Czech Republic

Introduction

The new Czech Labor Code (Act No. 262/2006 Coll.) ("Labor Code") went into effect on January 1, 2007, and currently constitutes the principal legislative act governing employment relationships in the Czech Republic.

Most of the provisions in the labor legislation are mandatory, and they safeguard observance by employers of the most important principles, such as the principle of equal treatment and the prohibition of discrimination. On the other hand, the Labor Code respects the freedom of contract of the parties and, thus, employment relationships may be altered by provisions of the employment agreement provided that the basic rights and working conditions of the employees set forth in the Labor Code are observed. This applies, particularly, to the termination of an employment relationship.

Terminations

Under the Czech Republic Labor Code, an employment relationship may be terminated:

- By agreement;
- By notice of termination;
- By immediate cancellation; or
- By termination during the probationary period.

An employment relationship agreed upon for a fixed term also terminates with expiration of such fixed term.

An employment relationship with a foreigner also terminates:

- On the day when the foreigner's residence on the territory of the Czech Republic or his or her work permit is to end (if such permit is required);
- On the day when a sentence imposing punishment of expulsion from the territory of the Czech Republic takes legal effect; or

- By expiration of the term for which the work permit was issued (if such a permit is required).

Notice Provisions/Consequences Of A Failure To Provide The Required Notice Period

Termination By Agreement

If an employer and employee agree to terminate the employment relationship, the employment relationship ends on the agreed day. The agreement to terminate an employment relationship must be made by the employer and employee in writing (otherwise it is invalid), and the reasons for termination of the employment relationship must be provided in the termination agreement upon request by the employee.

Termination By Notice

Either an employer or an employee may terminate an employment relationship by a notice of termination. The notice of termination must be given in writing and delivered to the other party; otherwise it is invalid.

An employee may serve a notice of termination upon an employer for any reason or without giving any reason.

(i) Notice Period

If a notice of termination has been given, the employment relationship ends with the expiration of the notice period. The notice period is a minimum of two months for both the employer and employee. Generally, the notice period begins with the first day of the calendar month following delivery of the notice of termination and ends generally with the last day of the appropriate calendar month. A notice of termination that has been delivered to the other party may only be revoked with that party's agreement. Revocation of a notice of termination and agreement with its revocation must be executed in writing.

(ii) Reasons for Termination

An employer may give its employee a notice of termination only for reasons explicitly stated in Section 52 of the Labor Code. Grounds for termination must be specified in the notice in such a way that they are not interchangeable with other reasons (otherwise the termination is invalid), and the reasons for termination may not be

subsequently changed. Section 52 of the Labor Code sets out the following reasons for termination of an employment contract by an employer's notice (letter references are identical to the Labor Code):

(a) If the employer or a portion of the employer's organization is dissolved;

(b) If the employer or a portion of the employer's organization is relocated;

(c) If the employee becomes redundant because of a decision by the employer to change the employer's tasks or technical set-up, to reduce the number of employees for the purpose of raising work productivity, or to make other organizational changes;

(d) If the employee cannot (based on a doctor's opinion issued by a facility of labor-medical care or based on a decision by a relevant State administration authority that revises the doctor's opinion) continue to perform his or her previous work due to a work injury, occupational disease or due to being threatened by this disease, or if the employee has reached the highest allowable exposure at the work place determined by a binding expert opinion of the appropriate health service authority;

(e) If the employee has lost, on a long-term basis, the ability to continue to perform his or her previous work because of health condition (based on a doctor's opinion issued by a facility of labor-medical care or based on a decision by a relevant State administration authority that revises the doctor's opinion);

(f) If the employee does not meet the qualifications stipulated by statutory provisions for performance of the agreed-upon work or, through no fault of the employer, does not fulfill the requirements for proper performance of this work; if the failure to fulfill these requirements takes the form of unsatisfactory work results, the employee may be given a notice of termination only if he or she was called upon in writing by the employer within the previous 12 months to eliminate such deficiencies and the employee did not do so within a reasonable period; and

(g) If there are reasons for which the employer could immediately cancel the employment relationship with the employee, or if there is a serious breach of obligations arising from legal regulations relating to work performed by the employee; for ongoing but less serious breaches of legal

regulations relating to work performed by the employee, the employee may be served with a notice if, during the previous six months in connection with this breach of obligations arising from legal regulations relating to performed work, he or she was notified in writing of the possibility of being given a notice of termination.

(iii) Prohibition to Serve Notice of Termination

An employer may not serve a notice of termination during the following "protected periods;" however, it is not prohibited from concluding during such protected period an agreement on termination of employment with an employee:

- During a period when the employee is designated as temporarily incapable of work (if the employee did not bring about this incapability intentionally or if such incapability did not arise as an immediate result of a state of inebriation or addictive drug abuse), and during the period from when a proposal for institutional treatment is submitted or from the date of commencement of spa treatment to the day when such treatments are completed (this period is extended for six months after discharge from the institutional treatment in the event of tuberculosis);
- During a period when the employee has been provided a long-term leave of absence to serve in a public office or during the period of the employee's military service or exceptional military service (from the date of receipt of the order to serve until the expiration of two weeks from termination of the service);
- During a period when the employee is pregnant, on parental or maternity leave; or
- During a period when the employee (if he or she works at night) is declared, on the basis of a medical expert's opinion issued by a facility of labor-medical care, to be temporarily unfit for night work.

There are special exemptions available from this "protection."

Immediate Cancellation

Immediate Cancellation by Employer

An employer may immediately cancel an employment relationship only exceptionally and only in the following cases:

- If the employee was sentenced for an intentional crime to an unconditional prison term of at least one year and such sentence is final, or if the employee was sentenced to an unconditional prison term of no less than six months for an intentional criminal act committed in the course of performing his or her work tasks or in direct connection therewith and the sentence is final; or
- If the employee breached obligations arising from legal regulations relating to work performed by him or her in an "especially gross manner."

Special rules apply to this type of termination.

As a practical matter, unless the employee clearly breaches obligations arising from legal regulations relating to work performed by him or her (e.g., regularly appears at work intoxicated, or steals or continuously fails to follow the instructions of his or her superiors), it is often difficult to meet the standard that an employee has breached obligations arising from legal regulations relating to work performed by him or her "in an especially gross manner." Moreover, the definitive answer to the question whether the standard of "especially gross manner" was met can only be given by the relevant court deciding on a particular case.

Immediate Cancellation by Employee

An employee may immediately cancel an employment relationship if:

- According to a doctor's opinion issued by a facility of labour-medical care or decision of relevant State administrative authority that revises a doctor's opinion, he or she cannot continue to perform work without serious threat to his or her health and the employer did not allow such employee, within 15 days of submission of this opinion, to transfer to other suitable work; or
- The employer did not pay the employee wages or compensation for wages or any part thereof within 15 days after the date when payment was due.

Termination of a Fixed-Term Employment Relationship

A fixed-term employment relationship ends with expiration of the employment term. If, after expiry of the fixed term, the employee continues to carry out work and the employer is aware of it, such employment relationship shall change to an employment relationship agreed for an indefinite period, unless the employer

agrees otherwise with the employee. A fixed term employment relationship may also be terminated in any of the four manners set out above in the paragraph regarding termination of employment.

Termination Of An Employment Relationship During The Probationary Period

During the probationary period, either an employer or employee may terminate an employment relationship in writing for any reason or without giving a reason. Written notice of termination of the employment relationship should be delivered to the other party (as a rule at least three days before the date when the employment relationship is to end). The employer, however, cannot terminate the employment relationship during the first 14 days of sickness of the employee.

Trade Union Involvement

Trade Unions participate in termination of employment relationships under the following circumstances:

- An employer is required to discuss a notice of termination or immediate cancellation in advance with the competent Trade Union body;
- If a notice of termination or immediate cancellation concerns an individual who is a member of a competent Trade Union body (during such member's term of office and/or for a period of one year thereafter), the employer is required to obtain prior consent of the competent Trade Union body before serving a notice of termination to such employee. The Trade Union is deemed to have consented to such termination if it did not refuse in writing to grant its consent to the employer within 15 days of receiving a request. The employer may make use of such consent within two months from the day it is granted;
- If the competent Trade Union body refuses to grant its consent under the conditions stated above, the notice of termination or immediate cancellation is generally deemed to be invalid. However, if other conditions of termination or immediate cancellation are met and if a court determines that it would be unjust to require the employer to continue to employ the employee, termination or immediate cancellation would be valid; and
- An employer is also required to notify the Trade Union in those circumstances as agreed between the employer and the Trade Union.

Special rules may be agreed upon in the collective bargaining agreement.

Mass Redundancy

Mass redundancy is defined as termination of employment relationships within a given 30 day period on the basis of termination notices served by the employer under Section 52 (a), (b) and (c) of the Labor Code of at least:

- 10 employees of an employer that employs from 20 to 100 employees;
- 10% of employees of an employer that employs from 101 to 300 employees; or
- 30 employees of an employer that employs more than 300 employees.

If termination of at least five employees occurs based on a termination notice served by the employer during the above 30 calendar day period (i.e., the last date of the employment is decisive) for redundancy reasons (Section 52 (a), (b) and (c) of the Labor Code), any termination based on a mutual agreement concluded between the employer and the employee with the termination date in the relevant 30 calendar day period is counted towards the threshold of collective dismissal.

Special rules and proceedings apply for any mass redundancy, including various information and consultation requirements towards employees and employee representatives and the Labor Office. This procedure is more time consuming and administratively demanding, and is also, in most cases, more expensive.

Severance Payments

Provided that the reason for termination (by agreement or notice) is one of those stated in Section 52 (a) to (c) of the Labor Code, an employee is entitled to three months severance pay; if it is the one stated in Section 52 (d) of the Labor Code, the employee is entitled to twelve months severance pay. However, a higher severance payment amount may be agreed upon in the collective bargaining agreement or the employer's internal regulations or in the employment contract. Additional conditions for payment of the increased severance payment may also be agreed upon.

Other Comments

It is necessary to review, in detail, the entire employment documentation of each employee to be dismissed and the collective bargaining agreement (if any) and internal regulations of the employer (if any) in order to:

- Check whether any protection against dismissal applies;
- Identify the employee's position in the employment documentation as well as the organizational structure of the employer;
- Check the powers of attorney and authorizations granted to the employee in order to properly cancel them;
- Check the assets and values provided to the employee;
- Check whether there is any pending or threatening dispute with the employee (e.g., harassment, discrimination, etc.);
- Check outstanding entitlements and liabilities and vacation (outstanding unspent vacation must be paid out upon termination);
- Check whether there were any investment incentives provided by the employer and what were their conditions (e.g., continued employment of a certain number or type of employees);
- Check whether or not the employee is a disabled employee - The employer is required to inform the relevant labor office of termination of the employment relationship with a disabled employee;
- Check the bonus plan (stock option plan) or similar arrangements in which the employee participates and any related entitlements of the employee;
- Check whether or not a non-competition agreement was concluded with the employee; and
- Also check whether the employer implemented any Sickness Policy that grants employees continued full pay in case of sickness and consider its cancellation to reduce potential costs of dismissals.