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Labour Law Newsletter
April 2017

Rising penalties, intensifying labour and occupational safety and health inspections

The Hungarian Labour Office and the Occupational Safety and Health Authority publish the results of official inspections year after year as well as also present the legal consequences of infringements. Their valuable experiences are discussed below:

According to the reports, the lack of employers' awareness prevails in the field of both labour and occupational safety and health, which is well reflected in the high ratio of infringements. The most common infringements in the field of occupational safety and health are the absence of risk assessment, the lack of knowledge on occupational safety and health, the ignorance of requirements regarding personal or collective protective equipment, as well as if no aptitude test has taken place. Their consequences are clearly visible because the number of accidents at work increases year after year. It can also have serious consequences regarding compensation as an injured worker can claim lifelong allowance, compensation or restitution too. The authority can also impose administrative penalty in addition to occupational safety and health penalty, and according to the report, it regularly makes use of this power.

In the field of occupational safety and health inspections, infringements in connection with working time records and the rules for hours of work and rest period (incomplete, false record, infringement of the rules of the allocated accumulative working hours, infringement of daily and weekly limits on hours of work etc.) as well as unauthorized employment have prevailed. Whereas the majority of employers properly interpret the rules for guaranteed minimum wage, the inspections have in many cases detected infringements within the scope of wage supplements and flat rates. In view of the consequences of infringements manifested in the form of penalties, employment or civil litigation, it is worth consulting with our Law Firm in advance in all cases, and adjusting the provisions of employment contracts regarding hours of works, rest period as well as remuneration for work to the requirements of the legislation in force. As the current legislation provides very broad scope of freedom of actions for the employers.

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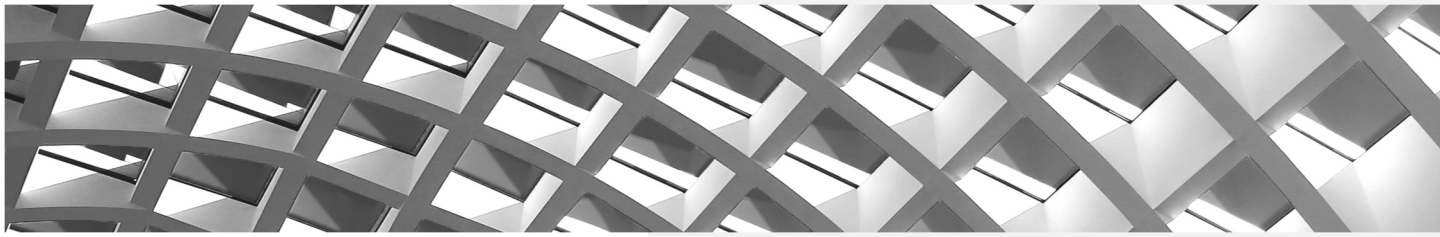

The conditions of employment of the executive officer may derogate from the content of the law in many respects but shall not be contrary to good morals

The contract of employment of an executive employee may derogate from the rules of the Labour Code taking into account the importance of the position, its enhanced confidentiality nature, but the limits cannot be extended infinitely. Decision No. EBH2017.M.3. of the Curia helps clarity of thoughts regarding the issue.

Excellent payment, high premium, shareholding by employees, company car and business mobile phone can form a part of the package of the executive officer. It may often arise that the parties provide benefits in higher amount to the Employee in case of termination of employment. However, the conditions went significantly beyond it in the controversial litigation case. As 70 days of compensatory leave per year had been also granted to the employee in the position of deputy managing director and, if not taken, it was compulsory to pay allowance in lieu of vacation days each year. Moreover, the parties also agreed that the employer must pay the basic salary of 10 month to the employee in case of the termination of employment for any reason whatsoever. The source of the legal dispute arose from the situation that the employment of the employee in question was terminated upon termination by the employer with immediate effect. As the employee dated back one of his contract according to the termination notice. Under such circumstances, however, the employer was no longer willing to pay absentee pay. The Curia examined accordingly whether the circumstance violates general legal principles of law if the employee is still entitled to generous absentee pay even if the termination is based on the conduct attributable to the employee. The Curia also pointed out that no declaration of nullity is generally brought due to the violation of good morals if the grounds on which the request was made could serve as a legal base for a claim to be submitted under separate legal title (e.g. it could have been challenged). However, the Curia has determined that the clause of the amendment of the contract of employment, which stipulates that the employee is entitled to compensation even if his employment is terminated with immediate effect, contradicts good morals under Section 200 (2) of the Civil Code in force at that time, since it obviously violates general moral norms, therefore this part of the provision is null and void under Subsection 8 (1) of the Labour Code.

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In the termination notice, the employer can also refer to the information notice displayed, which however must be well-known and applied, too

The most essential part of the termination notice is the reason given by the employer for the termination, as the employment can only be terminated by relevant justification specified in the law. This justification can neither be amended nor supplemented later on. However, is it possible to refer to the failure to take into account the content of a simple information notice displayed, as a reason for the termination? The Curia gave an affirmative answer to the question stating that the employer must prove that everybody has been able to familiarize itself with the contents of the information notice displayed as well as the employer has consistently caused the employees to observe the rules, too. Otherwise, a valid notice cannot be based on the information notice. (EBH2017.M2.)

During the litigation for the establishment of unlawful termination of the employment, the burden of proof falls on the employer that the employee failed to mitigate his/her damages.

The Labour Code entered into force on 1 July 2012 stipulates that the employee is obligated to mitigate the damages if it refers to the unlawful termination of his employment. Accordingly, it is obliged to do everything to find a job. It also means that he is not entitled to the absentee pay of twelve (12) months as arrears of salary regardless of all circumstances. As in case of failure to mitigate his damage, he cannot enforce the portion of the damage concerned against the employer. However, the question arises that in this respect who is obligated to provide evidence in this respect. The Curia again pointed out in its decision No. Mfv.I.10.266/2016. that it is the employer who is obligated to submit a request for evidence. The obligation of the employee to provide data for request is also not excluded within this scope. If, however, the employer does not refer to the violation of the obligation to mitigate the damage, it cannot be officially taken into consideration.

If you have any question, please feel free to contact us:

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