HUNGARY

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EFFECTS OF THE TRANSPOSITION OF DIRECTIVES 2019/1152 AND 2019/1158 OF 20 JUNE 2019 ON HUNGARIAN LEGISLATION

In Hungary, one of the most significant changes in labour law was the entry into force of *Act LXXIV of 2022 amending certain employment-related acts*[1]. In line with the specificities of the Hungarian labour law, the Act amended not only Act I of 2012 on the Labour Code (hereinafter « LC »), but also other employment-related laws (e. g. acts regulating the statuses of several type of public service employees)[2]. The amendment was made necessary by the transposition of Directive 2019/1152[3] and Directive 2019/1158[4], which were transposed into Hungarian law after a delay of almost 6 months following the transposition deadline. It must be admitted, the legislation proceeded along the lines of « minimum harmonisation », so the Directives did not cause revolutionary changes in the labour market.

The transposition of Directives 2019/1152 and 2019/1158 into Hungarian law has resulted in the introduction of new provisions on information on working conditions **(I)**, changes to the probationary period for employees **(II)**, paternity, parental and care leave **(III)** and changes to the rules on employee protection and the burden of proof **(IV)**.

I - PROVISIONS ON INFORMATION ABOUT WORKING CONDITIONS

The new provision reduced the period within which the employer must provide information on working conditions from 15 days to 7 days from the start of the employment relationship (the first day of employment) and extended the scope of the information to be provided in line with Directive 2019/1152/EC.

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1 The act was adopted on 7 December 2022 and entered into force on 1 January 2023.

2 See Act XXXIII of 1992 on the status of civil servants, Act LXVIII of 1997 on the public service relationship of judicial staff, Act CLXII of 2011 on the status and remuneration of judges, Act CXCIX of 2011 on civil servants, Act CCV of 2012 on the status of military servicemen, Act XLII of 2015 on the status of professional staff of law enforcement agencies, Act CXIV of 2018 on the status of defence personnel, Act CXXV of 2018 on government administration, Act CVII of 2019 on bodies with special status and the status of their staff, Act CXXX of 2020 on the status of staff of the National Tax and Customs Administration.

3 Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.

4 Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

In addition to the issues already regulated[5], employer must inform employees of the following:

a) the beginning and duration of the employment relationship;

b) the place of work;

c) the duration of the daily working time, the days of the week on which working time may be scheduled, the possible starting and finishing times of the scheduled daily working time, the possible duration of the extraordinary working time, the specific nature of the employer's activities[6];

d) the number of days of leave, the method of calculating them and the rules for granting them;

e) the rules relating to the termination of employment, in particular the rules for determining the period of notice;

h) the employer's training policy and the length of the period of training which the employee may receive; and

i) the name of the authority to which the employer will pay the public charges relating to the employment relationship[7].

According to the LC employers are not required to provide information on working conditions which have been expressly agreed in writing by the parties. The employer also must inform the employee in writing of the change in the terms of working conditions no later than the date on which the change takes effect[8].

II - CHANGES REGARDING TO THE PROBATIONARY PERIOD

According to the LC, the parties can agree a probationary period of up to 3 months from the start of the employment contract (or 6 months by collective agreement). If the probationary period is shorter than this, the parties may extend it once up to 3 months[9]. These rules have been supplemented by the amendment in the light of Article 8 of the Directive 2019/1152. Under the new rules, no probationary period may be imposed on the renewal of a fixed-term employment contract or on its re-establishment within 6 months of its termination in the same or a similar job. In the case of fixed-term employment of a maximum of 12 months, the duration of the probationary period shall be determined

5 LC, art. 46(1).

6 It must be noted, the provisions on minimum predictability of work (Directive 2019/1152, art 10) were not transposed, because according to the legislator Hungarian labour law only allows for predictable working conditions for typical and atypical employment.

7 Employer must pay all employment-related public charges to the National Tax and Customs Administration.

8 LC was amended with additional information for workers sent to another Member State or to a third country according to art. 7. of the Directive 2019/1152 (see LC, art. 47). It also must be noted that the legislator has not adopted any new rules on parallel employment, as it considers that art. 8(1) of the LC requiring that during the employment relationship the employee shall not engage in any conduct which would jeopardise the legitimate economic interests of the employer, unless authorised by law, adequately transposes Article 9 of the Directive 2019/1152.

9 LC art. 45(5).

on a *pro rata* basis (e. g. if the fixed-term contract is for 6 months, it should not exceed 1.5 months; if it does exceed this, the excess is considered invalid)[10].

III - PATERNITY LEAVE, PARENTAL LEAVE AND CARERS' LEAVE

Under the previous legislation, the father was entitled to 5 working days of additional leave for the birth of a child, at the latest by the end of the second month following the birth, and 7 working days for the birth of twins. Under the new rules, a father is entitled to a total of 10 working days' paternity leave (no special rules for twins), to be granted at the end of the second month following the birth of his child at the latest, or the adoption of the child at the latest, after the decision granting the adoption becomes final, and to be granted in two instalments at the time of his request[11]. The so-called absence fee is paid for the first 5 days of paternity leave, and 40 % of it for the second 5 days[12]. State budget reimburses the employer the absence fee only for the first 5 working days of the paternity leave.

As a new rule the employee, if he or she is employed for at least one year, is entitled to 44 working days of parental leave up to the age of 3 of her her child[13]. The employer shall grant parental leave at the time requested by the employee[14]. The allowance for this period is quite low: the employee is entitled to 10 % of the absence fee for the duration of the parental leave, reduced by the amount of various childcare benefits[15].

The employee shall be exempted from his or her obligation to be available for work in order to provide personal care for a relative who needs care for serious health reasons or for a person living in the same household as the employee for a maximum of 5 working days per year (carer's leave)[16].

The employee until the age of eight or the carer, except during the first 6 months of employment, may request a change of place of work, a change in working hours, teleworking; or part-time work. The employee shall give reasons in writing for his or her request and indicate the date of the change. The employer shall give written notice of the employee's request within 15 days. If the request is refused, the employer shall give reasons for his statement, which must be clearly stated, real and reasonable. In the event of an unlawful refusal of the application or failure to make a statement, the court shall replace the employer's statement of consent[17].

IV - PROTECTION OF THE EMPLOYEES AND BURDEN OF PROOF

Generally, the LC requires the employer to give reasons in order to justify for termination of employment, and there are only a few exceptional cases when this is not necessary. However, according to the Article 18 of the Directive 2019/1152, the new rules provide

10 LC art. 192(4) and (5).
11 LC art. 118(4).
12 LC art. 146(4).
13 LC art. 118/A(1) and (2).
14 LC art. 122(4a).
15 LC art. 146(5).
16 LC art. 55(1)l.
17 LC art. 61(4), (5) and (6).

that, even in the absence of a duty to state reasons, the employer must, at the employee's request, justify its decision to terminate the employment relationship if the employee claims that he or she believes that the termination was due to a request for carer's leave, paternity leave, parental leave, unpaid leave to care for a child, or the amendment to the employment contract covered by the Directives. The employee may request the reasons for termination in a written form within 15 days of its notification, which the employer must give in writing within 15 days of receipt of the request. The reason for termination must be clearly stated. If the employee disputes this, the employer must prove that the reason for the termination is real and reasonable[18].

The compliance with the Directives is also facilitated by the new rules on the burden of proof regarding the prohibition of abuse of rights. Under these provisions the burden of proof is split between the employee and the employer. In the case of a claim based on an infringement of the prohibition of abuse of rights:

a) the person asserting the claim shall prove the facts, circumstances, and detriment on the basis of which the prohibition was infringed; and

b) the person exercising the right proves that there is no causal link between the fact or circumstance proved by the asserting party and the detriment[19].

This change is of great importance not only in the context of the Directives, but also for the protection of employees in general, since previously the practice of the courts placed the burden of proof entirely on the party who claimed that the other party had infringed the prohibition of abuse of rights. The new rules also provide that if the employer has breached the prohibition of abuse of rights by terminating the employment relationship, the court shall restore the employment relationship at the employee's request[20].

The amendment also included paternity leave, parental leave and carer's leave among the prohibitions on dismissal, so an employer cannot lawfully terminate the employment relationship with notice during these periods[21].

18 LC art. 64(2), (3) and (4).

19 LC art. 7(3).

20 LC art. 83(1)a point ab.

21 LC art. 65(3)c, d and h.