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Labour Law and Data Protection Newsletter September 2017

The Supreme Court held: vacation shall be granted for the full period of notice

Enterprises often confront interpretation issues in connection with the regulation of vacation. One of those is the so-called overtaken leave, to which the regulation in force does not give an adequate answer. Another vexing issue is the notice period if the employee is fully discharged from the obligation to work.

The Labour Code stipulates that in the event of dismissal the employer shall excuse the employee concerned from work duty for at least half of the notice period. Any fraction of a day shall be applied as a full day. The exemption from work duty shall be allocated in not more than two parts, at the employee's discretion. For the period of being excused from his duties the employee shall be entitled to absentee pay, except if he would not be eligible for any wages otherwise.

At the same time, in many cases, following the event giving reason for the termination of the employment, the employer excuses the employee from work duties for the full duration of the notice period. In general, its reason is that either the employer had lost its confidence in the employee, or he simply does not wish the employee without motivation to be further employed for the remaining part of the notice period. Let us see what the law set forth for this period.

Employees are entitled to paid annual leave based on the time spent at work, comprising vested vacation time and extra vacation time. Time spent at work shall include any duration of exemption from work as scheduled; any duration of paid leave; any duration of maternity leave; the first six months of leave of absence without pay for caring for a child (Section 128); any duration of incapacity to work; any duration of leave taken up to three months for the purpose of actual voluntary reserve military service; and the duration of exemption from work specified in Paragraphs *b)-k)* of Subsection (1) of Section 55. Thus, it is obvious that vacation shall be granted for such durations when the employee does not spend at work, thus the vacation shall be granted for the duration of incapacity for work, as well as for the duration of the vacation as well. It is also obvious that in case of notice, vacation shall be granted for half of the notice period despite of the fact that the employer shall discharge the employee under the employment according to the law.

As referred to above, several employers argued that the voluntary discharge for another half of the duration of the discharge is not mandated by the law, thus it is not granted vacation. We have highlighted the misinterpretation of the law

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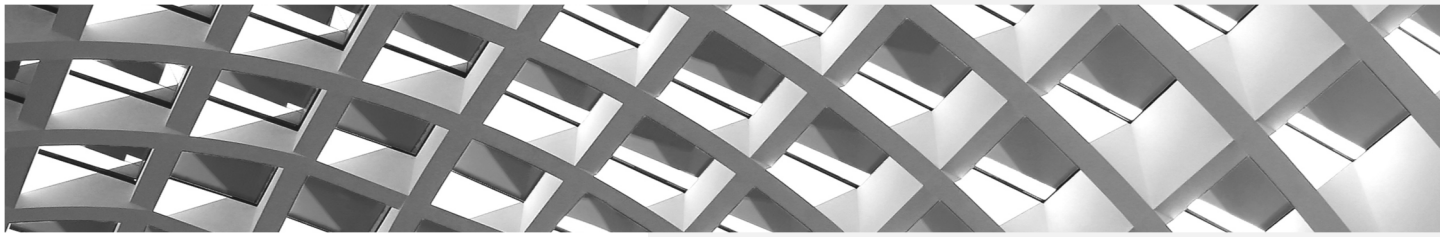

in many analysis and our position was also confirmed by the No. Mfv. II.10.053/2017/4. of the Supreme Court. In the opinion of the Court, there is no significance whether the employer works only during part of the notice period. As the discharge of the employee under employment shall always be deemed as completed under the law.

The lessons of case Barbulescu v. Romania: Being monitored at work is lawful but the rights of the employee may not be reduced to zero.

The Strassbourg based European Court of Human Rights has interpreted in its decision the frameworks of being monitored at work, the rights of parties and their obligations.

The case focused on the issue to what extent the employer can monitor employees in connection with the employment, and what decision can be based on the information acquired during the surveillance. The Romanian Barbulescu was employed as an engineer in charge of sales. During his working time, he had also exchanged private messages with his fiancée, which was challenged by the employer. Later, the employment of said employee was also terminated. In the subsequent procedure, the employee referred to that he had not received the explicit, prior notification that the use of the internet and email is under surveillance, namely he is monitored. In this absence, his private data have been put into possession of the employer. The Court sided with the employee holding that although it is a fundamental right of the employer to monitor performance at work, which however shall be done with due care. However, the employer failed to do so.

The Hungarian Labour Code stipulates that the employer may only monitor the employee in the scope of conduct in connection with employment. The surveillance of the employee and the tools and methods applied during the process may not violate the human dignity. The private life of the employee may not be monitored. The law also stipulates that the employer shall notify in advance the employee of the use of the technical tools, which are for monitoring the employee.

In practice, the surveillance at work is the processing of personal data, as a consequence of which the provisions of the Freedom of Information Act shall also be applied. The obligation to preliminary inform the employee can be found here, which among others, covers the fact of monitoring, its legal ground, the processed data, the monitoring methods, the duration of the data management, as well as how and where the employee may enforce his rights. In this context, it is essential to know that, which is also highlighted by the decision of the Barbulescu case, even if private use is explicitly excluded, employer's right to monitor is not unlimited. On one hand, the private life of the employee may not be monitored. Consequently, prior to the monitoring, the employee shall be provided with the opportunity to delete his private data. On the other hand, the fact of the private use may have legal consequences according to the rules

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of labour law, however the employer may not know the content of the data.

We highlight again that it is vital that the companies review their data processing activities, methods for processing data and their policies, in the respect that the compliance with the provisions of the general data protection regulation (GDPR) entering into force on 25 May 2018 may be ensured. While the current rules in force shall be applied until the regulation will enter into force, it is worth preparing for entering into force of the regulation in advance.

New Code of Civil Procedure has been adopted. As from 1 January 2018, the rules for labour disputes will be amended

As from 1 January 2018, Act CXXX of 2016 on the Code of Civil Procedure (the new Code of Civil Procedure) will enter into force, the rules of which shall be applied in cases filed after 1 January 2018.

The definition of labour dispute will be amended as from next year. The actions arising from the Labour Code, the Act on the Legal Status of Public Servants, service relationship, public service relationship, contract of employment entered into under the Sport Act, contract of apprenticeship enter into during vocational training, student employment contract under the National Higher Education Act and from legal relationship aimed at performing work of members established with cooperatives.

The rules for calculating the amount in dispute will also undergo significant changes. If the establishment, the existence, the termination of employment is challenged in a labour dispute and reinstatement is requested, one-year absentee pay shall be take into consideration as the value of the claim enforced by the action or of other rights – regardless from the amount which can actually be established. However, if the subject matter of the action is pecuniary claim, the amount of the pecuniary claim shall be considered. If the claim is lost wages, a maximum of its one-year amount shall be taken into consideration as the value of the claim enforced by the action.

The rules for competence will be expanded. In legal dispute, next year, instead of the competent court in general which is based on the location of the employer, the employee may also bring action before the competent court where the defendant is domiciled, or, where the defendant is habitually resident. Furthermore, in labour disputes, instead of the defendant' s competent court in general, the employee of applicant may also bring action before the court where the employee is or has been employed for a long time.

From next year, there will also be significant changes in rules of evidence. In labour disputes, the employer shall prove the contents of collective agreements, internal policies, instructions and other employment related documents, the correctness of calculations in connection with claimed allowances, if it is disputed and the payment of the allowances in case of wage dispute.

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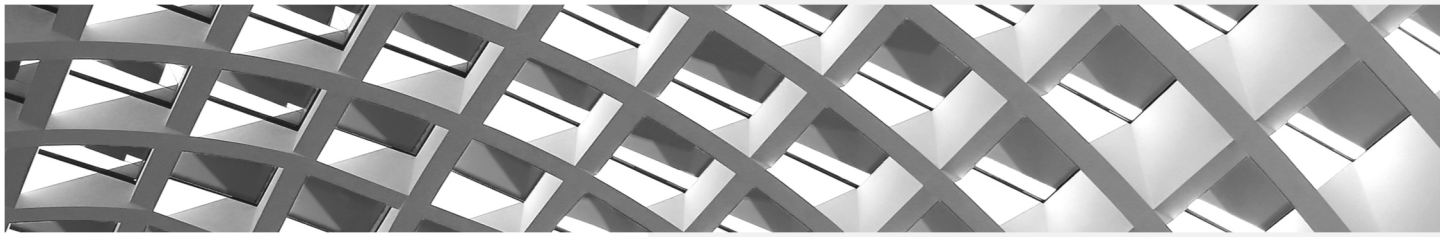

Finally, the amount of the claim shall be specified in details, as well as the review by the Supreme Court will be available reduced. To compensate for this, at the same time, the Court will have discretionary power to hear appeal cases.

Coming Soon! KRS Webinar Series

Professional events deem a priority for KRS Attorneys at Law. Keeping up with the opportunities ensured by the technic, we will launch webinar series as of October in order to comfortably make available our events for as many partners and clients as possible.

The program of the webinar and the conditions of participation will be available on the website of www.krs.hu. Applications shall be sent to pinter.szandra@krs.hu. For any further professional questions, please contact to the head of the Labour Law Department, dr. Ádám Kéri (keri.adam@krs.hu). If you have any proposal, question, idea, don't hesitate to contact our colleagues!

The amendment of the Labour Code is subject of tripartite discussions again

Since the adoption of the Labour Code, it has always been the centre of debates. Whereas employers in particular urge to make the Labour Code more flexible, the employees would like to have their former rights restored.

The government has already attempted to amend the law this year. In this regard, it would have extended the maximum period of working time banking, it would have applied more relaxed rules regarding the amendment of scheduling of working time and it would also have introduced clarifications in the content of the Labour Code. However, the proposal created by the Ministry for National Economy failed to get green light by social partners. Thus, the government withdrew the draft amendment under pressure of the trade union side, which amendment would have reflected suggestions of the employers only.

However, the amendment of the Labour Code still remained to be on the carpet. Employees proposed the strengthening of the rules for unlawful termination of employment, the relaxation of the rules for employers operating in public sector and the partial restoration of the collective rights. Employers further urge to make the rules for employment more flexible. In response to the issue of the labour shortage, they would like to achieve the relaxation of the rules for extraordinary work, the faster modification of the arrangement of working time and the relaxation of the rules for working time banking.

The government is currently negotiating with both employees and employers.

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

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