



HFDA Academy: New View

Labour Law Vis Maior Situations

dr. Ádám György

The current coronavirus pandemic has caused uncertainty in the day-to-day practice of labour law. Both employers and employees have found themselves in an unusual, unprecedented situation, and in times like these, it is now even more important for the parties to be aware of their obligations as well as their rights, and how the virus situation affects them.

Employment in the creative industries during coronavirus

The creative industry is mostly characterized by two forms of employment: when employees perform their duties in the framework of employment, and secondly when they operate as sole proprietors. The question arises, who qualifies as a sole proprietor? A sole proprietor is a natural person who carries out economic activity on a business-like, regular basis for the purpose of making a profit and wealth at his/her own risk. During an emergency, sole proprietors have the option of suspending their activities, which can last from one month up to 12 months - or worse, for up to two years – however, it is important to consider various options before making such decision. Entrepreneurs are not allowed to work while their business activities are suspended - they cannot even sign contracts for future work.

The employment relationship between employers and employees is regulated by the Labour Law (Labour Code), which covers wages, the duration of employment, the place of work, and the job role/title. An intermediate solution between being a private entrepreneur and being an employee is the framework of an employment relationship working as an independent contractor, which is already present in jobs related to design, tailoring and material processing. In such cases, the employee determines his/her work schedule individually, works with his/her own work equipment, and the employer's right to instruct is limited to the choice of the material and the method of work – the employer's possibility to check and inspect the work is also limited. However, the employer is obliged to reimburse the employee for the costs.

What rules need to be applied now?

During the times of emergency, the previous rules are equally valid and in force. The government has regulated these by ordering a state of emergency and announcing rescue packages: among other things, it has given employers the opportunity to deviate from their normal work schedule and perform their duties at home and has also allowed employers to initiate health assessments at their given worksites to curb the spread of the pandemic.

How long are these regulations applicable for?

According to the government decree, these special regulations can be applied for 30 days after the state of emergency has ended.

What obligations do employers have regarding the pandemic?

The primary responsibility for employers is to continue to employ their workers, providing them with tasks that match their job description. To deviate from this can only be done in exceptional cases and may not be disproportionately burdensome for the employee. Health protection must also be maintained at the place of work: this means that the employer must obtain protective equipment - including adequate hygiene equipment, masks, in the possession of which the employee cannot refuse to work. If the virus appears at the employer's site and there is a risk that workers may become infected, workers have the right to refuse to work, however they have to be available. Irrespective of the situation, employers still have the duty to provide other tools and equipment necessary for work: during this period, the possibility to use previously used electronic devices and IT services has to be available, in the possession of which working from home can continue.

Can an employer oblige the employee to work from home?

The government decree has provided an opportunity to order unilateral work and telework, however, it is important to distinguish working from home, from telework. Parties have had the option and opportunity to work via telework before - but this can only be concluded in an employment contract, and the agreement of the parties is required. In contrast, working from home takes place outside of the place of work, at the place of residence or stay of the workers, and can be ordered unilaterally.

Can workforce be transferred to another job position?

Even before the state of emergency was declared, it was possible for the employer to transfer its workforce to another job position. This does not constitute as a change in the contract, as the employer has the right to employ the employee in a different job position, place or employer. The duration of employment differing to that stated in the employment contract may be a total of up to 44 working days per calendar year or 352 hours. It may also count as a different method of employment from the employment contract if the employee has to work during other working hours, however, this period of employment is still considered to be the same, so when and if the employee is not given work, the obligation to pay his/her basic salary is still upheld.

In the case of work that cannot be completed from home, is there an option to be sent on compulsory or unpaid leave?

Labour law rules have not changed in this respect since the declaration of the state of emergency: Unpaid leave can still be claimed primarily by the employee or may arise in other circumstances. The employer may not unilaterally send the employee on unpaid leave, however, it is possible for the employer and the employee to jointly agree on taking unpaid leave. The rules regarding this time frame should be applied in the same way as previously done: the employer is not obliged to pay a basic wage if the employee is unable to fulfil his obligations due to external circumstances.

Questions regarding annual leave / paid time off (PTO)

The rules for granting leave / paid time off have also not changed: the employee previously had the option to choose over seven working days a year, and the rest can be set by the employer at his own discretion. The employer must notify the employee of his application 15 days before the start of the leave, who must then state whether the leave given by the employer falls on appropriate dates.

Adjustments on Working Hours – Placing focus on job retention

The economic protection package provided another opportunity to change working hours: the State provides unencumbered support to employers where they can agree with the employee on part-time work agreements. This aid is for a maximum of 3 months and the employer must commit and guarantee to not dismissing the employee during this period and to maintain his/her employment in the period following the state of emergency. The aim of these steps is to preserve jobs, which in the current situation is in the common interest of both employers and employees.