

## Czech Republic

On 1 January 2011, important changes to the Czech labour code came into force.

Although some of them are to be welcomed because they tighten up the regulation of (atypical) employment contracts, other changes, mainly related to the reduction and even cancellation of social support allowances, are not.

On the positive side, there is written formalisation of the ‘*agreement to perform work*’ (*dohoda o provedení práce*) via an amendment to Act 262/2006 Coll. This form of employment can be concluded for a maximum of 150 hours per calendar year, but subject to more flexible rules than labour contracts (for example, in relation to termination rules and payment of health and social insurance).

Second, stricter rules have been established for *employment agencies*, which now need to have insurance against insolvency, either its own or that of its customers (the premium must be three times the average monthly earnings of all temporarily assigned employees) and they now need a permit to operate from the Ministry of Interior.

Less positive is that *unemployment benefits are being reduced for workers who terminate their employment* without a compelling reason but who nevertheless qualify for a severance payment. Workers will not now receive unemployment benefit for the period corresponding to the value of the severance pay.

Despite these changes introduced in January 2011, new came into force on 1 January 2012 after the adoption of Act No. 365/2011 Coll., Amendment of the Labour Code and Act No. 364/2011 Coll., Amendment of the Act of Employment. The amendments provide, among other things, for:

- An *extension of the maximum length of a fixed-term contract* from two to three years. It may be prolonged only twice (instead of three times), but it could mean that fixed-term contracts can be extended to nine years. Any extension of the employment relationship is considered to be successive for this purpose. The only restriction to this rule is a provision stipulating that any previous employment for a fixed term which ended more than 3 years ago shall be disregarded. If the employment for a fixed term is concluded in accordance with the current legislation and if the duration of such employment continues in 2012, this period is already included in the new rules, according to the new legislation, and it will therefore only be possible to extend the employment for a fixed term twice. Only agency workers continue to be exempt from the restrictions of fixed-term employment contracts.

- As for the *'agreement to perform work'* (see above) the amendment provides for an increase of the 150 hour limit per calendar year to 300 hours per calendar year and if income in the calendar month exceeds a certain amount (about 400 euros) it would be subject to social security and health insurance contributions, which is not the case at present. Indeed, the employee's full amount of income from the agreement to complete the job shall be subject to mandatory health and social insurance contributions, provided that such income exceeds CZK 10,000 in the given calendar month (around 396 euros). The obligation to register the employee with the competent authorities shall only arise if the abovementioned limit is exceeded. An employer who signs an agreement with an employee to complete an assignment has additional related obligations. Employers will be required to determine the schedule of the weekly working hours for the purposes of the compensation of remuneration in the event of a temporary incapacity to work, and issue a confirmation of employment for such employees in case of termination of the agreement.
- Other amendments foresee agreements on *extended trial periods for managerial employees* (i.e., employees who manage and supervise at least one subordinate employee) of up to six months (currently three months and applicable to all workers). For other employees, the trial period remains unchanged, i.e., it may not exceed 3 months.
- The *concept of temporary assignment* (in other words, employers hiring out their employees to other employers) outside the framework of an employment agency has been re-introduced. It is now possible again for the employer to temporarily assign the employee to perform work for another employer, without the requirement of an employment agency license. The temporary assignment shall be concluded on the basis of a written agreement with the employee and on condition that the employee has been employed for at least 6 months. Furthermore, the employee must be provided with a comparable salary and working conditions of the receiving employer's employees, and the temporary assignment shall be carried out free of charge. Only the salary and travel allowances can be refunded in accordance with the law. Also, as from 1 January 2012, a new ban would be introduced on assignment in the form of agency employment of foreigners from third (non-EU) countries and disabled employees.
- Adjustment to the *possibility of withdrawal from an employment contract*. A legal reason for withdrawal from an employment contract still relates to the fact that the employee has not begun to perform his or her work without the existence of an impediment to the work, or that the employer was not informed about such an impediment within a week. A slight change has been made to the current legislation, and the employer can now be informed about the impediment in any way and it is not necessary for the employee to inform the employer directly in person. A more significant change is that withdrawal from the employment contract is now only possible when the employee appears at work.
- Amendments to the *rules on severance pay* are also envisaged. Whereas now all employees, including newly hired ones, receive three months' severance pay if dismissed for organisational reasons, the amendment foresees one month's severance pay in the first year, two months for the

second year and those who have worked more than two years will receive the current three months' pay. With regard to *working hours* the conditions for even and uneven schedules of working hours shall be unified. Under the new legislation, the maximum length of the shift will be 12 hours, regardless of the type of schedule (currently, in case of an even schedule the limit is 9 hours). Also, regardless of the type of schedule the employer will be required to inform the employee about the weekly working hours schedule at least 2 weeks before the beginning of the period for which the working hours are scheduled (formerly applied only in case of an uneven schedule), as well as before any changes are made. The possibility to agree on shorter probation periods will remain in place, but the distribution of working hours has been abandoned because it is superfluous in light of the release of the working hours' regulation.

- *Flexible working hours*: A substantial number of regulations regarding flexible working hours has been issued. According to the current regulation, one segment of basic working hours must always be inserted between two segments of optional working hours. However, this regulation will be removed, and employers will be able to freely combine basic and optional working hours. For example, it will be possible to combine "basic x optional x basic", or "basic x optional", or "optional x basic", etc. on certain days. The decision which combination to use will solely be the employer's in order to meet the company's operational needs; the needs of the employees need to be taken into account as well. Substantial change for flexible working hours entails the length of the compensatory period. While the current Labour Code includes restrictions for the employer and establishes a maximum compensatory period of 4 weeks, the amendment extends this period for up to 26 weeks, and in case of a collective agreement even up to 52 weeks.
- *Account of working hours*: Very substantial amendments relate to accounts of working hours. The amendment will stipulate that the account of working hours may be introduced only by means of a collective agreement in the event that the employer has established a trade union (it is now possible to conclude an internal regulation). The removal of unnecessary administrative burdens in the form of the employer's obligation to present the difference between full-time and actual working hours each week is, of course, a positive change. If the account of working hours is established by a collective agreement, it will now be possible to negotiate the transfer of overtime work into the subsequent compensatory period in the extent of up to 120 hours. This will increase the flexibility of accounts, as demanded by employers' representatives. In the event that a transfer of overtime work is used, the following protective measures will apply: 1) restriction of the possibility to require the performance of work on non-working days - not more than twice within a period of 4 weeks, 2) increase in the minimum amount of the employee's permanent salary from 80% to 85% of the average earnings, and 3) increase in severance pay (4 to 6 monthly earnings in accordance with seniority) in case of termination by agreement due to organisational reasons.
- *Employee working night shift*: Following a long period of unclear interpretations, "employees working the night shift" shall be uniquely defined. The amendment stipulates that the definition shall refer to an employee who works during the night for at least 3 working hours at least once a week on average during a period defined by the employer – and a maximum of 26 weeks. The fact that "regularity" is not required to determine whether an employee works the night shift is

slightly problematic, as this represents the current legislation, and overtime work shall therefore be included in this context.

- *Extra pay for night work and work on the weekend:* It will be possible to determine the amount of extra pay for night work and for work on Saturday and Sunday individually (even at a lower level than provided by the Labour Code) on the basis of an individual agreement with the employee. Currently, this is only possible on the basis of a collective agreement.
  - *Agreement on salary taking overtime work into account:* A significant extension of the possibility to agree on salary, already taking possible overtime work into account, has been agreed. For managerial employees it should be from the currently 150 up to 416 hours (the maximum limit of agreed overtime work) and for ordinary employees up to 150 hours (the maximum limit of required overtime work) – within one year.
- *Annual leave:* The new system shall not distinguish between the minimum legal entitlement for annual leave (4 weeks) and premium annual leave. The basic rule will be to take all annual leave in a given calendar year, provided that there is no impediment to work on the side of the employee or any serious operational reasons. If the annual leave is not taken by June 30 of the following year, the right to decide on annual leave shall also be granted to the employee, i.e., he/she will be able to decide what to do with his/ her annual leave. It is important to note, however, that the employer's entitlement to decide on the employee's annual leave will not be cancelled, i.e., the employer has the right to override the employee's decision for operational reasons, for example. Entitlement for annual leave will not expire, possibly resulting in the accumulation of annual leave for several years.
- In relation to *redundancy rules:* With regard to the length of the notice period, it will be unequivocally stipulated that a longer notice period can be negotiated only on the basis of an individual agreement with the employee. Therefore, it will no longer be possible to negotiate a longer notice period within the framework of a collective agreement. The legal regulation on severance pay will also change. The amount of severance pay will depend on the length of the employee's duration of employment. In the event of the termination of employment due to so-called organisational reasons, employees will be entitled to severance pay as follows: 1 average monthly earning if less than 1 year seniority, 2 average monthly earnings if between 1 and 2 years seniority and 3 average monthly earnings if at least 2 years seniority. In the case of severance pay for the termination of employment due to a work injury or an occupational disease, the amount of severance pay will not change and will remain at a maximum of 12 average earnings. The abovementioned limits of severance pay represent a minimum, the employer may, of course, always set a higher severance pay limit. In this regard, the author recommends employers to review current collective agreements or internal rules. Severance pay will now also not be paid to employees who terminate their employment with immediate effect. They will be provided with salary compensation which corresponds to the applicable notice period. The amendment also reintroduces court moderation in case an employee seeks salary compensation in connection with the invalidity of a termination of employment by the employer. If the duration for which compensation is sought is over 6 months, the court may, on the employer's proposal, take into account any other employment the employee may have had during this period and reduce the compensation accordingly. With regard to non-

competition clauses, substantial changes were discussed, but after long negotiations these were abandoned and the amendment does not include any significant changes compared with the current legislation. Only the minimum amount of financial compensation will be reduced to half of the employee's average earnings and the non-competition clause can now be concluded during the trial period. The other rules relating to non-competition clauses shall remain unchanged. With regard to the transfer of rights and obligations under the employment relationship, the rights and obligations from the collective agreement shall transfer to a new employer for the period of the collective agreement's effectiveness, but no longer than until the end of the following calendar year. Furthermore, the obligation of the employer to inform employee representatives (in the absence of individual employee representatives) about the upcoming transfer will be specified. The employer must meet these obligations no later than 30 days prior to the effective date of the upcoming transfer. In the event that the employer has not established employee representatives, the employer is only obliged to inform the employees, but not to consult them. The length of the notice period in the event of termination of employment by the employee in connection with the transfer of rights and obligations will be specified. In such cases, the employment relationship will end no later than on the day preceding the effective date of the transfer; in other words, the employment of the employee concerned will end and he or she will not be transferred to the new employer. In certain cases, the notice period may be shorter than the minimum 2 months. The amendment also introduces the possibility of the employee whose employment was terminated within 2 months from the date of the effectiveness of the transfer, to claim in court that the reason for the termination is a significant deterioration in working conditions due to the transfer. If the court finds such claim to be justified, the termination of employment will be attributed to organisational reasons, and the employee will consequently be entitled to severance pay. In addition, a new reason for dismissal was added namely, pursuant to Section 52(h) of the Labour Code, the employer may give the employee notice of termination if the employee grossly violates an obligation to observe the regime for employees who are temporarily sick specified in the Sickness Insurance Act in the first 21 calendar days of his/her temporary sickness (during the first 21 calendar days, remuneration is provided by the employer). This is an important change because, according to the current legislation, termination of employment for a breach of the treatment regime is expressly prohibited. On the other hand, it will be very difficult for employers to prove that an employee has breached their obligations during illness. This provision was contested by the Social Democrats in the Constitutional Court who claim that the loss of entitlement to sickness insurance benefit is an adequate penalty in such cases, and that a notice of termination given on this ground only is unconstitutional. It is not clear how the Constitutional Court has dealt with the complaint.

In the meantime in the course of 2012, relationships between the new Government (led by Prime Minister Petr Nečas of the Civic Democratic Party (ODS) and trade unions in particular deteriorated. One proof is the government resolution No. 444/2011 of 11 June 2011 instructed the Minister of Labour and Social Affairs and the Minister of Justice to begin intensive preparation of legislation on the right to strike. The purpose of the new legislation, in particular, is to:

- define the right to strike, and in particular define such terms as a strike and a lockout, a striker, a strike organiser, and define the rules for procedures on such issues as deadlines and who must be notified;
- improve legal assurances for the enforceability of the right to strike provided in Article 41 of the Charter;
- reduce the number of potential legal disputes on the illegal nature of strikes;
- improve the demarcation of decision-making for a potential dispute on the illegal nature of a strike;
- reduce the economic impact of the strikes that would be considered illegal under the subject-matter of the bill;
- regulate lockouts as a right of employers' collective action.

The social partners were given an opportunity to comment on the proposed legislation during consultations that ended on 31 July 2012. However both sides for different reasons rejected from the outset the proposed changes. The proposal, according to ČMKOS, was not only unconstitutional but would also make a strike and a lockout administratively complicated. CMKOS also criticized the fact that a strike could only be called by a trade union as this would exclude other groups of people from having the ability to call a strike. The Confederation of Employer and Entrepreneur Associations of the Czech Republic ([KZPS ČR](#)) saw no need to change and wanted to keep the existing legislation.

## **References/sources**

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ETUI-AIAS Collective Bargaining newsletter:

<http://www.etui.org/E-Newsletters/Collective-bargaining-newsletter>

ETUC website section on economic and social crisis: <http://www.etuc.org/r/1378>

ETUI website section on crisis: <http://www.etui.org/Topics/Crisis>

European Labour Law Network - <http://www.labourlawnetwork.eu/>

### Periodicals

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### Other

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### Contributions by ETUC affiliated organisations:

ETUC Litigation network (meetings 29 June 2012 and 10 December 2012)

ETUC Social Policy and Legislation Ad hoc working group (Meetings 13 November 2011, 5 April 2012, 24 October 2012).

ETUC Legal Experts Network NETLEX (Annual Conference 1-2 December 2011, 11–12 December 2012)