition for a notice on the termination of employment to be deemed valid.

Under the present legislation, if an employee is dismissed for so-called *organisational reasons* (namely redundancy, the employer is wound up or moves offices) or for health reasons, the employer is obliged to **assist the employee in getting a new job**. This obligation is no longer applicable to employers.

Moreover, if an employee who presently cares for a child under the age of 15 is dismissed on health grounds, the employment of such an employee terminates only after the employer ensures a new job for such an employee. The new Labour Code abolishes this obligation.

Redundancy payments

As mentioned above, new redundancy payments have been fixed for when an employer dismisses an employee for so called “organisational reasons” (i.e. if the employer’s enterprise or a part of it shuts down, relocates or if the employee is made redundant) or in case that the labour relationship is terminated on these grounds by mutual agreement. In contrast to the present legislation a redundancy payment is now set at **three times** the average month’s salary (previously this was twice the average month’s salary).

A new redundancy payment is now also to be paid by an employer if an employee is dismissed on health grounds (e.g. in cases of injury at work or an occupational disease). Such a payment now amounts to **twelve times** the average month’s salary, although as of yet no such payment has been made.

Strengthening the position of Labour Unions

The new Labour Code has strengthened the position of members of Labour Unions.

However, there has been strong criticism from employers that they are now obliged to release an employee who is a labour union functionary for **five days** so that such an employee may undergo union training and they (employers) must compensate their wage for such days.

There has been no change to the law regarding the position that a labour union functionary may be dismissed only if the labour union gives its consent. This applies not only during the period in which the employee carries out their function but also for one year after. Previously this only concerned

functionaries in the highest positions who could act jointly in such matters with the employer, but has now been extended to cover all labour union functionaries.

There have also been quarrels amongst the labour unions themselves. Previously, if an agreement was not reached amongst the particular labour unions a collective agreement could not be concluded with an employer.

Now, it is sufficient for an employer to reach an agreement with **the Labour Union which represents the majority of employees**, which in practice could lead to the discrimination of minor and professional organisations.

The right of labour unions to refuse work if the health and safety of the employees is endangered is also considered unusual.

Account of working hours

From the new year there will be a possibility for an employer to better react to higher or lower needs for work within a specific time period by the introduction of the so called *account of working hours*.

The *account of working hours* is a method of unevenly scheduling working hours on the condition that such a schedule must be anticipated in a collective agreement or internal regulation. The express consent of each individual employee concerned is also necessary.

An employee is entitled each month to a fixed wage. If, during a certain time period (26 weeks, or, if stated in a collective agreement, 52 weeks) an employee is entitled to a higher wage than the set amount, the employer is obliged to pay the difference. However, if an employee has worked less than they should have, an employer is not entitled to dock the difference.

Juveniles

People under 18 will be no longer be allowed to work more than **six hours per day and thirty hours per week**, even if they work for more than one employer.

In practise this equates to a limitation on the possibility for high school students to get a summer job; employers will probably prefer to employ people over 18 in order to avoid the administrative burden of employing a high number of students under 18.

Employers to pay sickness benefit instead of the state as from 2008

According to the new Labour Code an employer will be liable to pay sickness benefit to an employee for the first fourteen days of the sickness.

The payment of wages shall remain at 30% of the average monthly salary for the first three days and 69% of the average monthly salary from the fourth day. An employer and an employee may agree on a higher amount but not in excess of the average monthly salary.

Since employers will be responsible for paying sickness benefit they will also be entitled to monitor whether the sick employee complies with the prescribed conditions which govern a person temporarily unable to work who must remain indoors and not leave for any length of time in excess of the prescribed time periods.

Employers are strongly criticising the above obligation since it is a *de facto* transfer to the employer of the duty of the state to monitor and control a sick employee, which the state itself is currently unable to do.

If an employer learns that a sick employee is not complying with their obligations they may lower the wage or refuse to pay it. However, the possibility to dismiss such an employee has not been enacted.

Conclusion

The effect of the new Labour Code is not clear yet.

Due to many incorrect and inaccurate matters, amendments are expected in the near future. The Labour Code has brought partial positive changes but it is obvious that employers expected much more liberalisation of employment relations. To them, it seems that the present state of affairs remains largely unchanged.

[PRINTER FRIENDLY VERSION]

Published by Alan Griffiths
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