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Selected Czech Labor Law: Related Matters

Abstract

An overview of selected labor law practices in the Czech Republic with guides to employment agreements, working hours, workplace safety and more.

Keywords

Czech Republic, labor law, employee agreements, working hours, workplace safety, maternity leave, renumeration

Comments

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1. Background

1.1. Principal Legislative Acts

The Czech Labor Code, Act No. 65/1965 Coll. as amended, (“Code”), is the principal legislative act governing employment relations in the Czech Republic. The Code has been updated several times to reflect the process of economic transformation in the Czech Republic and contemporary practices in the work place, particularly in the private sector, and to incorporate into Czech law the various concepts existing under the EU labor law related Directives.

Other relevant legislative acts include the Act on Employment, Act No. 435/2004 Coll. as amended, the Act on Wages, Remuneration for Stand-by Activities and Average Wages, Act No. 1/1992 Coll. as amended, (“Act on Wages”) and the Act on Collective Bargaining, Act No. 2/1991 Coll. as amended, (“ACB”). There are also a number of Decrees which implement the Code, in particular Decree No. 108/1994 Coll.

Most of the provisions in the labor legislation are of a mandatory nature and may not be varied by the provisions of the relevant employment agreement.

Expected changes – Please note that extensive changes of the Code are expected to become effective from January 2007. The amendment of the Code is recently negotiated in the Czech Parliament. The amendment of the Code shall change in particular (i) rules regarding termination of employment relationship and (ii) increase the role of the employee representatives (including Trade Unions). The proposed wording of the amendment of the Code is not reflected in this overview. However, final wording of the amendment of the Code and the date of its effectiveness is not clear yet.

1.2. Labor Relationships

Under the Code, employment relationships generally arise between employees and employers on the basis of employment agreements (pracovní smlouva). In addition, certain employment relationships can arise based upon an election or appointment (typically for top management employees). Further, under the Code, labor relationship outside employment may arise based on (i) agreements for the performance of a specific work assignment (dohoda o provedení práce) or (ii) agreements on work activity (dohoda o pracovní činnosti).

A labor relationship may only be created with the consent of an individual and an employer. Under the Code, an “employer” is a legal entity or natural person employing an individual in the context of a labor relationship or, if the law so provides, in the context of other analogous labor relations.

The Code also governs the relationship between Czech employees and

foreign employers in the Czech Republic and between foreign employees and Czech employers and foreign employers on the territory of the Czech Republic, unless the Act on International Private and Procedural Law, Act No. 97/1963 Coll. as amended, (“Act”) stipulates otherwise. Under the Act, employment agreements with expatriates may be governed by non-Czech law, if so agreed by the parties, although any provisions in the agreement (even if valid under the chosen law) would be invalid if they were to violate “Czech public order”.

1.3. Collective Agreements

The process of collective bargaining is governed by the ACB. Wages and other labor entitlements may be regulated in collective agreements within the framework established by the relevant labor regulations. Collective agreements also regulate the relationship between the employer and the trade unions established within the employer. Rights which individual employees acquire through collective bargaining agreements are treated the same as other employee rights arising out of the employee’s employment relationship.

There are two types of collective agreements:

- (a) agreements between a trade union body and the employer; and
- (b) agreements concluded between a higher trade union body and an organization of employers (so-called collective agreements of a “higher degree”).

1.4. Equal Opportunity for Men and Women and Prohibition of Discrimination

The Code reflects the principle of equal treatment for women and men with respect to accessibility of employment, professional training, promotion, and working conditions and prohibits discrimination. Any discrimination due to one’s race, color, sex, sexual orientation, language, belief, religion, political or other opinions or activity in political parties, political movement, trade unions and other associations, nationality, ethnic or social origin, property, descent, health, age, marital and family status or obligations to one’s family is prohibited. Employers must ensure that men and women be treated fairly and have equal opportunities. Sexual harassment is prohibited. In sexual harassment cases, the employer has the burden to prove that that no sexual harassment occurred at a workplace.

1.5. Information and Consultation / Representatives of Employees

The employees have the right to information and consultation. The employer is required to discuss with an employee (or the employee representatives if established) certain specified topics and to provide the employee with certain types of information. Special consultation and

information duties are stipulated by the Code.

There are three types of employee representatives: (i) trade unions, (ii) work council and (iii) representative of employees for safety and protection of health at work.

A work council or representative of employees for safety and protection of health at work may be established where there is no trade union.

Trade union can be established by three employees (at least one must be older than 18 years of age). Work councils can be established with respect to employers with 25 or more employees and so-called representatives of employees for safety and protection of health at work with respect to employers with 10 or more employees. However, no work council or employee representative can exist in those entities where a trade union exists. To the extent that there are no employee representatives established within the employer, the employer is required to provide to each individual employee the information and consultation which would otherwise have been provided to the employee representatives.

2. Employment Agreements

2.1. Employment Agreements – General

An employment relationship is based on an agreement between the employer and employee.

2.2. Content of Employment Agreement

Before the execution of the employment agreement, the employer is required to acquaint the employee with the rights and responsibilities of the employee under the employment agreement, including the conditions under which the work is to be carried out (e.g. health and safety regulations, internal regulations, collective agreement) and the terms of remuneration. In cases as determined by the state health administration, the employer is required to ensure that the employee undergoes a medical examination before commencing work.

In the employment agreement, the employer must, at a minimum, agree with the employee as to:

- (a) the type of work for which the employee is hired;
- (b) the place where the employee will be asked to carry out the employment activities; and
- (c) the day of commencement of work.

The employment agreement may also contain additional terms and conditions as agreed by the parties. The employment relationship is deemed to be agreed upon for an indefinite period unless the employment agreement expressly stipulates the period of its duration. The employment

relationship for defined period of time may be agreed for the maximum of 2 years (with certain exceptions).

2.3. Additional Information Provided to Employees

The employer is obliged to inform employees in writing about certain fundamental matters as stipulated in the Code no later than within 1 month of the creation of the employment relationship (unless such information is included in the relevant employment agreement). Such matters include, *inter alia*, vacation issues, remuneration, allocation of shift time, a more precise specification of the type of work to be carried (where applicable) and information on termination notices. Some of this information may be replaced by reference to the relevant labor law regulation, collective agreement or internal regulations of the employer; if so, it is sufficient if the employment agreement contains a reference to such regulations.

Where an employment contract does not contain information about the rights and obligations arising from the employment relationship, the employer is obligated to inform each employee of these in writing, no later than one month after the commencement (creation) of such employment relationship; this shall also apply when there are changes to the employee's rights and obligations. Such information must include at least the following:

- (a) the employee's name and the employer's business name and seat;
- (b) details of the type of work of the employee and the place where it will be carried out;
- (c) the annual leave (vacation) entitlement of the employee, or the manner in which such entitlement will be determined;
- (d) information about notice periods relating to termination of the employment;
- (e) information about the wage and remuneration system, payment dates and the place and method of payment;
- (f) weekly working time and its schedule.

The information under subsections (c), (d) and (f) can be replaced by a reference to the relevant labour legislation (regulations) or the collective bargaining agreement, or to the internal policy/ies issued by the employer.

The employer's obligation to inform its employees in writing of the fundamental rights and obligations ensuing from an employment relationship does not apply to employment relationships agreed for a fixed- term of less than one month.

2.4. Non-competition Agreement

It is possible to conclude a non-competition agreement under which the employee may not perform for another employer or on employee's account, for up to 1 year after the termination of its employment, activities identical or competitive to those performed for the existing employer, with the option to agree upon a contractual penalty. If the non-competition agreement is concluded, the employer is obliged to pay to the employee special remuneration (equal to the employee's 100% average wage) during the non-competition period.

2.5. Business Trip

An employer may send an employee on a business trip only if such condition is agreed upon in the relevant employment agreement. Thus, if an employer wishes to send its employees on business trips, a provision addressing this issue should be added to the existing employment agreement with the relevant employee.

2.6. Mandatory Written Form

Generally, an employment agreement must be in writing. However, no written agreement is necessary if the employment is for a period of less than one month (unless the employee requires that it be in writing).

2.7. Commencement of the Employment Relationship

An employment relationship on the basis of an employment agreement commences on the date as provided in the employment agreement as the date of commencement of work (even if the employee actually does not commence his or her work). The employer may, however, rescind the employment agreement if the employee (in the absence of an acceptable reason) fails to commence his work activities as agreed.

From the day that the employment relationship commences:

- (a) the employer is required to assign the employee work assignments as specified in the employment agreement, to pay the employee wages for work performed, to provide working conditions which enable the employee to carry out his employment obligations and to maintain other work conditions as required by legal regulations, the collective agreement or the employment agreement; and
- (b) the employee is required personally to perform the employment activities as specified in the employment agreement according to instructions from the employer and within the required working hours, and to comply with generally acceptable codes of conduct.

2.8. Probationary Period

The employment agreement may include a probationary period of up to three months. The probationary period as agreed upon in the employment

agreement may not be subsequently extended. The probationary period must be agreed upon in writing; otherwise it is invalid.

2.9. Amendments to the Employment Agreement

The employment agreement may only be amended if such amendments are agreed upon by the employer and the employee. If the employment agreement was made in writing, any amendments must be in writing. However, in certain limited cases employees can be temporarily transferred by the employer to another work or a workplace without their consent.

3. Remuneration

The minimum wage in the Czech Republic is fixed from time to time by the Government. In general, the amount of minimum wage can be proportionally decreased for part-time employees.

The employer is generally required to pay wages in accordance with:

- (a) collective agreements of a “higher degree” (if any);
- (b) collective agreements with the enterprise (if any);
- (c) the provisions of the Act on Wages and other relevant regulations governing wages;
- (d) employment agreements; and
- (e) internal salary regulations of the employer.

Employees are entitled to wage supplements for work performed between 10 pm and 6 am and for work performed during national holidays or under special dangerous or difficult circumstances (e.g., heights). Wages shall be payable after performance of the work and must be paid by the end of the month following the month for which the wage is being paid. Wage which would become due and payable during vacation must be paid prior to the vacation unless the employer and employee agreed otherwise. If an employment is terminated and the employee so requests, the employer is generally required to pay all due wages by the date of the termination of employment.

Employers generally must consult with trade unions on wage matters.

4. Working Hours

4.1. Working Hours – Generally

The maximum working hours are 40 hours per week (certain single shift jobs and all double and triple shift jobs are subject to a slightly lower weekly working hours). This period does not include any breaks for meals

and rest. The working time can be distributed evenly or unevenly, subject to special rules.

The Code recognizes also the concept of “flexible working time”. Such concept can be applied only to certain workers and in certain working places based on an agreement between the employer and the relevant trade union.

A lower number of weekly working hours may be stipulated in the employment agreement. The employer and employee may also agree for health reasons to a shorter work week. Employees with shorter working hours are to receive wages corresponding to these shorter working hours.

4.2. Overtime Work

There are two basic types of overtime work:

- (a) Overtime work performed by the employee based on the employer’s order - When the employer orders any overtime work to its employee, such ordered overtime work may not exceed more than 8 (eight) hours in an individual week and in total 150 hours in a calendar year.
- (b) Overtime work performed by the employee based on an agreement with the employer - Agreed overtime work in excess of the limits mentioned above in letter a) may be performed exceptionally only and on condition that the employee agrees to do it. The total number of hours of such agreed overtime work may not exceed an average of 8 (eight) hours per week.

However, the collective bargaining agreement of the employer may stipulate a lower (not higher) limit for the overtime work.

The employer is obligated to pay to the employee wages for performed overtime work and premium (or provide the employee with time in lieu instead of the premium). This means that the employer is obligated to pay such employee wages for all performed overtime work and premium on top of his/her monthly basic wage. However, if so agreed between the employer and the employee in the employment contract (subject to special requirements), the employer is not obligated to pay the employee for performed overtime work any premium or provide the employee with any time in lieu. If not so agreed in the employment contract, the employer is obligated to pay to the employee wages for performed overtime work plus premium (or to provide time in lieu instead of the premium).

General comments – The above number of the maximum permissible overtime work does not include an employee’s overtime work for which compensatory time off (in lieu of such overtime work) is provided to the employee by the employer. A period in which overtime work may not exceed an average of eight hours per week may be fixed in the employer’s collective bargaining agreement, or agreed between the employee and the employer, and the length of such period may not be more than (i) 4 (four) consecutive calendar months, in the case of regularly scheduled working

time, or (ii) 6 (six) consecutive calendar months, in the case of unevenly scheduled working time. The employer's collective bargaining agreement may fix a period in which average weekly overtime work may not exceed eight hours, and the length of such period may extend up to 12 consecutive calendar months.

Overtime work may not be carried out by employees whose working time has been shortened due to health grounds and without any reduction in wages.

4.3. Night Work

Night work is work performed during night time. Night time is the period from 10 pm to 6 am. A night worker is considered to be an employee who regularly works at least 3 continuous hours during night time within the subsequent 24 hours. Night workers are generally entitled to additional remuneration for work carried out during the above period.

4.4. Vacation

The basic vacation period is 4 (four) weeks (twenty working days) for all categories of employees employed in a private sector, however, in many cases voluntarily prolonged by the employer to 5 (five) weeks. The age limit previously applying to the basic annual leave is no longer applicable. The leave with respect to pedagogic workers and academic workers of the universities is extended to 8 weeks.

A collective agreement or internal regulations may extend the period of vacation by additional weeks and, as a matter of practice, companies in most industries increase vacation by one week. During the vacation period, the employee is entitled to receive compensation in the amount of his average earnings.

The employer is obliged to compensate (compensation equals to the amount of employee's average earnings) the employee for any unused vacation entitlements only if the employee is unable to take the vacation before the end of the following calendar year due to reasons set forth in the Code.

4.5. Impediments to Work

The compensatory wages in case of work stoppage shall be 80% of the average wage; the compensatory wages in case of work interruption due to unfavourable weather conditions shall be 60% (this assumes that the employees could not be transferred to another work). Both compensations may be increased up to 100% by a collective bargaining agreement or internal regulations.

If, in case of other impediments on the part of the employer, the employer, in a written agreement with the competent trade union body, defines what shall constitute material operational reasons for which the employer is not able to assign work to the employee, the compensatory wages may be agreed at 60% to 80% of the average wages.

5. Safety and Protection of Health at Work

An employer shall ensure the safety and protect the health of employees at work in relation to risks which may pose a danger to life and health when employees are performing their work. The employer's obligation to ensure safety and protect health at work shall also relate to all persons who are present at his workplace with his knowledge.

The Code stipulates obligations of the employer regarding safety and protection of health at work, such as the obligation to provide training, information and instructions to employees. The employer shall keep records of such training, information and instruction.

A position of a "representative of employees for the safety and protection of health at work" has been introduced. The employer shall provide the representative with the information, regulations and documents related to safety and protection of health at work issues. The appointment of such representative is not obligatory. To the extent that there is no such representative or trade union at the respective workplace, the employer has to fulfil all stipulated obligations to each employee individually.

All the employee injuries must be included in the record of injuries. The employer is obliged to report an injury at work and send a copy of the record of such injury to all the prescribed authorities and institutions.

A special legal regulation introduces the prohibition of smoking in areas where non-smokers work.

6. Termination of an Employment Relationship

6.1. Termination of an Employment Relationship – Generally

Under the Code, an employment relationship may be terminated:

- (a) by agreement;
- (b) by notice of termination;
- (c) by immediate cancellation; or
- (d) by termination during the probationary period.

An employment relationship agreed upon for a fixed period also terminates with the expiration of such period. An employment relationship also expires with the death of the employee.

An employment relationship with a foreigner also terminates:

- (a) on the day on which the foreigner's residence on the territory of the Czech Republic or the work permit is to end according to an enforceable decree depriving him of permission to reside (if such permission or work permit is required); or
- (b) on the day on which a sentence imposing the punishment of deportation from the territory of the Czech Republic takes legal effect.

6.2. Termination by Agreement

If the employer and employee agree to terminate the employment relationship, the employment relationship ends on the agreed day.

The agreement to terminate an employment relationship is made by the employer and employee in writing and the reasons for termination of the employment relationship must be provided in the termination agreement if the employee asks for this. Provided that the reason for termination is one of those stated in Section 46 (1) (a) to (c) of the Code the employee is entitled to two months severance pay. A termination by agreement is generally found to be the most effective way of carrying out any employment termination (including mass redundancies).

6.3. Termination by Notice

6.3.1. Termination by Notice – Generally

Either an employer or the employee may terminate an employment relationship by notice of termination. The notice of termination must be given in writing and delivered to the other party; otherwise it is invalid.

An employee may serve notice of termination upon an employer for any reason or without giving any reason.

An employer may give the employee notice of termination only for reasons explicitly stipulated in Section 46 (1) of the Code. The grounds for termination must be specified in the notice in such a way that they are not interchangeable with other reasons (otherwise the termination is invalid) and the reason for termination may not be subsequently changed. A notice of termination which has been delivered to the other party may be revoked only with that party's agreement. Revocation of a notice of termination and agreement with its revocation must be executed in writing.

If a notice of termination has been given, the employment relation ends with expiration of the notice period. The notice period is generally two months for both the employer and employee; however, termination under Section 46 (1) (a) to (c) of the Code by an employer requires a three month notice period.

Generally, the notice period begins with the first day of the calendar month following delivery of the notice of termination, and ends generally with the last day of the appropriate calendar month.

Section 46 (1) of the Code sets out the following reasons for termination of

an employment contract by employer notice (reference to the letters is identical to the one in the Code):

- (a) if the employer or a portion of the employer's organization is dissolved (three months notice period required);
- (b) if the employer or a portion of the employer's organization is relocated (three months notice period required);
- (c) if the employee becomes redundant because of a decision by the employer to change the employer's tasks or technical set-up, to reduce the number of employees for the purpose of raising work productivity, or to make other organizational changes (three months notice period required);
- (d) if the employee has lost, on a long-term basis, the ability to continue to perform his or her previous work because of a health condition (based on a doctor's opinion or a decision by a state health administration authority), or may no longer perform such work because of having contracted an occupational disease or being threatened by this disease, or if the employee has reached the highest allowable exposure at the work place determined by a binding expert opinion of the appropriate health service authority (two months notice period required);
- (e) if the employee does not meet the qualifications stipulated by statutory provisions for the performance of the agreed-upon work or, through no fault of the employer, does not fulfil the requirements for proper performance of this work; if the failure to fulfil these requirements takes the form of unsatisfactory work results, the employee may be given notice of termination only if he/she was called upon in writing by the employer within the previous 12 months to eliminate such deficiencies and the employee did not do so within a reasonable period (two months notice period required); and
- (f) if there are reasons for which the employer could immediately cancel the employment relationship with the employee, or if there is a serious violation of work discipline; for ongoing but less serious breaches of work discipline, the employee may be served notice if, during the previous six months in connection with this breach of work discipline he/she was notified in writing of the possibility of being given notice of termination (two months notice period required).

Termination of employment under Section 46 (1) (a), (b) and (c) of the Code would require that a formal decision regarding dissolution of the employer, relocation of the employer or re-organization be adopted by the employer which eliminates the positions currently held by the employees. A termination under Section 46 (1) (a), (b) and (c) of the Code would require a three month termination notice and would give rise to an obligation by the employer to pay a two month severance payment (unless a higher severance payment amount has been agreed upon in the collective

bargaining agreement or internal regulations of the employer; also additional conditions for payment of the increased severance payment can be agreed upon).

In addition, under Section 59 of the Code, trade unions participate in the termination of employment relationships under the following circumstances:

- (a) The employer is required to discuss a notice of termination or immediate cancellation in advance with the competent trade union body (in this regard, a failure by the employer to discuss a notice of termination or immediate termination does not make such acts legally ineffective; however, a fine can be imposed against the employer by the relevant labor authorities).
- (b) If a notice of termination or immediate cancellation concerns an individual who is a member of a competent trade union body (during such member's term of office and/or for a period of one year thereafter), the employer is required to obtain the prior consent of the competent trade union body before serving notice of termination to such employee. The trade union is deemed to have consented to such termination if it fails to respond to the employer within 15 days of receiving a request. The employer may make use of such consent within two months from the day it is granted.
- (c) If the competent trade union body refuses to grant its consent under point (b) above, the notice of termination or immediate cancellation is generally deemed to be invalid. However, if the other conditions of termination or immediate cancellation are met and if a court determines that it would be unjust to require the employer to continue to employ the employee, the termination or immediate cancellation would be valid.
- (d) The employer is also required to notify the trade union in those circumstances as agreed between the employer and trade union.

It should be noted that the employer may serve notice of termination upon the employee in cases not concerning breaches of work discipline and not involving grounds upon which the employment relationship could be cancelled immediately only if:

- (a) it is not possible for the employer to employ the employee further in the place which was agreed as the place of work, or in the employee's place of residence even after a period of retraining; or
- (b) the employee is not willing to be transferred to some other position which is suitable for him or her and which the employer has offered in the place agreed as the place of work, or in the place of the employee's place of residence, or if the employee is not willing to undertake retraining for this other appropriate work.

Generally, if the employee is served notice for any of the reasons stated in Section 46 (1) (a) to (d) of the Code, the employer would generally be

required to co-operate with the appropriate state labor office in obtaining suitable alternative employment for the employee. However, the employer has no duty actively to assist the employee in acquiring new suitable employment if the employee is unwilling to transfer to another suitable position and which the employer offered to him prior to serving notice. In the event, notice of termination under Section 46 (1) (c) of the Code is given to (i) a female worker living without a husband or a male worker living without a wife (and such male or female worker is permanently caring for a child less than 15 years of age) or (ii) a handicapped employee (whose handicap is not such so as to qualify such employee for a handicap pension) or (iii) to an employee because he is no longer permitted to continue his present work due to the danger of an occupational disease or (iv) to an employee who has been subjected at the work place to the maximum level of exposure permitted by a ruling of the competent public health protection authority, the employer is required to ensure that the employee obtains other suitable work. In such cases, the notice period does not end until the employer fulfils this duty, unless the parties agree otherwise. However, the employer has no duty actively to assist the employee in acquiring new suitable employment if the employee is unwilling to transfer to another suitable position and which the employer offered to him prior to serving notice.

6.3.2. Mass Redundancy

Mass redundancy is defined as termination of employment agreements within a given 30 day period on the basis of termination notices served by the employer under Section 46 (1) (a), (b) and (c) of the Code of at least:

- (a) 10 employees of an employer that employs between 20 and 100 employees;
- (b) 10% of the employees of an employer that employs between 101 and 300 employees; or
- (c) 30 employees of an employer that employs more than 300 employees.

In addition, if a termination notice is served by the employer to at least five employees under Section 46 (1) (a), (b) or (c) of the Code during a given 30 day period, all of the employees whose employment agreements were terminated by means of mutual agreement (instead of by means of a termination notice served by the employer) on the basis of Section 46 (1) (a), (b) or (c) of the Code grounds during such 30 day period are added to the number of employees terminated by notice and, if such resulting aggregate number reaches the thresholds in point (i) to (iii) above, a mass redundancy will be deemed to have occurred.

The following conditions must be met in the event of mass redundancy:

- (a) The Code generally requires that any employer who intends to serve termination notices to employees when carrying out a mass redundancy must notify the appropriate trade union authority or an employee council (both referred to in this point as the “trade

union”) of such intention at least 30 days prior to service of the termination notices. Such notifications to the trade union must include information on measures to be taken by the employer to prevent or limit the mass redundancy and to mitigate the unfavourable consequences of redundancy for the employees (in particular, measures to provide the employees with suitable employment in another workplace of the employer). The employer and the trade union must then negotiate in good faith the issues raised in the employer notification to the trade union; prior to such negotiations, the employer has an obligation to present to the trade union with all “necessary” information and documentation; however, there is no guidance in the legislation as to what sort of information and documentation will be deemed “necessary”.

- (b) At the same time that the employer notifies the trade union, the employer is required to notify in writing the relevant local labor office of the fact that negotiations have commenced with the trade union and of the measures being negotiated with the trade unions, including the reasons for such measures, the total number of employees affected by the mass redundancy, the number and professional structure of the affected employees, the time periods for the mass redundancy and the proposed criteria for selection of redundant employees. A copy of such written notification to the labor office must be delivered to the trade union.
- (c) Upon the conclusion of the negotiations with the trade union, the employer is required to deliver to the labor office a written report regarding the decision on the mass redundancy and the results (success or failure) of the negotiations with the trade union. The report must include information on the total number of employees affected by the mass redundancy and the number and professional structure of the affected employees. A copy of such report must be delivered to the trade union. The trade union has the right to comment on the report to the labor office. As an exception, a bankrupt employer has an obligation to deliver such report to the labor office only upon such office’s request.

The employment of redundant employees can terminate no earlier than 30 days from the date of delivery of the written report by the employer to the labor office unless the employee indicates a willingness to terminate the employment relationship earlier. This 30 day period does not apply to employers who are bankrupt or subject to insolvency proceedings. The employer has an obligation to notify the employee of the date of delivery of the employer’s report to the labor office.

If no trade union was established in the company, the employer shall be required to carry out the actions outlined in points (i), (ii) and (iii) above directly with each of the redundant employees.

6.3.3. Prohibition of Notice of Termination

An employer may not serve notice of termination during the following “protected periods”:

- (a) during a period when the employee is designated as temporarily incapable of work because of illness or injury (if the employee did not bring about this incapability intentionally and did not cause it by a state of inebriation), and during the period from when a proposal for institutional treatment is submitted or from when permission for spa treatment is received to the day when such treatments are completed (this period is extended for six months after the discharge from the institutional treatment in the event of tuberculosis);
- (b) in the case of being called to serve in the armed forces, from the day when the draft order was delivered to the employee (or when a proclamation containing a group draft order was made public) until two weeks after the employee’s release from such service; this applies by analogy to cases of civil service;
- (c) during the period when the employee has been provided a long-term leave of absence to serve in a public office;
- (d) during the period when a female employee is pregnant or is on a maternity leave, or when a female employee or a male employee permanently cares for at least one child less than three years of age; or
- (e) during the period when an employee who works at night is declared, on the basis of a medical expert’s opinion, to be temporarily unfit for night work.

There are certain exemptions from the prohibition of notice of termination available under the Code.

6.4. Immediate Cancellation

An employer may immediately cancel an employment relationship only exceptionally, and only in the following cases:

- (a) if the employee was sentenced for an intentional crime to an unconditional prison term of at least one year and such sentence is final, or if the employee was sentenced to an unconditional prison term of no less than six months for an intentional criminal act committed in the course of performing his work tasks or in direct connection therewith and the sentence is final; or
- (b) if the employee breaches work discipline in an especially gross manner.

The employer may immediately cancel the employment relationship only within a period of one month from the day when the employer learned of the reason for immediate cancellation and no later than one year from the day when this reason arose.

An employer may not immediately cancel an employment relationship, *inter alia*, with a pregnant female employee, a male or female employee who permanently cares for a child less than three years of age; however, the employer may, except for a female employee on maternity leave or a male employee on a paternity leave during the period of up to 28/37 weeks after a child was born, terminate the employment relationship with such employee by serving notice of termination.

As a practical matter, unless the employee clearly breaches work discipline (e.g., regularly appears at work intoxicated, steals or continuously fails to follow the instructions of his superiors); it is often difficult to meet the standard that an employee has breached work discipline “in an especially gross manner”. Moreover, the definitive answer to the question whether the standard of “especially gross manner” was met can give only the relevant court deciding on the particular case.

An employee may immediately cancel an employment relationship if:

- (a) according to a doctor’s opinion he cannot continue to perform work without serious threat to his health, and the employer did not transfer the employee within 15 days of submission of this opinion to other suitable work; or
- (b) the employer did not pay the employee wages or compensation for wages within 15 days after the date when payment was due.

An employee may immediately cancel an employment relationship only within a period of one month from the day when he learned of the reason for immediate cancellation, and not later than one year from the day when this reason arose. An employee who immediately cancels an employment relationship has the right to compensation for wages in the amount of his average earnings as if a two month notice period had been applicable.

Immediate cancellation of an employment relationship must be carried out by an employer or an employee in writing and must explicitly state the reasons for termination and must be delivered to the employee in the stipulated time period; otherwise it is invalid. The reason provided for cancellation may not be subsequently changed.

6.5. Termination of a Fixed-Term Employment Relationship

A fixed-term employment relationship ends with the expiration of the employment term. If the term was set as the period of completion of a certain work project, the employer should notify the employee of the termination of the project in a timely fashion (generally, at least three days in advance). If, after the expiry of the fixed term, the employee continues to carry out work and the employer is aware of this, such employment relationship shall change to an employment relationship agreed for an indefinite period, unless the employer agrees with the employee otherwise. A fixed term employment relationship may also be terminated in any of the four manners set out above in the paragraph regarding termination of

employment.

6.6. Termination of an Employment Relationship During the Probationary Period

During the probationary period, either the employer or employee may terminate the employment relationship in writing for any reason or without giving a reason. Written notice of termination of the employment relationship should be delivered to the other party (as a rule at least three days before the day when the employment relationship is to end).

6.7. Confirmation/Opinion Issued by the Employer

After the employment relationship is terminated, the employer must provide to the employee a confirmation which includes information as required by a special decree. In addition, if the employee so requests, the employer must provide him with an “opinion” on the employee’s working performance. If the employee disagrees with the content of such confirmation or opinion, he may file a challenge in court within three months of when he received such confirmation or opinion.

6.8. Compensation for Invalid Termination of an Employment Relationship

If (i) the employer has provided the employee an invalid notice of termination, or if the employer has invalidly cancelled the employment relationship either immediately or within the probationary period and (ii) the employee has notified the employer that he would like to continue the employment relationship, the employment continues and the employer is required to provide the employee with compensation for wages in the amount of the average earnings from the day when the employee notified the employer that he would like to continue the employment relationship to the date when the employer enables the employee to continue in the work or when there is a valid termination of employment.

If an employer invalidly terminates an employment relationship, but the employee does not wish that the employment relationship continue, (unless otherwise agreed in writing) the employment relationship will be considered to have ended by agreement:

- (a) upon the expiration of the notice period, if an invalid notice of termination was given; or
- (b) if employment was cancelled in an invalid manner immediately or during the probationary period, on the day when employment was to end in this manner; in such cases, the employee shall be entitled to compensation for wages in the amount of average earnings for the time of the notice period.

If the employee provides an invalid notice of termination, or invalidly terminates the employment relationship immediately or within the

probationary period, and the employer notifies the employee that the employer wishes to continue the employment relationship, the employment relationship shall continue. If the employee fails to comply, the employer may request compensation from the employee for damages which the employer has suffered thereby from the day when the employer gave notice to the employee requesting the continuation of the performance of work.

Either an employer or an employee may file a claim in court regarding the invalidity of the termination of an employment relationship (whether by notice of termination, by immediate cancellation, by cancellation during the probationary period or by agreement) no later than two months from the day when employment relationship was to have terminated.

6.9. Severance Payments

6.9.1. Amount of Severance Payments

When an employment relationship is terminated as a result of (i) a termination notice given by the employer for reasons listed in Sections 46 (1) (a) to (c) of the Code or (ii) by agreement of the employer and employee for the same reasons, the employee is entitled upon termination of the employment relationship to a severance payment in the amount of two times his or her average monthly earnings-salary (unless a higher severance payment amount has been agreed upon in the collective bargaining agreement or internal regulations of the employer; also additional conditions for payment of the increased severance payment can be agreed upon).

The Act on Wages stipulates that a “salary” is deemed to be monetary and in-kind payments provided to an employee for his/her work. A salary is not considered to be various reimbursement rendered in relation to employment (travel reimbursement, gains from shareholding, stand-by remuneration, severance payments).

An employee is not entitled to severance pay if:

- (a) the rights and responsibilities as regards such employee under an employment relationship are transferred to another employer in the course of organizational changes; or
- (b) the employee is performing work for the employer in a subsidiary employment relationship (i.e., the employee is primarily employed by another employer).

Also, if the employee returns to the work (for the same employer) before the expiration of the period for which he or she obtained the severance payment (i.e., two months or any longer period if so agreed), such employee must return to the employer a proportional part of the severance payment.

6.9.2. Waiver of Severance Payment Rights by the Employee

An employee can mutually agree to terminate an employment agreement

with the employer and the terms upon which such termination occurs may be as agreed upon by the employer and the employee. However, if termination occurs by mutual written agreement and the respective reason for such termination (regardless whether stated or not) was one of the reasons outlined in Sections 46 (1) (a) to (c) of the Code, the employee is always entitled to two months severance pay.

An employee may not, when entering into the employment agreement, waive his rights to any severance payments which may arise in the future.

As described above, the Code requires that a two (or more if so agreed) month severance payment be paid to employees made redundant for the reasons listed in Section 46 (1) (a) to (c) of the Code. In addition to any severance payment, a terminated employee would be entitled to receive payment for any vacation time which could not be taken due to the termination of the employment relationship.

Finally, the collective bargaining agreement, if any, should be reviewed to determine whether there are any additional benefits provided which exceed that which is mandated under the Code.

6.10. Health and Social Security Contribution

If an employee is employed under the Code, both the employer and the employee will be required to make health and social security contributions. Currently, the employer is required to contribute the equivalent of 9% of an employee's salary and the employee 4.5% of the employee's salary for health insurance. The employer is also required to contribute 26% of an employee's salary and the employee 8% of the employee's salary for the social security insurance. The payments required to be made by the employee must be withheld by the employer and forwarded by the employer (together with the employer's contribution) to the relevant state bodies. Employer payments are tax deductible for the employer.

7. Maternity Leave; Mother With Young Child Protection

Czech labor legislation grants special protection to women in accordance with the basic social rights as provided in the Charter of Fundamental Rights and Freedoms declared by Act No. 2/1993 Coll. The rules governing these rights are outlined in the Code and other legislation. In addition, under the new concept of "parental leave" men as well as women may take care of a newly born or adopted child up to 3 years of age.

7.1. Duration of Maternity Leave

A woman is entitled to maternity leave for a period of 28 weeks in connection with childbirth and the care for her newly-born child. If the woman has given birth to two or more children as a result of a single pregnancy, or if the woman is alone (i.e. single, widowed, divorced or not living with a friend), she is entitled to maternity leave for a period of 37

weeks.

In order to improve maternal care, the employer is required by law to provide additional paternity leave to any man or woman who requests it until the child reaches three years of age. The period of leave provided depends on the request of the parent and does not have to be drawn as whole (i.e., if a woman returns to a work after being at home with a child for one year, until the child reaches three years of age, such woman can request additional maternity leave).

7.2. Return to Work

If a female employee returns to work at the end of her maternity leave (or a male employee after the end of the paternity leave of up to 28/37 weeks after a child was born), or an employee returns to work after a period of temporary disability (or after quarantine measures), or an employee is no longer performing his “public functions” for the performance of which he was released from the work, the employer is obliged to employ the employee in his or her original position and workplace. If this is not possible because that type of work has been discontinued or the workplace has been shut down, the employer is required to employ the employee in another position which corresponds to his or her employment agreement.

7.3. Other Protection

Generally, women, and especially pregnant women, are protected by various Sections of the Code. For example, women may not be employed in jobs that are not physically appropriate for them or which are harmful to their bodies, especially jobs which threaten childbirth. The Ministry of Health periodically publishes a list of jobs which may not be performed by breastfeeding women, pregnant women and/or any mother in the first nine months after childbirth. A pregnant woman (breastfeeding woman and/or mother in the first nine months after childbirth) also may not be employed in jobs which a doctor believes may endanger her pregnancy. Similarly, where a pregnant woman (breastfeeding woman and/or mother in the first nine months after childbirth) performs work that is forbidden to pregnant women or threatens according to medical opinion her pregnancy (health), the employer is required to transfer her temporarily to work that is suitable for her and allows her to maintain the same pay as her normal position.

If a pregnant woman (breastfeeding woman and/or mother in the first nine months after childbirth) working at night requests that she be assigned to a daytime position, the employer is required to comply with her request. If a woman earns less in the position to which she has been transferred, an adjustment is made for the difference pursuant to regulations on temporary disability insurance.

An employer may not employ pregnant women or women caring for a child who is less than one year of age for overtime work.

8. Transfer of Rights and Obligations Ensuing from Labor Relations

The labor law introduces transfer of rights and obligations ensuing from labor relations. However, such transfer may generally occur only in the cases stipulated in the Code or in the other special legal regulation. If the event effecting transfer of the employee's rights and obligations ensuing from labor relations takes place then such rights and obligations shall transfer to the taking-over employer in their full extent.

The Code imposes certain obligations to the employer and taking-over employer even before the transfer of the rights and obligations ensuing from the labor relations. Such obligations are, *among others*, to inform the competent trade union organization or work council of the fact of transfer and consult it in order to agree on the specific questions of the transfer.

9. Liability for Damage – Generally

9.1. Employee's Liability

An employee is liable for damage caused by a breach of his/her duties. If the employer was also at fault, the employee's liability shall be proportionately reduced. If the employee fails to avert damage or causes a damage, he/she is liable to pay the amount of damages caused as a result of his or her negligence but not more than 4.5 times his/her monthly salary (prior to the breach). However, this limitation does not apply if the damage was caused by a drunk or intoxicated employee. For any damage caused by the employee intentionally the employer may also generally demand other damages, including any lost profit (i.e. the above limitation does not apply).

9.2. Employer's Liability

Generally, an employer shall be liable for any damage caused to its employees in the performance of their work or in direct connection therewith through violation of its legal obligations or by wilful action contrary to the rules of "decency and civic co-existence". Please note that employers are obliged to insure against their liability for damage in cases of accidents and occupational diseases.

