

PETERKA PARTNERS

THE CEE LAW FIRM

CZECH LABOUR CODE SUBSTANTIAL CHANGES

CZECH REPUBLIC SLOVAKIA UKRAINE BULGARIA
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After several years of professional and political debates, a substantial, non-COVID-19-related, Amendment to the Labour Code¹ was adopted, which introduced significant changes to certain currently well-established provisions of the Labour Code (i.e., leave, automatic transfer of rights, delivery, etc.), and introduces new concepts (such as “shared work position”).

The Amendment also incorporates certain EU Regulations, in particular, Directive (EU) 2018/957 of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers within the framework of the provision of services.

*The changes shall become effective in two phases since **July 30, 2020** and **January 1, 2021**. Therefore, employers should become acquainted with the changes as soon as possible.*

¹ ACT NO. 262/2006 COLL., AS AMENDED.

A. AMENDMENTS EFFECTIVE SINCE 30 JULY 2020

Recall and resignation

The recall and resignation clause can be agreed only with those employees performing posts at the exact hierarchy level expressly enumerated by the Labour Code. The performance of work in such posts terminates newly already on the day of the notification of the recall or resignation to the other party, not the subsequent day, unless a later date is mentioned.

Transfer of rights and obligations from employment relationships

The Amendment modifies provisions related to the automatic transfer of rights and obligations from employment relationships in the case of the transfer of the employer's activity or its part, namely it expressly lays down detailed grounds which are considered as the transfer of rights and obligations from employment relationships in the light of the case law of the EJC.

Unless the transfer is determined by a special law (e.g., sale of enterprise, merger, etc.), **the conditions newly introduced by the Amendment must be cumulatively fulfilled in order to qualify the transfer as transfer of employer's activity reflecting the concept of economic unit.**

In addition to this, **the Amendment particularizes the termination periods and effectiveness of terminations given by employees in connection with the transfer** depending on whether the employee was duly informed about the transfer in compliance with corresponding provisions of the Labour Code or not.

Long-term care

The Amendment also slightly modifies the conditions for provision of long-term care for a family member, as a new employee sickness insurance benefit, which came into force as of 1 June 2018.

It is only a formal modification; the meaning of the provision remains unchanged. It will newly expressly set the employer's obligation to accept the absence of an employee at work during the long-term care provision, unless serious operational reasons of the employer prevent it.

Delivery of employment related documents

The Amendment also brings particular to changes to delivery between the employer and the employee. Unfortunately, it does not respond to all of the difficulties employers face in this situation, such as offering fully electronic communication.

Delivery of documents to employee by employer

The Amendment has retained the **priority of personal delivery**. The employer is obliged to deliver documents to an employee at work in person; only if this is not possible, it can do so (i) at any place where the employee can be reached, (ii) by postal services, (iii) by electronic means (the specific, demanding conditions of the current regulation of this type of delivery remain unchanged), or newly (iv) by data mailbox. **It is up to the employer to choose the optional mode, there is no longer a hierarchy of deliveries.**

Delivery through an official data mailbox of the employee can be used by the employer only upon the employee's prior consent in writing. The document is considered as delivered 10 days from the delivery, if the employee has not logged into the mailbox.

In addition to this, postal delivery by the provider of postal services shall be delivered to the address which the employee notified to the employer in writing. This enables the employee flexible changes of his/her address; however, he/she is liable for notifying the correct address.

The time limit for picking up the document at the post office provided has been extended from 10 to 15 calendar days, in cases when the employee is not reached at his/her delivery address; the document is considered as delivered after the lapse of this period.

Delivery of documents to employer by employee

The Amendment newly sets that if the employer rejects the acceptance of the document, does not cooperate, or otherwise does not enable postal delivery in its registered office or place of undertakings, the document is considered as delivered once such situation occurs.

In addition to this, upon the employer's consent, the employee can also deliver any documents to the employer's data mailbox. In such a case, the post is delivered, once it is delivered into the data mailbox.

Temporary assignment of an employee within the framework of transnational provision of services

The Amendment also proceeded with transposition of the EU Directive regarding the posting of workers within the framework of the provision of services. It newly brings additional conditions for the posted employees for the performance of work within the framework of the transnational provision of services on the territory of the Czech Republic.

Prior to the Amendment, **the Labour Code set the list of its provisions applying to employment of employees posted in the Czech Republic.** This list is extended by the Amendment and covers rules regarding remuneration, accommodation rules and travel allowances rules.

Newly, **almost all stipulations of the Labour Code except for the establishment, change and termination of the employment) shall apply to the employee when his/her posting in the Czech Republic exceeds 12 months.** If notified in accordance with the Employment Act, the 12-month period may be extended to 18 months. In addition to this, if the employer posts another employee to replace the previous one to perform the same working tasks, the periods of these employees shall be counted together.

It remains unchanged that the national regulations of the state from which the employee was posted shall prevail if they provide the employee with better rights than Czech legal regulations.

The employer who assigns its Czech employees abroad must be acquainted with the work conditions regulated by the receiving EU member state.

Information duty to employment agency (double-posting)

The Amendment newly sets the obligation of the user of a temporarily assigned employee to inform the agency, in advance, that the user will post the employee to perform the work within the framework of the transnational provision of services within the meaning of Sec. 56 of the Treaty on the functioning of the European Union in other EU member states. If this obligation is violated, the user may be sanctioned up to CZK 1 M.

Working hours

The Amendment has replaced the three-shift working schedule by the “more-shift working schedule” which is defined as the regular placing of employees in three or more shifts within 24 consecutive hours. The basic working hours to be performed during this schedule are fixed at 37.5 hours per week.

The Amendment specified that in case of reduced hours per week via a collective agreement or internal rules, such amount of work hours is considered as full time.

The Amendment also modifies and extends the exceptions of non-application of flexible working hours, for example, in cases of paid leave.

Other changes

The Amendment also slightly modifies some other rules such as certain rules regarding remuneration and travel allowances of employees in the public sector; prevention duty and the damage compensation of employees, specification of the calculation of the compensation of salary loss (annuity), employment record, running of terms or average earnings.

B. AMENDMENTS EFFECTIVE SINCE 1 JANUARY 2021

Paid leave

The Amendment substantially changes the current concept of determining the length of leave and cancels the leave for worked days which is now used in the case of an employee who is not entitled to leave for a calendar year or its part due to the reason that he/she worked for fewer than 60 days at the employer. It also amends the conditions for taking leave or the transfer of untaken leave to the following calendar year.

Calculation of annual leave and proportional leave

The basic amount of paid leave for employees in the private sector remains at least 4 weeks per year.

Each employee who has continuously worked for the same employer for 52 weeks for the determined weekly working hours scheduled for this period, is entitled to annual leave.

The annual leave will be newly calculated according to the employee's weekly working hours, which will be multiplied by the total number of weeks of annual leave. If the employee worked for shorter weekly working hours, he/she will be entitled to annual leave corresponding to shorter weekly working hours.

If the employee does not have the right to annual leave according to the conditions mentioned above, he/she is entitled to a **proportion of annual leave** provided that he/she worked for the employer for a continuous period of 4 weeks at least. The length of this proportional annual leave will be **1/52 of the annual leave** multiplied by the total number of weeks of annual leave which the employee would be entitled to.

However, if the employee worked in the calendar year according to the work schedule for more than 52 weeks, the leave shall be extended by **1/52 of the annual leave for each additional weekly working hours, or shorter weekly working hours.**

The Amendment further modifies the calculation of additional leave to which employees who perform particularly difficult work are entitled. These conditions are very similar to the calculation of annual leave.

The Amendment newly sets that the missed working hours (absence) for reasons of temporary working incapacity, quarantine, maternity leave and other personal obstacles at work shall be used up to twenty times weekly working hours for the calculation of annual leave provided that the employee worked outside these obstacles at least twelve times weekly working hours or twenty times shorter weekly working hours.

Taking the leave

The Amendment also newly provides the employer with the possibility to determine upon the employee's consent the leave to a shorter extent than his/her shift's length; however, such **leave cannot be shorter than half of such shift**, unless it is the rest of untaken leave, which is shorter than half of the employee's shift.

Transfer of unused leave to the following calendar year

The Amendment also brings the limited possibility to transfer, upon the employee's written request and with regard to the employee's justified interests, an unused part of his/her leave, which exceeds 4 weeks (6 weeks for workers in education) to the following calendar year.

Shortening of the leave

The Amendment also brings changes to an employee's non-excused absence at work. The current penalty for an employee for an unexcused absence is the reduction of his/her leave by 1 to 3 days. According to the Amendment, the employer will be entitled to deduct the leave only for an unexcused missed shift and by the number of working hours in such shift; the unexcused absence of shorter parts of shifts will be possible to count. The transferred leave from a previous year cannot be deducted.

However, even in the case of an annual leave reduction according to the Amendment, an employee who worked for a whole calendar year still must have at least 2 weeks of leave.

Shared work position

The Amendment further introduces the possibility of shared work position.

This enables employers to agree with two or more employees to work for shorter working hours, and that the employees will schedule their working hours for particular shifts themselves for a shared working position.

The condition is that these employees will have the same type of work and the employees are obliged to provide the employer with a written schedule of their working time, at least one week before the beginning of the working time period.

They also must meet the average weekly working time in a four-week balancing period and the total amount of working hours in one week of all employees in a shared position shall not exceed the set week working hours.

Finally, the Amendment also sets particular provisions for termination of the agreement for work in a shared position.

Compensation in the event of an employee's accident

The Amendment also brings also new provisions related to the one-time compensation for family members of an employee who has suffered serious bodily harm, and changes the calculation of the amount of such compensation.

In addition to this, the Amendment modifies the calculation of expenses connected with an employee's funeral.

Paid obstacle at work related to an event for children and teenagers

Employees will be newly entitled for paid leave up to one week per calendar year when he/she performs activities at events for children and teenagers (such a camp counsellor, etc.) if organized by a legal entity registered with the public registry for more than five years and the work with children and teenagers is its main activity. The compensation will be capped and the employer will be entitled to claim the paid compensation back from the Social Security Administration.

This document provides general information on current legislation in the Czech Republic.

The document is for informational purposes only and may not be considered a legal opinion or advice on how to proceed in a particular case. We remain at your disposal to analyse specific cases.

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