Chapter 8. Labor Law

8.1 Labour relations

Labour law regulates relations between the employers and the employees. These are the relations arising in connection with the performance of **dependent** work. A dependent work (as opposed to entrepreneurship) is carried out within the relationship of the **employer's superiority and his employee's subordination** in the **employer's name** and according to the **employer's instructions** (orders) and that is performed in person by the employee for his/her employer, performed for **wage, salary or other remuneration,** at the **employer's cost and liability**, at the employer's **workplace** or some other agreed place within the **working hours (40 hours weekly).**

An entrepreneurship is, on the contrary, defined by independency, it is a profit-making activity carried out on the entrepreneur's own account and responsibility with an intention to do so systematically and for the purpose of making the profit.

8.2 Sources of the Czech Labour Law

The basic source of the labour law in the Czech Republic is the act no. 262/2006 Coll., Labour Code, as amended. Also, labour law is regulated by the act no. 435/2004 Coll., on Employment, as amended, an act no. 2/1991 Coll, on Collective Bargaining, as amended, and further acts.

8.3 Basic principles of labour law

Even though labour law belongs rather among private law fields (as civil law, commercial law, family law etc.), the labour relationships are much more strongly regulated than other private relationships. The freedom of contract in the field of labour law is limited and the employee who is understood a weaker party is protected.

The labour law is thus characterized by several basic principles, such as the specific legal protection of the employee status, requirement of satisfactory and safe working conditions for performance of work, fair remuneration for an employee as well as a proper performance of work by an employee in accordance with the employer's justified interests and the equal treatment of employees and prohibition of their discrimination (i.e. principle of equal treatment for all employees as regards working conditions, remuneration for work, vocational (professional) training and opportunities for career advancement (promotion).

8.3.1 Prohibition of discrimination

As is mentioned above already, one of the basic principles of labour law is the prohibition to discriminate employees as regards their working conditions, remuneration for work, vocational

training and opportunities for their promotion. The main principles of prohibition of discrimination can be found in the act no. 198/2009 Coll., on Equal Treatment and on the Legal Means of Protection against Discrimination and it relates also to the access to employment. Equal treatment is thus required even before employment relationship commences (interviews, job advertisements etc.).

The act distinguishes direct and indirect form of discrimination where both forms are equally prohibited. **Direct** discrimination is more obvious, easier to identify. It can be defined as treating one person less favourably than other person in a comparable situation, on the basis of sex, race, ethnical origin, nationality, religion, age, sexual orientation, health disability, etc.

A typical example of a direct discrimination would be different remuneration of men and women or job advertisement looking only for male lawyers because the boss of the law firm believes that men are better lawyers than women.

The **indirect** form of discrimination means the application of a seemingly neutral provision, criterion or practice which however leads to the less favourable position of one person against others.

Imagine that 20 % of all employees in the firm are women taking care of small children and for this reason working only afternoons. The boss who is aware of that starts organizing morning trainings for all employees which subsequently leads to the promotion of the employees who attend them. At first sight, such practice seems to be equal for all employees because *in theory*, every employee can attend the trainings. However, due to the fact that all mothers work only the afternoons and thus cannot, *in practice*, attend the trainings and thus achieve the promotion. They are indirectly discriminated as regards career advancement.

8.3.1.1 Exceptions from prohibition of discrimination

Even though prohibition of discrimination is a general and broad principle, there are few exceptions from such prohibition. It means, there are cases when unequal treatment is not prohibited, simply because it is, for some reason, justified.

The first category of such exception relates to the nature of occupational activities. If the nature of work requires different treatment, such unequal treatment is justified and thus not prohibited.

E.g. If you require a couple of dancers and you already have a man, you can require that only women apply for the position without breaching discrimination prohibition.

The second category relates to the protection of specific groups of employees such as pregnant women or disabled persons.

E.g. If an employer requires that all employees work full time (does not allow for part-time jobs in his/her firm) except for pregnant women who can get flexible part-time job upon their request, it is quite obvious that such treatment is unequal for the benefit of the pregnant women who belong to the protected group and thus it is justified.

And the third category of exceptions belong to specific jobs where requiring minimum age, specific qualification or duration of practice is necessary for its due performance. It relates to the positions of judges, attorneys, architects, auditors etc.

8.4 Subjects of labour relations

The labour relationship is two-sided with an employer on one side and the employee on the other. An employer can be any natural or legal person (it is very common to be employed by the corporations represented by its directors). The capacity of an individual to assume rights and duties in labour relations as an employer through own legal acts arises on the attainment of the age of 18 years. Legal persons gain such capacity upon their incorporation, i.e. typical upon their registration in the commercial or other register. An employee, on the other hand, can only be a natural person with the capacity to bear rights and duties as an employee as well as the capacity to acquire these rights and take on such duties through his own legal acts. Such capacity is gained on the day such person reaches the age of 15 years on the condition that he/she has completed the compulsory education.

8.5 Establishment of an employment relationship

In the vast majority of cases the employment relationship is established by the employment contract, i.e. a bilateral legal action. An employment contract requires a written form but if the contract was concluded orally and the employee starts working according to the contract, the employment relationship has been validly established even without an employment contract. This is an expression of the special protection of an employee principle. On the other hand, if an employment contract has been concluded only orally and an employee changes his/her mind and does not start working according to such contract, an employer cannot force him/her anyhow since there simply is no employment contract. The protection relates only to the employee. The employer who is understood a professional should have known that employment contract requires a written form and cannot benefit from the orally (and thus invalidly) concluded contract.

8.5.1 Mandatory terms of an employment contract

An employment contract may be very simple. Its obligatory contents include only (i) the type of work to be carried out by the employee, (ii) the place or places where an employee will perform work and (iii) the date of commencement of an employment. Why are these terms so necessary? First, the type of work matters so much because it clearly defines the working duties of an employee. It says what activities an employee is obliged to do according to the contract and what activities not.

Imagine that a lady is hired by a law firm as a receptionist. She is thus obliged to answer the phones, welcome clients, etc. If the boss requires that she starts vacuum cleaning the whole office or doing his/her personal shopping, these activities are clearly outside the scope of the contract (out of the scope of receptionist's work) and thus she is not obliged to do them.

The place of work means usually the specification of town, it is thus not necessary to include a precise address since it would be very unpractical to amend all the employment contracts in

case of moving the employer to another office. However, it is necessary to specify the town(s) because it again protects an employee who cannot be required to move to a different town for work.

E.g. if an employer is based in Prague but has a subsidiary in Brno, it is possible that he/she will require that some of the employees go from time to time to Brno to do some work over there. The employees who have Prague as their place of work in the contract may refuse to go to Brno because they are simply not obliged to go there. And if they agree to go, it will be considered a business trip with all the compensation such as travel costs, meal vouchers etc.

The date of commencement is an obligatory element of any employment contract because that is the day on which an employee is obliged to start performing the work according to his/her employment contract within the scheduled weekly working hours and comply with the duties arising from his employment relationship and an employer is obliged to assign work to an employee, pay the wage and create all conditions for due performance of work.

You may have noticed, from your own working experience, that usually an employment contract includes also a wage, a trial period or holiday (4 weeks for private sector and 5 weeks for state employees). Those are very common but not obligatory elements of such contract. Thus they might be missing in the contract as such and may arise from some internal rules of the employee. Such solution is quite practical because they may be easily changed by a unilateral amendment of such internal rule without the need to amend all the employment contracts.

Apart from employment contract which is definitely the most common way of establishing an employment relationship, such relationship can arise also out of an appointment. An appointment relates, however, mostly to the top managerial positions in the public sector and we are not going to describe it in detail here.

8.5.2 Term of employment

An employment relationship may be agreed to last for a specific period of time or for an indefinite period. As we know already, the term is not an obligatory element of an employment contract so what if a specification of term is missing in the contract? In such case the term of an employment is for an indefinite period which is convenient for an employee (as we explain in the subchapter about the termination of an employment relationship below). The same is valid in case both parties agree that the employment shall last for more than 3 years – such contractual provision is invalid and thus indefinite period of employment applies. You can see that the contractual freedom is limited for the benefit of the employee for whom the indefinite period is convenient. To sum it up, an employer and an employee may agree in the contract on the term of up to 3 years. If they agree on longer term or if they skip this element (which is not obligatory), the term is automatically for an indefinite period of time.

Another form of protection of an employee relates to the continuation of employment after the expiry of the fixed term. Where after expiry of the agreed term (up to 3 years) the employee continues to perform his/her work and the employer is aware of it, such employment relationship shall be deemed to change into an employment relationship for an indefinite period.

8.6 Termination of the employment relationship

An employment relationship may be terminated by several specific legal reasons: (a) mutual agreement; (b) termination within the trial period; (c) notice of termination; (d) immediate termination, (e) death of an employee, (f) the expiry of the agreed period (in case of fixed-term employment).

(a) Agreement on termination of the employment relationship

An agreement to terminate employment relationship is definitely the smoothest way how to terminate an employment. It is simple and quick and the only thing that both parties must adhere to is an obligatory written form of such agreement. This agreement, as any other agreement, is a bilateral legal action which means that both an employer and an employee must agree with such termination – and that is usually the problem due to which many employments must be terminated by other ways. If, however, both parties agree to terminate the employment relationship, they also agree on the date as to which the relationship ends and possibly to some other conditions.

(b) Termination within the trial period

The trial period is an agreed period between an employer and an employee which starts in the beginning of the employment and lasts up to three months. The goal of the trial period is to allow both parties to find out whether they are happy in this type of relationship and if they wish to continue further. During this period, the relationship is very flexible for both parties and it is very easy (compared to the rest of the term) to terminate it. Both parties may, if they are not happy, unilaterally terminate employment within this period immediately even without stating the reason. Such termination must be in writing and must be delivered to the other party but apart from that, it is very informal. The mere letter stating that the employee terminates the relationship within the trial period and does not show up at work next day is completely lawful. Such termination must be made on the last day of the trial period at the latest.

(c) Notice of termination

In case that one party of the employment relationship wishes to terminate it but the above mentioned ways (an agreement or termination within trial period) cannot be used (e.g. because the other party does not agree or the trial period has already elapsed), the employment relationship may be unilaterally terminated by a notice of termination.

The notice of termination must again be in writing and must be properly delivered to the other party. While an employee may terminate the employment by notice for any reason or even **without any reason**, an employer may terminate the employment with an employee only for specific reasons. These reasons are:

(i) the employer's undertaking, or its part, is closed down;

(ii) the employer's undertaking, or its part, relocates;

(iii) the employee becomes redundant owing to the decision of the employer to change the activities (tasks), to reduce the number of employees for the purpose of increasing labour productivity (efficiency);

(iv) the employee is not allowed to perform his/her current work due to an industrial injury, an occupational disease or due to threat of an occupational disease;

(v) the employee has lost, long-term, his/her capability to perform his/her current work due to his/her state of health;

(vi) there are reasons on the employee's side due to which the employer could immediately terminate the employment relationship, or if the employee has seriously breached some obligation arising from statutory provisions and relating to work performed by him/her.

In case that the employment relationship is terminated by the notice (by any party), an employment will come to an end upon the expiry of the notice period lasting 2 months.

E.g. An employee delivers the notice of termination to the employer on 15 September 2018. The notice period of 2 months starts on 1 October (always from the next month following the delivery of the notice) and will elapse on 30 November. The employment ends on 30 November 2018.

If the employer terminates the employment relationship for the reasons stated in a) – c) above, the employee is entitled to receive **redundancy payment** at least in the amount equal to once his/her average (monthly) earnings if an employment relationship to the employer lasted less than one year, twice his/her average monthly earnings if an employment relationship to the employer lasted at least one year and less than two years, triple his average monthly earnings if an employment relationship to the employer lasted at least two years.

(d) Immediate Termination of an Employment Relationship

Apart from the notice of termination, both parties may unilaterally terminate the employment relationship by an immediate termination which means without any notice period. Such immediate termination, however, requires a serious reason for both parties. It is thus, as opposed to the termination notice, not that easy for an employee to terminate the employment immediately. Again, such termination must be done in writing and must be properly delivered to the other party. If an immediate termination is valid, the employment relationship ends upon the delivery of the termination.

An employer may immediately terminate an employment relationship only:

(i) if an employee has been sentenced, under a final verdict, for an **intentional** criminal offence to a term of an unconditional imprisonment of **over one year** or **for an intentional** criminal offence committed in connection with the performance of work to a term of an unconditional imprisonment of **over 6 months**.

(ii) if an employee has breached an obligation that arises from the statutory provisions and relates to his/her work performance in an **especially gross manner.** What constitutes such a vague notion of "especially gross manner" has to be considered case by case. You would probably agree that being 5 minutes late in the morning is not that serious breach which could justify an immediate termination to such employee. Also, you probably feel that having some residual alcohol in blood after the birthday party is

different in case of a secretary and in case of a bus driver. Quite a typical example of such especially gross breach is an embezzlement of an employer's assets.

An employer may **never**, however, immediately terminate the employment relationship with an employee belonging to the protected group such as pregnant woman, a female employee who is on maternity leave or an employee who is on parental leave. These employees fall under the specific protection which does not mean that even if they commit some serious breach, an employer cannot fire them – it only means that an employer cannot give them an immediate termination but will need to terminate such employment with a notice period.

An employee may immediately terminate his/her employment relationship only if:

(i) an employee cannot perform his/her work any longer without a serious threat to his/her health and the employer has not transferred the employee to perform some suitable alternative work within 15 days

(ii) an employer has not paid the wage within 15 days after the due date

An employee who immediately terminated an employment relationship is entitled to receive compensatory wage in the amount of his/her average earnings for a period equal to the length of the notice period (2 months).

(iii) the employment relationship always ceases by death of an employee

(iv) if the employment was agreed as fixed-term, it also ends upon the expiry of the agreed period.

8.6.1 Void Termination of an Employment Relationship

Most legal disputes in the field of labour law relate to the termination of an employment relationship which one of the parties considers void. Such nullity of the termination (either notice of termination or an immediate termination, rarely the agreement to terminate an employment relationship) may be caused by e.g. oral instead of written form of such termination, the lack of proper delivery of such termination to the other party or absence of valid reason to terminate (apart from the notice of termination given by an employee who does not include any reason). Such nullity can be claimed by either party before the competent court (district court in the district in which the seat of the defendant is) within two months after the employment relationship was supposed to end according to such termination.

E.g. An employer gives the notice of termination to an employee on 20 September 2018. An employee, however, considers it invalid because it does not include a legal reason for such termination. According to the notice, the employment relationship would end on 30 November 2018 (2 month notice period). On 1 December 2018 thus starts a period of 2 months for filing an action before a competent court. Such action must be filed on 31 January 2019 at the latest.

But what happens in the period before the competent court decides whether the termination was valid or not? It is clear that both parties are in dispute – one claims that the employment relationship has already finished and the other claims that the employment relationship still lasts. If notice or the immediate termination given by the employer is void, the employee should

inform the employer in writing that he/she insists on being further employed by this employer, the employer shall thus pay compensatory wage or salary to this employee for the period before the legal dispute is resolved. We talk about compensatory wage because obviously the employee does not work during this period (because the employer does not count with him/her anymore) but since the termination was invalid, formally the employment relationship lasted and thus an employee is entitled to get his/her money.

If notice or the immediate termination given by the employee is void, the employer should notify this employee in writing of his/her insistence on the employee's continuation of work performance. If the employee does not comply with the employer's notification, the employer may apply for compensation of damage caused.

E.g. Imagine that an employee was supposed to work on a very important project which had to be finished on a specific date. The employee terminated his/her employment relationship by a notice which the employer considers invalid (for example because it was oral). If the employer notifies the employee that he/she insists on the employee's continuation of work performance on this project and the employee does not comply with that, the employer can apply for compensation of damage caused by not finishing the project on time (suppose that the employer does not get paid for the project by his client).

8.7 Liability for damage caused by the employee

An employee can, while performing his/her work tasks, cause a damage to his/her employer. For example if a worker breaches, by accident, a very expensive machine or if a junior lawyer misses the deadline for filing an action to the court and thus loses the case or the bus driver having an accident and destroys a bus. All of these breaches lead to damage on the side of the employer and may, sometimes, way exceed the earnings of the employee. As we said in the beginning of this chapter, labour law is based on the principle of a special protection of an employee which is visible also in these kind of cases. The liability of an employee is usually limited to 4,5 times of average monthly wage of such employee. It means that an employee earning CZK 20 000 monthly will be liable for CZK 90 000 maximum even if he/she causes much bigger damage. Such limitation, however, does not apply if the damage was caused intentionally or under the influence of alcohol or other drugs.

In order to hold an employee liable for damage at all, the general conditions for such liability must be claimed and proved. They are (i) breach of duty of the employee, (ii) damage on the part of an employer, (iii) causation, and (iv) **fault –** in the form of negligence or intention. For more details about the general conditions of liability for damage see the respective chapter.

8.8 Agreements on work performed outside an employement relationship

So far we have focused on an employment relationship established by an employment contract. In practice, however, sometimes more flexible legal forms of performing work are of bigger use. Typically, if you look for a summer job or some part-time flexible job during your studies, it may be cheaper and more flexible for both parties to choose other form of cooperation than an employment contract. The two basic forms for such work are:

(i) An agreement to complete a job, and

(ii) An agreement to perform work.

Both agreements are less formalized but must still be in writing. The flexibility consists in their easier and quicker termination for both parties (notice period of 15 days rather than 2 months), it usually does not include any right for paid holiday which makes it cheaper for the employers.

Agreement to Complete a Job

The work performed under this type of contract may not exceed 300 hours in one calendar year for one employer. It is thus suitable for ad hoc works or even regular works with limited monthly hours. If the earnings do not exceed CZK 10 000, the health insurance and social security insurance is not payable so net earnings are relatively high. On the other hand, if such employee gets sick, he/she has not right to obtain sickness benefits.

Agreement to Perform Work

The work performed under this type of contract may not exceed 20 hours per week (1/2 of the standard working hours). Health insurance and social security insurance is payable once the monthly salary exceeds CZK 2500.

8.9 Summary

This chapter addressed the basics of labor law in the Czech Republic.

Labor relationships were distinguished from entrepreneurship and the notion of a dependent work was defined. Even though labor law belongs rather among the private law disciplines, it is regulated much more strictly for the benefit of an employee who is understood a weaker party.

The basic principles of labor law are thus a specific legal protection of the employee status, requirement of satisfactory and safe working conditions for the performance of work, fair remuneration for an employee as well as a proper performance of work by an employee in accordance with the employer's justified interests and also equal treatment of employees and prohibition of their discrimination. The special protection of employees is expressed also by the limitation of their liability for damages which is an exception from other civil liabilities.

An employment contract which is the dominant legal title for establishing the employment relationship must include the type of work, the place of work and the commencement date. All other elements are optional.

An employment relationship may be terminated for several specific legal reasons: (a) mutual agreement; (b) termination within the trial period; (c) notice of termination; (d) immediate termination, (e) death of an employee, (f) the expiry of the agreed period (in case of fixed-term employment).

8.10 Self-assessment questions

1. What are the basic features of every employment contract?

2. The easiest way to terminate the employment for both parties is to terminate it in the _____ period.

3. Compare an entrepreneurship with a dependent work.

4. For how long is the employment concluded if no specific term is stated in the contract?

5. Name at least three ways how to terminate the employment relationship.

6. Is the liability of an employee for damage somehow limited? If so, how?

8.11 Further reading

Selected provisions of the Czech Labour Code no. 262/2006 Coll., in English available at: https://www.mpsv.cz/files/clanky/3221/Labour_Code_2012.pdf

PICHRT, Jan a Martin ŠTEFKO. *Labour law in The Czech Republic*. Second edition. Alphen aan den Rijn, The Netherlands: Kluwer Law International, [2015]. ISBN 9041156739.