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THE LONG AWAITED TEMPORARY LABOUR CODE PROVISIONS IN FRONT OF PARLIAMENT

The article series based on our analysis was published in two parts in the Legal Section of [origo].
Part I. is available here, whereas Part II. will be accessible through the following link in Hungarian language.

The long awaited bill on the interim provisions of the new labour law has been tabled (Part I.)

The government introduced the highly anticipated bill on the so called transitional provisions related to the entry into force of the new Labour Code; whereby the legislator has to amend a total of 66 statutes. In Part I. of the two-part analysis, the expert of Jádi Németh Law Firm, Dr. Tamás Esze stresses that whenever there are significant legislative changes one must chose very carefully how to apply new statutory provisions on already concluded agreements.

On this Friday the Government tabled the bill on the transitional provisions and requisite amendments related to the entry into force of the new Labour Code (the "LC"), which provides for the rules of transition to the new law entering into force on 1 July. Pursuant to the general reasoning of the proposed act available on the Parliament's website, some 66 statutes needs be amended. The principal idea behind the transitional provisions related to the LC was that the new labour law provisions shall apply also to existing legal relationships as at the date of its entering into force.

During the elaboration the bill's provisions it was a crucial conceptual principle that the modification of the labour law regulations shall not infringe the fundamental rights and basic interests of employees, says the reasoning.

According to the expert of the Jádi Németh Law Firm, in case of significant changes in statutory law, the method of application of the new rules to previously concluded agreements requires special care. The bill submitted to the Parliament on the entry into force of the new labour code ("LCEF") meant to deal with this issue.

Dr. Esze emphasized that people often do not think of the necessity of special diligence to ensure smooth switch-over between a repealed legal regulation and the new one about to enter into force. Notwithstanding the prohibition of retrospective legislation as a general rule; the so called "further applicability" can be of significance which means that the effect of certain provisions of a legal instrument survive its repeal. This is one of reasons why the transitional provisions in respect of the Labour Code were preceded by high anticipations and were eventually put on Parliament's agenda as a cardinal bill.

In many cases the provisions of the old LC shall apply in the future

In principle, the provisions of the new LC must be followed with effect 1 July 2012, concurrently the previous code will have been repealed. Nevertheless the LCEF provides for several instances where the old provisions remain still applicable for a definite or even indefinite period of time.

An interesting question for many is whether the implementation of the new LC could affect already pending legal disputes? – pointed out the attorney of Jádi Németh Law Firm. What happens if the employee or the employer asserts claim against the other on the ground of infringement of old LC rules, but under the meanwhile introduced new LC infringement cannot be established anymore?

The above case is the typical example of further applicability. Albeit the notion is almost self-evident, nonetheless explicitly stated in the new LCEF insofar as upon the enforcement of a claim the provisions in effect as at the date of the occurrence of such claim must be applied. Likewise, it is also stipulated that in case of application of disadvantageous legal consequences the date of breaching of the obligation shall determine which norms are applicable as naturally the parties shall follow the norms being in effect at the time. Therefore, in case of a legal dispute, lawsuit commenced meanwhile the old Mt. being in effect the courts will proceed in line with the old rules irrespective of how many years the legal dispute shall last.

It is also separately stipulated in the Mth. that for the already concluded non-competition agreements and study agreements the old Mt. shall be applicable. Therefore, for example the three year prohibition related to the obligation of an employee to refrain from engaging in employment shall remain legally valid, if the parties agreed to enter into this option in accordance with the old provisions instead of

the maximum two year prohibition as per the rules applicable in the future.

It shall be mentioned here that the Mt. clarifies that for the unilateral statements the provisions in effect at the date of their communication must be applied. This rule is separately expressed in the subject area of termination of employment in the Mth. Pursuant to this, if the termination of employment takes place in July based on a breach of obligation (current name: ordinary termination) committed in June by the employee - under the effect of the old Mt. – the new rules are applicable to the termination which may have serious consequences concerning severance payment.

It shall be examined in each case whether certain contractual provisions can be further applied

The further application of the old Mt. also has a case which depends on the parties' intention. It can also happen that the parties – under the statutory framework – agreed on points, on which they were not obliged to and they could have relied on the minimal statutory provisions as background rules. In such a case – considering that the old Mt. permits the diversion from the text of the statute wider than the new one – there is a high chance that the provisions remain valid – outlined the expert of the Jádi Németh Law Firm.

Notwithstanding, such contractual points shall be examined in each case as if a provision of the old employment is invalid under the new Mt. then a claim can not be based on it from 1 July 2012. For instance as per the old Mt. the parties could have agreed in a termination period of one year, however the new upper maximum will be six month in line with the new Mt. which must not be exceeded by the parties even in case of mutual consent stipulated in an agreement. Simultaneously, in this case the rule of the Mth. is of importance as this limitation of the new Mt. shall not be applied to already existing agreements.

It also belongs to the subject area of the individual employment agreements that against the fact that the legislator does not amend the contractual intentions of the parties in general in a way that where there is reference a provision of the old Mt. it shall mean the relevant provision of the new Mt., although it does modify the merits of the text of the agreement entered into by the parties in certain. For example, Dr. Tamás Esze emphasised that in the future absence fee shall be understood where the parties mention average wage in their agreement,

The temporary provisions would already modify the not yet effective Labour code (Part II.)

According to the expert of the Jádi Németh Law Firm the so called draft statute proposal on the temporary provisions related to the entering into force of the labour code would already amend the new labour codex effective from 1 July 2012. In the second part of the two-part analysis, Dr. Tamás Esze also revealed that certain provisions will be applicable exclusively to agreements entered into after 1 July 2012 and there are provisions which will not be effective from 1 July 2012.

Pursuant to the new Mt. in certain cases the probation period can be extended, however the Mth. stipulates that this will be possible in case of new agreements. The same applies to the new rule which makes it possible to rescind from the employment agreement before the commencement date of the employment relationship.

The expert of the Jádi Németh Law Firm pointed out: although, the new holiday / vacation rules would not become applicable in 2012, but the proposal is lacking an express reference to this. However, the Mth. overwrites the own enacting provisions of the new Mt. and stipulates later effective dates for the relevant provisions. It can be stated especially in relation with employers having a larger number of employees that the regulations concerning the working time frame, working time schedule shall represent a beneficial change from July.

Related to this, Dr. Tamás Esze drew the attention on the new rules of the daily working and rest time – involving the holiday/vacation rules – which as a main rule become applicable to the working time frame commencing after 30 June 2012 and the working time schedule communicated after this date. The new Mt. increased the annual maximum limit of overtime – in the absence of collective agreement – from 200 hours to 250 hours. Therefore, based on the Mth. the proportionate upper limit for 2012 is 225 hours.

With respect to the already commenced studies until the finishing of the studies – which is maximum until the expiry of the relevant course duration – the rules of the old Mt. shall remain effective based on which the employers are obliged to ensure at least the time off / free time which is stipulated in the statute necessary for the studies. (It must be noted that in this case the subject matter shall be the time off / free time and not extra vacation time, therefore separate remuneration is not payable for this period as a main rule).

Questions directly affecting the purse of the parties

A relevant temporary rule concerning the salary is that in case the parties agree in a lump sum or in a basic salary including the wage supplement as well instead of accounting the wage supplements on a case by case basis, the determination of this amount for the first time until 30 June 2013 shall be calculated based on the amount of the wage supplement paid in the last twelve calendar months, or respectively it shall be incorporated into the amended basic salary.

The changes concerning the liability for damages in relation with the employees introduce significantly stricter rules effective from the entry into force of the new Mt.. In connection with this, those essential provisions of the Mth. must be considered according to which the applicability of the new, stricter provisions depend on the date of causing the damages primarily. Namely, if the date of causing the damages can not be determined – but other conditions of the causing of the damages are proved /verified – the date of occurrence of the damages will have relevance. Therefore, it may happen that someone causes damages meanwhile the old Mt. is in effect, however the new, stricter rules will be relevant to the act – pointed out by the expert of Jádi Németh Law Firm.

Rules concerning collective agreement, employees' interest representation

Temporary provisions will be introduced concerning for example the works council / firm council, employees' representatives being under individual protection, trade unions and collective agreements. It must be highlighted under all means that if such a collective agreement is in force at an employer which was entered into by such a trade union on behalf of the employees which shall not have the right under the new Mt., this collective agreement will be repealed on 31 January 2012.

The provisions of the new Mt. may also be amended

Dr. Tamás Esze emphasized: the Mth. would already amend the text of the new Mt. concerning more points, although it has not yet entered into force. For instance it is a significant change that with regards to the termination rules it will be possible in a certain case to differ from the statutory text in the interest of the employee. The conditions to determine flexible work schedule also loosen. For this, it will be enough to fulfil the criteria that the employee sets half of its working time on a weekly basis.

An amendment affecting outstandingly significant classes of undertakings is based on the Mth. under which the legislator refrains to adopt the proposed strictness in decreasing the possibility of employment on Sundays in ordinary working hours. Moreover, for example rules which allow parties to differ from certain provisions concerning the working time via collective agreement, as well as certain registration rules are also changing.

Based on the act proposal the rules of the overtime payment payable for the period between 6 p.m. and 6 a.m. may be introduced with an amendment beneficial for the employees. Simultaneously, it is in the interest of the employer that the fixed term employment relationship may be extended under certain circumstances.

Furthermore, certain rules may be enacted concerning temporary agency workers and employees' interest representation organisations in a different way from the previously proposed.

Summary

The draft proposal of the act stipulating temporary rules contains several various provisions on top of the above specified rules concerning the Mt. – as an "impractical statute" – and amends a significant number of other acts. To such an extent - Dr. Tamás Esze emphasised –that in case of the acceptance of its accurate wording it must be voted as an implementing/cardinal act with the supporting votes of the 2/3rd of parliament.

As a result, for instance the act on business associations will also be amended. If the proposal is accepted there is no need to adopt a provision on the person entitled to exercise the employer's rights in the deed of association or in a resolution and as a result it will cease to be obligatory to appoint a single person to exercise the employer's rights in case of several managing directors.

Several points of the proposal may still be modified, nevertheless the expert of Jádi Németh Law Firm noted: for the reason of the new codex the parties are not obliged to modify an already concluded employment agreement, however it is in the interest of both parties to review in detail the old agreement in order to define whether it means the same as earlier in accordance with the new statutory text. The more detailed an agreement is, the easier it happens that the content of specific parts of the text fail to reflect the previous intention of the parties. In such instances, the amendment of the employment agreement will be unavoidable.

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