

### **Termination notice given to pregnant women can be withdrawn**

Act I of 2012 on the Labour Code provides, among others, protection against termination of employment for the total duration of pregnancy, as well as for a maximum of 6 month from the start of medical treatment relating to human reproduction process. The Labour Code relating to these cases initially ruled that the employee could only refer to the protection ensured by the Labour Code if she informed the employer of the pregnancy or the start of medical treatment relating to human reproduction process prior to the termination notice.

The Hungarian Constitutional Court considered this provision unconstitutional by the Hungarian Constitutional Court decision no.17/2014 (V.30.) AB and annulled it. According to the Hungarian Constitutional Court, on the one hand, the provision - according to which the employee had the right to protection if the employee informed the employer about the given circumstances prior to the termination notice – unnecessarily limited the right of pregnant women to privacy and human dignity (having regard to that, it required the employee regardless of the termination notice to inform the employer about the circumstances above); on the other hand in certain cases – when the employee is not yet aware of her pregnancy – it laid down an impossible condition for the employee.

After the decision of the Hungarian Constitutional Court, the employee could inform the employer after a possible termination notice under the Labour Code in the particular case that she has right to protection as described above. This has resulted that the employer was subsequently informed that his measure was unlawful. In this situation, the employer could lawfully withdraw his unlawful termination – till the amendment of the Labour Code entered into force in June 2016 – with the consent of the employee under the Labour Code.

The amendment of the Labour Code entered into force on 18 June 2016 (and it exclusively is applicable in case of termination notice served after this date) wishes to eliminate the legal loophole above, according to which the employer is entitled to withdraw his written termination within 15 workdays after being informed by the employee following the notification of the termination notice. The amendment entered into force on 18 June specifies for this case that the provisions relating to restoration of employment relationship, put down in Section 83 (2)-(4) of the Labour Code must be adequately applied. The period between the termination and restoration of employment relationship must be considered as period of employment from the perspective of entitlements relating to



employment relationship, derived following the restoration of the employment according to the provisions referred, the outstanding remuneration, contribution and damage possibly exceeding this of the employee must be paid. In the calculation of outstanding remuneration or other contribution, the amount, which the employee earned in the meantime or could have expectedly earned in the given circumstances, moreover the amount of severance payment possibly paid shall be deducted.

Accordingly, the amendment of the Labour Code above offers a reassuring solution to the employers and it establishes such regulation with regard to both parties' interest, which makes on the one hand possible for pregnant women or for women participating in a treatment relating to human reproduction process that they should not exclusively share sensitive information relating to their private life with their employer immediately in order to participate in protection against dismissal - they are entitled to protection in the absence of this; on the other hand, taking into account the legitimate interest of the employer, it ensures the possibility of the withdrawal of their unknowingly unlawful termination and thus the possibility of voluntary and unilateral restoration of their unlawful procedure.

It is important to note that it does not mean that the employee could abusively withhold relevant information relating to her employment relationship thus if she becomes aware that the employer wishes to terminate her employment relationship, she is required to immediately notify the employer of her protected status.

Both the employer and the employee have an obligation to act in accordance with the good faith and fair dealing in exercising their rights and in performance of their legal requirements, the parties have mutual obligation of cooperation and information. Furthermore, the Labour Code includes the principle of the prohibition of abuse of rights, thus the parties need to act in the specific situation always taking these principles into account, and they need to define the procedure to be followed in such situation always considering these principles.