Petr Hůrka / Nataša Randlová

Labour Code

Commentary

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TABLE OF CONTENTS

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Dr. Hůrka acts as a mediator and arbitrator in collective labour law disputes, as well as a lecturer and a consultant. He is a member of advisory board of a periodical Právník, publishes in expert media and is an author or co-author of several labour law publications.

Sections 1–77, 248–275, 365–393

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The experience of Nataša Randlová is highly valued in many international rankings, such as *PLC Which Lawyer?* and *Chambers Europe*. She was also voted the Czech Lawyer of the Year 2007 for the labour law area.

In preparing this commentary Nataša cooperated with other Randl Partners lawyers – **Romana Kaletová**, **Daša Aradská**, **Barbora Suchá** and **Ondřej Chlada**. This enabled her to include a lot of practical experience into the text.

Sections 78–247, 276–364, 393a–396

LEGAL REGULATIONS CITED IN THE COMMENTARY[1]

International Treaties

Convention on forced labour (International Labour Organisation), pronounced in the Czech Republic under No. 506/1990 Coll.	**Forced Labour Convention**
The convention for the protection of human rights and fundamental freedoms (Council of Europe), pronounced in the Czech Republic under No. 209/1992 Coll.	**Convention for the Protection of Human Rights and Fundamental Freedoms**

Legal Regulations of the European Communities

Regulation No. 883/2004/EC of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems	**EC Coordination Regulation**
Council Directive No. 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women	**EEC Equal Pay Directive**
Council Directive No. 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions	**EEC Equal Treatment of Men and Women Directive**
Directive No. 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services	**EC Posting Directive**
Council Directive No. 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin	**EC Equal Treatment Irrespective of Racial or Ethnic Origin Directive**

Council Directive No. 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation	**EC General Framework for Equal Treatment Directive**
Council Directive No. 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses	**EC Transfer Directive**
Directive No. 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community – Joint declaration of the European Parliament, the Council and the Commission on employee representation	**EC Information and Consultation Directive**
Directive No. 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive No. 76/207/EEC	**EC Implementing Equal Treatment Amendment Directive**
Directive No. 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time	**EC Working Hours Directive**
Directive No. 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation	**EC Equal Treatment of Men and Women Directive**
Directive No. 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees	**EC European Works Council Directive**

Legal Regulations of the Czech Republic:

Resolution of the Presidium of the Czech National Council No. 2/1993 Coll., on promulgation of the charter of fundamental rights and basic freedoms	**Charter of Fundamental Rights and Basic Freedoms**
Act No. 94/1963 Coll., on family	**Family Act**
Act No. 99/1963 Coll., the civil procedure code	**Civil Procedure Code**
Act No. 40/1964 Coll., the civil code	**Civil Code**
Act No. 65/1965 Coll., the labour code	**Previous Labour Code**

Act No. 20/1966 Coll., on care for health of the population	**Public Health Care Act**
Act No. 133/1985 Coll., on fire prevention	**Fire Prevention Act**
Act No. 2/1991 Coll., on collective bargaining	**Collective Bargaining Act**
Act No. 513/1991 Coll., the commercial code	**Commercial Code**
Act No. 117/1995 Coll., on state social support	**State Social Support Act**
Act No. 155/1995 Coll., on pension insurance	**Pension Insurance Act**
Act No. 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic	**Foreigners Residence Act**
Act No. 101/2000 Coll., on personal data protection	**Personal Data Protection Act**
Act No. 219/2000 Coll., on the property of the Czech Republic and its position in legal relations	**Act on Property of the Czech Republic**
Act No. 245/2000 Coll., on state holidays, significant days and rest days	**State Holidays Act**
Act No. 435/2004 Coll., on employment	**Act on Employment**
Act No. 627/2004 Coll., on European Company	**European Company Act**
Act No. 251/2005 Coll., on labour inspection	**Labour Inspection Act**
Act No. 379/2005 Coll., on measures for protection against damages caused by tobacco products, alcohol and other addictive substances	**Act on Protection against Smoking**
Act No. 187/2006 Coll., on sickness insurance	**Sickness Insurance Act**
Act No. 266/2006 Coll., on accident insurance of employees	**Act on Accident Insurance**
Act No. 307/2006 Coll., on European Cooperative Society	**European Cooperative Society Act**
Act No. 309/2006 Coll., on the provision of other conditions of occupational safety and health protection	**Health and Safety Act**
Act No. 198/2009 Coll., on equal treatment and on legal remedies for protection against discrimination and the modification of certain laws	**Anti-Discrimination Act**
Government regulation No. 290/1995 Coll., stipulating a list of occupational diseases	**Regulation Listing Occupational Diseases**
Government regulation No. 495/2001 Coll., stipulating the extent and details of providing personal protective equipment, washing, cleaning and disinfectant agents	**Regulation on Personal Protective Equipment**

Government regulation No. 567/2006 Coll., providing for the minimum salary, the minimum level of guaranteed salary, the specification of an unfavourable working environment and the amount of the extra pay for work in unfavourable working environment	**Regulation on Minimum Salary**
Government regulation No. 589/2006 Coll., providing for a different regulation of working hours and periods of rest for employees in transport	**Regulation on Working Hours in Transport**
Government regulation No. 590/2006 Coll., on the area and scope of other important personal impediments to work	**Regulation on Employee Impediments**
Government regulation No. 595/2006 Coll., on the manner of calculation of the basic amount that cannot be deducted from the monthly salary of the obliged in case of an execution, and on setting the amount, above which the salary is subject to deductions without limitation	**Regulation on Non-Deductible Amounts**
Government regulation No. 182/2007 Coll., providing for a different regulation of working hours and periods of rest for members of the corporate fire rescue unit	**Regulation on Working Hours for Fire Rescue Units**
Government regulation No. 361/2007 Coll., stipulating the conditions of health protection at work	**Regulation on Health Protection at Work**
Government regulation No. 201/2010 Coll., on the manner of keeping records, reporting them and sending a record of an accident at work	**Regulation on Accident Evidence**
Government regulation No. 227/2010 Coll., on the modification in regulation of employment relationship of employees with regular workplace abroad	**Regulation on Employees Abroad**
Decree of the Ministry of Finance No. 125/1993 Coll., stipulating the conditions and the rates of the statutory insurance of employer's liability for damage sustained in connection with an accident at work or an occupational disease	**Decree on Accident Insurance**
Decree of the Ministry of Health No. 342/1997 Coll., stipulating the procedure in recognition of occupational diseases and issuing a list of health-care facilities which recognize such diseases	**Decree on Acknowledging Occupational Diseases**

Decree of the Ministry of Health No. 440/2001 Coll., on compensation for pain and diminishing of a social position	**Decree on Pain Compensation**
Decree of the State Nuclear Safety Office No. 307/2002 Coll., on radiation protection	**Decree on Radiation Protection**
Decree of the Ministry of Health No. 288/2003 Coll., stipulating work and workplaces that are prohibited for pregnant women, breastfeeding women, mothers to the end of the ninth month after childbirth and minor persons, and the conditions under which minor persons may carry out this work in exceptional cases for reasons of preparation for an occupation	**Decree on Prohibited Work**
Decree of the Ministry of Finance No. 350/2010 Coll., stipulating the base rates for foreign catering fee for the year 2011	**Decree on Foreign Catering Fee**
Decree of the Ministry of Labour and Social Affairs No. 377/2010 Coll., changing for the purposes of provision of travel allowances the rates of basic compensation for the use of road motor vehicles and catering fee and stipulating the average fuel prices	**Decree on Transport Expenses**

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[1] **Unless stated otherwise, the legal regulations referred to in the text are cited as amended. The legal regulations were sorted in the following order:**
International Treaties
Legal regulations of the European Communities
Legal regulations of the Czech Republic

INTRODUCTION

This commentary is intended to be used by foreign private sector employers, foreign managers and foreign employees. It is not designed for the public sector. As such, it does not go into detail about other provisions pertaining only to public sector employees, such as those on public sector pay, etc. This commentary is a practical explanation of the Labour Code and points out the most problematic areas; it does not analyze in detail each aspect of employment law or provide extensive theoretical background. The text is complemented with numerous examples in order to clarify key issues, as well as with the text of relevant provisions of the Civil Code (Act No. 40/1964 Coll.). In preparing this commentary the authors have applied their broad practical experience with Labour Code.

The current Labour Code (Act No. 262/2006 Coll.) was adopted after a problematic legislative procedure in 2006 and has been in effect since 1 January 2007, replacing the previous Labour Code adopted in 1965 (Act No. 65/1965 Coll.). The purpose of the current Labour Code was to introduce more flexibility and contractual freedom into employment relationships (the previous Labour Code was based on the concept that what is not expressly allowed by law is forbidden). This goal was not reached, and after being in effect for almost four years it is safe to say that this Labour Code contains many problematic issues which will have to be clarified by an amendment or a new regulation entirely. Some of the problems of the original wording were corrected by a technical amendment to the Labour Code (Act No. 362/2007 Coll.) with effect from 1 January 2008, others by a decision of the Constitutional Court (No. 116/2008 Coll.) repealing numerous Labour Code provisions. However, this decision itself created several new issues, especially as it concerns the invalidity of legal acts.

In 2007-2008, the Ministry of Labour and Social Affairs prepared a draft conceptual amendment to the Labour Code, with the cooperation of a panel of employment law experts that included the authors of this publication. Although this amendment should resolve the problematic issues, due to the political situation in spring 2009 this new regulation was not approved and its future is unclear.

262/2006 Coll.

ACT
of 21 April 2006

The Labour Code

Amendment: 585/2006 Coll.
Amendment: 181/2007 Coll.
Amendment: 261/2007 Coll., 296/2007 Coll., 362/2007 Coll., 357/2007 Coll.
Amendment: 116/2008 Coll.
Amendment: 121/2008 Coll., 126/2008 Coll.
Amendment: 294/2008 Coll.
Amendment: 305/2008 Coll., 382/2008 Coll., 451/2008 Coll.
Amendment: 320/2009 Coll.
Amendment: 326/2009 Coll.
Amendment: 286/2009 Coll.
Amendment: 306/2008 Coll., 462/2009 Coll.
Amendment: 347/2010 Coll., 377/2010 Coll.

The Parliament has passed this Act of the Czech Republic:

PART ONE

GENERAL

TITLE I

SUBJECT OF THE ACT AND DEFINITION OF EMPLOYMENT LAW RELATIONSHIPS

Section 1

This Act

a) regulates the legal relationships arising within the performance of dependent work between employees and employers; these relationships are employment law relationships;

b) also regulates legal relationships of a collective nature. Legal relationships of a collective nature that are related to the performance of dependent work are employment law relationships;

c) transposes the applicable regulations of the European Communities[1];

d) also regulates certain legal relationships existing at a time before employment law relationships pursuant to subparagraph a) above.

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[1] **Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.**

Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

Council Directive 99/70/EEC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.

Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

Council Directive 97/74/EC of 15 December 1997 extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

Council Directive 2006/109/EC of 20 November 2006 adapting Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, by reason of the accession of Bulgaria and Romania.

Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

Art. 13 of Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working hours.

Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work.

Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment law relationship or a temporary employment law relationship.

Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (third individual directive within the meaning of Article 16(1) of Directive 89/391/EEC).

Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently

given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working hours of persons performing mobile road transport activities.

Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector.

Art. 15 of Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

Introductory provisions

These introductory provisions define the scope of the Labour Code. The Labour Code constitutes elemental labour law legislation; it regulates the legal relations that arise in connection with employment. The function and the purpose of employment regulations is to regulate the performance of work by the employee for the employer. On the one hand, the aim of the Labour Code is to provide the employer with tools to organize and to control employee work to achieve the employer's activities (organizational function), and to secure for the employee reasonable working conditions (protective function) on the other hand.

Employment law relationships, therefore, are quite specific compared to other private law relationships. In labour law, contractual freedom (the parties agree to deviate from the law) is more protective of the employee, being the weaker party to the legal relationship. The Labour Code thus quite often stipulates the duty to behave in a certain way and it does not provide for any different conduct, even if the employee consented to it. Labour law stems from the fact that the pressure to get a job may economically and socially determine the employee's free will (e.g. when concluding an employment contract). Therefore, the purpose of employment rules is to counterbalance this inequality through the legal protection

of preferential treatment of the employee; i.e. the weaker party. The aim should be to find a balance, which however is not at all easy.

Scope of the Labour Code

Employment law relationships can be divided into three types – individual, collective and legal relations arising in regards to employment. Individual employment law relationships are deemed to be the legal relations between persons that require the labour force of another person to implement their line of business. Individual employment relations then regulate the rights and the obligations of the person who offers the job and the rights and the obligations of the person who does the job for the person offering it in person and in return for payment. On the other hand, collective employment law relationships regulate employee working conditions and the rights and obligations between the employer and employee representatives. Apart from individual and collective employment law relationships, labour law is also concerned with legal relations that arise in regards to employment. Nonetheless, these legal relations are not of a private nature and they are not contained in the Labour Code but in the *Act on Employment*.

The Labour Code also implements EC regulations, primarily EU directives that regulate employment law relationships and which, most importantly, guarantee employees working in the EU reasonable working conditions and occupational safety. Following the need to observe the rules contained in EU Directives, Member States are obliged to implement these in national legislation, specifically the Labour Code. By doing so, Czech labour law will be in harmony with the legal regulations contained in the Directives. A comprehensive overview of the provisions of the Labour Code that implement EU legislation is provided under *Section 363(1)*.

The Labour Code also regulates certain legal relations that arise prior to the creation of employment law relationships (employment, legal relations established on the basis of agreements for work performed outside an employment law relationship). This primarily concerns the parties' rights and obligations prior to the conclusion of an employment law relationship, where on the one side stands the employer and on the other side stands the natural person – the job applicant (*Section 30 to Section 32*). Until the employment law relationship is formed, the parties' legal relationship cannot be deemed to be an employment law relationship.

Derived then from employment law relationships are the rights and obligations of some persons that are regulated by the Labour Code (e.g. the rights of next of kin, survivors, the obligations of natural and legal persons, for whom the employee is released, etc.). These relations are regulated by the Labour Code, but they cannot be deemed to be employment-related.

Related provisions:
Section 30–32 of the Labour Code – procedure preceding commencement of employment law relationships
Section 363(1) of the Labour Code – list of the provisions transposing EU regulations

Related legal regulations:
Act on Employment – No. 435/2004 Coll.

Section 2

(1) The rights or obligations within employment law relationships may be regulated in derogation of this Act provided that this is not explicitly prohibited by this Act or unless it follows from the nature of its provisions that no derogation is possible. No derogation is possible from the provisions set out in Section 363(1), which transpose the regulations of the European Communities; however, this does not apply if the derogation is for the benefit of the employee.

(2) A derogating regulation of the rights or obligations pursuant to paragraph 1 above may be stipulated by an agreement and, under the conditions set out by this Act, also by an internal regulation.

(3) A derogating regulation of the rights concerning salary rights and other rights in employment law relationships (Section 307) may not be lesser or greater than the right stipulated by this Act, a collective agreement or, as appropriate, an internal regulation as the lowest or highest permissible.

(4) Dependent work that is performed within the relationship of superiority of the employer and subordination of the employee means exclusively personal performance of the employee's work for the employer based on the employer's instructions, on the employer's behalf, for a salary, public sector pay or remuneration for work, during working hours or at an otherwise determined or agreed time at the employer's workplace, or at a place that is otherwise agreed, at the employer's expense and responsibility.

(5) Dependent work pursuant to paragraph 4 above also includes those cases where the employer temporarily assigns its employee for the performance of work to some other employer on the basis of authorization pursuant to a special legal regulation (hereinafter an 'employment agency') and on the basis of an arrangement made in the employment contract or agreement to perform work whereby the employment agency agrees to provide its employee with an opportunity to temporarily perform work according to the employment contract or agreement to perform work for some other employer (hereinafter the 'user') and the employee agrees to perform the work according to the user's instructions and on the basis of an agreement on temporary assignment of an employee of the employment agency concluded between the employment agency and the user.

(6) Work by natural persons under the age of 15 years or aged 15 years and older until the completion of compulsory education is prohibited. These persons may perform only artistic, cultural, advertising or sports activities under the conditions stipulated by a special regulation.

Mandatory and non-mandatory rules

This is a key Section of the Labour Code. On the one hand it stipulates the fundamental concept that 'what is not prohibited is permitted' and on the other hand it defines employment as the subject-matter of labour law.

The principle 'what is not prohibited is permitted' contained in paragraph 1 ensues from the foregoing general private law principle of autonomy of will, or also contractual freedom. The said principle significantly strengthens contractual freedom in employment law relationships and employment flexibility in general. Parties to employment law relationships may engage in conduct that is not prohibited by a legal regulation or in conduct with regard to which the nature of legal provisions does not clearly state that it may not be deviated from.

Employment law relationship rights and obligations may be regulated at variance with this statute, if the law does not prohibit this. Therefore, parties to an employment law relationship may do everything that is not prohibited by law. The flexible concept of this principle is then unfortunately significantly restricted by a comprehensive list of mandatory provisions which it is not possible to deviate from. The provisions of *Section 2(1)* present three cases when the principle 'what is not prohibited is permitted' is restricted. These are as follows:

- statutory prohibition;
- the nature of a provision;
- provisions implementing EU law.

The first category of rules that one cannot deviate from are categorical prohibiting rules; i.e. rules that expressly prohibit certain conduct of entities. The identification of this type of rules should not pose a problem in practice: they should be obvious from the use of the prohibiting imperative, i.e. primarily from using collocations such as 'it is prohibited, may not, it is not permitted', etc. Other mandatory rules where the law directly prohibits divergent conduct are defined in *Section 363(2)*.

Nonetheless, most mandatory rules need to be recognized by their nature; i.e. using interpretive rules, the legislator signifies whether a legal rule can or cannot be deviated from. Mandatory rules may be deemed to be rules that permit only one solution, i.e. the recommended solution. The legal sentence will then contain words such as 'solely, only, expressly' (e.g. *Section 3*). Moreover, the nature of a provision needs to be established on the basis of its interpretation; the sense, aim and purpose of the given provision should be taken into regard. In other words the aim, purpose and function of the Labour Code and labour law should be reviewed. However,

such a teleological interpretation is no easy thing. Both the organization function and the protective function of labour law need to be taken into consideration. The labour law principles laid down in *Section 13 and Section 14* may be applied. Furthermore, provisions which cannot be deviated from owing to their nature may also be deemed status-related matters, i.e. provisions that regulate the position (status) of the parties – (*Section 6 to Section 12*) and provisions that regulate compensation for damage (*Section 248 to Section 275*, *Section 365 to Section 393*).

The last category of restrictions of the 'what is not prohibited is permitted' principle is described under *Section 363(1)*, which defines the provisions one may deviate from but only in favour of an employee. These provisions are harmonization provisions through which EU law, represented by the Directives of the EC, has been implemented into the law of the Czech Republic. Deviation in favour of an employee in this sense is not a problem since Directives provide only for minimum employee protection that will not be disturbed by deviating from a provision for an employee's benefit.

Definition and characteristics of employment

The provisions of *Section 2(4) and (5)* define the term 'employment'. Employment falls under labour law. Thus, it is an activity that is regulated by labour law and as stated under *Section 3*, if the subject-matter of the relationship between the parties is an activity that shows signs of employment, such an activity must be performed under an employment law relationship.

The following is characteristic of employment:

- organizational subordination of an employee;
- employer costs;
- work performed in the name of the employer and at its responsibility;
- work performed during regular hours scheduled by the employer;
- remuneration is subject only to performance of work.

What is typical of employment and contrary to self-employment is the superiority and the subordination of the persons who do the work. Thus, work is performed in the way required by the employer and in accordance with its instructions. The employer also manages and controls the work on an ongoing basis. Thus, the employee performs specific activities on a repetitive basis in accordance with the instructions given to him. The second element that distinguishes employment from self-employment is at whose costs the work is performed. Raw material, energy, material, tools, aids and work space are primarily deemed to be costs. Employment (work performed at the employer's costs) should mainly be performed on the employer's premises (at its workplace) using a contractor's material.

Where employment is concerned, work is performed on behalf of the employer and at its responsibility. The employee does the work on behalf of the employer and should he cause damage to a third person, the employer is liable for such

damage. Similarly, should the employee sustain damage while performing work caused by a third person, the employer is liable for such damage in accordance with employment liability.

Where employment is concerned, the employer allocates work to the employee in accordance with working hours and periods of rest stipulated by the Labour Code. The employer is thus entitled to utilize the employee's work potential only in the time periods and under the terms and conditions set in the Labour Code. Thus, the basic features of employment are scheduling of working hours and allocation of work only during these working hours, observance of the length of working hours and shifts, restriction of overtime and night work, statutory breaks at work and periods of rest, time off in the event of an impediment to work, provision of the employee's vacation and keeping records on working hours.

What is also typical of employment is that salaries are agreed upon as regular payment provided to the employee for performance of work. Salaries are calculated in relation to time, i.e. salaries are remuneration that depends on the number of hours worked during working hours. The employee is entitled to this remuneration periodically for a certain period (generally a calendar month) and only for performance of work and not other activities therewith connected (costs, liability, independent work). Remuneration (the amount) primarily depends on the number of hours worked, or standardization of work, if applicable, and not on the value of the final thing.

Related provisions:

Section 3 of the Labour Code – regulation of dependent work
Section 6–12 of the Labour Code – parties to employment law relationships
Section 13 of the Labour Code – basic principles of employment law relationships
Section 14 of the Labour Code – exercise of rights and performance of obligations arising out of employment law relationships
Section 248–275 of the Labour Code – compensation for damage
Section 363 of the Labour Code – list of provisions transposing EU regulations, list of mandatory rules
Sections 365–393 of the Labour Code – liability of employers for damage in cases of accidents at work and occupational diseases

Section 3

Dependent work may be performed only within an employment law relationship pursuant to this Act unless it is regulated by special legal regulations.[2] Basic employment law relationships pursuant to this Act include employment law relationship and legal relationships established by agreements on work performed outside an employment law relationship.

[2] **E.g. Act No. 218/2002 Coll., on the service of public servants in administrative authorities and on remuneration of these servants and other employees in administrative authorities (the Service Act), as amended; Act No. 361/2003 Coll., on the service relationship of members of the security corps, as amended.**

Dependent work

This Section lays down the rule according to which employment defined under *Section 2 (4) and (5)* of the Labour Code may be performed only under an employment law relationship. Thus, if a natural person does work in person that bears the signs of employment for another natural person or for a legal person, the individual must perform this work under an employment law relationship (he cannot do such work on the basis of, for example, a contract for work done or another type of contract according to the *Civil Code* or the *Commercial Code*). These relationships will also be deemed to be employment law relationships by state bodies in regards to tax or social insurance issues, or by the court in the event of specific legal disputes.

Employment and legal relationships established on the basis of agreements for work performed outside of employment (agreement to complete a job and agreement to perform work) are deemed to be employment law relationships.

Related provisions:

Section 2(4) and (5) of the Labour Code – definition of dependent work

Section 4: Repealed

Relationship between the Civil Code and the Labour Code

This Section was repealed through a judgment of the Constitutional Court with effect as of 14 April 2008. It defined the mutual relationship between the *Civil Code* and the Labour Code given the principle of delegation. According to the principle of delegation the *Civil Code* could be applied to employment law relationships only if the Labour Code so expressly stipulated (refer to the so-called delegation provisions under *Section 13*, *Section 18*, etc.). The Constitutional Court cancelled this principle on the grounds of its contradiction with the principle of a legal state and in its justification the Constitutional Court stated that the *Civil Code* should continue to be applied in employment law relationships on the basis of the principle of subsidiarity. According to the subsidiarity principle, we always apply the *Civil Code* to employment law relationships if the provisions of the Labour Code cannot be applied.

The problem of this application lies in the fact that this principle is not expressly stated in legal regulations. The Labour Code itself did not take this principle into account, it in no way establishes its position in regards to this principle, it does not contain adequate varying legislation, nor does it specifically exclude the application of certain provisions of the *Civil Code* that are unsuitable when it comes to labour law.

Related provisions:
Section 13 of the Labour Code – basic principles of employment law relationships
Section 18 of the Labour Code – relationship between the Civil Code and the Labour Code

Related legal regulations:
Judgment of the Constitutional Court dated 12 March 2008 – No. 116/2008 Coll.

Section 5

(1) This Act applies to relationships arising out of the discharge of a public office only if explicitly stipulated by this Act or if stipulated by special legal regulations.

(2) If a public office is discharged within an employment law relationship, the employment law relationship shall be governed by this Act.

(3) Labour relationships between a cooperative and its members shall be governed by this Act unless a special legal regulation stipulates otherwise[3].

(4) This Act applies to employment law relationships of judicial trainees, State attorneys, State attorney trainees and employees performing State administration in administrative authorities as a service that is provided by the Czech Republic to the general public pursuant to the Service Act only if expressly stipulated by this Act or if stipulated by special legal regulations[4].

(5) Employment law relationships of trainees preparing for the performance of public service; officers of local governments; academic employees of institutes of higher learning; pedagogical workers[4a]; directors of public research institutions; captains of vessels and members of crew on seagoing vessels[4b]; employees of the Probation and Mediation Service; attorneys-at-law performing the legal profession within an employment law relationship[4c]; assistants of judges[4d]; assistants of State attorneys[4e]; the Ombudsman; the Deputy Ombudsman; notarial candidates; notarial trainees[4f]; distraint candidates; distraint trainees[4g] and trainee attorneys-at-law[4h] shall be governed by this Act unless a special legal regulation stipulates otherwise[5].

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[3] **Section 226 of the Commercial Code.**

[4] **Act No. 6/2002 Coll., on courts, judges, lay judges and State administration of the judiciary and on amendment to some other laws (Courts and Judges Act), as amended.**

Act No. 283/1993 Coll., on State attorneys, as amended.

[4a] **Act No. 563/2004 Coll., on pedagogical workers and on amendment to some laws, as amended.**

[4b] **Section 68 of Act No. 61/2000 Coll., on marine navigation.**

[4c] **Section 15a of Act No 85/1996 Coll., on the Bar, as amended by Act No. 79/2006 Coll.**

[4d] **Section 36a of Act No. 6/2006 Coll., as amended by Act No. 79/2006 Coll.**

[4e] **Section 32a of Act No 283/2008 Coll., on State attorneys, as amended by Act No. 121/2008 Coll.**

[4f] **Act No. 358/1992 Coll., on notaries and their activities (the Notarial Code), as amended.**

[4g] **Act No. 120/2001 Coll., on judicial distrainers and distraint (the Distraint Rules) and on amendment to other laws, as amended.**

[4h] **Section 36 et seq. of Act No. 85/1996 Coll., on the Bar, as amended.**

[5] **The Service Act.**

Act No. 312/2002 Coll., on officers of local Governments and on amendment to some laws, as amended.

Act No. 111/1998 Coll., on universities and amending and supplementing other laws (Act on Universities), as amended.

Act No. 349/1999 Coll., on the Ombudsman, as amended.

Act No. 257/2000 Coll., on the Probation and Mediation Service and on amendment to Act No. 2/1969 Coll., on establishment of the ministries and other central State administrative bodies of the Czech Republic, as amended, Act No. 65/1965 Coll., the Labour Code, as amended, and Act No. 359/1999 Coll., on social and legal protection of children (the Act on the Probation and Mediation Service).

Relation of the Labour Code to other special legal regulations

This Section defines the relation of the Labour Code to other special legal regulations that regulate special types of employment. It specifies the rules and the extent of application of the Labour Code to the working conditions of these persons. Special legal regulations regulate, for example, the discharge of a public office, employment law relationships between a cooperative and its members, employment law relationships of judicial and legal trainees, prosecuting attorneys, articling attorneys-at-law, regional self-government administrative unit officials, and academic and pedagogical workers. The Labour Code is in most cases regarded as a general legal regulation, whereas special statutes constitute special regulations.

TITLE II

PARTIES TO EMPLOYMENT LAW RELATIONSHIPS

Chapter 1

Employee

Section 6

(1) The capacity of a natural person as an employee to bear rights and obligations within employment law relationships, as well as the capacity to acquire such rights and assume such obligations through own legal acts, shall arise on the day when the natural person reaches 15 years of age unless this Act hereafter stipulates otherwise; however, the employer may not agree with the natural person on a day preceding the day when the natural person completes compulsory education as the day of commencement of work.

(2) Incapacitation or limitation of legal capacity of an employee shall be governed by Section 10 of the Civil Code.

Capacity of natural persons to become employees

This Section deals with the capacity of natural persons to become employees. It defines the statutory requirements placed on natural persons that are to perform employment work under an employment law relationship.

A natural person may become an employee if he has capacity to rights and obligations and if he has legal capacity. A natural person acquires both these capacities upon reaching fifteen years of age. Thus, a natural person may conclude an employment contract, an agreement to complete a job or an agreement to perform work as an employee no sooner than he turns fifteen. The natural person and the employer may agree on the natural person starting work on the date when the natural person completes his compulsory education (the regulation makes a collision between employment and compulsory education impossible). The employment law relationship is deemed established on the date agreed as the commencement of employment.

The Labour Code does not regulate the incapacitation or the limitation of legal capacity; following the principle of the subsidiary application of the *Civil Code*, the provisions of Section 10 of the *Civil Code* apply.

Related legal regulations:
Civil Code – No. 40/1964 Coll.

Chapter 2

Employer

Section 7

(1) For the purposes of this Act, 'employer' means a legal or a natural person who employs a natural person within an employment law relationship.

(2) The employer acts in employment law relationships on itsown behalf and bears the responsibility following from these relationships.

Definition of employer, employer's acts
This Section defines the term 'employer' as being a party to employment law relationships. The employer is a natural or a legal person for whom the employee does work in person; in other words the employer is a person who employs employees under an employment law relationship. As already set down in the definition of employment, when it comes to employment law relationships the employer acts in its own name and at its own liability.

Section 8

The legal position of employers who are legal persons shall be governed by Sections 18, 19, 19a, 19b, 19c, 20, 20a, 20f, 20g, 20h, 20i and 20j of the Civil Code.

Legal person as an employer
A judgment of the Constitutional Court rendered the delegation-related provisions of this Section obsolete. The legal position of the employer is governed by the respective provisions of the *Civil Code* not because the Labour Code so stipulates, but because of the subsidiary application of the *Civil Code*.

The legal position of the employer, a legal person, is regulated primarily by Sections 18 through to Section 20j of the *Civil Code*, which identify various types of legal persons, their establishment and conduct.

Related legal regulations:
Civil Code – No. 40/1964 Coll.
Judgment of the Constitutional Court dated 12 March 2008 – No. 116/2008 Coll.

Section 9

Where the Czech Republic (hereinafter the 'State') is a party to employment law relationships[6], it is a legal person and employer. The organizational

unit of the State[7] that employs an employee in an employment law relationship on behalf of the State shall exercise the rights and perform the obligations under employment law relationships for the State as the body competent in employment law relationships.

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[6] **E.g. Act No. 219/2000 Coll., on the property of the Czech Republic and acts thereof in legal relations, as amended.**

[7] **Sections 3 and 51 of Act No. 219/2000 Coll.**

The state as a party to employment law relationships

This Section regulates the position of the State as a party to employment law relationships. Where employment law relationships are concerned, the Czech Republic is regarded as being a legal person, which is, like other employers, subject to civil regulations. In employment law relationships the State is represented by its organizational unit and its conduct is regulated by the *Act on the Property of the Czech Republic*.

Related legal regulations:

Act on Property of the Czech Republic – No. 219/2000 Coll.

Section 10

(1) The capacity of a natural person to bear rights and obligations in employment law relationships as the employer shall arise at birth. The capacity of a natural person to acquire rights and assume obligations in employment law relationships through own legal acts as the employer shall arise upon reaching eighteen years of age.

(2) Incapacitation or limitation of the capacity of a natural person, who is an employer, to legal acts shall be governed by Section 10 of the Civil Code.

Capacity of natural persons in employment law relationships

This Section defines the employer's capacity in employment law relationships. Capacity in this sense means that a person has rights and obligations in legal relations and that he can acquire these rights and obligations through his own legal conduct. Where the employer is concerned, natural and legal persons must be distinguished. A natural person becomes entitled to rights and obligations (acquires legal personality) at birth. That means that from birth onwards a natural person can become an employer and he may own an enterprise even with employees. A natural person gains legal capacity, i.e. the capacity to acquire rights and obligations through his own legal acts, when he turns eighteen. Thus, a natural person can act as an employer towards employees from the age of eighteen. A legal person becomes entitled to rights and obligations and gains legal capacity as of the date of its incorporation.

Paragraph 2 regulating incapacitation and limitation of legal capacity became obsolete since the judgment of the Constitutional Court; which introduced fully the subsidiarity principle of the *Civil Code*.

Related legal regulations:
Civil Code – No. 40/1964 Coll.
Judgment of the Constitutional Court dated 12 March 2008 – No. 116/2008 Coll.

Section 11

(1) The legal acts of a legal person who is an employer in employment law relationships shall be governed by Section 20 of the Civil Code.

(2) The legal acts of a natural person who is an employer shall be performed, in employment law relationships, by this natural person; instead of this person, such acts may be performed by persons authorized by him/her.

(3) In cases set out in Section 9, the legal acts in employment law relationships shall be performed by the head of the organizational unit of the State; other employees may perform such acts under the conditions stipulated by the Act on Property of the Czech Republic and its Representation in Legal Relations.

(4) Managerial employees of an employer mean those employees who are authorized, at the individual management levels, to determine and impose working tasks on subordinate employees, organize, direct and control their work and give them binding instructions to this end. The head of an organizational unit of the State is also a managerial employee.

Legal acts of the employer

This Section regulates the employer's conduct. It generally applies that the employer acts either in person or through a representative. Section 20 of the *Civil Code* regulates the legal conduct of legal persons. If the employer is a natural person, he acts either in person or through a person appointed by him.

Related legal regulations:
Civil Code – No. 40/1964 Coll.

Managerial employee

Paragraph 4 defines the term 'managerial employee'. A managerial employee acts in employment law relationships towards employees that are subordinate to him on behalf of the employer. A managerial employee is deemed an employee who, based on the employer's decision, manages employees that are subordinate to him. Each employer is thus entitled to develop a vertical hierarchical organizational structure that will define the superiority and the subordinarity of individual employees from company director to rank-and-file employees.

Chapter 3
Representation

Section 12

Representation in employment law relationships shall be governed by Sections 22, 23, 24, 31, 32, 33, 33a and 33b of the Civil Code.

Representation

This delegation-type Section has been made obsolete following a judgment of the Constitutional Court. The Labour Code does not regulate representation. Representation is thus governed by the respective provisions of the *Civil Code* not because the Labour Code so stipulates, but because of the subsidiary application of the *Civil Code*.

Related legal regulations:
Civil Code – No. 40/1964 Coll.
Judgment of the Constitutional Court dated 12 March 2008 – No. 116/2008 Coll.

TITLE III

FUNDAMENTAL PRINCIPLES OF THE EMPLOYMENT LAW RELATIONSHIPS

Section 13

(1) Employment law relationships pursuant to this Act may arise only with the consent of the natural person and the employer.

(2) The employer

a) must not transfer the risk following from the performance of dependent work to employees;

b) must provide for equal treatment of employees and comply with the prohibition of any discrimination against employees;

c) must comply with the principle of provision of equal salary or public sector pay or other pecuniary performances and performances of a pecuniary value, and remuneration, as appropriate, for the same work and work of the same value;

d) must provide employees with information in employment law relationships and provide for consulting the employees;

e) must acquaint employees with the collective agreement and internal regulations;

f) may not impose pecuniary penalties on or require such penalties from employees in respect of breach of any obligation arising out of a employment law relationship; this shall not apply to damage for which the employees are liable;

g) may not request or agree on security for an obligation in a employment law relationship, except for a non-competition clause and deductions from income under the employment law relationship;

h) may temporarily assign an employee for the performance of work at some other legal or natural person only pursuant to Section 2(5), except for increasing or improving the qualifications at some other legal or natural person [Section 230(5) and Section 231(3)].

(3) Employees in an employment law relationship shall have the right to be assigned work within the scope of the set weekly working hours, except for reduced working hours (Section 80) or accounts of working hours (Sections 86 and 87), as well as to distribution of working hours prior to commencement of work, unless this Act hereafter stipulates otherwise.

(4) Employees may not perform work of the same type for the same employer within an additional employment law relationship or based on agreements

on work performed outside an employment law relationship. If the employer is the State, the first sentence shall apply only in respect of performance of work within the same organizational unit of the State.

(5) Employers shall be obliged to strive to create and develop employment law relationships in conformity with this Act, other legal regulations and good morals.

Basic principles of employment law relationships

This Section lays down the basic principles to be followed when regulating employment law relationships.

The introductory principle constitutes a rule according to which an employment law relationship cannot be established without the consent of the natural person and the employer. This principle fulfils the no forced labour principle. A natural person should start working only if he agrees to it. Where employment contracts and agreements for work performed outside an employment law relationship are concerned, the employee's consent is supported by the bilateral nature of these legal acts. The same should also apply where the employee's employment is subject to appointment. In this case the employee's acceptation must at least be expressed by his taking up the office he was appointed to. The forced labour prohibition ensues from international documents dedicated to human rights as well as from the *Charter of Fundamental Rights and Basic Freedoms* (Article 9). The *Convention for the Protection of Human Rights and Fundamental Freedoms* stipulates the prohibition of forced or compulsory labour in Article 4. The *Forced Labour Convention* (C29), concerning forced or compulsory labour, defines the term 'forced labour' under Article 2(1) as all work for which the person who performs it has not offered himself voluntarily. The employee may thus perform work only subject to his own consent. Therefore, the employee cannot be ordered to do work and his job cannot be changed without the employee's consent. The only exception according to the above resources is when the case concerns a public interest which overrides the interest of private persons, including employers.

Further principles include:

- prohibition to transfer the risk following from employment to the employee;
- equal treatment of employees and the non-discrimination principle;
- provision of information and consulting;
- prohibition to impose pecuniary penalties on employees for breach of employment obligations;
- prohibition to arrange a security for an obligation in an employment law relationship.

International treaties:

Forced Labour Convention – No. 506/1990 Coll.

Convention for the Protection of Human Rights and Fundamental Freedoms – No. 209/1992 Coll.

Related legal regulations:
Charter of Fundamental Rights and Basic Freedoms – No. 2/1993 Coll.

Prohibition to transfer risk to the employee

The obligation not to transfer the risk following from the employer's activities to the employee is an essential principle in consequence of the nature of employment work performed by the employee for the employer.

The employee is organization-wise subordinate to the employer and performs work in accordance with the employer's instructions. The employer determines where, when and what work the employee will do and the method of its realization; the work is performed for the employer and on its behalf. Thus, the employee has little input in the content of his work or in securing its output and profit. Work is performed at the responsibility (liability) of the employer. It is thus liable towards third persons whose conduct cannot result in rights and obligations directly toward the employee. Therefore, the employee cannot bear any direct consequences of the employer's economic activities. These should not be reflected in the employee's salaries, liability for damage or contractual fine.

Equal treatment of employees and non-discrimination principle

The principle of equal treatment of all employees implies the employer's obligation to secure identical treatment of all employees under an employment law relationship. Equal treatment of employees means that the employer adopts the same approach to all employees, especially in what concerns their recruitment, identical working conditions, remuneration of also other pecuniary performance or performance of a pecuniary value, vocational training and promotion.

The non-discrimination principle prohibits both direct and indirect discrimination. Direct discrimination is deemed an act or omission, where employees are discriminated in direct connection with a discrimination feature, i.e. the employee is treated less favourably than another employee on grounds that constitute a discrimination indicator. Indirect discrimination is deemed an act or omission which in itself is neutral, nonetheless, in the end it puts at a disadvantage certain employees compared to others on the grounds of a discrimination indicator. Discrimination features are primarily race, colour, sex, sexual orientation, language, belief and religion, political or other opinions, membership or involvement in political parties or political movements, in trade unions and other associations, nationality, ethnic or social origin, property, lineage, health conditions, age, marital and family status or duties towards family. For more information refer to *Section 16*.

In EU law the principle of equal treatment and the non-discrimination principle are reflected in EU Directives which always focus on one segment of protection. This primarily concerns directives that regulate equal treatment between men

and women – the *EC Equal Pay Directive*, the *EEC Equal Treatment of Men and Women Directive*, the *EC Implementing Equal Treatment Amendment Directive*, the *EC Equal Treatment of Men and Women Directive*, the *EC Equal Treatment Irrespective of Racial or Ethnic Origin Directive* and, primarily, the *EC General Framework for Equal Treatment Directive*.

Related provisions:

Section 16 of the Labour Code – provision on equal treatment and prohibition of discrimination in employment law relationships

Related regulations of the European Communities:

EEC Equal Pay Directive – No. 75/117/EEC
EEC Equal Treatment of Men and Women Directive – No. 76/207/EEC
EC Equal Treatment Irrespective of Racial or Ethnic Origin Directive – No. 2000/43/EC
EC General Framework for Equal Treatment Directive – No. 2000/78/EC
EC Information and Consultation Directive – No. 2002/14/EC
EC Implementing Equal Treatment Amendment Directive – No. 2002/73/EC
EC Equal Treatment of Men and Women Directive – No. 2006/54/EC

Provision of information and consulting, right to representation

Owing to the nature of the work performed by the employee, which is work that is determined by the employer with regard to a subordinated employee, it is necessary that the employee be given adequate information about the facts regarding the performance of the work. For this purpose and in accordance with Directive 2002/14/EC of the European Parliament and of the Council establishing a general framework for informing and consulting employees the employer is obliged to inform the employee or to consult with him the basic issues relating to the performance of work.

The only principle of a collective nature here stated is the employee's right to be represented. Employees may associate with other employees to protect their labour rights yet they also have the right to be represented by their representatives in employment law relationships. The hereinabove principles cannot be prevented. On the other hand, the matter in concern is an individual's right to be represented, i.e. the expression of the will of the individual, a fully competent person, to authorize another entity to establish through their acts the employee's right and obligations under labour relations. As already ensues from the finding of the Constitutional Court, namely Pl.ÚS 83/06 (No. 116/2008 Coll.), the matter concerns the individual's right to decide whether or not he will be represented.

Distribution of work

Another principle may be deemed to be the rule according to which the employer is obliged to distribute the work of each employee into shifts (the employee should know ahead of time when he is to go to work). The Labour Code thus does not allow for employed employees to do on-call work or to provide assistance on an irregular basis. The employer is obliged to schedule the employee's working

hours in advance, doing so not only in the event of legal relations established through agreements for work performed outside an employment law relationship. Another of the employer's obligations is to actually assign work to the employee within his scheduled working hours in the extent of stipulated weekly working hours, unless the employer and the employee have agreed on shorter working hours. Should this not be the case, the matter concerns an impediment to work on the part of the employer according to *Section 208*, whereas the employee is entitled to compensation for wages in the amount of one average monthly salary. An exception is the so-called 'account of working hours'.

Related provisions:

Section 208 of the Labour Code – compensation for average earnings in case of impediments to work on the part of the employer

Secondary activities

Another principle relates to so-called secondary activities. According to this principle, the employee may conclude additional employment law relationships with the same employer (employment, a legal relation based on an agreement to complete a job and an agreement to perform work) only if such additional employment law relationship concerns other types of work. The Labour Code in no way limits the number of an employee's parallel employment law relationships. Where these legal relations exist with one employer, the employee may not perform the same type of work for the employer on the basis of these legal relations. This helps to protect the length of working hours, overtime and occupational safety.

Conformity of the employment law relationships

The provisions that require the employer to attend to employment law relationships and good morals are more proclamatory than obligatory. Moreover, the provisions of *Section 14* regulate the good morals and obligations of both parties to the employment law relationship.

Related provisions:

Section 14 of the Labour Code – exercise of rights and performance of obligations arising out of employment law relationships

Section 14

(1) The exercise of rights and performance of obligations arising out of employment law relationships may not infringe on the rights and justified interests of another party to an employment law relationship without a legal reason and may not be at variance with good morals.

(2) The employer may not penalize or discriminate against an employee in any manner whatsoever for the reason that the employee is asserting his/ /her rights following from employment law relationships in a lawful manner.

(3) The employer shall be obliged to consult the employee or, at his/ /her request, a trade union or council of employees, or a representative for occupational safety and health protection, on any employee's complaint relating to the exercise of rights and performance of obligations arising out of employment law relationships. This shall in no way prejudice the employee's right to assert his/her rights in courts.

Exercise of rights and performance of obligations

Another labour law principle is the duty of the parties to an employment law relationship not to interfere in the justified interests of another party and not to act in variance with good morals. The rule stems from the assumption that the parties to an employment law relationship, in particular the employer and the employee, have many rights and obligations under the employment law relationship. These arise directly from legal regulations or from a contract. In exercising these rights, the parties to the employment law relationship must behave in such a way as will not restrict the other parties in the assertion of their rights. Where employment law relationships are concerned, a party is never alone; its rights and obligations correspond to the rights and obligations of others. Following general theories, good morals may be deemed traditional rules of decency and the behaviour of an individual within society. Nonetheless, the prohibition to act in contradiction with good morals is also regulated by the *Civil Code*.

Moreover, the employer may not penalize or discriminate against an employee who asserts his rights. The employee's rights are established by legal regulations, collective agreements, individual contracts, and the employer's internal guidelines. When asserting these rights, the employee is acting entirely in accordance with the law and he enjoys the rights vested in him. Therefore, the employer cannot proceed in a negative manner against the employee. This situation may also occur if, for example, the employee exercises his rights in regard to outstanding salaries, invalid termination of employment or if he demands performance that he is entitled to in accordance with the law, even if he seeks the same at court. The last principle guarantees the employee the right to consult with the employer and imposes on the employer the obligation to consult with the employee his complaint(s) regarding the exercise of rights and obligations arising from their employment law relationships. Should the employee so request, the employer is obliged to discuss these matters with the trade union or the occupational safety and health care representative.

Related legal regulations:
Civil Code – No. 40/1964 Coll.

Section 15
Trade Unions

(1) Trade unions are authorized to act in employment law relationships, including collective bargaining pursuant to this Act, under the conditions stipulated by the law or agreed in the collective agreement.

(2) The body specified in the statutes of the trade union shall act for the trade union[8].

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[8] **Section 6(2)(d) of Act No. 83/1990 Coll., on association of citizens.**

Trade union

This Section establishes the position of trade unions, as the representative of employees in employment law relationships. Following legal regulations, a trade union is viewed as being an unincorporated association. At least three employees are necessary for a trade union to be established. The will of at least three random employees suffices for the foundation of a trade union, whereby according to legal regulations it represents all employees who are employed by the employer.

The trade union may represent employees in employment law relationships and it may, through its conduct, constitute employee rights and obligations. The trade union leads collective bargaining negotiations with the employer and concludes agreements to regulate the rights and obligations of the contracting parties and employees. More detailed information about how the trade union operates under the employer is provided in the Labour Code and in the *Collective Bargaining Act*.

Related legal regulations:
Collective Bargaining Act – No. 2/1991 Coll.

TITLE IV

EQUAL TREATMENT, PROHIBITION OF DISCRIMINATION AND CONSEQUENCES OF BREACH OF THE RIGHTS AND OBLIGATIONS ARISING OUT OF EMPLOYMENT LAW RELATIONSHIPS

Section 16

(1) Employers shall be obliged to ensure equal treatment of all employees in relation to their working conditions, remuneration for work and provision of other pecuniary performances and performances of a pecuniary value, vocational preparation and the opportunity to achieve functional or other advance in employment.

(2) Any discrimination in employment law relationships is prohibited. The terms direct discrimination, indirect discrimination, harassment, sexual harassment, mobbing, instruction to discriminate and inciting to discrimination, and the cases where a difference in treatment is permissible are regulated by the Anti-discrimination Act.

(3) A difference in treatment shall not be deemed to be discrimination if it follows from the nature of the working activities that such a difference in treatment is a material precondition necessary for the performance of the work; the aim pursued by such an exception must be genuine and the requirement proportionate. Measures where the aim justifies prevention or compensation of disadvantages related to the membership of a natural person in a certain group defined by one of the reasons set out in the Anti-discrimination Act shall also not be deemed to be discrimination.

Equal treatment and prohibition of discrimination

This Section elaborates on the equal treatment of employees principle and the prohibition of any discrimination in employment law relationships. It generally ensues from the said principle that the employer must at all times treat employees in the same way and that it may not give any employee preferential treatment or the opposite on the grounds of discrimination. Nonetheless, absolute observance of this principle is not possible taken the purposeful implementation of the employment law relationship and therefore *Section 16* lays down the statutory exceptions from the said principle. It follows from the nature of employment law relationships that exceptions may be made from the fundamental observance of the equal treatment of employees principle and from the non-discrimination principle, whereby this allows differences to be made between employees. However, the aforesaid only applies in cases stipulated by law or if there exists a material reason ensuing from

the nature of the work that allows for such unequal treatment of employees, i.e. it ensues from the nature of the working activities performed by the employee that there is a material reason that represents a decisive requirement for the performance of the work concerned and which is essential for the performance of this work.

Related legal regulations:
Anti-Discrimination Act – No. 198/2009 Coll.

Section 17

The legal means of protection against discrimination in employment law relationships are regulated by the Anti-discrimination Act.

Protection against discrimination

This Section refers to a special statute, specifically, *the Anti-Discrimination Act* in what regards the legal means against the breach of the equal treatment principle and the prohibition of the discrimination principle.

Related legal regulations:
Anti-Discrimination Act – No. 198/2009 Coll.

TITLE V

LEGAL ACTS

Section 18

Legal acts are governed by Sections 34 to 39, Section 40(3) to (5), Sections 41, 41a, 42a, 43, 43a, 43b, 43c, 44, 45, 49a, 50a, 50b and 51 of the Civil Code. However, an agreement pursuant to Section 51 of the Civil Code may not be at variance with the contents or purpose of this Act.

Relation to the Civil Code

The provisions of this Section are of a delegation type. Before the judgment of the Constitutional Court Pl.ÚS 83/06, this Section gave an exhaustive overview of the provisions of the *Civil Code* that apply to employment law relationships. Currently, i.e. after the above judgment of the Constitutional Court, it applies that legal acts in employment law relationships are governed by the *Civil Code*, unless the Labour Code stipulates otherwise. The Labour Code constitutes special legislation in what concerns the invalidity of legal acts, i.e. *Section 19 to Section 21*. The *Civil Code* relates to other cases, primarily to the creation of legal acts and the essentials of such acts, general cases when legal acts are invalid, the regulation of contracts, withdrawal from contracts, etc.

Related provisions:

Sections 19–21 of the Labour Code – other cases of invalidity of legal acts in employment law relationships

Related legal regulations:

Civil Code – No. 40/1964 Coll.
Judgment of the Constitutional Court Pl.ÚS 83/06 – No. 116/2008 Coll.

Other Cases of Invalidity of Legal Acts in Employment law Relationships

Section 19

(1) A legal act whereby an employee waives his/her rights in advance is invalid.

(2) Invalidity of a legal act may not be to the detriment of an employee unless the employee caused the invalidity exclusively himself/herself; if the employee incurs any damage as a result of such an invalid legal act, the employer shall be obliged to compensate the damage.

(3) A legal act that lacks the prescribed consent of the competent body is invalid only if explicitly stipulated by this Act or a special law. Where this

Act requires only that a legal act be consulted with the competent body, the legal act is not invalid even in the absence of the consultation.

Invalidity of legal acts

The provisions of this Section are specific with regard to the provisions of the *Civil Code* regulating legal acts. For employment purposes the Labour Code stipulates variations from the application of the common rules regulating legal acts contained in the *Civil Code*.

The introductory paragraph regulates the forbidding of the advance waiver of an individual's rights in employment law relationships; that is such waiver of rights is invalid. From the point of view of legal certainty and the protection of a contracting party it is, therefore, prohibited to waive a right that does not yet exist and which will be created in the future (e.g. the right to pay compensation for damage if the individual causes such damage in the future).

Paragraph 2 protects the employee by laying down the rule that the invalidity of a legal act cannot be to the detriment of the employee, unless the employee himself caused the legal act to be invalid. Therefore, if the employee concludes a bilateral legal act with the employer (employment contract, agreement to terminate employment, agreement to extend qualifications) or if the employer executes a unilateral legal act (notice of termination of employment) and such a legal act is invalid solely on the grounds of its fault, such invalidity cannot be to the detriment of the employee, provided he did not cause it. This does not apply to legal acts where the employee himself caused such invalidity, for example, by intentionally misleading the employer by providing him with untrue information about his person.

The third paragraph regulates the impact of any breach of the obligation to obtain the consent of the trade union (or works council) or to discuss with them facts stipulated by law. According to the Labour Code, the invalidity of a legal act causes such breach of obligation only if such invalidity is expressly stipulated by law.

Related legal regulations:
Civil Code – No. 40/1964 Coll.

Section 20

As regards the grounds for invalidity of a legal act, a legal act shall be deemed to be valid unless the person affected by the act invokes its invalidity. Invalidity may not be invoked by a person who himself/herself caused the invalidity. The same shall apply if an act is not performed in the form required by agreement of the parties.

Relative invalidity

This Section regulates the invalidity of legal acts under labour law. Where the finding of the Constitutional Court is concerned, legal acts under labour law are regarded as being relatively valid. Relative validity is typical for private law, where the contracting parties use legal acts to regulate, in particular, their mutual rights and obligations without taking into regard any common interest. Relative validity of legal acts means that a legal act is deemed valid until one or the other party seeks it to be declared invalid. Neither a third party nor the court may dispute the validity of such a legal act.

In practice this means that if the employer and the employee conclude, for example, an agreement to terminate employment verbally, such an agreement is then invalid only relatively. It will, thus, be considered valid unless the employer or the employee disputes its validity.

Where state bodies are concerned, they can only penalize the employer for breaching its legal obligations; it is not possible to declare the legal act invalid. Invalidity cannot be asserted by the party that caused it.

For example, the employer serves notice of termination of employment on the employee for redundancy and only afterwards is it discovered that there was no redundancy, yet notice of termination is relatively valid. Thus, it is viewed as being valid until the employee claims that it is invalid. The employer cannot seek invalidity because he himself caused the invalidity of the legal act. The same applies to the legal form of the act. For example, where the employer dismisses the employee verbally, the previously described case shall apply.

Even though it seems, given the linguistic interpretation, that legal acts under labour law are only relatively valid, this standpoint is not correct. Where the essentials (freedom and seriousness of will, comprehensibility) of a legal act are inadequate or where the defect of the legal act does not only concern the contracting parties but also the public interest or the personal rights of a person, absolute invalidity needs to be derived.

Section 21

(1) If a legal act was not performed in the form required by this Act, it is invalid only if explicitly stipulated by this Act. A legal act is invalid on the grounds of lack of the prescribed form also if so required by agreement of the parties. The provision of the second sentence is not applicable to employment contracts.

(2) An agreement is concluded in writing also if a written proposal is accepted in writing. The manifestations of the parties' will need not be on the same deed, unless this Act hereafter stipulates otherwise.

Invalidity due to lack of form

This Section lays down the rule for the validity of legal acts in labour law in terms of their form. Where labour law is concerned it applies that a legal act is invalid (relatively valid) if it fails to comply with the written form stipulated by law, only if such invalidity is expressly stipulated by the law or if the contracting parties agree on it. Therefore, where labour law is concerned, a legal act is invalid if:

- the law requires a legal act to be concluded in written form; at the same time the law stipulates the penalties associated with such invalidity if the law is not observed (e.g. collective agreement, trial period agreement, non-competitive clause agreement, agreement to extend qualifications, agreement to indemnify the employer, agreement to terminate employment, notice of termination of employment, immediate termination of employment, agreement to perform work, agreement for the assignment of wages); or
- the contracting parties agreed on the written form and the invalidity of the legal act if it is not observed (all other legal acts with the exception of employment contracts).

Contrary to the *Civil Code* where the mere statutory requirement for an act to be made in writing if not observed results in the invalidity of the legal act, the Labour Code includes acts that are required to be made in writing, but the Labour Code does not stipulate any penalties in terms of invalidity (e.g. employment contract, notice of termination of agreement to perform work). In this case, breach of the written form does not result in the invalidity of the legal act, but the employer exposes himself to penalties by a state body (the State Labour Inspection Office) because of breach of statutory obligations under labour law.

The provisions of paragraph 2 are superfluous because they state, as does the wording of the general regulation – i.e. Section 46(2) of the *Civil Code*, that where bilateral legal acts are concerned, the parties' signatures do not have to be attached to the same document. Thus, a bilateral legal act may, in fact, constitute two unilateral legal acts (oferta – acceptation) that are mutually addressed and identical content-wise. The only exception to the above is when a legal regulation requires the signatures to be attached to the same document (e.g. collective agreement).

Related legal regulations:

Civil Code – No. 40/1964 Coll.

Labour Inspection Act – No. 251/2005 Coll.

Judgment of the Constitutional Court dated 12 March 2008 – No. 116/2008 Coll.

Collective Agreement

Section 22

Only a trade union may conclude a collective agreement on behalf of employees.

Section 23

(1) A collective agreement may provide particularly for salary rights and other rights in employment law relationships, as well as the rights or obligations of the parties to the agreement. A collective agreement may not impose obligations on individual employees.

(2) The parties to a collective agreement include the employer or several employers, or one or more employers' organizations, and one or more trade unions.

(3) A collective agreement may not be replaced by an agreement pursuant to Section 51 of the Civil Code.

(4) A collective agreement is

a) corporate if concluded between the employer or several employers and a trade union or several trade unions active at the employer;

b) of a higher level if concluded between an employers' organization or organizations[10] and a trade union or trade unions.

(5) The procedure in concluding a collective agreement, including resolving disputes between the parties, is stipulated by a special legal regulation[11].

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[10] **Section 16(2) of Act No. 83/1990 Coll., as amended by Act No. 300/1990 Coll.**

[11] **Act No. 2/1991 Coll., on collective bargaining, as amended.**

Collective agreement

The issues concerning the working conditions of a group of employees can be discussed by and between the employer and the employees' representative. The employees' representative is regarded as being the trade union and the works council. The works council, however, does not have legal personality and cannot represent employees in legal relationships. Only the trade union is entitled to create, change and terminate the employees' rights and it can only do so in a collective agreement, i.e. not through any other agreement with the employer.

A collective agreement is a legal act in which the trade union and the employer, or their representatives, as the case may be, agree on the terms and conditions under which employees work (collective working conditions). As a result, only the trade union is entitled to conclude a collective agreement.

A collective agreement is concluded by the employer or several employers on the one part and by one or more trade unions on the other part. We distinguish between higher level collective agreements and corporate collective agreements. Higher level collective agreements are concluded between more than two employers and a trade union or between trade unions and organizations or employers' organizations. Corporate collective agreements are concluded by and between the respective trade union and the employer for one enterprise or its organizational unit (branch), as the case may be.

The working conditions of a group of employees can be regulated only through a collective agreement. Nonetheless, a collective agreement is a bilateral legal act that is regulated by the Labour Code and it cannot be replaced by an innominate contract according to Section 51 of the *Civil Code*.

The *Collective Bargaining Act* regulates the procedure involved in the conclusion of collective agreements (collective bargaining), including issues concerning collective disputes.

Related legal regulations:
Civil Code – No. 40/1964 Coll.
Collective Bargaining Act – No. 2/1991 Coll.

Section 24

(1) A trade union concludes a collective agreement also for employees who are not members of any trade union.

(2) If there are several trade unions at a single employer, the employer shall negotiate the conclusion of a collective agreement with all such trade unions; the trade unions shall act with legal consequences for all employees jointly and in mutual agreement, unless they agree mutually and with the employer otherwise.

Section 25

(1) A collective agreement is binding on its parties.

(2) A collective agreement is also binding on

a) employers who are members of an employers' organization that has concluded a collective agreement of a higher level and on employers who cancelled their membership in such an employers' organization during the term of effect of the collective agreement;

b) employees on whose behalf the collective agreement was concluded by a trade union or trade unions;

c) trade unions on whose behalf a collective agreement of a higher level was concluded by a trade union.