

NEWSLETTER

Modification of the Labor Code with regard to the new Civil Code

(Act CCLII of 2013 on the Modification of Certain Acts in connection with the Entering into Force of the New Civil Code¹)

Aim of the Modification: creating a harmony between the new Civil Code and the Labor Code.
Entering into Force: March 15, 2014

Details of the Modification are as follows:

(1) In connection with the Introductory Provisions of the new Civil Code, the Modification supplements the subtitle ‘Common Rules of Conduct’ of the Labor Code (see: section 6) with the relevant provisions of the new Civil Code, in accordance with the provisions relating to attributability. This means that when performing the employment contract, a person must act in the manner that can be reasonably expected of him, and no one may rely, in support of his claim, on an unlawful act he has committed.

In relation to the prohibition of the abuse of rights, section 7 of the Labor Code is supplemented by the provision according to which where the abuse of a right is manifested in the repudiation of a legal act required by a rule on the employment relationship and this conduct does injury to an overriding public interest or a private interest of the other party in cases of exceptional circumstances, the court is entitled to substitute its judgment for the party’s legal act, provided there is no other way of averting the injury.

(2) The Second Book of the new Civil Code provides for the rules on rights relating to personality, and uses the term ‘personality rights’ instead of ‘personal rights’, therefore section 9 of subtitle 5 of the Labor Code is modified. (Subtitle 5 of the Labor Code: “Protection of personal rights” is modified to “5. Protection of personality rights”.)

When applying the provisions of the new Civil Code relating to exemplary compensation for wrongdoing, the rules of the Labor Code on liability for damages shall prevail, thus the employee’s liability for damages is restricted also in the case of exemplary compensation for wrongdoing.

The Labor Code is amended at several places in connection with exemplary compensation for wrongdoing, thus the new rules of liability for damages shall be applicable also in the case of school cooperatives and temporary work agencies.

(3) The new Civil Code introduces a change regarding the rules on legal capacity, thus the rules of the Labor Code relating to making legal acts are also modified.

¹ Hungarian Gazette issue no. 122 (30.12.2013)

(Pursuant to the currently effective section 21(4) of the Labor Code, the consent of the legal representative is required for the legal acts of persons of limited legal capacity relating to the conclusion, amendment or termination of an employment contract, or to undertaking commitments. However, for the purposes of the Modification: “the consent of the legal representative is required for the validity of the legal acts of the young worker or the employee of partially limited legal capacity with respect to certain type of matters, which are aimed at the conclusion, modification, termination of the employment contract or at undertaking a commitment.”)

(4) In the same way, the rules of the Labor Code regarding formal requirements are changed in order to create harmony with the rules of the new Civil Code relating to legal acts requiring written form.

Pursuant to the Modification, the following legal acts must be construed to have been made in writing:

- a) If communicated in an electronic document (hereinafter: the “electronic document”) with facilities for retrieving the information contained in the legal act unaltered, and for identifying the person making the legal act and the time when it was made;
- b) In the cases specified in sections 93(4), 97(4), 108(1), 110(5) and (6), 138(4), 193(2) of the Labor Code even if published by means considered customary for, and commonly known in, the area.

References to the above provisions cover the following cases:

- Specifying in writing and making public the beginning and ending dates of working time cycle;
- Making the work schedule public;
- Ordering overtime work;
- Ordering on-call and stand-by duty and communicating their duration;
- Communicating the performance requirements and performance-based wage factors in writing;
- In the case of performing work based on call for work, communicating the time of working.

According to the effective Labor Code, a legal act made in writing shall be considered served upon delivery to the person concerned or the person authorized to receive it, or at the time when access to the electronic document is provided. The legal act shall also be considered served if the person concerned or the authorized recipient refuses to receive it or intentionally prevents delivery.

For the purposes of the Modification, a legal act made in writing shall be considered served upon delivery to the person concerned or the person authorized to receive it, or at the time when access to the electronic document is provided, furthermore in the case of a legal act specified in section 22(2) point b) (i.e. legal acts to be published by means considered customary for, and commonly known in, the area), if published by means considered customary for, and commonly known in, the area. Access is provided to the electronic document, when it becomes possible for the person concerned or the person authorized to receive it to become acquainted with its contents. The legal act shall also be considered served if the person concerned or the authorized recipient refuses to receive it or intentionally prevents delivery.

(5) Pursuant to section 27(1) of the Labor Code, any agreement that infringes upon any employment regulation, or that is entered into by way of circumvention of any employment regulation shall be null and void. For the purposes of the Modification: “any agreement that infringes upon any employment regulation, that is entered into by way of circumvention of any employment regulation or that is manifestly in contradiction to good morals shall be null and void”. (This rule is in harmony with section 6:96 of the new Civil Code, according to which a contract shall be null and void if it is manifestly in contradiction to good morals.)

(6) A deficiency of the effective regulation in respect of the right to contest on the grounds of misapprehension is rectified by the Modification in such a way that it is made clear what can be considered as a mistake regarding a material circumstance. Since it is necessary for the coming into existence of a contract that the parties should agree on material issues, only such mistake may be qualified as material in the knowledge of which the party concerned would not have concluded the contract on the given terms. In the judicial practice, it has been examined even earlier in relation to a mistake whether the party who referred to the mistake could have recognized the mistake when acting with due care.

As per the Modification, the right to contest on the grounds of misapprehension is excluded if the party could have recognized his mistake, or if he/she assumed the risk of the mistake.

(7) Section 31 of the Labor Code is also changed for the purpose of adjusting its provision to the modified structure of the new Civil Code. The Modification contains a list of the provisions from among the sections of the Sixth Book of the new Civil Code which are applicable in respect of legal acts in the absence of a provision of the Labor Code to the contrary.

(8) Section 172 of the Labor Code (dealing with compensation) is modified in accordance with the established judicial practice, and is supplemented by a new section which makes it clear that when calculating loss of income from employment, contributions must be deducted.

It is set out in the Modification that the following shall be deducted from the amount of compensation:

- a) Benefits provided under the social security system or by a voluntary mutual insurance fund;
- b) The income in fact earned by the obligee, or which could have been earned in the given situation within reason;
- c) The profit earned by the obligee through the utilization of the damaged property;
- d) The benefit gained by the obligee as a result of expenses saved in consequence of the occurrence of the damage.

(9) By changing the current subtitle 76 of the Labor Code (“Liability for damage caused by wrongful acts”) to “General rules of liability”, it is made clear that sections 6:518-534 of the new Civil Code are to be applied generally for compensation of damage caused by the employee, not

only for damage caused by wrongful acts but also for damages asserted in respect of liability for safeguarding and inventory liability.

(10) By formulating sections 127 and 209 of the Labor Code more precisely, an even more complete compliance with the Council Directive 92/85/EEC is realized.

Pursuant to the currently effective section 127(1) of the Labor Code, mothers shall be entitled to twenty-four weeks of consecutive maternity leave. According to the Modification, “mothers shall be entitled to twenty-four weeks of consecutive maternity leave with the proviso that they are obliged to use two weeks thereof”.

The rules of employment contracts of executive employees are also changed.

According to section 209 of the effective Labor Code, employment contracts of executive employees may derogate from the provisions of Part Two of this Act, save where subsection (2) applies. Collective agreements shall not apply to executive employees. Executive employees shall work under flexible arrangements. Executive employees shall be subject to full liability for damages caused by negligence. By way of derogation from subsections (1)-(2) of section 84, the executive employee, if having terminated his employment relationship unlawfully, shall be liable to pay compensation in the sum of absentee pay due for twelve months.

The new text shall read as follows: “employment contracts of executive employees may derogate from the provisions of Part Two of this Act, save where subsection (2) applies. According to subsection (2), employment contracts of executive employees may not derogate from the provisions of section 55(1) points b), c) and e); section 65(3) points a) and b), section 113(3), section 127 and subsection (3) of the Labor Code

Thus, employment contracts of executive employees may not derogate from the following rules:

- Employees shall be exempted from the requirement of availability and from work duty: if receiving treatment in a healthcare institution related to a human reproduction procedure, as specified in the relevant legislation; and for the duration of mandatory medical examination; furthermore if they are nursing mothers, for one hour twice daily, or two hours twice daily in the case of twins during the first six months of breastfeeding, and thereafter for one hour daily, or two hours daily in the case of twins until the end of the ninth month;
- The employer may not terminate the employment relationship by notice during pregnancy and during maternity leave;
- An employee may not be ordered to work in night shifts, from the time the employee’s pregnancy is diagnosed until her child reaches three years of age and until the child reaches three years of age, if a single parent;
- The rules on maternity leave are also applicable to the executive employee; and
- Collective agreements shall not apply to executive employees even based on the employment contract.

It remains unchanged that collective agreements shall not apply to executive employees; and that executive employees shall work under flexible arrangements.

Executive employees shall be subject to full liability for damages caused by negligence. By way of derogation from subsections (1)-(2) of section 84 of the Labor Code, the executive employee, if having terminated his employment relationship unlawfully, shall be liable to pay compensation in the sum of absentee pay due for twelve months.”

(11) In the Modification, the provisions of the new Civil Code on liquidated damages are ordered to be applied in connection with study contracts and non-competition agreements.

(12) The concept of relative is specified more precisely in harmony with the new Civil Code; and the concept of the deduction-free part of the wages is supplemented.

According to this, relatives shall mean spouses, next of kin, adopted children, stepchildren, foster children, adoptive parents, stepparents, foster parents, and siblings; domestic partners, spouses of the next of kin, spouses next of kin and siblings, and spouses of siblings.

(Earlier, the relatives according to the Labor Code contained a tighter scope / spouses, next of kin, spouses next of kin, adopted persons, stepchildren, foster children, adoptive parents, stepparents, foster parents, brothers and sisters, and domestic partners/).

Budapest, January 13, 2014

The contents of this Newsletter have been prepared for information purposes and cannot be deemed as a comprehensive analysis of the modifications. Therefore it cannot be interpreted as a legal opinion or a legal advice in a concrete matter under any circumstances.
