KOVÁCS RÉTI SZEGHEŐ
ÜGYVÉDI IRODA

KRS: When and how an employer should be notified of pregnancy?

By its decision at the end of May, the Constitutional Court declared unconstitutional the provision of the Labour Code providing that an employee may only allude to the existence of the prohibition of dismissal due to her pregnancy or her involvement in human reproductive process once she has notified the employer accordingly prior to the communication of the termination notice – an expert of Kovács Réti Szegheő Law Firm draws the attention of Origó portal. Dr. Zita Orbán stated that, based on the decision, employees continue to be obliged to notify the employer. There is no change in this respect. However, it is no longer required that the notification should be done prior to the communication of the termination notice.

The Constitutional Court considers that – beyond these data constituting personal data – the intention to have children, a treatment related to human reproductive process as well as when pregnancy occurs as a result of it or one has got pregnant in the natural way are not only a private but also an intimate matter – the expert of Kovács Réti Szegheő Law Firm describes the opinion of the court.

Therefore, pregnancy is exempt from state intervention by its nature, and thus, in consideration of the aforesaid, stipulating by law that the aforesaid data should be supplied to the employer as an obligatory requirement does in itself constitute an intervention into private matters.

Protection rules

It has been stressed by the Constitutional Court that supplying of data is apparently not voluntary arising out from the hierarchical relationship between employer and employee. In consideration of the objective circumstances, the aforesaid provisions formulate a prohibition of dismissal for the employer.

Dr. Zita Orbán emphasized that as stated in the decision, it is also important to underline that the vulnerable status of women in employment on the grounds of having children should not result in the loss of their job, or the fear of getting dismissed from work should not influence women in making decisions about having children. Women with children should reserve their freedom to choose to avail themselves of additional protection provided by the Labour Code or not.

However, notifying the employer of the fact on which they are based is a prerequisite for the applicability of these protection rules and benefits. It is irrelevant in this regard whether such additional protection is of positive (for example, time off work) or negative (for example, prohibition) nature.

Condition relating to the time of notification was determined unreasonably

Therefore, the Constitutional Court reached the conclusion that the obligation to provide information is in itself necessary for the enforcement of the protection against dismissal – which otherwise would also follow from the rules of the Labour Code imposing a general obligation of cooperation and information.

However, the condition relating to the time was unreasonably determined in the Labour Code, as with this stipulation the obligation to provide information and the intention to terminate the employment relationship are separated. This way, employees are forced to provide the employer without delay with such information as may fall within the intimate sphere of employees.

As provided in an earlier version of the Labour Code, however, the provision formulated as a compromise between the prohibition of dismissal enforced on an objective basis and the provision of the Labour Code worded prior to the decision of the Constitutional Court providing that the obligation to supply information falls on employees prior to the communication of dismissal does not resolve this problem as open questions still remain on the part of both the employer and the employee.

Questions difficult to answer

The expert of Kovács Réti Szegheő Law Firm highlighted that these are sensitive issues that concern the most private things, and also owing to this sensitive nature, questions still remain that are truly difficult to answer by legislation.

Considering that the employer may ask an employee no questions regarding her pregnancy or her involvement in human reproductive process, the employer is unable to make sure prior to a dismissal, if any, that a prohibition of dismissal of such nature does not indeed exist in respect of her.

By deleting the wording of "prior to the communication of dismissal" from the provision objected in the Labour Code, further questions arise. For example, if the employee herself becomes aware of her pregnancy following the communication of the dismissal but still within the 30-day time limit for contesting such dismissal, it is questioned whether she is required to notify the employer accordingly – however the employer may no longer withdraw the dismissal unilaterally –, or she may bring an action against the employer in accordance with the law?

It is an additional question in this topic whether the service of the statement of claim by the court to the employer is deemed to be a notification by the employee under the Labour Code? – dr. Zita Orbán finally outlined further possible difficulties in practice.