

Hungary

Introduction

Hungarian labor law has gone through significant changes in the last decade and has become one of the most developed areas of law in Hungary. Since the end of the communist regime, labor law legislation has had to cope with the challenges of the new social and economic system. As a result, and due to the development of the labor market, labor law plays an increasingly significant role in legal relationships in Hungary.

Act XXII of 1992 of the Labor Code (the “Labor Code”) contains several employee protection rules, which apply to all employment relationships. One of the main legal concepts under the Labor Code that significantly protects employees’ rights is known as the “unilateral cogency” employment rule. This rule of law provides that the parties may agree only on terms that are at least as favorable to the employee as the applicable statutory provisions. However, there are certain statutory provisions from which no contractual deviation is allowed.

Employment relations in Hungary are governed by the Labor Code and other labor law legislation, collective bargaining agreements and individual employment contracts. In the context of labor disputes, courts generally protect employees’ rights by interpreting the provisions of the Labor Code, collective bargaining agreements and employment contracts in favor of employees. Consequently, courts are usually considered very “employee friendly” in Hungary. Overall, litigation trends reflect a decrease in the number of lawsuits initiated by blue-collar employees, while more and more white-collar employees, particularly executives and key-employees, are initiating labor disputes against their employers before courts in Hungary.

Terminations

Restrictions On Employers

The Labor Code provides that all employment contracts and notices must be in writing. This means that the parties to an employment contract may terminate such contract only by giving notice in writing. Furthermore, the Labor Code sets out the reasons for termination by ordinary notice and provides certain restrictions on terminations. The main purpose of the rules regulating termination is to safeguard employees against unlawful terminations by employers.

Pursuant to the Labor Code, an employment relationship may be terminated (i) by “ordinary notice,” (ii) by “extraordinary notice,” (iii) during the probationary period with immediate effect, or (iv) by mutual consent of the employer and the employee. However, the Labor Code prohibits employers from terminating the employment relationship by ordinary notice during the period when the employee is:

- Unable to work due to illness, and during a maximum one year period following the expiration of the sick leave period;
- Unable to work due to an accident at work or an occupational disease, for the entire duration of eligibility for sick pay on the grounds of incapacity resulting from such accident or disease;
- On sick leave for the purpose of caring for a sick child;
- On leave of absence without pay for nursing or caring for a close relative;
- Pregnant, on maternity leave and for three months after giving birth;
- On unpaid leave for the purpose of nursing or taking care of children, until the child reaches the age of three, during the period of eligibility for child-care allowance, irrespective of any leave of absence without pay;
- Absent due to regular or reserve army service; and
- Absent due to disability with reception of rehabilitation benefits.

Employers are prohibited from terminating workers during these leave periods plus 15 days thereafter (if the periods of leave are longer than 15 days). If these periods of leave are longer than 30 days, no termination may occur during the 30 days following the last day of the leave.

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

Termination By Ordinary Notice

An employment contract concluded for a fixed term may be terminated only by ordinary notice if the employer pays the employee an amount equal to one year’s average salary. However, if the remaining period of employment is less than one year, an employer is required to pay only an amount equal to the average salary for the remaining period.

Both the employer and the employee may terminate an employment contract concluded for an indefinite term by ordinary notice. A notice of termination issued by the employer must contain the employer's clear and justified reasons for the termination, unless the employee is an executive as defined under the Labor Code (e.g., managing director, member of the Board of Directors, etc.). Termination notices that fail to include justified reasons are unlawful. The notice of termination must state that the employee is entitled to initiate legal proceedings within a specified period of time to challenge the termination and must provide information on how to initiate such proceedings.

The reasons justifying termination of an employment relationship may be related only to the abilities of the employee, his or her behavior in relation to the employment or the operations of the employer. Before giving an employee a notice of termination as a result of an employee's work performance or behavior, an employer must give the employee the opportunity of defending him or herself against the termination reasons raised, unless the employer cannot be expected to do so in the given circumstances. In the case of ordinary notice of termination by the employee, no reasons justifying the termination of the employment relationship need to be included in the notice.

The notice period in cases of termination by ordinary notice must be at least 30 days, but not longer than one year. The terminating party, whether it be the employer or the employee, must give the appropriate notice to the other party. In the absence of an agreement to the contrary, the statutory minimum notice period will apply in cases of termination by ordinary notice.

Under the Labor Code, the minimum 30-day notice period is extended depending on the duration of the employment as follows:

Tenure (Number of Years)	Statutory Period Extended By Certain Days	Total Notice Days
3 to 5	5	35
5 to 8	15	45
8 to 10	20	50
10 to 15	25	55
15 to 18	30	60
18 to 20	40	70
Over 20	60	90

These provisions, however, do not apply to “executive” employees.

After giving an employee an ordinary notice of termination, the employer must release the employee from his or her obligation to work for up to one half of the total notice period. The purpose of the exemption from work is to enable the employee to look for another job. The employee may select which days or hours he or she will be released from the obligation to work for at least one half of the exemption period. Furthermore, an employee must continue to receive his or her average salary during the notice period.

Termination By Extraordinary Notice

An employer or an employee may terminate the employment relationship by extraordinary notice if any important obligation stemming from the employment contract is materially breached by the other party, either intentionally or by gross negligence. An employment relationship also can be terminated by extraordinary notice if the other party acts in a way that makes the continuation of the employment relationship impossible. The parties may neither extend nor limit the scope of the reasons that may serve as a basis for the extraordinary notice of termination. However, the parties may give concrete examples in the employment contract of behaviors that may give rise to an extraordinary notice of termination.

In the case of termination by extraordinary notice, the notice of termination must contain the terminating party’s clear and justified reasons for termination. No notice period need to be given in the case of termination by extraordinary notice, as it has immediate effect. Before giving an employee a notice of extraordinary termination, the employer must inform the employee of the reasons of the intended termination and must give the employee the opportunity to defend against the termination reasons raised, unless the employer cannot be expected to do so in the given circumstances.

The party terminating the employment relationship by extraordinary notice must exercise its rights within 15 days of becoming aware of the cause for extraordinary termination. Moreover, the terminating party must exercise its rights within a maximum period of one year from the date on which the facts justifying the termination actually arose. If the reason justifying the termination by extraordinary notice is a crime committed by the other party, the party terminating the employment relationship must exercise its rights within the statute of limitations applicable to such crime.

If the employer terminates the employment relationship by extraordinary notice, no severance payment is due to the employee. If the employee terminates the employment relationship by extraordinary notice, the employer must pay the employee an amount equal to the severance payment to which the employee would have been entitled to had the employer terminated the employment relationship by ordinary notice. The rules pertaining to severance payments for termination by ordinary notice also apply. Thus, the employee may claim damages he or she incurred as a result of such termination.

Collective Dismissals

The Labor Code was recently amended with a view to harmonizing it with the provisions of EU Directives 77/187 and 75/129 relative to the protection of an employee's rights upon a change of ownership and collective dismissals. In the event of a legal succession of an employer, the Labor Code provides that the "working conditions" set forth in the collective bargaining agreement entered into between the employees' representative body or the trade union and the former employer must be maintained by the new employer until the earlier of: (i) one year after the effective date of the legal succession; or (ii) the date that the collective bargaining agreement is terminated, expires, or is replaced by a newly negotiated collective agreement.

"Legal succession" is defined as:

- Any succession pursuant to a legal rule; or,
- The takeover of all or part of the business activities of the former employer (manufacturing unit, shop or any other place of business), where the takeover is governed by an agreement (e.g., sale and purchase agreement, lease agreement or an agreement pursuant to which assets are contributed to the capital of another legal entity), provided that the employees are continuously employed.

For a period of one year following a legal succession, the former employer and the new employer are jointly and severally liable to employees for employment-related claims made within that period. Furthermore, if the former employer holds more than 50% of all voting rights in the new employer, the former employer will be liable, as a guarantor, for all amounts due by the new employer to an employee pursuant to an employment-related claim, provided that: (i) the employment contract

was concluded for an indefinite term, was terminated for reasons related to the activities of the employer (i.e., a reorganization) and was terminated within one year following the effective date of the legal succession; or (ii) the employment contract was concluded for a fixed term, was terminated within one year from the effective date of legal succession and the employer paid the average salary for the remaining term of the employment contract.

The employees' representative committee (i.e., a trade union or any committee established by the employees) must be consulted at least 15 days prior to the termination by ordinary notice of a group of employees if the number of employees to be dismissed exceeds certain limits established by law. The competent Labor Center and the employees to be dismissed must be given at least 30 days' notice in writing of such termination. On a sliding scale, those limits are:

Number of Employees	Number Of Employees To Be Terminated
21 to 99	10
100 to 299	10%
300 or above	30

If the employer has several places of business, the above criteria are applicable separately for each place of business; however the number of employees employed at various locations, but within the jurisdiction of the same county (e.g., Budapest) must be calculated together. The employee who works at various places must be accounted at the location where he or she works in the position registered at the time when the decision on collective dismissal was adopted.

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

If an employee initiates court proceedings asserting that his or her employment was terminated unlawfully, and the court rules in favor of the employee, the termination has no effect. If this occurs, the employer must pay for all damages and loss of salary incurred, except for those amounts that the employee was able to recover from other sources (e.g., unemployment indemnities). The employee, if his or her employment

was not terminated by ordinary dismissal, shall also be reimbursed for lost wages and, in addition, shall be eligible to his or her average earnings payable for the notice period and severance payment payable in the event of ordinary dismissal.

If it is determined by court that the employer has unlawfully terminated an employee's employment, such employee, upon request, shall continue to be employed in his or her original position. At the employer's request, the court shall exonerate reinstatement of the employee in his or her original position if the employee's continued employment cannot be expected, such as in the situation where the employee's position has been eliminated further to reorganization. The employer may not be exempted from being obliged to reinstate the employee to his or her original position, if:

- The employer's action violates the requirements of the proper execution of law, the principle of equal treatment or restrictions on termination, or
- The employer has terminated the employment relationship of an employee who was under the labor law protection prescribed for elected trade union representatives.

If the employee does not request reinstatement or if, upon the employer's request, the court exonerates reinstatement of the employee in his or her original position, the court shall order, upon weighing all applicable circumstances - in particular the unlawful action and its consequences - the employer to pay no less than two and no more than twelve months' average earnings to the employee.

If the employee does not request reinstatement or if, upon the employer's request, the court exonerates reinstatement of the employee in his or her original position, the employment relationship shall be terminated on the day when the court ruling to determine unlawfulness becomes definitive.

If the employee terminates the employment relationship unlawfully, the employee must pay damages to the employer. These damages are limited to an amount equal to the employee's average earnings falling due for the notice period, or in the case of employees in key positions, to twelve times the employee's average monthly salary.

Termination Indemnities

If the employment relationship was terminated either by ordinary notice given by the employer, by extraordinary notice given by the employee or by the

discontinuation of the employer's business activities without a legal successor, the employee is entitled to a severance payment. The amount of the severance payment is calculated according to the duration of the employment, as follows:

Continuous Employment With Employer (Years)	Multiple Of Average Monthly Salary
3 to 5	1
5 to 10	2
10 to 15	3
15 to 20	4
20 to 25	5
25 or above	6

If the termination of the employment relationship takes place within five years from the time when the employee would reach the legal retirement age, the severance payment must be increased by an amount equal to three months' salary, provided that the employment relationship was terminated by the employer by ordinary notice or following the cessation of the employer's business activities without a legal successor. No severance payment is due if the employee has already acquired the right to receive a pension or if the employee was granted an early retirement pension.

Pursuant to the Labor Code, any time spent in prison, performing community work or on unpaid leave exceeding 30 days (except leave for caring for a child under the age of 10 or caring for a close relative) shall not be taken into account when calculating the duration of employment.

Laws On Separation Agreements, Waivers, And Releases

Basically, Hungarian law does not provide rules concerning separation agreements, waivers and releases. Although such agreements with an employee are not prohibited, they are typically only used in cases of termination with the mutual consent of the employer and the employee. Such waivers may be held invalid if they result in: (i) the violation of legal regulations; (ii) the unreasonable difference between the waiver and the consideration; (iii) unfairly taking advantage of the other party's situation; (iv) an essential mistake of any of the parties; or (v) the deception or an unlawful menace of the other party.

Litigation Considerations

Approximately 30% to 35% of labor disputes initiated in Hungary involve unlawful termination. In practice, the courts tend to rule in favor of employees in cases where an employer has failed to comply with the formalities pertaining to the termination notice provided in the Labor Code.

If an employee challenges the termination before a competent court, the court will first determine whether the employer complied with the applicable formality requirements set out in the Labor Code. This means that prior to deciding on the merits of the termination, the court will investigate whether the employer provided appropriate reasons justifying the termination, complied with the statutory deadlines and restrictions applicable to the termination and whether the person authorized to exercise the employer's rights signed the termination letter. Thus, in practice, it is possible that even if it is established that an employee dismissed by extraordinary notice committed a crime against the employer, and the employer was one day late in delivering the termination notice to the employee, the termination may be deemed unlawful and the employee, upon request, could be reinstated and entitled to compensation for damages. Of course, the determination by the court that an employment relationship was unlawfully terminated does not affect the employer's right to initiate criminal proceedings against such an employee or to submit a counterclaim in the labor dispute requesting payment of damages caused by the employee.

If the court determines that the ordinary or extraordinary notice of termination issued by the employer is unlawful, and the employee does not request to be reinstated, the employee's employment only will be deemed terminated at the time when the court's judgment establishing the unlawfulness of the termination becomes final and binding. This means that if the employer loses the case, the employee's employment shall be deemed to have never ceased, and the employer must pay the employee's salary and other payments due for the period prior to the date on which the court rendered its final and binding judgment. Consequently, the amount payable by the employer in such a case also will depend on the length of the court procedure, which might take years in Hungary.

Discrimination

Laws On Employment Discrimination

The Labor Code includes a section prohibiting discrimination against employees based on any condition not related to their employment. However, to date, only a few labor disputes have been initiated before the courts by employees claiming that their employer engaged in employment discrimination.

Section 5 (1) of the Labor Code and Act CXXV of 2003 on equal treatment and promotion of equal prospects (the “Equal Treatment Act”) prohibits discrimination against employees based on their gender, age, nationality, race, ethnic origin, religion, political convictions, participation in employee interest groups or any other condition not related to their employment.

In compliance with the EU Directives, a direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to above. Furthermore, an indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age or a particular sexual orientation at a particular disadvantage compared with other persons, unless (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or (ii) that provision, criteria or practice shall be considered as having reasonable ground with respect to the legal relationship in question.

According to the Equal Treatment Act, a violation of the principle of equal treatment in an employment occurs, in particular, if an employer discriminates against an employee directly or indirectly, particularly in relation to the determination and the use of the following provisions:

- The process of awarding jobs, especially through public job advertisements, the process of job applications and the terms of the employment;
- Provisions preceding the establishment of the employment or other work-related legal relationship, and provisions which were created for the furthering of such procedures;

- The establishment and termination of the employment or other work-related legal relationship;
- Training conducted before or during the work;
- The determination and providing of the terms and conditions of the work;
- The benefits relating to the employment or other work related legal relationship, particularly the determination and providing of the salary;
- Membership and participation in the employees' organizations;
- Promotions; or
- Enforcement of compensation and disciplinary liability.

In addition to the Labor Code, the Hungarian Constitution, the Hungarian Civil Code and the Equal Treatment Act, also Government Decree N° 218/1999 (XII.28.) on Minor Offences (the “Government Decree”), contain provisions prohibiting discrimination.

Employee Remedies For Employment Discrimination

According to the Hungarian Act III of 1952 on Civil Procedure (the “Civil Procedure Act”), labor courts may adjudicate disputes arising from the employment relationship, negotiations held prior to the conclusion of the employment contract and rights derived from the employment relationship after it is terminated. This means, for example, that an individual may initiate a lawsuit against a “potential” employer before the labor court based on a claim that the employer violated the laws on discrimination by publishing a job advertisement that asked for men or women only, when there was no legal reason for such differentiation. The Civil Procedure Act provides for scheduling hearings very quickly (i.e., within 15 days) following the submission of a petition and, in certain cases, shifts the burden of proof to the employer.

Potential Employer Liability For Employment Discrimination

Despite the various legal regulations prohibiting it, there have been only a limited number of court cases involving employee claims of discrimination. An employee may challenge discriminatory terms contained in an employment contract and all discriminatory actions carried out by an employer before the competent labor court. All such discriminatory terms in the contract are considered null and void.

Furthermore, if the employee is successful, the employer must pay the employee all damages incurred (including loss of salary, attorney's fees and procedural costs) as a result of the breach of the prohibition on discrimination.

If a dispute arises in connection with the violation of the prohibition on discrimination, the employer must prove that it did not breach this rule of the Labor Code (the burden of proof is on the employer in labor disputes involving discrimination). In addition, pursuant to the Government Decree, a labor inspector is entitled to initiate a procedure for committing a minor offence if an employer discriminated against its employees. The Act LXXV of 1996 on Labor Supervision prescribes the labor matters that fall within the investigatory powers of the labor authorities, such as a violation of the prohibition on discrimination. The labor authorities carry out the labor inspections *ex officio*. Without any special permission or prior notification, the inspector is entitled to enter any workplace, review documents, make copies of documents and request information from persons at the workplace. If the inspector discovers any violation of the prohibition on discrimination, he or she may take any necessary steps in order to remedy the violation, including: (i) requesting the employer to comply with the relevant labor laws; (ii) requiring the employer to cease contravening the relevant labor laws by a certain deadline; (iii) prohibiting the employment in certain circumstances; (iv) requiring the employer, employing a foreign employee, to pay certain contribution into the Labor market Fund; (v) initiating proceedings for minor offences; (vi) obliging the employer to fulfill its payment obligations deriving from the employment relationship; (vii) establishing the commencement date of the employment and requiring the employer to comply with the relevant statutory labor law; (viii) prohibiting the employer from its business activity if the employer does not have the required licences, or registration; and (ix) making a written proposal to the manager of the labor authority regarding the imposition of a fine on the employer. The fine can range between HUF 30,000 and HUF 8,000,000 for a first offence if only one labor law rule is breached. If more than one rule is breached or if a second offence is committed within three years following the date on which a previous resolution on the imposition of fine becomes final and binding, the fine ranges between HUF 30,000 and HUF 20,000,000.

Practical Advice To Employers On Avoiding Employment Discrimination Problems

As indicated above, employers are obliged to prove that they did not violate the prohibition on discrimination. This means that in a labor dispute initiated by the employee based on the prohibition on discrimination, the employer must provide actual and reasonable reasons justifying why the affected employee did not receive the same treatment as other workers. Therefore, it is advisable for employers to prepare and maintain sufficient records and documentation regarding the reasons motivating an employer's decision to differentiate among employees (e.g., evaluations, payment of bonuses, terminations, etc.).

Sexual Harassment

Laws On Sexual Harassment

Under Hungarian Law, there is no explicit legal definition of the type of actions that constitute sexual harassment or practical guidance as to the remedies available to a victim of sexual harassment before Hungarian courts. Because the concept of sexual harassment is not well defined in the applicable legislation, very few claims have even been submitted to courts.

Despite the lack of specific legislation on this issue, there is a general provision in the Equal Treatment Act that contains a definition of harassment, which may also be applicable by analogy to sexual harassment in an employment relationship. According to the provision, the employer is generally prohibited from acting in a manner that, with respect to the gender, age, nationality, race, ethnic origin, sexual identity, health condition, marital status, religion, political convictions, participation in employee interest groups or any other condition of a person, is aimed at having such person frightened, humiliated or put in shame; and it is also prohibited from behaving with hostility or aggression towards any person in connection with the same conditions. Under the Equal Treatment Act, harassment, in general, qualifies as a kind of unfavorable treatment, thereby a harm of the principle of equal treatment and a manifestation of discrimination.

There are also several general provisions of the Labor Code that a person claiming to be a victim of sexual harassment could use as a basis for commencing a legal action. For example, the Labor Code provides that the rights and duties specified by the Labor Code must be exercised and executed properly. In particular, the

exercising of rights is not proper if its purpose or result is the curtailment of the legal interests of others, the restriction of another's interests, harassment or the suppression of opinion. Furthermore, the Labor Code also provides a general prohibition against discrimination. Section 102 (2) of the Labor Code provides that an employer must ensure safe and healthy working conditions for its employees. This rule might be interpreted to include the requirement that a "psychologically" healthy atmosphere must exist in the workplace.

Employee Remedies For Sexual Harassment

In accordance with the relevant provisions of the Equal Treatment Act, the Equal Treatment Bureau, as the authority being in charge, operating under the control of the Hungarian Government, examine harassment cases (i.e., whether the principle of equal treatment was harmed) based on either an individual initiative or on an ex officio basis. Depending on the outcome of the examination of the case, the Equal Treatment Bureau may (i) start a court action for the protection of rights of those persons or groups of persons whose rights suffered an infringement; (ii) order to stop discriminative actions or measures; (iii) prohibit the continuation of unlawful behavior or practice; (iv) arrange for the publication of its resolution establishing the infringement of lawful rights; or (v) impose a fine that can range between HUF 50,000 and HUF 6,000,000. It is important to note that the same measures cannot only be taken in harassment cases but, in general, when an infringement of the principle of equal treatment occurs, i.e., those can also serve as employee remedies against the employer for any employment discrimination.

Other than the measures that can be taken under the Equal Treatment Act, a sexual harassment claim may also be submitted individually to the labor courts on the basis of the provisions of the Labor Code. A victim of sexual harassment may recover from the employer all damages caused to him or her in connection with the employment, loss of salary, all costs incurred in connection with the damages suffered and any moral damages, if applicable.