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THE LABOUR LAW ASPECTS OF THE ECONOMIC CRISIS

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Abstract in original language:
A gazdasági válság hatásai a munkaerőpiacot sem kerülték el, sőt, talán itt érzékelhetők a legnagyobb problémák, amelyek a munkavállalók és így az egész társadalom mindennapi életére kihatnak. A munkajog, amely a munkaviszonyok alapvető szabályait tartalmazza, megfelelő válaszokat próbál találni a gazdasági válság-okozta problémákra. Bár a munkaviszonyra vonatkozó szabályok egész Európában „békeidőben", azaz konjunktúrában, bővülő piacok és bővülő fogyasztás mellett lettek megalkotva, számos olyan jogintézmény található a szabályok közt, amelyek a gazdasági visszaesés közepette áthidaló megoldást jelenthetnek egyrészt a munkáltatóknak, másrészt a munkavállalóknak. A munkáltatók talán fenn tudnak maradni a versenyben, míg a munkavállalók védelmét szolgáló intézkedések a munkahely megtartásához, valamint az esetleges kényszerű átmeneti időszakhoz, esetleg újrakezdéshez nyújthatnak segítséget. Így az előadás a munkaidő rugalmas beosztásáról, a munkaerő-kölcsönzésről, a távmunkáról, a csoportos létszámcsökkentésről, az átirányításról, részmunkaidőről szól, valamint említést tesz a kiszervezés (outsourcing) intézményéről is. Ha ezeket az eszközöket a munkáltatók a megfelelő helyen és időben alkalmazzák, valószínűleg mindannyiunknak könnyebb lesz a válságból való kilábalás.

Key words in original language:
Munkajog, gazdasági válság, munkaerőpiac, munkaidő, leépítés, csoportos létszámcsökkentés, munkaviszony megszűntetése, távmunka, átirányítás, kollektív szerződés, kiszervezés, részmunkaidő, munkabér.

Abstract:
The effects of the economic crisis did not leave uneffected the labour market either, possibly the biggest issues can be noticed here, which are effecting the everyday life of the employees and through that the whole society. The labour law, which includes the fundamental regulations of the labour relations, is trying to find answers to the issues caused by the economic crisis. Though the regulations of labour relations were created in the whole of Europe „during the time of peace"; meaning during economic boom, expanding markets and consumption; there are several arrangements amongst the regulations, which can be temporary solutions during recession for the employers but also for the employees. The employers might be able to maintain an existence in the competition, whilest the regulations protecting the employees can be helpful to keep their jobs, to overcome obligatory interim periods, or to facilitate new starts. The topic of the lecture is: flexible working times, labour-rent, working from home, grouped cut back, redirecting processes, part time work, it also mentions the topic of outsourcing. If the employers are using these tools at the right time under the right circumstances, it can possible make the recovery from the economic crisis much easier for all of us.

Key words:
Labour law, economic crisis, labour market, working time, cut back, grouped cut back, end of labour relation, working from home, redirecting, collective agreement, outsourcing, part time work, wages.

The effects of the economic crisis did not leave unaffected the labour market either, possibly the biggest issues can be noticed here, which are effecting the everyday life of the employees and through that the whole society.

The labour law, which includes the fundamental regulations of the labour relations, is trying to find answers to the issues caused by the economic crisis. Though the regulations of labour relations were created in the whole of Europe „during the time of peace"; meaning during economic boom, expanding markets and consumption; there are several arrangements amongst the regulations, which can be temporary solutions during recession for the employers but also for the employees. The employers might be able to maintain an existence in the competition, whilst the regulations protecting the employees can be helpful to keep their jobs, to overcome obligatory interim periods, or to facilitate new starts.

The topic of the lecture is: flexible working times, temporary work, distance work, group layoff, redirecting employees, part time work; it also mentions the topic of outsourcing. If the employers are using these tools at the right time under the right circumstances, it can possible make the recovery from the economic crisis much easier for all of us.

Under current economic conditions it is extremely important that business advisors show all methods to their clients which can potentially decrease cost, and legal and economic risks. In the crisis management labour law can be an important aspect, as it helps to optimize working time, management of employees, and the observation of data protection questions of the employees.[1]

1. FLEXIBLE WORKING TIMES

The EU law in general allows the usage of the 4 months fixed term work time. The bill nr. T/9239 about the modification of the Labour Code is currently in front of the Parliament for discussion. This bill supposed to enable the above in Hungary.[2] Currently within the terms of EU regulations the Labour Code (LC) enables the following in order to ensure flexible employment: under the one sided decision of the employer the 3 months or 12 weeks, long fixed term work time or under collective agreement the maximum 6 months or 26 weeks long fixed term working time.[3] The flexible work time management is extremely important, especially in current hectic economic situation.

Full time work means daily 8, weekly 40 hours.[4] The legal definition of full time work is very important, for one reason the parties often forget to determine it in the contract in this case the regulations of the LC apply. Also certain regulations about the safety at work and healthcare can regulate it differently by assigning shorter time period as full time work.

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[1] http://www.bpv-jadi.com/hu/hireink?id=5705&PHPSESSID=4db20342ec31b9535fe28c5189fca973 - 2009. 05. 26.

[2] T/9239. bill, 9. §

[3] 1992. évi XXII. tv. A Munka Törvénykönyvéről – Mt. (Hungarian Labour Code), 118/A. §

[4] Mt. 117./B. §

The mutual agreement of the parties can determine shorter, or longer work time (in case of stand by job or if the employee is a close relative of the employer, but it can not exceed 12 hrs per day and 60 hrs per week.

The exact definition of the full time work is also in the interest of the alignment with the minimal wage regulations. If the daily working hours are shorter then 8 hours, then the minimal wage needs to be proportionally decreased, or if it's more then 8 hours per day, then proportionally increased.

We have to differentiate btw full time work less then 8 hours and part time work. In case of part time work (which can be e.g. 4 hrs) the minimal wage needs to be determined in the ratio of the part time work to the full time work.[5]

The same bill includes the following: in case the parties concerned or the regulations regarding the labour relations allow a shorter full time work due to the crisis, they can also agree to work the lost time btw 1st Jan 2010. and 31st December 2011. However the weekly working hours can not exceed 44 hours.[6] Though this rule seems to be in favour of the employer, the creators of the bill think this can lead to the preservation of several jobs.

2. TEMPORARY WORK

Temping work is such a working relationship, where the employee works not for the employer mentioned in the labour agreement, but for the borrowing company, to whom the employer lends him for a certain fee.

Many consider this atypical working relationship an effective and flexible solution for the borrower, it can „replace" the classical working relationship.

The primary aim of the temping work is to provide the temporarily needed additional staff for the employer in the following cases: suddenly increased number of orders, additional tasks due to seasonal fluctuations, immediate reactions to the changes of the market, or any causes affecting the employer such as sick leave, pregnancy leave, holidays.

The guideline about temping work[7] – accepted last year, but not implemented yet in the Hungarian legal system – stresses the temporary aspect of temping work. While this is understood in Western Europe, in Hungary unfortunately this is not the case.

It is being mentioned very often that an important aspect of temping work is, through this system such people have a chance to jobs, who would not be able to get one through the typical working system. This might be true for the majority of the European countries; however for Hungary it's not completely valid. The employment is restructured through the

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[5] Radnay József: Munkajog. Szent István Társulat Budapest, 2003. 124. p.

[6] T/9239. bill, 8. §

[7] Directive 2008/104/EC of the European Parliament and of the council of 19 November 2008 on temporary agency work

temping work, its not expanding. The atypical replaces the typical working forms, and the stable working environment is replaced by the less stable.[8]

The temping work has lost its function, this can also be noticed when we look at the probation work. Sometimes the employer gets the job applicant work for him through a temping agency, in order to avoid the limitations of maximum 3 months probation time, which is regulated in LC 81. §. The institution of temporary work functions as „probation time".

When using temporary employment the employer avoids the costs of selection, of the administrative expenses of new hires (e.g. Fees of the preparation of employment agreements), salary and common charges, payroll calculations, and the risk of resignations. In exchange of these he has to pay a fee to the temping agency. Based on experience all the relevant expenses of the agency are built in the renting fee, no matter if the fee is being charged based on actual working time or lump sum. For this reason temporary work can not be considered substantially cheaper then regular employment. Its a fact though that it releases the employer of administrative charges and it provides flexibility, especially if the employer thinks in projects or plans for a short term, it can also be a tool of HR planning (e.g. if in the given company internal regulations limit the number of employees).[9]

3. DISTANCE WORK

Distance work has been practiced for a long time, and its spreads all over the world in recent times[10], in this case the place of daily work is not the base of the employer, but the usually the place of the employee. They are keeping in touch and delivering the work through IT channels, with IT tools.[11] Due to the type of work the job can be performed away from the company's base (like a gas fitter or driver) but an essential part of the job is the use of IT systems. Jobs that fall in this category are: data entry, statistic calculations, summarizing, translation, press-watch, journalism, editing of publications.

Due to the atypical aspects of this type of work the LC defined specific regulations for the distance work. The LC does not give the definition of the distance work, but it regulates this question from the viewpoint who can be considered distance work employee. The main point is, that the place of work is separate from the employer's official worksite, this can be the distance worker's home or any other rented building. A further requirement is that the task has to be within the limits of the employer's field of activity, and it has to be performed with the help of IT technologies and systems (e.g. phone or computer)[12] .

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[8] Mihály Ildikó: Atipikus foglalkoztatási formák – szakszervezeti szemszögből. Interjú Pataky Péterrel, az MSZOSZ elnökével, Munkaügyi Szemle 2009/1., 7. p.

[9] Petrovics Zoltán: A munkaerő-kölcsönzés: Csodaszer vagy tünetek kezelése? Országos Humánpolitikai Egyesület XIX. Conference 2009. május 12-14. Budapest

[10] Kiss György: Munkajog. Osiris Budapest, 2005. 97. p.

[11] Mt. 192/D. §

[12] Kiss György (szerk.): Az Európai Unió munkajoga. Osiris Budapest, 2001. 462. p.

The third requirement is that the result of the work has to be submitted electronically (e.g. phone, e-mail) to the employer.[13]

The labour relationship originates with the signing of the labour agreement, in which apart from the compulsory contents (scope of activities, base rate, and place of work) it has to be mentioned that this is specifically a distance working relationship. It might happen that an already existing employee initiates the modification of the labour agreement, to be employed as a distance worker. For such an enquiry the employer has to answer within 15 days in writing.

The method of communication has to be determined, since in this case it is not personal. This can determine who is entitled to instruct and how often the distance worker, and when is the distance worker supposed to deliver and to whom. It is important to determine what costs of the distance worker will be covered by the employer. It's useful to regulate this with lot of detail, as it can be the ground for future arguments. The parties have to decide who will provide the systems and IT tools necessary for the work and for the communication. In case this is not determined the employer is supposed to provide these tools.

The employer has to advise the distance worker in writing within 30 days of signing the contract about the control of the work, liabilities in case of damages, and the limits of using the IT equipments. The employee has to advise the employer about the ways to communicate with him electronically (e.g. Phone number, e-mail address). The parties have to pay attention to the special data protection regulations.[14]

In case of distance work the employer's right to instruct and direct the employee are more limited then in a regular working environment. For this reason the employee has to be much more self sufficient. The work time schedule of the distance worker can be agreed upon, though this is exactly why it is so appealing, that the employee can decide about his own time. If the work schedule is not regulated the employee is free to decide about his own work schedule.[15]

Using distance workers the employer can save on cost, the downside is that only certain jobs can be performed this way – e.g. in IT, market research, sales etc.

4. GROUP LAYOFF

The guideline 98/59/EK[16] made it necessary to change the regulations of group layoffs.

When the employer is planning a big layoff, he has to decide if the layoffs which are within 30 days and the cause is related to the activity of the company is above the limit where the regulations of group layoff apply.[17]

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[13] Pál-Radnay-Tallián: Munkajogi kézikönyv. HVG-Orac Budapest, 2007. 352. p.

[14] Mt. 192/E. §

[15] Mt. 192/G. §

[16] Directive 92/56/EC into the system of regulation of collective redundancies established by Directive 75/129/EEC

The LC provides specific regulations as to what is to be considered group layoff. When the number of layoffs is determined not only the regular layoffs are to be counted but all the cases of layoffs which are caused by the activity of the employer.

These are the employees, whose work relationship has been ended with regular layoff, with common agreement of the parties initiated by the employer and whose fixed term employment has ceased based on paragraphed 88. § of the LC[18]. It is important that in all 3 cases the reason of end of contract has to be related with the activity of the employer.[19]

If the company has several premises, the size and conditions of the layoff have to be determined separately for each premises, but if the premises are in the same county (capital) the number has to be summarized.

The regulated limit compared to the total amount of employees is also influencing the implementation of group layoff's rules. The base is the average statistic number of employees in the 6 months before the decision is taken. If the employer exists less then 6 months e.g. 3 months, then the average has to be determined for this time period.

If the employer doesn't comply with the compulsory notice requirement in advance towards the Employment Agency, it will be charged a penalty of 1000-100000 Ft, furthermore in this case the regular layoff is against the law.

Based on LC 94/B. § the employer (liquidator) has to consult the factory council, or if there is none, the union represented at the company or the employee's committee. The aim of the consultation is, before the final decision of the group layoff that the employer and the committee try to find ways to avoid the layoff or decrease its numbers.

To ease the effects of the group layoff, a non refundable subsidy can be applied for in the amount of up to 1 million Ft.

The employer has to give notice also to the employees, if he ends their contract with regular layoff or in case of fixed term employment. Min 30 days before the official announcement about the layoff, the employees need to be advised of the decision.[20]

5. REDIRECTION

The employment agreement doesn't need to change in case of redirection. The employer can instruct the employee – with one-sided decision – to perform other duties next to or in place of his original tasks. This action of the employer is called redirection in the new terminology. The employer can only exercise this right if the redirection is necessary for the activity of the

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[17] Mt. 94/A. §

[18] Termination of fixed-term employment before the expiration.

[19] Kiss György: Munkajog. Osiris Budapest, 2005. 245. p.

[20] Lehochkyné Kollonay Csilla (szerk.): A magyar munkajog I. Vince K. Budapest, 2001. 153. p.

company, if it is only temporary, and it can not cause ill-proportioned discontent to the employee.[21]

As per the rules for remuneration of redirecting to optimize work times, if the employer performs new duties instead of his original ones, he will be paid based on the actually performed work, but this amount can not be less then his average salary.

If the employee performs additional duties next to his original ones, and the time can be clearly differentiated, he is entitled to his wages based on the actual work.

In case the time used for the additional duties can not be clearly determined, them employee is entitled to substitution wages on top of his original salary.

Taking into account that delegation, detached service and performing the jobs at another employer also means temporary employment, the LC regulates this in maximum 110 days in the given calendar year. The LC's regulations only apply if the collective agreement doesn't regulate these specifically. The collective agreement can determine less or more days.

6. OUTSOURCING

In case of outsourcing there is no employer or employee. This is a specific workflow aimed at external delivery of activities performed previously in the company or external supply of products previously produced.

Companies can decide to separate some activities from the core processes and let them be performed by external companies. The outsourcing can happen through the owners creating a new company or that a company already on the market will be commissioned to perform the tasks.

Lately several companies specialized in providing complete consultancy and delivery to those companies which are trying to "slim" in some areas.[22]

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