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Labour Law Newsletter
August 2016

The Labour Code has been and will be amended on several points

The negotiations began between social partners and the government a year and a half ago, as a result of which the legislation relating to employment was amended this summer. The most important amendments, which are presented below, shall enter into force on different dates.

The so called compensatory rest period will be introduced from **1 January 2017**, according to which when the rest period between the completion of daily work of the employee and the start of the next working day is shorter than 11 hours, the difference must be added to the rest period of the following day. Accordingly, the daily rest period on two-day average shall be 11 hours without exception. The law continues to define the cases when it is possible to reduce the daily rest period to a maximum of 8 hours; and stand-by employment will be removed from this list. So, the reduced daily resting period will be applicable to employees employed within the framework of split shift, continuous shift work, shift work or seasonal activity in the future.

As from **18 June 2016**, the termination notice given during pregnancy can already be withdrawn within 15 days following the notification of the pregnancy. This terminated the legal uncertainty which was caused by the decision of the Constitutional Court of Hungary, according to which the employee is not obliged to notify the employer of her pregnancy prior to the termination. At the same time, the prohibition on termination was simultaneously extended to the father if both parents took unpaid leave for the purposes of having a child.

The rule was repealed in connection with the organisation of working time primarily having regard to public employers on **18 June 2016**, according to which, if normal working time was scheduled to an employee in stand-by employment on Sunday, normal working time cannot be scheduled on the preceding Saturday. Subsequently, the supplement of 50% for overtime does not need to be paid in the future for working on Saturdays – in certain conditions, namely, in case of working on Sundays.

Finally, the legislation relating to executive employees (Article 209 of the Labour Code) and the legislation relating to delegated employee (Article 297 of the Labour Code) will be changed a little bit as from **18 June 2016**. Having regard to the latter, the Act on Labour Inspection was significantly expanded as of **8 July 2016**. We are pleased to provide additional information about the details of the changes to our customers.

Contact
Kovács Réti Szegheő Attorneys at Law
1121 Budapest, Zugligeti str. 41
Phone: +36 (1) 275 - 2785
Fax: +36 (1) 275 - 2784
http://www.krs.hu

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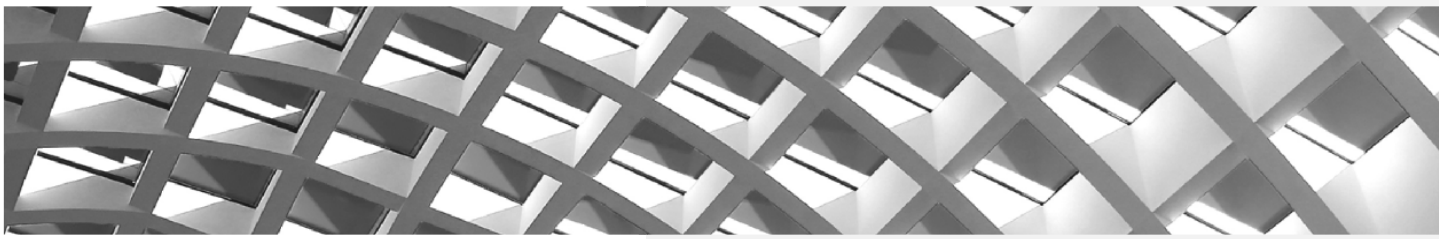

We recommend the following analyses and links of our Firm in connection with the changes to your attention:

- *http://www.hrportal.hu/hr/unios-jogharmonizacio-miatt-kerulhet-sor-a-munka-torvenykonyvenek-modositasara-20160606.html*
- *http://adozona.hu/munkajog/Juliustol_megabirsag_a_kulfoldi_szallitasi__89KT2Z*
- *http://adozona.hu/munkajog/Felmondasi_vedelem_uj_szabalyokra_kell_figy_UK67PB*
- *http://www.hrportal.hu/hr/gyereket-var-kedvezobb-munkajogi-szabalyok-varhatoak-20160511.html*

The rate of wage supplement will not currently change

The legislator introduced a higher rate of wage supplement for working on Sundays payable under special circumstances by entering into force the Act on the prohibition of work on Sundays in the retail sector and then abolished it with the repeal of the Act. The government promises further consultations with social partners in the autumn.

One of the issues of public interest is the question of wage supplement beyond dispute, the legislation of which also gives rise to several misunderstandings. Subsection (1) of Section 139 of the Labour Code states that wage supplement is paid to the employee in addition to his wage, from which rule the parties may not derogate even in the collective agreement. Wage supplement is paid having regard to the special circumstances of the employment; namely, the employee and the employer already took the normal and average conditions of the employment into account in the calculation of the minimum wage when the employment contract was concluded.

The employees were not and are not entitled to the wage supplement in case of whom Sunday work arises from the nature of the employment and the activity of the employer. Accordingly, those workers are currently entitled to wage supplement who are employed within the framework of shift work, in stand-by jobs or are employed by the employer engaged in commercial activity, at mercantile subservience activity or in tourism activity of commercial nature falling within the scope of the Act CLXIV of 2005 on Trade. The rate of the supplement is 50%, which is granted only if the Sunday work may not be ordered for any other reason addressed by Article 101 of the Labour Code in their cases. The most common example of this is the continuous shift work (in power plant, in hospital etc.) or for example employer or employment (malls, restaurants, museums), which works or operates also on Sunday due to its function.

The legislator has also amended the Labour Code simultaneously with the entry into force of Act CII of 2014 on the prohibition of work on Sundays in the retail sector in order to compensate the employees, who exceptionally worked nevertheless on a fixed Sunday of the year. However, this

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affected few people in reality. However, the legislator repealed the legislation entered into force on **15 March 2015** as of **16 April 2016** and reinstated the condition as it had been before **15 March 2015**. According to the current legislation in force, the wage supplement of Sunday work is back down to 50%.

We would like to draw your attention to the following articles of our Law Firm:

- *http://hvg.hu/gazdasag/20160504_vasarnapi_potlek_csak_annak_jar_aki_nem_igen_dolgozik_vasarnap*

H&S law has been amended

H&S law will be amended at many points. In the future, labour safety representative must be elected in many cases, protection of labour rights of labour safety representative will be amended and the scope of penalties applicable by the supervision will be also expanded.

The Parliament amended the legislation relating to the election of labour safety representatives and the protection of their labour rights from **8 July 2016**.

Under the legislation in force, labour safety representative shall be elected from already 20 workers instead of 50 workers. The reason for the change is that significant part of the employees are employed by small and medium sized enterprises, thus the European Union considered it expedient to reduce the thresholds to a lower level in order to enable more and more workers to work in healthy and safe conditions. Moreover, it clarified that all labour safety representatives shall enjoy labour right protection. The legislator accepted the judgement **No. Mfv.I.10.434/2015/9** of the Supreme Court.

Finally, the H&S law will be amended with Article 82/D, according to which the supervision of labour safety shall impose administrative penalty on the natural person who breaks the rules relating to healthy and safety work and the rules relating to its inspection in organised employment, or tolerates the failure to implement these rules in his function, or fails to fulfil his obligation to keep records, to carry out investigation, to take the minutes, and to notify of the accidents at work in time, or provides incorrect data, conceals the real cause of the accident or prevents its disclosure, fails to fulfil his obligation to report on the cases of prolonged exposure, prevents the investigation of occupational disease, prolonged exposure, or as a representative of the employer prevents the labour safety representative from exercising his rights provided by the H&S law, or takes actions detrimental to the labour safety representative for having exercised his rights. The amount of the penalty imposed may be up to HUF 500,000. The administrative penalty may be imposed in one procedure repeatedly if he fails to fulfil the same or another obligation.

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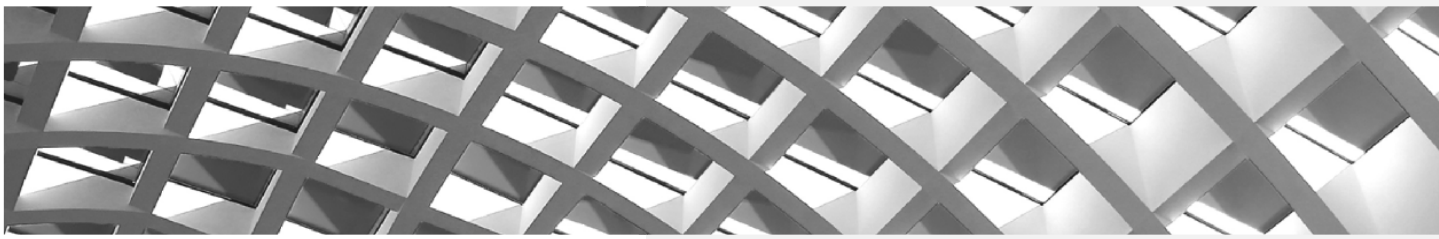

We would like to draw your attention to the following articles of our Law Firm:

- *http://adozona.hu/2016_os_valtozasok/Szigorubb_munkavedelmi_szabalyok_bovul_a_sz_06P4RC*

School cooperatives will be excluded from the scope of the Labour Code

Following several competing proposals, the government decided to settle the actual concerns of the EU about school cooperatives by individual legislation rather than extending the provisions relating to vacation to school cooperatives.

Articles 223-226 of the Labour Code will be repealed on **1 September 2016**, as a result of which the legislation will be incorporated in the text of the Act on Cooperatives. With this, the legislator intends to prevent the unfavourable outcome of infringement procedure of the EU started on the grounds that vacation is not provided to employed students according to the regulation in force. Under the legislation entering into force this autumn, the employment will be performed within the framework of engagement by the school cooperatives. At the same time, the legislator inserted the basic provisions (leave, minimum wage, break, resting period etc.) of the Labour Code into the Act on Cooperatives.

It is dubious whether the legislation so changed is compatible with EU legislation, or whether the EU will not review the legal relationship under the Directive relating to temporary employment relationship. Directive 2008/104/EC regulates temporary agency work comprehensively, within the framework of, and in relation to, employment relationship.

We recommend the following analyses and links of our Firm in connection with the changes to your attention:

- *http://hvg.hu/itthon/20160708_diakmunka_szovetkezet_veszelyek_tanacsok*
- *http://adozona.hu/munkajog/Igy_dolgozhatnak_a_diakok_szeptembertol_mut_D5MIKK*
- *http://www.origo.hu/jog/lakossagi/20160811-fiatal-munkavallalok-foglalkoztats.html*
- *http://www.hrportal.hu/hr/fizethetunk-e-mint-a-katonatiszt---avagy-sikerult-e-orvosolni-az-iskolaszovetkezeti-szabalyozas-fogyatekossagait-20160513.html*

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The scheduling and allocation of vacation time continues to be a problem

The summer is the main period of vacations. It is not coincidental that the associated problems arise as concentrated during this period. The scheduling and allocation of vacation time, converting vacation time into working hours and the application of provisions in practice relating to the allocation and payment of leave in case of simplified and temporary employment are problematic.

The new Labour Code makes it possible for the employer to schedule the vacation in working days or hours in case of an irregular work schedule, according to his choice. The employer must make his decision on the allocation of the annual vacation days for the first time, at the latest. In the absence of this, the vacation must be scheduled and allocated in working days. However, it is important that the vacation must be allocated in working days even when the vacation time is converted into working hours. The employee may not be on vacation time during a day when he works in the other part of the day. In the view of employees representative organisations, the converting of vacation time into hours, at the same time, deprives the employees of guaranteed rights such as 20 days of basic leave and the rights of employee to take 14 continuous vacation days. In vacation is converted into hours, the number of vacation days may be reduced by more than one vacation day in a given working day depending on the working schedule. However, the problems may arise in connection with converting vacation to hours (for example what to do about fractions of days), the Supreme Court did not find the converting of vacation to hours to be infringing.

Moreover, allocation of vacation in case of simplified employment is the source of problems in numerous cases. The legislation does not clearly state how the accrued vacation of the employees should be granted (these rules are not applicable) or compensated in cash. It is also not clear whether the employer incurs obligation to pay tax and levies when cash compensation is given for unused vacation. Meanwhile, the Labour Supervision also carries out increased level of inspections regarding this atypical form of employment.

We would like to draw your attention to the following articles of our Law Firm:

- *http://adozona.hu/munkajog/Ne_kockaztasson_milliokat_Tevedesek_az_egys_6WTLLS*
- *http://adozona.hu/munkajog/Munkaidonyilvantartas_kotelezo_de_van_mozga_Y9DYNX*

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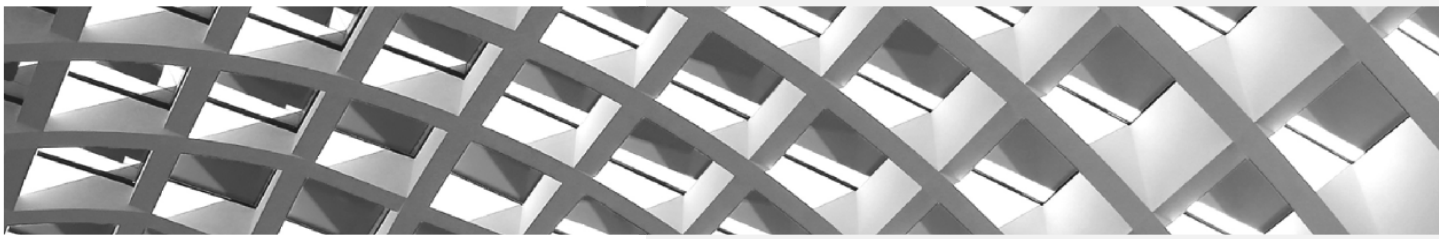

The Supreme Court published a summary opinion on the field of labour law

The jurisprudence-analysing working group of the Supreme Court published a new opinion in connection with illegal terminations of employment relationship in June 2016. On the one hand, the opinion summarizes and evaluates the judicial practice established; on the other hand it also makes definite professional criticism in connection with regulation in force.

The summary opinion took a stand on many questions, in respect of which the legal practice was not consistent. It shall emphasise the questions of indemnity enforceable against the employer and employee, the application of rules relating to reinstatement, the adequate definition of laws of income foregone, the assessment, changeability of salary, the application of indemnity rules of the Civil Code, indemnity requirement on employee and the burden of proof on the parties too. Beside these, however, the Supreme Court expressed its concerns again, according to which the labour laws in the Act I of 2012 – especially its part relating to the termination of employment relationship – do not encourage the employer to comply with the law, do not sufficiently protect pregnant women and interest representation officers. It emphasises in connection with this that it is crucially important not only for the functioning of labour courts but also for the social interest how the courts enforce the prevention by applying the legal consequences of unlawful termination of employment relationship beside the effective legal protection of the aggrieved party in their judgements. The opinion is available at the following link:

- *http://www.lb.hu/sites/default/files/joggyak/osszefoglalo_velemeny_-_a_munkaviszony_jogellenes_megszuntetese_jogkovetkezmenyei_-_vegleges.pdf*

Few employer(s) resort to employment related state subsidies

The number of persons employed is increasing; it is currently exceeding 4,200,000 persons according to the data of the Central Statistical Office (KSH), which presents approximately 65% of the level of employment. This favourable tendency, however, affects each layer of the population in a different way. The labour market data regarding mothers with young children (13%), people under the age of 25 (25.7%), above the age of 55 (55.8%) and with low level of education (33.9%) are below the average for different reasons. Aid could be claimed to facilitate the employment of these layers.

The employers may claim tax allowance for the employees employed in unskilled jobs. This rate is the gross wage but a maximum of 14.5% of HUF 100,000.-, namely HUF 14,500 per worker. The employer monthly receives the amount of tax allowance per employment relationship, namely individually

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for each employee. In respect of the employees under the age of 25, who have a maximum of 180-day employment relationship, the employer can claim tax allowance at wider range. This rate is 27% of the gross wage in the first two years of the employment and maximum of HUF 27,000. In case of employment of an employee under the age of 25 having more than 180-day employment relationship or an employee above the age of 55, the tax allowance is slightly lower; its rate is 14.5% of the gross wage, maximum of HUF 14,500 each month. The employer employing permanent job seekers may also claim tax allowance. This rate is 27% of the monthly gross wage in the first two years of the employment, maximum of HUF 27,000 but it is 14.5% of the monthly gross wage in the third year, maximum of HUF 14,500. Finally, during the payment of maternity allowance or following the termination of its payment, the employer employing employed worker may also claim tax allowance. The rate of the allowance is the gross wage of employee, who receives child care allowance or child-care assistance benefits but maximum of HUF 100,000; of which 27% of will be paid in the first two years of the employment then 14,5% in the third year of the employment. If the employee receives maternity allowance for at least three children, the allowance may be claimed for 5 years. Read the analysis of our Law Firm for the details and consult with our tax advisor:

- *http://www.hrportal.hu/hr/tamogatja-az-allam-a-raszorulo-csoportok-foglalkoztatasat-20160804.html*

The labour shortage has become an increasing problem in Hungary

The labour shortage has become an increasing problem in Hungary, which is a no longer a specific feature of certain sectors. Beside catering and tourism, commerce also faces shortage of labour, and a significant number of skilled workers is also absent from the labour market. According to the Ministry of National Economy, the labour shortage may also slow down economic development.

The social partners, namely, the representatives of the employees and employers have long been stressing that unless urgent intervention occurs, the domestic labour market will face serious problems, primarily significant labour shortage. Competition is developed for both skilled and unskilled workforces in the single European area, and thus it is difficult to discourage underpaid workforce, vulnerable from many points of view, not to go to work abroad. Many factors, first and foremost high taxes and contributions payable by employers and resulting low wages are behind the scenes. Many employers are unable to generate the costs of a pay rise under domestic conditions. The use of workers is significantly increasing due to labour shortage, which often crosses lawful frameworks and in many instances becomes a source of tensions at work. However, there are instruments provided by labour law using which employers can retain workforce showing appropriate work performance and who can be better motivated within lawful frameworks.

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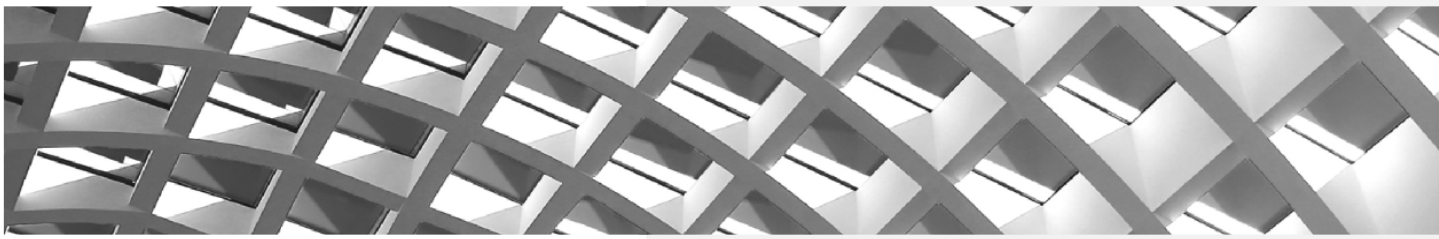

For assistance in this regard, please consult our Law Firm. Read our analysis for more details:

- *http://www.hrportal.hu/hr/fokozodo-gondok-a-magyar-munkaero-piacon-20160816.html*

The dates of entry into force of the most important changes:

Compensatory rest	01. 01. 2017
Stand-by employment	18. 06. 2016
Termination letter can be withdrawn	18. 06. 2016
Protection against termination extended to the father	18. 06. 2016
Executive employees	18. 06. 2016
Delegated employees, labour inspection	18. 06. 2016
Labour safety representatives, the Labour Code	08. 07. 2016
Student employment services	01. 09. 2016

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

Kovács Réti Szegheő Attorneys at Law
Dr. Ádám Kéri
Employment team leader
keri.adam@krs.hu