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Breaking New Ground in Hungary: Summary of Selected Provisions of the Hungarian Labour Legislation

Abstract
[Excerpt] Hungarian labour law has gone through significant changes in the last decade and become one of the most developing areas of Hungarian law. Since the end of the communist regime, the labour law legislation has had to cope with the challenges of the new social and economic system. As a result of Hungary's accession to the EU in 2004, Hungarian labour law has been almost fully harmonized with the applicable EU laws. Employee protection rules, the general principle of anti-discrimination work force lending, and provisions concerning working from home have also become part of the Labour Code.

Keywords
Hungary, labor law, employment, legislation, employee protection, immigration, working conditions, termination

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Europe

BAKER & MCKENZIE

Breaking New Ground in Hungary

Summary of Selected Provisions of the Hungarian Labour Legislation

2006

Breaking New Ground in Hungary

Summary of Selected Provisions of the Hungarian Labour Legislation
2006

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1 Introduction

Hungarian labour law has gone through significant changes in the last decade and become one of the most developing areas of Hungarian law. Since the end of the communist regime, the labour law legislation has had to cope with the challenges of the new social and economic system.

As a result of Hungary's accession to the EU in 2004, Hungarian labour law has been almost fully harmonized with the applicable EU laws. Employee protection rules, the general principle of anti-discrimination work force lending, and provisions concerning working from home have also become part of the Labour Code.

Sources of Hungarian Labour Law

The primary source of Hungarian labour law is Act XXII of 1992 on the Labour Code, as amended (the "Labour Code"). In addition to the Labour Code, various other Hungarian legislation concerning labour matters, health and safety, social benefits and immigration issues may also govern a particular employment relationship.

There are three levels of Hungarian labour law on which an employment relationship can be governed. These are: (i) the Labour Code and other labour legislation; (ii) the collective bargaining agreement; and (iii) the employment contract concluded between the individual employee and the employer. From the date of Hungary's accession to the EU, the laws of the EC constitute one additional layer of legal provisions to be considered with regard to the labour legislation.

Concept of Unilateral Cogency

One of the main legal concepts of the Labour Code which significantly protects the employees' rights is known as the "unilateral cogency" employment rule. This rule of law provides that the parties to an employment contract may only agree on terms different from the statutory provisions of the Labour Code only in certain matters and only if such terms are more favourable for the employee than the statutory provisions.

2 Immigration Matters

Visa

Pursuant to Act XXXIX of 2001 on the Entry, Residence of Foreigners ("Immigration Act"), as a basic rule, in order that a foreigner may enter and stay in Hungary the following conditions must be fulfilled. The foreigner shall possess: (i) a valid passport; (ii) a visa for entering the country or a "permit of entry and of residency"; (iii) a visa for transferring and leaving the country; (iv) evidence of sufficient financial cover for entering, staying in and leaving the country, and for medical services; and (v) should not stay under expulsion or prohibition of entering the country, and the entering of such person should not endanger the public security, national security and public sanitation interests of the Republic of Hungary.

A "permit of entry and of residency" could be: (i) a visa; (ii) residency permit; or (iii) permit for settling down. The certificate of temporary stay in Hungary also allows a foreigner to stay in Hungary.

A visa entitles its owner to either enter, transfer through, stay for a limited period of time or leave Hungary. A visa can be either: (i) an airport transit visa; (ii) a transferring visa; (iii) an entrance visa for a short period of time ("C" type); or (iv) a residence visa ("D" type).

A "C" type *entrance visa for a short period of time* can be obtained for the purpose of making one or more entries into Hungary within six months but only for a period of ninety days during the six months.

A "D" type *residence visa* can be obtained for the purpose of making one or more entries into Hungary during the period of more than ninety days but less than one year.

Those who need to request a work permit in Hungary need to request a visa as well, and vice versa: a foreigner must have a work permit before he/she may apply for a visa.

A "D" type *residence visa* must be requested for a foreign person who wishes to perform work in Hungary within the framework of an employment relationship (including seconded employees of foreign companies) or pursue another taxable wage-earning activity. A request for the "D" type visa must be personally submitted by the applicant to the Hungarian Embassy or Consulate which has jurisdiction in accordance with the permanent residence of the foreign applicant.

The Immigration Act provides that in special circumstances an application may also be submitted to other authorities such as the Ministry of Foreign Affairs, the County Headquarters of the Police or the State Headquarters of the Police.

Each Hungarian Embassy or Consulate has different requirements regarding the documents to be submitted to obtain a work visa. In general, a foreign person will be required to show his/her valid passport, to submit 3 (three) photographs to provide, a document confirming his financial status in Hungary to submit, his work permit, to complete a form available at the Embassy or Consulate and to pay a fee. In addition, the corporate documents confirming the operations and existence of the respective Hungarian employer may also be required. It is advisable that the relevant Embassy or Consulate be contacted in advance in order to clarify any additional specific requirements.

Assuming that the foreign person's passport is in order, the work visa will be attached to the passport. On the basis of the work permit, a work visa may generally be obtained within 1 (one) business day.

A bilateral or multilateral treaty with a particular country may grant exceptions from the above requirements.

Residency Permit

If a foreigner wishes to stay in Hungary for more than 1 year, he/she is required to hold a residency permit.

On the basis of the "D" type residence visa, the foreign person can obtain a residency permit. The dependents of the foreign person must also apply for a residency permit on the basis of their visas previously obtained. A residency permit can only be obtained for two (2) years and occasionally be extended for two (2) years. If the purpose of the stay is the performance of work, the residency permit at the first occasion is issued for a maximum period of 4 years, but later it may be prolonged for a further 2 years.

Permit for Settling Down

A foreigner intending to settle down in Hungary may obtain a permit for settling down, if he/she satisfies the following requirements:

(i) the foreigner has lived in Hungary for three (3) years without leaving the country (leaving the country for not longer than ninety (90) days and leaving with the purpose of pursuing studies does not qualify as leaving the country);

(ii) the foreigner's living in Hungary is financially ensured;

(iii) the foreigner is not affected by any prohibitions under the relevant laws; and

(iv) the Ministry of Internal Affairs granted its permission for the foreigner to settle down.

Exceptions from the requirement set out above under a) can be given to a foreigner having residency visa or residency permit, and who applies for the settling down permit in the capacity of being a spouse or other relative, or if the applicant or his ascendants were Hungarian citizens.

Work Permit

General

Pursuant to Decree No. 8/1999 (amended effective as of 1 May 2004 with respect to Hungary's accession to the European Union) on the Licensing of Employment of Foreigners in Hungary issued by the Minister of Social and Family Affairs (the "Decree"), as a general rule a work permit must be obtained if a foreigner (i.e., non-Hungarian citizen) would like to perform work in Hungary within the framework of an employment relationship. A work permit is also necessary if a foreign individual who is employed by a foreign company performs work in Hungary on secondment.

No individual work permit is required for the performance of work by a foreign citizen being an executive officer or a member of the Supervisory Board of a Hungarian company operating with foreign participation.

Application Procedure

A work permit is issued by the labour authority having competence over the area where the place of work in Hungary is located (the "Labour Center"). The Hungarian entity for which the foreign employee will work must apply to obtain a work permit.

The law technically requires that the work permit be issued or denied within 30 (thirty) or a maximum of 60 (sixty) days following the submission of an application including the above listed documents.

If issued, the work permit will be valid for 1 (one) year and may be renewed for additional 1 (one) year periods.

The competent Labour Center will issue the work permit if the documentation referred to above satisfies the legal requirements and if:

(i) the employer, prior to the submission of an application for a work permit, filed a valid manpower request in respect of the position to be taken by the potential foreign employee;

(ii) no Hungarian employee, or citizen of the EEA (European Economic Area) or any dependent thereof who is registered as employment seeker according to the specific legal regulations and who has the qualifications prescribed by law or requested by the employer for the relevant position was directed by the Labour Centers to the employer following the filing of the manpower request of the employer; and

(iii) the potential foreign employee has the qualifications prescribed by law or requested by the employer for the relevant position.

The manpower request of the employer referred to in point (i) above qualifies as a "valid manpower request" if the request was filed with the Labour Center at least 30 (thirty) days but not earlier than 60 (sixty) days prior to submitting the application for the work permit. The request is also deemed to be valid if it was submitted earlier than

sixty days prior to the date of filing the application for a work permit but it was renewed in sixty-day periods and not more than sixty days passed since the last date of filing of such renewal.

The request for work permit will be rejected if the employer does not intend to commence the foreigner's employment within 120 days following the date of submission of such request.

In certain instances stipulated by the Decree the work permit may be issued in a simplified procedure, without examining the conditions set out in points (i) - (iii) above. Among others the following circumstances may give rise to simplified procedure:

(i) if one or more foreign firms (or persons) have majority ownership interest in the company applying for work permit, provided that the total number of foreigners to be employed by the applicant in one calendar year does not exceed 2% of the total work force of the company as of the 31 December of the immediately preceding year; or

(ii) if the applicant, pursuant to an agreement concluded between the applicant and a foreign entity, intends to employ a foreigner for installation work, or to provide guarantee, maintenance or warranty related activities for more than 15 consecutive working days.

No work permit is required at all if the foreigners are to be employed by the applicant under the circumstance set out in point (ii) above for less than 15 consecutive working days occasionally.

Collective Work Permit

The related laws make possible to request a collective work permit if an employer intends to employ more foreign employees pursuant to a contract concluded between the employer and a foreign entity.

Sanctions

In the event of a violation of the above requirement to obtain a work permit and performing work by the employee without a valid work permit, the authorities may impose the following sanctions:

(i) warn the employer to comply with the relevant labour regulations;

(ii) require the employer to cease the illegal practice within a prescribed period;

(iii) prohibit the continuation of the employment if the employment contravenes a rule of law and such contravention may not be remedied within a short period of time;

(iv) impose a fine on an employer who employs a foreigner without a work permit in accordance with Act IV of 1991 on Fostering of Employment and on Unemployment Benefit ("Unemployment Act"), which fine may be a maximum of double the amount of the foreigner's compensation for the period during which the foreigner worked in Hungary without a work permit, but the fine may be increased depending on the nature of the offence;

(v) impose a fine on the employer pursuant to Decree No. 3/1996 on Fines issued by the Minister of Employment Matters;

(vi) initiate proceedings for minor offences; and

(vii) impose a fine on the employer under Act LXXV of 1996 on Labour Supervision ("Labour Supervision Act") in the amount of: (a) between HUF 50,000 (approximately USD 215) and HUF 2,000,000 (approximately USD 9,500) for the first offence (depending on the seriousness of the offence); or (b) up to HUF 6,000,000 (approximately USD 28,500) if there is more than one violation or a second offence is committed within three years of a previous fine becoming final and binding.

Employers fined under the existing laws may also find it difficult to obtain further work permits in subsequent dealings with the labour authorities.

As a related matter, the employer of a foreign citizen is obliged to report to the competent labour authority the termination of the employment of the foreign citizen within five days from the effective date of the termination.

Provisions applicable with view to Hungary's accession to the European Union

The Immigration Act introduced new provisions with respect to Hungary's accession to the EU as of 1 May 2004, regarding the entering and staying in Hungary of the citizens of the European Economic Area ("EEA") and the relatives thereof. Thus, for the immigration matters of the citizens of the EEA the following specific regulations are applicable since 1 May 2004.

Visa

An EEA citizen may enter into Hungary without a visa, possessing either a valid passport or a valid identity card and may stay for a period not exceeding 90 days without any special permission. No visa is required for the staying of an EEA citizen for a period exceeding 90 days, and such persons have the right for settling down which right is certified by their residency permit. An EEA citizen is obliged to notify his/her address to the authorities.

The relatives, who is the citizen of a third country, of an EEA citizen having the status of an employee, self (independent) entrepreneur or self-employer is also entitled to stay in Hungary.

Residency permit

The residency permit for the above scope of persons is valid for 5 years and can be extended. In case of staying in the country with the purpose of performing work for a definite period or other income accumulating activity the validity of the residency permit can be restricted for the time of performing the work or activity. This regulation is applicable in case of performing work for a definite period only if the time of work does not exceed 12 months.

The validity of the residency permit of a relativesqualifying as citizen of a third country is the same as that of the residency permit of the EEA citizen after whom the relativesis entitled to stay in the country. In case of the death of the EEA citizen, the relatives is entitled to stay for 2 more years.

If Hungary applies reciprocity towards an EEA member state according to the provisions of the Accession Agreement, the validity of the residency permit issued for an employee in case of performing work in Hungary by a citizen of the EEA member state in question can be restricted to the validity period of the work permit or the period of employment.

Work permit

The Government Decree No. 93/2004 (IV. 27.) (the "Decree") contains the provisions on reciprocity and protective measures concerning the labour market applicable after Hungary's accession to the EU. According to the Decree, the citizen of a.) an EU member state being already an EU member state at the time of Hungary's accession and b.) a state which is treated as an EU member state on the basis of an international agreement can be employed under a permit if he/she is the citizen of an EU member state or a state referred to under point b.) which applies different treatment for Hungarian citizens in respect of employment within their own territory than is prescribed by the provisions on the free movement of employees of the EEA Decree No. 1612/68. The permit has to be issued either a.) according to the general rules on the employment of foreigners in Hungary, or b.) without the examination of the conditions on the labour market[1].

Contrary to the above, no permit is required for the further employment of the citizen of the states defined above if such citizen is employed under a permit or without permit requirements within the frame of an employment relationship for a period at least of 12 months, lawfully and continuously at the time of or following the accession.

An employer is obliged to notify to the competent labour authority the employment of a citizen or a relative thereof of a country joining to the EU simultaneously with Hungary - with the exception of Malta and Cyprus - on the commencement date of the employment at the latest and the termination of the employment on the day following the day of termination at the latest.

According to the new EU-compatible registration system (the "Unified Hungarian Labour Database") introduced on the 1 May 2004, the employer of a foreign citizen is obliged to report to the competent labour authority the commencement of the employment relationship on the day of commencing work at the latest, and the termination of the employment relationship on the first working day following the effective day of termination.

3 Terms of Employment

The Labour Code requires that employment contracts be concluded in writing, which is to be arranged for by the employer. An employment contract not concluded in writing can be cited as invalid by the employee within a period of thirty days from the commencement of work. The employment contract may not be contrary to the collective (bargaining) agreement unless it stipulates more favourable terms for the employee.

The basic salary of the employee, the job profile of the employee and the place of work must always be defined in the employment contract. The place of work can be a permanent location or a variable location. Upon concluding the employment contract the employer must inform the employee of certain important information related to the working conditions, and must confirm those in writing within 30 days.

Unless otherwise agreed by the parties, the employment is established for an indefinite period of time. The employer and the employee may agree on a fixed term employment also. The duration of employment contracts concluded for a fixed term may not exceed five years.

[1] The countries currently qualifying under point a.) are Austria, Belgium, Finland, France, Greece, The Netherlands, Iceland, Lichtenstein, Luxemburg, Germany, Italy, Portugal, Spain; and those qualifying under point b.) are Denmark and Norway.

If the commencing date of employment is not stipulated in the employment contract, the day following the execution of the employment contract is to be considered to be the commencing date of employment.

The minimum age of employment is sixteen years in Hungary.

A pre-employment medical check up is required to be conducted, before commencing the performance of work, for each new person whom the employer wishes to hire. It is prohibited to oblige the employee to undergo pregnancy testing or to provide certificate on pregnancy except if it is prescribed by law.

Unless otherwise provided in the employment contract, the employment is established for a full-time basis.

Probationary Period

The probationary period may not exceed three months. Extension of this period is prohibited and will be deemed null and void.

During the probationary period, the employment may be terminated by either party with immediate effect and without justification.

4 Working Conditions

Salary

Gross Basic Salary

Unless otherwise provided by law, the gross basic salary must be established and paid in Hungarian Forints.

Unless otherwise agreed by the parties or stipulated in labour regulations, the salary must be paid, at the latest, by the tenth day of the month following the relevant month.

The three different arrangements for structuring an employee's salary under the Labour Code are described below.

Fixed (Time-related) Salary

The employee may receive a fixed salary (e.g. monthly or weekly), which is not related either to his/her or the company's performance.

Performance-Related Salary

The salary of an employee may also be linked to his/her or the company's performance. In this case the performance requirements and the factors for the calculation of the performance-related salary (the "Requirements and the Factors") must be established by the employer and communicated to the employee in advance.

The Requirements and Factors must be established in advance within the frame of a procedure taking into account objective criteria and assessing whether the Requirements and Factors are realizable.

When establishing the Requirements and Factors, conditions such as work-organization and applied technology at the employer have to be considered.

In a legal dispute regarding the establishment of the Requirements and Factors, the employer has to prove that it complied with the above described rules.

Before establishing or amending the Requirements and the Factors applying generally to the employees, the employer must request the opinion of the workers' council, if any.

If the achievement of the performance requirement does not depend solely on the employee, a minimum salary must be guaranteed.

Combination of Fixed and Performance-related Salary

An employee's salary may also be defined as a combination of fixed and performance-related salaries as described above.

Bonus

Apart from the above described salary structure, the employer may grant to an employee a bonus, in addition to his/her salary. Usually, a bonus is granted in addition to a fixed salary. The granting of a bonus is normally in the employer's sole discretion and may not be claimed by the employee; provided that the parties so agreed and the employer reserved the right to do so. However, in the case that the bonus (premium) is promised in advance to an employee upon completing a specific task, such premium can be claimed by the employee.

Time and/or Performance Related Salary versus Bonus

The determination of whether a performance requirement is achieved must be objective and may not merely depend on the employer's determination, in its discretion, as to such achievement.

If the employer prefers to have a bonus system based solely on its discretion, the employment contracts should provide only for a fixed monthly salary and contain a clause stating that the employer may, from time to time and at within its sole discretion, pay bonuses to the employees in addition to their salaries.

Statutory Minimum Wage

Since 1 January 2006, the minimum statutory gross salary for a full-time employee is HUF 62,500 per month (approximately USD 300) or HUF 360 (approximately USD 1,7) per hour.

Employees employed in a position requiring medium level education or technical qualification (i) with less than 2 years professional experience, are entitled to 105% of the minimum statutory gross salary (i.e., HUF 65,700, approximately USD 310), and (ii) with more than 2 years professional experience, are entitled to 110% of the minimum statutory gross salary (i.e., HUF 68,800, approximately USD 325).

Working Hours and Overtime

The general statutory limitation on the length of a work day is 8 hours per day and on the length of a work week is 40 hours per week.

The working time with extraordinary work ordered for the employee may be increased to the maximum of 12 hours per day and 48 hours a week; however, the law strictly defines when extraordinary work may be ordered, and the maximum amount thereof.

If an employer adopts the so called reference period scheduling system, the working time of the employee may exceed the general 8/40 hours limit, but still must be within the 12/48 hours limitation and in the average of the reference period must correspond to the general 8/40 hours limit.

In the case of stand-by duties or if the employee is a close relative of the employer, the employer and the employee may agree on longer working hours not exceeding 12 hours per day or 60 hours per week.

In exceptional cases the employee may be obliged to perform extraordinary work. Overtime work, work performed on weekly days off and on public holidays, as well as stand-by and inspection duties at defined places for a specific period of time, qualify as extraordinary work performed.

In addition to regular wages, employees are entitled to a fifty percent wage supplement for extraordinary work.

In consideration for working on weekly days off, an employee should preferably be granted additional days off from work. If the employee receives such additional days off from work, he/she is also entitled to a minimum supplemental of 50% on his/her salary for each additional day worked. If the employee is not granted additional days off, he/she becomes entitled to a minimum supplemental of 100% on his/her salary for each additional day worked.

Extraordinary work may not exceed 200 hours in a year; but the collective agreement, if any, may increase this annual maximum by up to 300 hours per year.

Rest Period

Daily Break and Rest

Should the daily working time exceed six hours, the employee is entitled to at least a twenty-minute break. The employees must be allowed at least eleven hours of rest between the end and commencement of daily work. Although a collective bargaining agreement or the agreement of the parties may depart from the above rule, a minimum of eight hours of rest must be provided to the employee.

Weekly Days off

The employee is entitled to two days off weekly, one of which must be on Sunday.

However, there are statutory exceptions to the Sunday work prohibition. Generally, only employees employed under irregular work schedules (e.g., continuous operation, three or more shifts and seasonal work) may be ordered to work on a Sunday as an ordinary work day. Where the work schedule is determined on the basis of reference periods, instead of permitting two weekly rest days, the employer may permit:

- 48 hours of uninterrupted weekly rest, which should include Sunday each week; or
- 40 hours of uninterrupted weekly rest, which should include one full calendar day each week and at least one Sunday each month, in which case the employer must also ensure that the employee receives at least 48 hours of weekly rest calculated over the reference period; or
- 48 hours of uninterrupted weekly rest, which should include at least one Sunday each month. This latter rule is applicable only to employees who are: (i) required to work on Sundays due to the nature of the employer's operations; (ii) employed on a stand-by basis; (iii) employed in three or more shifts; and (iv) employed in seasonal work.

  The Labour Code allows the rest days to be given to employees in concentration within the period, subject to the conditions defined in the Labour Code.

Annual Leave/Vacation

An employee is entitled to at least 20 days ordinary annual vacation. As shown in the chart below, after reaching a given age, the employee is entitled to the following total days of paid annual vacation:

Age	Number of Annual Vacation Days
25	21
28	22
31	23
33	24
35	25
37	26
39	27
41	28
43	29
45	30

An employee is entitled to an increased number of days in the years he/she reaches a relevant age (i.e., when he/she has his/her relevant birthday).

If the employment commences during the year, an employee is entitled to vacation days proportional to the period of his or her employment during the relevant year.

Parents may choose that the parent playing the more important role in raising their child(ren) shall receive supplementary leave depending upon the number of children below the age of sixteen.

Use of Vacation Days

The general rule is that employees are entitled to take and the employer must grant the vacation days to which they are entitled in the year in which they accrue. However there are two exceptions to the above rule:

(i) if the employee is ill or if there is another personal and unavoidable reason of the employee, the vacation may be taken later; in which case the vacation must be taken within 30 days of the termination of the cause for the delayed vacation; and

(ii) if, due to exceptionally important business reasons, the employer decides to grant the vacation later; in which case the vacation must be taken prior to 30 June of the subsequent year, or prior to 31 December of the subsequent year if it is permitted under the collective bargaining agreement (if such a collective bargaining agreement exists).

An employer decides on the exact dates when an employee is permitted to take his/her vacation. However, with the exception of the first three months after the commencement of the employment relationship, the employee must be permitted to take one quarter of his/her vacation time on those dates which are requested by the employee. The employee must submit such request for vacation at least 15 days prior to the commencement of his/her vacation. The vacation may be given to the employee in more than two "instalments" only if so requested by the employee.

Sick Leave

Employees are entitled to 15 workdays of sick leave per year paid by the employer. For the period of sick leave exceeding the 15 days employees are entitled to receive support from the social security authorities.

Public Holidays

Public holidays are: 1 January, 15 March, Easter Monday, 1 May, Whit Monday, 20 August, 23 October, 1 November, 25-26 December.

5 Termination of Employment

Pursuant to the Labour Code, an employment may be terminated by: (i) "ordinary notice"; (ii) "extraordinary notice"; (iii) during the probationary period with immediate effect; or (iv) by mutual consent of the employer and employee.

Termination of Employment by "Ordinary Notice"

An employment for a definite period of time may only be terminated by ordinary notice by the employer and only if the employer pays to its employee an amount equal to one year's average salary. If, however, the remaining period of employment is less than one year, an amount equal to the average salary for such remaining period must be paid.

Both an employer and an employee may terminate an employment for an indefinite period by ordinary notice.

The notice of termination by an employer must contain the employer's clear and justified reasons for termination, unless the employee is an executive of the employer as defined by the Labour Code (e.g., a managing director or a member of the Board of Directors). Termination notices which fail to include justified reasons are unlawful.

The reasons for the termination may only be in connection with: (i) the abilities of the employee; (ii) his/her behaviour in relation to the employment; or (iii) the operations of the employer. The notice of termination must state that the employee is entitled to initiate legal proceedings within a specified period to challenge the termination and must state how to initiate such proceedings.

Before giving an employee notice of termination due to his/her work performance or behaviour, an employer must give the employee an opportunity to defend himself or herself against the objections raised by the employer, unless the employer cannot be expected to do so in the given circumstances.

An employer may terminate the employment by ordinary notice only in extraordinary circumstances in the five year period of five years before an employee reaches his/her retirement age.

An employer is not required to give reasons for the termination after an employee qualifies as a pensioner.

In the case of ordinary notice of termination by an employee, no reasons for the termination need to be included in the notice.

Restrictions on Termination upon Ordinary Notice by the Employer

The Labour Code prohibits an employer from terminating employment by ordinary notice during a period while an employee:

(i) is unable to work due to illness until the expiry of one year from the last date of the sick leave;

(ii) is on sick leave or unpaid leave for the purpose of nursing or taking care of children or unpaid leave for nursing or taking care of a close relative;

(iii) is pregnant and for three months after giving birth or during maternity leave (for a maximum of 24 weeks);

(iv) is on unpaid leave for nursing and taking care of children, or until age 3 of the child(ren);

(v) pursues military service (regular or reserve) or civil service.

The notice period will commence only after: (i) fifteen days if the above periods exceed fifteen days; or (ii) thirty days if the above periods exceed thirty days.

The above described prohibition is not applicable after the employee becomes entitled to receive a pension.

Termination of Employment by "Extraordinary Notice"

Both an employer and an employee may terminate an employment relationship by extraordinary notice if:

(i) any important obligation stemming from the employment is materially breached by the other party intentionally or by gross negligence; or

(ii) the other party acts in a way which makes maintaining the employment impossible.

The parties may neither extend nor limit the scope of the reasons which may serve as a basis for the extraordinary notice of termination. However, the parties may give concrete examples in the employment contract which may lead to an extraordinary notice of termination within the scope defined above.

A notice of termination must contain the terminating party's clear and justified reasons for termination.

A extraordinary notice of termination has immediate effect.

The party terminating the employment by extraordinary notice must exercise this right within fifteen days of learning of the cause for such extraordinary termination. However, the terminating party may exercise the right of termination within a maximum period of one year from the date on which the facts giving rise to the right to conduct the termination actually arose. Further, if the reason for the termination by extraordinary notice is a crime committed by the other party, then the party terminating the employment may do so within the statutory limitation applicable for said time.

In the case of a termination by extraordinary notice, the rules of termination by ordinary notice may not be applied, except if the employee terminates the employment by extraordinary notice. If the employee terminates the employment by extraordinary notice, then: (i) the employer must pay to the employee his/her average salary which would be due to the employee if the employer terminated the employment by ordinary notice; (ii) the rules on severance payment are applicable; and (iii) the employee may claim damages occurred as a result of such termination.

The Notice Period

No notice period applies in the case of a termination by extraordinary notice. Such a termination has immediate effect.

The notice period for an ordinary notice of termination of employment must be at least thirty days but may not exceed one year. This means that whether an employer terminates, or an employee wishes to leave, each is compelled to inform the other party of the termination of employment at least thirty days in advance. In the absence of any agreement to the contrary, the statutory minimum notice period will apply in the case of an ordinary notice of termination.

Under the Labour Code, this minimum thirty day notice period is extended depending upon the length of the employee's employment, as follows:

Statutory Period		
Tenure (# of years)	**Extended by X days**	**Total Notice days**
3-5	5	35
5-8	15	45
8-10	20	50
10-15	25	55
15-18	30	60
18-20	40	70
20-	60	90

The above provisions, however, do not apply to executive employees.

Exemption from Work

After giving an employee ordinary notice of termination, an employer must release the employee from the obligation to work for up to one half of the total notice period ("exemption period").

The purpose of the exemption from work is to enable an employee to look for another job. Thus, the employee may use up to half of the exemption period to select which days and or hours he/she will be released from the obligation to work.

During the notice period, an employee must continue to receive his/her average salary.

Severance Payment

If the employment was terminated by either: (i) ordinary notice of the employer; (ii) extraordinary notice of the employee; or (iii) the discontinuation of the employer's activity without a legal successor, the employee is entitled to a severance payment. The amount of the severance payment is calculated according to the time the employee has worked for the employer as follows:

Continuous Employment with Employer (years)	Multiple of Average Monthly Salary
3-5	1
5-10	2
10-15	3
15-20	4
20-25	5
25-	6

If the termination of employment takes place within five years prior to the date when the employee becomes entitled to a pension, the severance payment must be increased by a further three months' salary in addition to the above.

No severance payment is due if the employee has already become entitled to a pension.

Pursuant to the Labour Code, any time spent in imprisonment, doing community work, or unpaid leave exceeding thirty days, except leave for caring for a child (under the age of ten) or a close relative, may not be taken into account when calculating the above periods of employment.

Group Termination

The Labour Code regulations are in line with the provisions of the respective EU Directives concerning both the protection of employee's rights upon a change of ownership and the rules addressing group terminations.

The specific rules on group termination apply and the employer must follow the special procedure related to group terminations if the employer terminates the number of employees set out below, within a 30 days period.

Number of employees in employment	Number of employees to be terminated
21-99	10
100-299	10%
300 or above	30

In the case of a group termination the workers' council or the employee representative committee (e.g., a committee established by the representatives of the trade union and that of the employees who are not trade union members) must be consulted at least fifteen days prior to the employer's decision on implementing a group termination. The relevant Labour Center and the employees to be dismissed must be given at least thirty days notice in writing of such termination.

Consequences of Unlawful Termination

If the employee initiates court proceedings asserting that his/her employment was terminated unlawfully and the court rules in favour of the employee, then: (i) the termination has no effect; (ii) at the request of the employee, he/she must be reinstated in his/her original position by the court; and (iii) the employer must pay for all damages and lost salary incurred by the employee, except for those amounts which the employee was able to recover from other sources (e.g., unemployment benefits).

Upon the request of an employer, a court may refuse to order the reinstatement of an employee to his or her original position if the maintenance of the employment may not be reasonably expected from the employer. This rule is not applicable if: (i) the termination by the employer constituted a violation of the requirement of proper exercise of rights, the requirement of equal treatment or the restrictions on termination by the employer; or (ii) the employer terminated the employment with ordinary notice of an employee who also served as a trade union officer without the prior approval of the trade union or the employer terminated the employment with extraordinary notice of such trade union officer unlawfully or without seeking the prior opinion of the trade union.

If the terminated employee does not request that his/her employment be reinstated or the court releases the employer from further employing the employee, the court will require the employer to pay an amount to the employee equal to a minimum of two up to a maximum of twelve months salary of the employee, as a penalty, further to the above referred payables.

If an employee terminates the employment unlawfully, the employee must pay a compensation equal to the amount that would be due to the employee in the notice period in the case of a termination with ordinary notice. Further, the employer may claim damages from the employee in respect of its loss not covered by the compensation referred to above. The liability of the employee for such damages is generally limited to half of the employee's average monthly salary (or a greater amount to be determined by the employment contract or the collective bargaining agreement in the amount of a maximum one and a half of the employee's average monthly salary or six times the average monthly salary, respectively) or in the case of executive employees twelve times the employee's average monthly salary.

6 Litigation Considerations

Recently, approximately 30-35% of the number of labour lawsuits involves termination in Hungary. The purpose of the majority of the claims is the determination of "unlawful termination". In practice, the courts issue their judgements in favour of the employees if there is any provision of the Labour Code which the employer has not complied with (e.g., reasoning and formality requirements) and, therefore, the termination is invalid.

Employers must be careful in complying with the provisions of the Labour Code on termination. If an employee challenges a termination by its employer before the competent court, the court will firstly determine whether the employer adhered to the formality requirements applicable to termination set out in the Labour Code. This means that prior to deciding on the merits of the termination, the court has to investigate, among other facts, whether the employer provided appropriate reasons for termination, the employer kept the statutory deadlines and restrictions applicable to the termination, and the person authorized to exercise the employer's rights signed the termination letter. Thus, in practice, for example it may happen that even if it is proved that the employee affected by a termination by extraordinary notice committed a crime against the employer and the employer was one day late in delivering the termination letter to the employee, the termination will be unlawful and the employee, upon his/her request, must be reinstated in his/her original position and would be entitled to compensation for damages. Of course the determination by the court of the unlawful termination does not affect the employer's right to initiate a criminal case against such an employee or to submit a counterclaim in the labour dispute to the court requesting the payment of damages caused by the employee.

If a court establishes that the ordinary or extraordinary notice of termination of an employer is unlawful and its employee does not request the reinstatement in his/her original position, the employee's employment will only be terminated at the time when the court's judgement on the establishment of unlawful termination becomes final and binding. This means that if the employer loses the case, the employee's employment continues to exist and the employer must pay to the employee his/her salary and other payments due to the employee until the court passes its final and binding judgement. Consequently, the amount payable by the employer in such a case will also depend on the length of the court procedure which might take as long as three to four years in Hungary.

7 Special Rules Governing the Employment of Executives

With regard to the top management of an employer, provisions different from the general rules of the Labour Code may apply.

Definition of Executives under the Labour Code

For the purposes of the Labour Code, an executive is the head of an employer (i.e. the manager(s), in the case of a limited liability company, and the members of the board of directors, in the case of a company limited by shares) and his/her deputies.

In addition, the articles/deed of foundation of the employer or the resolution of the major corporate organ of the employer (e.g. the founder, the quotaholders' meeting or the shareholders' meeting; depending on whether the Hungarian employer is a one-man entity or has more shareholders, as well as on the form of operation of said employer) may define, in respect of the applicability of certain provisions of the Labour Code as an executive under the Labour Code other employees performing important scope of duties and acting as key employees.

Specific Provisions Relating to Executives

The specific provisions of the Labour Code relating to executives are as follows:

(i) the collective bargaining agreements do not apply in respect of executives;

(ii) the restriction of the Labour Code providing that the term of an employment contract for a definite period may not exceed five years, taking also into account the extension of the employment, does not apply to executives;

(iii) the employment of an executive may be terminated by ordinary notice without providing the reasons for the termination and regardless of the restrictions of the Labour Code on termination in general. Also, the general provisions of the Labour Code on notice periods do not apply;

(iv) the employment of an executive may be terminated by extraordinary notice within three years following the occurrence of the cause of action, instead of the one year limitation applicable under the general rules;

(v) an executive may not validly establish further employment, except for the purposes of scientific, academic work or for activities protected by intellectual property rights;

(vi) an executive may not acquire an ownership interest in any business organization - except for public companies - which pursues business activities similar to those of the employer or which maintains regular business relationship with the employer;

(vii) an executive may not enter into any contract in favour of herself/himself within the employer's scope of business;

(viii) an executive is required to notify the employer if any of his/her next of kin (as defined in the Labour Code) acquire equity in a company which pursues business activities similar to those of the employer, maintains a regular business relationship with the employer or establishes an employment relationship with such company as an executive. In such a case the employer is entitled to terminate the executive's employment;

(ix) if an executive fails to comply with the rules set out in points (v)-(viii) above, the employer may initiate an action for damages or require the assignment of the profits generated by the executive from the particular business contract, as well as the claims acquired by the executive through the prohibited transaction.

Otherwise, the executive and the employer may deviate from the provisions contained in points (v)-(viii) above in favour of the executive or may disregard such restrictions in the employment contract;

(x) an executive may determine in his/her sole discretion his/her working schedule and the schedule of his/her annual leave within the scope of the employment contract;

(xi) an executive is not entitled to any compensation for extraordinary work, unless otherwise agreed in the employment contract; and

(xii) an executive is liable for damages caused within the scope of his/her executive activities or by the breach of the rules set out in points (v)-(viii) above in accordance with the civil law.

In respect of other damages caused by an executive, the general rules of the Labour Code are applicable, save for the negligence of the executive in which case an executive is liable up to the amount of his/her 12 months' average salary. In addition, an executive may be required to pay the same amount of damages caused by his/her unlawful termination of employment.

Executives Serving under a Civil Law Mandate

Executives do not necessarily have to be employed but can also be hired under a contract for services governed by the Act IV of 1959 on the Civil Code ("Civil Code"). It is a much more flexible legal arrangement than an employment relationship for various reasons and has numerous advantages and disadvantages for both sides. For example, an executive contractor would not enjoy the general labour law protection applicable to an employment relationship, and the employer could not enforce against the contractor the employment rights which would otherwise be available under the Labour Code.

8 Non-competition Obligation Imposed on Employees

The Labour Code contains non-competition provisions, which apply during the term of the employment of an employee and may also apply subsequent to terminating the employment thereof.

Non-competition Obligation During the Employment

The Labour Code provides that an employee must notify its employer if he/she entered into another employment relationship parallel to his/her current employment. The employer may refuse to give its consent to such additional employment only if such employment would endanger its lawful business interests.

Executives are explicitly prohibited by the Labour Code from entering into another employment relationship parallel to their current employment.

Non-competition Obligation After Terminating the Employment

Further to the above, it is possible to extend the applicability of the non-competition clause for a maximum period of 3 years following the termination of the employment, and the employee may be prohibited from performing activities which could be against or could endanger the lawful economic interests of the employer.

Such prohibition may apply, among others, to establishing employment with an other company which could be deemed as a competitor or potential competitor of the employer, becoming an executive officer of such company or acquiring any ownership interest in such company.

In order to validly establish a non-competition obligation, an employer and employee must enter into an agreement on the subject matter in advance, in which agreement appropriate consideration must be granted by the employer to the employee undertaking such obligation. Said agreement may either be part of the employment contract of the employee or may be in a separate agreement. In both cases the agreement on a non-competition obligation will be governed by Hungarian civil law; however, as a specific rule, the labour courts will have jurisdiction over any dispute arising between the employer and the employee regarding this agreement.

The amount of the consideration to be paid by an employer for an employee's undertaking is not exactly defined by the Labour Code. Based on published Supreme Court decisions in the subject matter, a minimum amount of 50% of the salary of the employee that he would have earned during the non-compete period is required to be given to the employee.

9 Confidentiality Obligations

According to Section 103 (3) of the Labour Code, an employee is prohibited from disclosing any trade secret and confidential information related to the employer that the employee learned during the term of employment. Further, the employee is prohibited from disclosing any information or data that the employee obtained in connection with his/her employment, the disclosure of which could have negative consequences on the employer or any third party.

The above obligation to keep trade secrets and other confidential information is binding on the employee after the termination of the employment also without any specific agreement concluded between the employer and the employee and is applicable without any limitation on time.

Further to the Labour Code, Act IV of 1978 on the Criminal Code ("Criminal Code"), the Civil Code and Act LVII of 1996 on the Prohibition on Unfair and Restrictive Market Practices (the "Competition Act") also have provisions related to infringing trade secrets, all of which laws apply also to the employee.

10 Transfer of Business

In the case of a transfer of business, from a labour law point of view a legal succession occurs between the transferor and the transferee employer; which means that all rights and obligations of the former employer arising from the employment relationship existing at the time of the effective date of the transfer are transferred to the new employer. The former employer is obliged to inform the new employer of such rights

and obligations prior to the succession. The former employer's failure to inform the new employer does not effect the application of the legal consequences of the succession and the enforcement of employees' right. The Labour Code provides that the "employment conditions" in the collective bargaining agreement entered into between the representative body of the employees or the union and the former employer must be maintained by the new employer until the earlier of: (i) one year after the effective date of the legal succession; or (ii) the collective bargaining agreement: (a) is terminated; (b) expires by its terms; or (c) is replaced by a newly negotiated collective agreement.

The term "legal succession" is defined as follows:

(i) any statutory succession;

(ii) if an employer transfers to another employer a separate, organized group of its material and/or immaterial resources (e.g., a factory, a division, a store, a branch, workplace or any part thereof), on the basis of a civil law agreement (e.g., a sale, exchange, lease, usufruct lease agreement or an agreement on capital contribution to another company) for the purposes of the transferee's operation or reactivation of said resources. Although the new Labour Code rules do not so state, the ministerial commentary to the Modifying Act emphasises that the above transfer results in a labour law succession only if the business unit comprised by the transferred group of assets retains its identity after the transfer; thus, a labour law succession is not triggered where certain assets are transferred by a company to an acquirer, which will perform completely different activities and use the assets for an entirely different purpose.

For the period of one year following a legal succession, the former and new employer are jointly and severally liable to employees regarding the latter's employment related claims made within said period. Furthermore, if a.) the former employer, b.) another business association in the former employer's majority ownership; c.) the majority owner of the former employer or d.) another business association in the majority ownership of the entity under c.) held over 50% of all voting rights in the supreme body of the new employer, the former employer will be liable as a guarantor for all amounts due from the new employer to an employee under an employment related claim, provided that (i) the employment contract concluded for an indefinite period was terminated for reasons connected with the activities of the employer (e.g., a reorganization) and was terminated within one year following the effective date of the legal succession; or (ii) the employment concluded for a definite period was terminated within one year from the effective date of legal succession, and the employer pays the average salary for the remaining term of the employment contract.

In the case of legal succession the former and the new employer is obliged to inform - 15 days prior to the succession - the trade union operating at the employer or, if there is no trade unionoperating at the employer, the workers' council or if there is no workers' council operating at the employer, the committee set up by the representatives of the non-union employees, about (i) the date or planned date; (ii) the reason; and (iii) the legal, economic and social consequences affecting the employees of the succession; and, with the purpose of reaching an agreement, is obliged to initiate consultation regarding other planned actions concerning the employees. The consultation has to address the principles and instruments of the actions, the methods to avoid detrimental effects to the employees and the instruments used for the reduction of such effects.

In the event of termination without legal succession, the obligations outlined above are the obligations of the liquidator or winding-up manager of the employer.

11 Employment Discrimination

The Hungarian laws on the prohibition of discrimination and requirement of equal treatment have been substantially modified as of 2004. Act CXXV of 2003 on the equal treatment and opportunity ("Act on Equal Treatment") has been adopted which declares the prohibition of discrimination with a general relevance for the whole legal system, defines the fundamental terms and establishes rules for specific areas such as employment, health care, education, etc. By the Act on Equal Treatment the relevant EU directive on anti-discrimination have been implemented into the Hungarian legal system.

Section 5 (1) of the Labour Code provides that the requirement of equal treatment has to be ensured. According to the Act on Equal Treatment the requirement of equal treatment is infringed by the following acts: (i) direct negative discrimination (an action that discriminates based on gender, race, nationality, ethnic origin, disability, religious or political conviction, family status, motherhood or fatherhood, age, participation in employee interest groups, skin colour, mother tongue, health condition, sexual disposition, social origin, financial condition); (ii) indirect negative discrimination (an action that does not qualify as direct negative discrimination and seemingly complies with the requirement of prohibition of discrimination; however, in fact discriminates based on the above features); (iii) harassment (a behaviour violating human dignity in connection with the above features; the aim or effect of which is the creation of hostile, humiliating or assaulting environment); (iv) unlawful separation (a behaviour that separates persons or groups of persons from others based on the other features without objective reasons); (v) retorsion (a behaviour that causes or intends to cause infringement of rights against who raises objection because of the violation of the requirement of equal treatment).

It is important to note that the provisions of the Act on Equal Treatment apply not only to employment relationships but also to other legal relationships aimed at performance of work, such as service or agency agreements.

The prohibition applies to the widest range of employment-related actions, such as application for work, public job advertisement, engagement for work, employment and work conditions, establishment of salary, training prior to or during employment, membership in employees' representation, career advancement, establishment of liability for damages and disciplinary liability.

The consequences of the breach of the requirement of equal treatment have to be properly remedied. Against the infringer employer labour law suit or labour law-related supervisory proceeding can be initiated. In the proceedings the person that suffered discrimination must prove that he/she possesses the abovementioned features described by law. If this is proved, the employer must prove that he complied with the requirement of equal treatment.

The remedy for infringement can not result in any violation of or harm to the rights of another employee.

Nevertheless, any differentiation reasonably resulting from the type or nature of the work does not qualify as a discrimination (e.g., a differentiation based on performance or certain positions being only available to men or adults because of, for example, the working conditions or rules on work protection).

An employer must, without discrimination, ensure the possibility of promotion of its employees to a higher position exclusively on the basis of the time spent in employment, the professional abilities, and the experience and performance of said employee. The Labour Code intends to guide the employer's choice in connection with a decision on the promotion of the employee so that the employer chooses the most appropriate employee on the basis of the above factors.

In addition to the Labour Code and the Act on Equal Treatment, the Hungarian Constitution, the Hungarian Civil Code and Government Decree No. 218/1999. (XII. 28.) on Minor Offences (the "Government Decree") also contain provisions prohibiting discrimination. The Hungarian Parliament also adopted effective as of 1 January 1999 Act XXVI of 1998 on Ensuring the Rights and Equal Chances of Disabled Persons. This act provides that disabled persons are entitled to integrated or protected employment for the purpose of ensuring these persons' constitutional right to work. The employers may receive subsidies from the central budget for establishing and maintaining work places for disabled persons.

Consequences of Violating the Prohibition on Discrimination by the Employer

All discriminating terms of an employment agreement are null and void. An employee may challenge before the competent labour court such terms and all discriminative actions of its employer. If the employee is successful, the employer must pay to the employee all damages incurred (including lost salary, attorney's fees and procedural costs) as a result of the breach of the prohibition on discrimination.

If a dispute arises in connection with the violation of the prohibition on discrimination, an employer must prove that it has not breached the Labour Code and other applicable laws (i.e., the burden of proof is on the employer in labour disputes involving discrimination). The purpose of this rule is to remove the burden on the employee in establishing a violation of the discrimination prohibition because, generally, the employee rarely possesses sufficient evidence relating to the prohibition of this rule due to his/her status.

Despite the burden of proof and the several legal regulations prohibiting discrimination referred to above, there is only a very limited amount of litigation involving the prohibition on discrimination primarily because of the practical uncertainty of the definition of discrimination and an employee's fear to initiate such a lawsuit.

In addition to the above, pursuant to the Government Decree, a procedure for committing a minor offence may be initiated against an employer applying discrimination against its employee(s). As a result of such procedure, a fine of up to HUF 100,000 (approximately USD 480) may be imposed on the employer.

Further, the Labour Supervision Act prescribes the labour matters which are within the scope of the investigatory/enforcement powers of the labour supervision, such as violation of the prohibition on discrimination. Without any special permission or prior notification, the inspector acting on behalf of the Labour Supervision is entitled to enter any work place, to review any documents, to make copies of documents and to request information from persons at the work place.

If the inspector discovers any breach of the prohibition on discrimination, he or she may take any necessary steps in order to terminate the breach of law, including the following: (i) warning the employer to comply with the relevant labour laws; (ii) requiring the employer to cease contravening the relevant labour laws by a certain deadline; (iii) initiating proceedings for minor offences; and (iv) submitting a proposal that the Director of the Labour Supervision impose a fine on the employer. The amount of the fine ranges from HUF 50,000 to HUF 2,000,000 (approximately USD 240-9,520) for the first offence (depending on the seriousness of the offence) if only one labour law rule is breached, and ranges from HUF 50,000 to HUF 6,000,000 (approximately USD 240-28,500) if more laws are breached or in the case of a second offence within three years following the date on which a previous resolution on the imposition of fine becomes final and binding.

Further, said individual may also make a claim to the newly established Equal Treatment Authority, which examines the case and may impose sanctions against the employer; including financial sanctions also.

Practical Advice to Employers on Avoiding Employment Discrimination Problems

As indicated above, employers are obliged to prove that they have not violated the prohibition on discrimination. This means that in a labour suit initiated by an employee based on the prohibition on discrimination, the employer must provide actual and reasonable reason(s) why the affected employee has not received the same treatment as the other employees. Therefore, it is advisable for employers to prepare and maintain sufficient records and documentation regarding the reasons for an employer's decision which differentiates among employees for labour law purposes (e.g., evaluation, payment of bonuses, and termination).

12 Sexual Harassment

Laws on Sexual Harassment

Hungary has not yet enacted specific legislation defining or governing the issue of sexual harassment. Nevertheless, the definition of harassment in the Act on Equal Treatment and, thus, the new law applies also to sexual harassment.

Further, there are several existing general provisions of the Labour Code which a person claiming to be a victim of sexual harassment could use as a basis for commencing a legal action.

For example, Section 4 (1) (2) of the Labour Code establishes the basic rules for the proper exercising of rights and duties and provides that the rights and duties specified by the Labour Code must be exercised and executed properly in accordance with their purpose. The exercising of rights is especially not proper if its purpose or result is the curtailment of the legal interest of others, restriction on the assertion of their interest, harassment or the suppression of opinion.

Further, Section 5 (1) of the Labour Code provides for the general requirement of equal treatment as described above.

Also, Section 102 (2) of the Labour Code provides that an employer must ensure the conditions for healthy and safe work. This rule may be interpreted to include the requirement that a psychologically healthy atmosphere exist in the work place.

However, there is no legal definition of the type of actions that constitute sexual harassment or practical guidance as to the type of recovery which a victim of sexual harassment might have the right to seek before Hungarian courts. To date no published court decision has been adopted either, which would elaborate on this issue.

Potential Employee Remedies for Sexual Harassment

A claim of sexual harassment may be submitted to the labour courts on the basis of the above described provisions of the Labour Code. A victim of sexual harassment may recover from his/her employer all damages caused to the employee in connection with his/her employment, lost salary, any costs occurred in connection with the damage or its prevention and any non-material damage, if applicable. To date, a court action

seeking money damages or other recovery as a result of the occurrence of sexual harassment has not been commenced based on the above or any other existing provisions of Hungarian law.

The Equal Treatment Authority also has authority to examines sexual harassment cases and may impose sanctions against the employer; including financial sanctions also. Nevertheless, to date, no such action has been initiated before said authority either.

Outside the legal sphere, some non-governmental associations and foundations are dealing with the problems and rehabilitation of victims of sexual harassment and other sexual attacks.

13 Labour Safety

The Hungarian Labour Code contains numerous provisions concerning labour safety, which place significant obligations on the employer - and, to a certain extent, also on the employee - regarding workplace conditions. Those provisions, as well as the relevant provisions of related legislation, are briefly summarised below.

Health and Safety Regulations

Section 102 (2) of the Labour Code requires employers to ensure the safety and health conditions of the workplace by complying with the relevant legislation, including, in particular, the provisions of Act XCIII of 1993 on Safety and Health Regulation (the "Safety and Health Regulation Act").

Employers are required to establish the appropriate working conditions and methods to be used at the workplace within the framework of: (i) the Safety and Health Regulation Act; (ii) the various decrees issued by the Minister of Public Welfare and Labour or the Minister of Health; and (iii) other legislation and standards. The minimum safety and health requirements applicable regarding special circumstances are specified in various ministerial decrees.

The Safety and Health Regulation Act provides generally that employers must, *inter alia*, ensure the "material" and "personal" conditions of safe work.

To ensure the "material conditions of safe work", employers must provide employees with, for example, individual protective equipment, adequate materials and tools meeting the requirements specified in the applicable regulations and standards. Further, employers must conduct periodic surveys to verify that the tools, methods and technologies used by the employees do not endanger human health. Such surveys must be completed by technically competent, authorised persons or institutions.

Devices (defined in annex 1 of the Safety and Health Regulation Act to include cranes, fork-lift trucks, dumpers, etc.) may only be operated if the devices both meet the safety and health requirements for non-dangerous working conditions and they obtain "statement of acceptance" or "certificate of acceptance". In the statement of acceptance, the producer states that the machine or equipment complies with all the legal regulations. While in the certificate of acceptance, a certain organization certifies that the machine or equipment complies with all the legal regulations, but only after carrying out a procedure where the machine or device is examined as to whether it complies with the EU standards. Personal protective equipment may only be provided to the employees if it received a "qualifying certificate".

The dangerous device or equipment may only be operated if it undergoes a safety start up procedure. However, a preliminary examination, the aim of which is to see if the device, workplace and technology meet the requirements of material and personal conditions for safe work, cannot be undertaken until all the statements, test results and statements of acceptance are available.

The employment inspectors of the Labour Authority are authorized to examine if an employer possesses all compulsory statements of acceptance, certificates of acceptance and qualifying certificates for both dangerous and general devices. If the employer does not possess the compulsory documentation, the employment inspector has the right to immediately suspend the use of the device or personal protective equipment.

Employment protection representative/s must be elected in every workplace, where the employer employs at least 50 employees. At a workplace where less than 50 employees are employed - provided that no employment protection representative has been elected, - the employer is obliged to conduct negotiations with the employees regarding the issue. Said representative represents the employees' rights and interests in connection with safe working conditions.

Employers also must ensure that employees are able to obtain sufficient drinking water and clear air and light. Employers must also provide dressing, washing, eating and resting facilities and make available medical aid. Employers must attend to the tidiness and hygiene of the workplace and to the appropriate treatment of waste.

In addition, employers must arrange that the workplace has adequate alarm and warning systems, taking into consideration the number of employees, and must establish emergency exists.

To ensure the "personal conditions of safe work", employees must submit to a medical examination prior to signing the labour contract. The scope of the examination varies depending on the type of work which the employee will perform. Certain types of work may be performed only by an individual having obtained a specific medical certificate to perform such work.

Employers must instruct their employees, before the employees commence work at the workplace, concerning the relevant work safety procedures and periodically supervise or test the employees' knowledge in this regard.

Further, if the number of employees exceeds one hundred, the employer must hire a professional to administer and control the work safety procedures. The number of such professionals, the level of their qualification and their daily hours of work must be adjusted to the number of employees and the classification of the employees being administered.

An employer must supervise and control the implementation and the effectiveness of the above mentioned requirements through certain safety processes (e.g., examination and analysis of workplace accidents). Further, an employer must investigate and correct any failures or deficiencies discovered in the safety procedures.

As a related matter, pursuant to the Labour Code, certain groups of employees (including women, employees with reduced working ability and employees under the legal working age of 18) are afforded additional protection in respect of work place conditions. For example, such persons may not be employed in certain positions.

In particular, a women - from the date of ascertaining her pregnancy until the first birthday of her child - and an employee under the legal age, may not be employed to work at night (from 10 pm to 6 am) and may not be requested to work overtime. Further, from the date of ascertaining pregnancy until the first birthday of the child, the woman must be moved to another workplace or the conditions of work must be

changed if a medical recommendation so warrants. Such changes to the workplace, however, may be made only with the employee's consent. As well, women and persons under the legal working age may be employed only in such positions which are not harmful to their health and which are suitable taking into consideration their specific physical features.

An employer's failure to comply with the applicable legislative provisions may result in a fine which may range from HUF 50,000 (approximately USD 240) to 6,000,000 (approximately USD 28,500), depending on the circumstances of the case.

Specific Requirements Applicable to Employees Working with Computers

In addition to the legislation summarised above, specific legislation concerning certain worker safety issues also has been enacted. For the establishment of a proper work environment, Decree of the Minister of Healthcare No. 50 of 1999 on Minimum Health and Safety Standards of Working in front of a Monitor ("Decree") was created. The Decree affects all employers whose employees work at least four hours per day in front of a monitor. The Decree applies not only to employees working at a computer but also to employees merely viewing monitors and not working at a computer.

The Decree also defines the type of glasses providing good vision for working in front of a monitor. It is important to note that the Decree defines glasses to include lenses of which diopter is defined by an optometrist and the frame for the proper function of the glasses.

To avoid the deterioration of vision for employees who work at monitors the Decree grants employees a ten-minute break for every hour of work. The breaks are not cumulative. In addition, the Decree prohibits employees from working at a monitor for more than six hours per day.

Furthermore, an employer must arrange for, and an employee must submit to, eye examinations every two years. If an examination establishes that an employee's corrective eyewear (including contact lenses) is insufficient for working before a computer monitor, the employer must provide the employee with appropriate eyeglasses. The employer must bear the costs of both an eye examination and an appropriate pair of eyeglasses, which shall have a special protective layer to protect against monitor emissions.

Among other matters, the Decree requires that software which uses the Hungarian alphabet must show said letters on the screen, as well as on any printed material, from February 2002.

Each workplace - including a new job created at an already existing employer and the workplaces created at each newly established company -, must comply with the requirements set out in the exhibit to the Decree. The exhibit to the Decree specifies the minimum requirements with which the monitor, the keyboard, the desk on which the monitor is to be located, the chair and the other aspects of the working environment, including lighting, noise, space, reflection, radiation and heating effects, must comply. Further, the exhibit to the Decree specifies requirements concerning software which may be used by the employer.

14 Employee Representatives

The Hungarian Constitution grants to each person the right to establish and/or be a member of an organisation in order to exercise his or her economic and social rights. Consistent with this constitutional provision, Act XXII of 1992 on the Labour Code provides detailed regulations on labour (trade) unions and workers' councils (also referred to as factory councils). In addition to the Labour Code, other legislation, such as Act VII of 1989 on Strikes, as amended, and Act II of 1989 on the Freedom of Association, as amended ("Association Act"), also provide regulations on unions and workers' councils.

Trade Unions

Definition and Establishment of Trade Unions

The Labour Code defines a trade union as an employee organisation whose primary function is the promotion and protection of employees' interests as they relate to the employment relationship.

According to the Association Act, ten private individuals may establish a trade union by executing its statutes and electing the union's managing and representative bodies. The trade union is established on the date on which it is registered with the competent court of law.

The Role and Certain Rights of a Trade Union

The Labour Code permits employees to establish trade unions within the organisation of the employer. A trade union may operate local organisations inside a company and may involve its members in such operations.

A trade union may inform its members of their rights and obligations concerning their material, social, cultural, living, and working conditions and represent them against their employer and/or before state authorities in matters concerning labour relations and employment.

A trade union may represent its members, on the basis of a power of attorney, before a court of law or any other authority or organisation, on matters concerning their living and working conditions.

An employer may not refuse to permit a non-employee representative of a trade union to enter the employer's premises if at least one member of the trade union (that the non-employee represents) is employed by the employer. The trade union must inform the employer in advance in writing of any intention to enter the employer's premises. When on the employer's premises, the trade union representative must comply with all regulations of the employer's order of business.

The employer must request the opinion of the trade union on its contemplated measures affecting a larger group of employees, in particular plans for reorganization, transformation of the employer, conversion of an organizational unit into an independent organization, modernization. The trade union must deliver its opinion in connection with the employer's planned actions within a period of 15 days. Failure to do so is to be interpreted as granting consent to such action. .

Further, a trade union may request from an employer information on all issues concerning its employees' employment-related economic and social welfare interests. The employer may not refuse to provide this information or to refuse provide a justification for its actions when requested by the trade union. The trade union may also provide the employer with the union's position concerning the employer's actions or

decisions and, further, initiate negotiations in connection with those actions or decisions. If there is no workers' council operating at the employer, the employer is obliged to inform the trade union of those matters of which the workers' councils are to be informed (see below in section concerning Workers' Councils).

A trade union may also examine an employer's compliance with regulations relating to working conditions. The trade union may draw the attention of the relevant authorities to any mistakes or omissions observed in the course of the union's inspection, and if the authorities do not take the necessary measures in a timely fashion, the union may institute legal proceedings against the employer. In such a case, the authority conducting the proceedings must inform the trade union of the result of the proceedings.

The person acting on behalf of the trade union, is required to keep confidential all the information which were conveyed to him/her as confidential by the employer, and may use them strictly for purposes determined in the Labour Code. The person acting on behalf of the trade union may disclose the information obtained in connection with his/her activity only to the extent by which the employer's lawful economic interests and the employees' personal rights are not jeopardized. This obligation applies to the above specified person for unlimited time.

A trade union may also object to an employer's unlawful action or omission that directly affects the employees or the organisations representing their interests. An objection must be delivered to the employer within five days of, and no more than one month after, the date on which the trade union learned of the action or omission. If the employer disagrees with the objection, a conciliation must be commenced within three business days. If the conciliation is unsuccessful within seven days after the objection is made, then, within five days of the failure of the conciliation, the trade union may commence proceedings before a court of law. The court must decide on the legal dispute within 15 days.

A union's objection stays the implementation of an action by an employer until the completion of the conciliation procedure or until the dispute is decided by a court.

However, a trade union may not raise an objection in any matter in respect of which an employee may initiate a court action.

The Collective Agreement

A collective (bargaining) agreement between the employer(s) or an organisation that represents the interest of the employer(s) and the trade union(s) regulates the rights and duties arising from the employment relationship, the manner of exercising and fulfilling the same, the procedural rules related thereto, and the relationship between the parties thereto. The trade union whose candidates received at least 50% of the votes in the workers' council election is deemed as the representative for such negotiations. If more than one workers' council is elected at an employer, the results of each election are combined to determine representation rights. A trade union whose membership includes at least two-thirds of the employees of an employer in the same employment group is also deemed as a representative. If a trade union qualifying as a representative union requests the employer to enter into negotiations with that trade union concerning the collective agreement, the employer may not refuse to commence such negotiations.

Each year an employer must propose to negotiate the regulations on the remuneration for work set out in the collective agreement with the representative trade union.

Unless otherwise agreed by the parties, the collective agreement may be terminated by either party upon three months' notice, but it may not be terminated within six months after the execution thereof.

Financial and Other Benefits Assisting Trade Union Activity

An employer must ensure that its employees' trade union has the opportunity to present public information and announcements and data related to the trade union's activities in a manner that falls within the procedures of the employer or in an another appropriate way. By agreement with the employer, the trade union may use the employer's premises after or during working hours for the purpose of its activities of interest representation.

The employer must exempt the trade union officials from work for a certain period of time. The employer must be informed in advance if a trade union official intends to be absent from work due to trade union related activities. Trade union officials are entitled to receive absentee pay for the duration of the work-time allowance.

Confidentiality of Trade Union Membership

An employer may not demand from any employee a statement concerning his or her trade union affiliation. Additionally, an employment relationship, or its continuation, may not be made dependent on: (i) whether or not the employee is a member of a trade union; (ii) whether the employee terminates a previous trade union membership; or (iii) whether the employee joins a trade union designated by the employer. It is also unlawful to terminate an employment relationship and/or to discriminate against an employee in any way due to his or her trade union affiliation or activities or to make any work-related entitlement or benefits dependent on affiliation or non-affiliation with a trade union.

Labour Law Protection for Trade Union Officials

The Labour Code contains special rules protecting trade union officials. Among other rules the prior consent of a trade union body, which is above the relevant trade union official in the trade union's hierarchy, is required for the employer for the temporary assignment, the secondment for at least 15 days, the transfer to another workplace, the placement to another employer of a trade union official and the termination of the employment relationship with an official by ordinary notice. The Labour Code requires the trade union to comment in writing on the above within eight days of the request for such comment.

Further, the opinion of the appropriate trade union body must be requested before termination of a trade union official by extraordinary notice. The Labour Code requires the trade union to comment in writing concerning the above within three days of receipt of the employer's notice on its intention to terminate the employment of such an official with extraordinary notice.

The appropriate trade union body must also be notified in advance concerning the application of legal consequences for the serious violation by an official of any obligation originating from the employment relationship. The appropriate trade union body must also be notified in advance regarding the transfer of an official (in a position subject to transfer) to another workplace.

A trade union official is entitled to the above-described protection for the duration, and for a period of one year following the expiration, of his or her term, provided that the individual was a union official for at least six months.

Workers' Councils

Election of Workers' Council or Workers' Representative

The Labour Code provides that a workers' council must be elected at all employers or at all of the employer's independent premises or sites where the number of employees exceeds 50.

If the number of employees (in total or at any independent division of the employer) is less than 51 but exceeds 15, no workers' council is required to be elected, but a workers' representative must be elected by the employees. The Labour Code's provisions regulating the rights and obligations of a workers' council apply equally to the workers' representative.

Workers' council and the workers' representative is elected for a three-year term.

Depending on the number of the employees at the time of the elections of the workers' council, the workers' council must be comprised of at least the following number of members:

Number of Employees	Minimum Number of Workers' Council Members Required
Not Exceeding 100	3
Not Exceeding 300	5
Not Exceeding 500	7
Not Exceeding 1000	9
Not Exceeding 2000	11
Above 2000	13

If the number of workers' council members does not meet the above requirements over a six-month period, new workers' council members must be elected to ensure that the above minimum requirements for workers' council membership are met.

The Labour Code contains detailed provisions regarding the election of the workers' council members and of the workers' representative.

An employee is eligible to be elected as a workers' council member if he/she is able to act in this capacity and has been employed by the employer for at least six months (not required for workers' councils in newly established employers).

Protection of Workers' Council Members

The provisions on the protection of trade union officials also apply for the protection of workers' council members, where the rights of the trade union body are exercised by a workers' council. In case of a workers' representative, the rights of the trade union body are exercised by the community of employees if the employee representative is not a trade union official.

Financial and Other Benefits for the Workers' Council

An employer must ensure the workers' council has the opportunity to publish information and announcements related to its activities in a manner customary at the employer's facilities or in any other suitable manner.

A workers' council member is entitled to free time equal to 10 percent of his or her monthly base working hours, and a chairman of a workers' council is entitled to free time equal to 15 percent of his or her monthly base working hours, in order to perform

workers' council related activities. An employer must also pay the workers' council member an "absence fee" in respect of this time, which includes the council member's base wage and other ordinary supplementary payments.

An employer must also pay the justified and necessary costs of the election and operation of a workers' council. The amount of such costs is jointly determined by the employer and the workers' council. In the case of a dispute in respect of such costs, a conciliation may be initiated by either party in writing, pursuant to the relevant Labour Code provisions.

Where an employer has more than 1000 employees, the employer must remunerate the workers' council chairman. The amount of the remuneration is determined jointly by the workers' council and the employer. If the number of employees does not exceed 1000, the employer may only pay remuneration to the workers' council chairman with the consent of the workers' council.

The Rights and Duties of the Workers' Council

(i) The Right of Joint Decision

A workers' council has the right of joint decision with the employer in matters relating to the utilisation of financial assets designated for welfare purposes (e.g. certain social contributions) as specified in the collective agreement, if any, and in respect of the utilisation of institutions and real properties of this nature.

(ii) The Right to Express Opinions

An employer must seek the opinion of the workers' council prior to making decisions regarding:

(a) measures affecting a large group of employees, particularly those involving plans for reorganisation, transformation of the employer, the conversion of an organisational unit into an independent organisation, privatisation and modernisation;

(b) plans to establish a system of staff records, the range of data to be put on file, the contents of a data sheet to be filled out by the employees and a staff policy plan;

(c) plans on employee training, ideas for utilising subsidies aimed at promoting employment and early retirement;

(d) plans for measures relating to the retraining of workers with a changed working ability;

(e) the plan for scheduling annual leave;

(f) the introduction of new work organisational methods and performance requirements;

(g) drafts of internal regulations affecting the employees' substantive interests; and/or

(h) tenders announced by the employer accompanied by a financial or honorary reward.

The workers' council must deliver its opinion concerning the employer's planned measures listed above to the employer within 15 days after the chairman of the worker's council, or another council member designated in the workers' council bylaws, receives written notification of the employer's contemplated decision or action. If the workers' council fails to make any comment, it is deemed to have consented to the proposed measure.

Although a workers' council's opinion is not binding on an employer, a decision on any of these items made by the employer without having sought the workers' council opinion in advance will be invalid.

(iii) The Right to Information

An employer must inform the workers' council about:

(a) basic issues affecting the employer's business situation, at least once every six months;

(b) any plans for a significant modification to the employer's activities or contemplated investments; and

(c) changes in wages and earnings, the cash flow related to the payment of wages, the characteristics of the employment and the working conditions and the utilisation of working hours, at least once every six months;

(d) number and position of employees working from home, at least once every six months.

A workers' council may inspect an employer's records in the process of exercising its right of joint decision and expression of opinion.

Additionally, a workers' council may request from an employer information on all issues related to the employees' economic and social interests in connection with the employment and the compliance with the requirement of equal treatment. The employer may not refuse to provide such information. The workers' council or one of its members may disclose information and data obtained in the course of operations only if the disclosure does not endanger the employer's justified business interests or infringe the employees' personal rights.

The workers' council or the member thereof is required to keep confidential all the information which were conveyed to him/her as confidential by the employer, and may use them strictly for purposes determined in the Labour Code. The workers' council or the member thereof may disclose the information obtained in connection with his/her activity only to the extent by which the employer's lawful economic interests and the employees' personal rights are not jeopardized. This obligation applies to for unlimited time after the termination of referred persons' employment.

Further, the workers' council must be impartial in relation to a strike organised at the employer. The workers' council may not organise, support or prevent a strike. The membership of a workers' council member participating in a strike is suspended for the duration of the strike.

European workers' council

A new act (Act XXI. of 2003 on the establishment of European workers' council and the procedures of consultation and information of employees) (the "Act") providing for the establishment and operation of European workers' councils has already been enacted in Hungary. The Act has entered into force on the date of accession to the European Union.

Under the act, in addition to the already existing local workers' councils, European workers' councils have to be formed at companies which themselves operate or belong to a group which operates on a European level (a company or group of companies operates on a European level if the company or group of companies employs at least 1,000 employees in the EEA and at least 150 employees in two or more Member States).

The European workers' council serves for ensuring to the employees the right of receiving information and being consulted by the employer in a formalized manner regarding the status of the company and the employees. The European workers' council has the right to request and receive general information from the company at least once a year and to be informed of certain particular circumstances affecting the employees.

Employers will be obliged to ensure, among other things, that the necessary conditions and means exist for establishing and operating the European workers' councils and for the election of employees' representatives in Hungary for delegation to special negotiating bodies or the European workers' councils.