



KOVÁCS RÉTI SZEGHEŐ
ATTORNEYS AT LAW

Labour Law Newsletter October 2016



Labour Standards have been repeatedly amended

We reported in our previous newsletter that Act XCIII of 1993 on Labour Safety had been amended at many points (Labour Safety Act). We currently give information about the actual changes of Decree of the Minister of Labour No. 5/1993 (XII.26.) MüM on the implementation of the Labour Safety Act. The amendments entered into force on 23 September 2016 with one exception; the regulation subject to exception will enter into force on 1 January 2018.

One of the most important changes is that the rules relating to mandatory employment of occupational health and safety specialists will be amended according to the amendment entering in force on 1 January 2018. According to point 3 of Annex No. 2 to the Decree, the employer is required to employ a minimum number of occupational health and safety specialists specified below for health and safety activity taking at least the working time specified in this point (according to the numbering of the Decree):

I/a) one person with intermediate training in health and safety for 4 hours a week (previously for 2 hours),

I/b) one person with intermediate training in health and safety for 3 hours a day (previously for 2 hours),

I/c) one person with intermediate training in health and safety for 6 hours a day (previously for 4 hours),

I/e) one person with advanced training in health and safety for full-time and one additional person with intermediate training in health and safety for full-time for 400 employees each above

1000 employees (previously for 600 employees each),

II/e) one person with advanced training in health and safety and one additional person with intermediate training in health and safety for full-time for 800 employees each above 1000 employees (previously for 800 employees each).

Furthermore, Section 5 of the Decree will also be amended in respect of accidents which does not result in incapacity of work, the obligation to furnish data specified in Section 9, the explanatory note for employees' report of accidents at work contained in Annex 3, as well as clarifications will be provided for Section 9(1)(b), according to which the fatal occupational accident or any accident which has resulted in incapacity for work for more than 3 workdays (rather than days) must be notified to the authority for occupational health and safety and the Mining Authority. Annex No. 2 of the Decree regarding the terms of employment of persons with training in occupational health and safety (safety at work) will be replaced by a new Annex as from September.

New decisions of the Curia helps the interpretation of the law

The Curia has made many decisions in the recent months examining the liability of the employer for the accident at work and the limits for defence. We present the most important ones of these decisions.

- The Curia examined in the case **No. EBH2016.M.12.** how the employer's policy and the instruction of the managing director can limit the employer's payment obligation in case of an accident at work as well as how it can determine the procedure to be followed in examining the claim. In

Contact

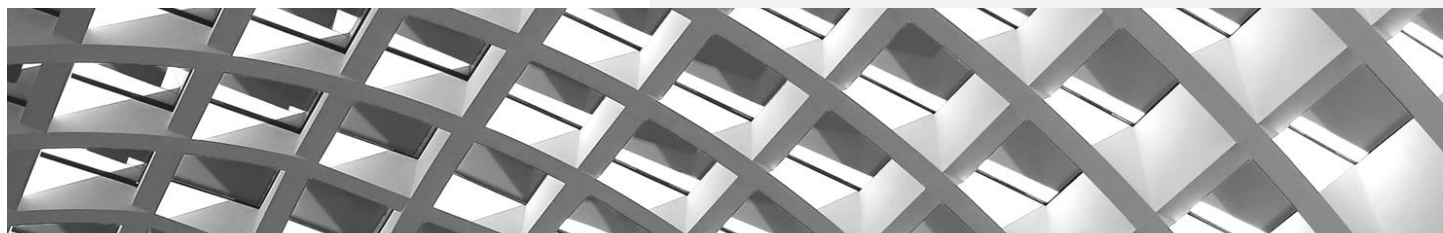
Kovács Réti Szegheő Attorneys at Law
1121 Budapest, Zugligeti str. 41
Phone: +36 (1) 275 - 2785
Fax: +36 (1) 275 - 2784
<http://www.krs.hu>





KOVÁCS RÉTI SZEGHEŐ

ATTORNEYS AT LAW



this context, the Curia emphasised that the employer's instruction cannot be considered as legislation and the internal rules cannot effectively limit the payment obligation of the employer required by legislation.

- The Curia also examined the employer's liability for damages in relation to accidents at work in the case No. **EBH2016.M.10**. In the particular case, the head of the nail that came off while used during work caused injury to the employee (plaintiff). The employee had an accident in the performance of his/her duties, namely in connection with his/her employment; however, the employer intended to justify its lack of liability by invoking the absence of its control. In respect of the amendment of the regulation, the exact content of the control and its limits are not yet known. **The Curia emphasised in the case that the employer is responsible for the choice of the working method, the appropriate work equipment, the material, the number of employees and the provision of technical knowledge, thus it has influence on it.**
- The Curia also examined the liability of the employer in connection with accidents at work in the case No. **EBH2016.M.9.**, where the employee (plaintiff) worked as a skilled chimney sweep. The employee (plaintiff) climbed on a home-made, one-branched wood ladder, which did not have anti slip protection or fixing hooks, and fell off from height of three meters to the ground. The Curia pointed out that the employee had had an occupational accident thus it is the employer who must defend itself from liability. In this context, it cannot be shifted on the employee's responsibility, if it cannot be clarified whether the plaintiff had acted according to the training given and ordered by the defendant and whether he had asked the house owner to fasten the ladder or not. The Labour Safety Act (Mvt.) specified under the principles in Section 2 (2)-(3) that the employer is liable for the implementation of requirements of safe work without endangering human health. For this purpose, **the employer is required to give the necessary instructions and notifications to the employee prior to performing work, and to provide appropriate work equipment adapted to the conditions of the work, taking into account of related dangers.** The provision thereof

would not have been the liability of "the customer".

- As a conclusion, the Curia pointed out in case No. BH2016.230. that the employer is subject to criminal liability for occupational accidents resulting in bodily injury, permanent disability to, or the death of, the employee it employs even if it was not it who created the emergency of accident during the performance of the work but he could have noticed its occurrence by ensuring accuracy expected from it and the accident could have been avoided if it had warned the employee.

Employers' concerns with the application of rules for stand-by employment

Domestic businesses strive for cost reduction in order to maintain, improve their competitiveness and therefore they try to take advantage of the opportunities in the more flexible rules of working time and rest period. However, for this purpose, the flexible rules of stand-by employment are often applied also when the law does not allow it. The Curia also adopted a decision regarding this issue, which is worth bearing in mind.

Under Section 92 (2) of the Labour Code, the daily working time may be up to 12 hours, and the working time based on working arrangement may be 24 hours per day or 72 hours per week. Thus by the application of the rules, the employer may order significantly longer working time in certain jobs than the law usually allows; moreover, they don't incur any obligation to pay wage supplement payable for extraordinary work in many cases. However, the position is of stand-by nature only in the case if the employee – taking a longer period as a basis – is at the employer's disposal without working at least in one third of the normal working time due to the nature of his/her duties, or when the work – particularly with regard to the characteristics of the position and the conditions for work – requires significantly less input from the employee than usual. With regard to the latter, the mental and physical load on the employees must be taken into consideration during the work.

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>





KOVÁCS RÉTI SZEGHEŐ

ATTORNEYS AT LAW



As a conclusion, it can be seen that it is possible to apply specific rules in cases when the employee works under significantly looser working conditions. The relevant decision is to be examined on the basis of the duties of the position, the regulations and instructions relating to the positions, and it is not the job title that is authoritative (Mfv.II.10.296/2015/4). If the employer applies the rules for stand-by work in cases when the law does not allow it, it has to bear a number of consequences. These include **wage supplement payable retroactively, fine imposed by supervisory authority, compensation; furthermore, the employee can terminate his/her employment with immediate effect.**

We would like to draw your attention to the following article in the issue of our Law firm:

http://adozona.hu/munkajog/Keszenleti_munkakor_rafizethet_a_munkaltato_DEJC2E

Government Report to ILO

Government Report on laws relating to employment was repeatedly made to the International Labour Organisation. Both employees and employers accepted the statements of the report with minor additions. The Head of Labour Law Department of KRS Attorneys-at-Law, Dr. Ádám Kéri as the representative of LIGA, Democratic League of Independent Trade Unions participated in the commenting on the report, as permanent member of the Committee. The report investigated the enforcement of the provisions of the conventions on night work of young persons working in industry, medical examination of young persons, determination of minimum remuneration, establishment of minimum wage in agriculture, protection of wages, equal remuneration, discrimination, employment policy as well as on rural worker's organisations.

KRS LABOUR LAW ACADEMY IS COMING SOON!

KRS Attorneys-at-Law are organising technical workshops named KRS Academy on four occasions every month for professionals interested in employment, and in particular for legal advisers and in-house attorney colleagues. The purpose of the workshops is a practice-oriented and problem-solving elaboration of various subdivisions and problems of labour law, as well as promoting the application of law in everyday life; consultation is also available at the workshop. Each module will be held by Dr. Ádám Kéri, Head of our Labour Law Department, as well as by recognised professionals invited by him relevant to that particular field. You can find detailed information about the professional program of the Academy and on the conditions of participation on our website [by clicking here:](#)

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

Kovács Réti Szegheő Attorneys at Law

Dr. Ádám Kéri, Head of Labour Law Department

keri.adam@krs.hu

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>

