

The Global Employer

Focus on Hungary



Hungarian labour law has gone through significant changes in the last decade and become one of the most developing areas of Hungarian law.

As a result of Hungary's accession to the EU in 2004, Hungarian labour law has been fully harmonized with the applicable EU laws.

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Sources of Hungarian Labour Law

The primary source of Hungarian labour law is Act I of 2012 on the Labour Code (the “Labour Code”) which entered into force on 1 July 2012, after Act XXII of 1992 (the “former Labour Code”) was repealed. In addition to the Labour Code, various other Hungarian legislation concerning labour matters, health and safety, social benefits and immigration issues may also govern a particular employment relationship.

There are three levels of Hungarian labour law on which an employment relationship can be governed. These are: (i) the Labour Code and other labour legislation; (ii) the collective bargaining agreement; and (iii) the employment contract concluded between individual employees and the employer. From the date of Hungary’s accession to the EU, the laws of the EU constitute one additional layer of legal provisions to be considered with regard to the labour legislation.

Concept of Unilateral Cogency

One of the main legal concepts of the Labour Code which significantly protects the rights of employees is known as the “unilateral cogency” employment rule. This rule of law provides that the parties to an employment contract may only agree on terms different from the statutory provisions of the Labour Code only regarding those matters where that is expressly allowed by the Labour Code and only if such terms are more favorable for the employee than the statutory provisions. Under the Labour Code the employer and the employee are entitled to deviate from the statutory provisions of the Labour Code to a much larger extent than that was allowed under the former Labour Code.

The new Labour Code introduced a new concept, whereby collective bargaining agreements may deviate from the statutory rules of the Labour Code, except where the Labour Code expressly prohibits such deviation; and the collective bargaining agreement may contain regulations which are less favourable to the employee than the statutory provisions of the Labour Code.

Immigration Matters

Different immigration provisions are applicable with respect to EU citizens and EEA nationals, and non-EU citizens and non-EEA nationals ("third country nationals").

Rules applicable to third country nationals

Rules on residing in Hungary less than three months

The EU Visa Code provides unified requirements related to applying for the various types of short-term visas within the member states of the Schengen Area (the "Schengen States"). According to the Visa Code the visa application must be supported with documents justifying, among others, the purpose of the stay, the accommodation, and the fact that the cost of living is covered by sufficient financial resources.

Under the Visa Code a visa issued by a Schengen State enables (i) transit through the international transit areas of airports of the Schengen States; or (ii) transit through or an intended stay in the territory of the Schengen States for no more than three months in any six-month period from the date of first entry in the territory of the Schengen States.

The Visa Code provides for the following type of visas: (i) Uniform visa, valid for the entire territory of the Schengen States; which may be issued for one or multiple entries and the period of validity may not exceed five years, (ii) Visa with limited territorial validity, valid for the territory of certain Schengen

States, but not all; which may only be issued in exceptional cases (e.g. when a Schengen State considers it necessary on humanitarian grounds, for reasons of national interest or because of international obligations); (iii) Airport transit visa, which is valid for transiting through the international transit areas of the airports situated on the territory of Schengen States.

Rules on residency of third-country nationals exceeding three months

Third-country nationals may enter and stay in Hungary for a period exceeding 90 days in any 180 day period if they meet the specific legal requirements. Those requirements include, among others, justification of the purpose of the stay, and to have sufficient financial resources to cover healthcare services etc.

The applicable law distinguishes between the following type of visas and permits: (i) a visa for a period longer than three months, (ii) a residence permit; (iii) an immigration permit; (iv) a permit for settling down; (v) an interim permit for settling down; (vi) a national permit for settling down, (vii) an EC permit for settling down, or a (viii) Blue Card.

A "visa for a period longer than three months" may be: (i) a visa for acquiring the residence permit; (ii) seasonal employment visa, for single or multiple entry and for the purpose of employment for a period of a minimum of three months but no longer than six months; (iii) national visa, which may be issued under specific international agreement, for single or multiple entry and for a period of longer than three months.

A third-country national having a residence visa or a national visa may obtain a residence permit after the expiry of the validity period of such visas. Based on the residence permit, a third-country national is entitled to stay in Hungary longer than 90 days in any 180 day period. If the purpose of the stay is the performance of work, the residence permit at the first occasion may be issued for a maximum period of 2 years, but later it may be extended for an additional 2 years period.

In addition, a residence permit may be issued under specific circumstances, e.g. for the purpose of family reunification, performing work, studying, scientific research, national interest upon buying state bonds in value of at least EUR 250,000.

A third-country national intending to settle down in Hungary may obtain (i) an interim settlement permit, (ii) a national settlement permit or (iii) an EC settlement permit, if he/she satisfies the specific requirements (e.g. expenses related to the third-country national's living and accommodation in Hungary).

is covered or similar) of the law. A third-country national, holding an EC settlement permit granted by an EU Member State, can obtain an interim settlement permit, if he/she intends to stay in Hungary for the following purposes: (i) performing work, except seasonal employment; (ii) performing studies or vocational training; or (iii) other certified reason. Such permit can be obtained for 5 (five) years, but occasionally it can be extended for 5 (five) years. A national settlement permit may be issued to third-country nationals holding a residence visa or a residence permit or an interim settlement permit and the particular person satisfies the specific legal requirements.

An EC permit for settling down may be issued to a third-country national, if he/she has lived legally at least for 5 years in Hungary prior to the filing of the application for such permit, or holds an EU Blue Card and lawfully and continuously lived in Hungary at least for 2 years prior to the filing of the application for such permit and lawfully and continuously lived in the member states of the European Union for a period of at least for 5 years.

Work Permit

As a general rule a work permit must be obtained if a third-country national would like to perform work in Hungary. No work permit is required for the performance of work by a third-country national being an executive officer or a member of the Supervisory Board of a Hungarian company operating with foreign participation. A work permit is issued by the labour authority having competence over the area where the place of work in Hungary is located (the "Labour Center"). The Hungarian entity for which the foreign employee will work must apply to obtain a work permit.

The work permit can be applied for either in a (i) two-step procedure or in a (ii) one-step procedure. In a two-step procedure, the employer must first submit a valid manpower request to the regional branch of the Labour Center, based on which it will be examined whether the position can be filled by a Hungarian national and that the work permit may be granted if no Hungarian national was found for the position specified in the manpower request and the potential employee, who is a third-country national, has the qualifications prescribed by law or requested by the employer for the relevant position. As of 1 January 2013, the manpower request and the work permit application can be filed together to the Labour Center in a one-step procedure also. If issued, the work permit is valid for 2 (two) years.

In certain instances the work permit may be issued in a simplified procedure. Among others the following circumstances may give rise to simplified procedure: (i) if the company applying for work permit is owned by foreign entities and the total number of third-country nationals to be employed by the applicant in one calendar year does not exceed 5% of the total work force; or (ii) if the applicant, pursuant to an agreement concluded between the applicant and a foreign entity, intends to employ a third-country national for installation work, or to provide guarantee, maintenance or warranty related activities for not more than 15 consecutive working days within a 30 day period.

Joint Permit

As of 1 January 2014, third country nationals residing in Hungary for more than 90 days in any 180 day period for the purpose of performing work with a Hungarian employer, must obtain a so-called joint permit, which includes work and residency permit, in a so-called joint procedure. This means that the third country national applicants whose employment is subject to work permit must submit a joint permit application to the immigration authority.

and the immigration authority will make an official inquiry to the labour centre to obtain an authorization for the work of the third country national. After the authorization of the labour centre is obtained, the immigration authority will decide if the residency requirements have been fulfilled and whether to grant a joint permit.

Rules applicable to EEA nationals

An EEA citizen may enter into Hungary without a visa, possessing either a valid passport or a valid ID card and may stay in Hungary for a period not exceeding 90 days without any special permission.

If an EEA citizen intends to enter Hungary and stay longer than 90 consecutive days, he/she must register at the Immigration Office and apply for a "Residence Certificate" ("Certificate") and an address card. If issued, the Residency Certificate is valid for an indefinite period of time, as long as the EEA National has a valid passport or ID card. EEA citizens and family members who have resided legally and continuously within the territory of the Republic of Hungary for 5 (five) years have the right of permanent residence.

However, the applicable law provides that in certain cases, less than 5 (five) years residence is required for EEA citizens who have been performing wage earning activity.

Work permit

No work permit is required to the employment of EEA citizens and their close relatives. However, the employer is required to notify - not later than on the commencement date of the employment - the competent Labour Center concerning the employment of an EEA citizen without a work permit.

Terms Of Employment

Employment Contract

The Labour Code requires that employment contracts be concluded in writing, which is to be arranged for by the employer. An employment contract not concluded in writing can be cited as invalid by the employee within a period of thirty days from the commencement of work. The employment contract may not be contrary to the collective bargaining agreement unless it stipulates more favourable terms for the employee.

The base salary of the employee, the position of the employee and the place of work must always be defined in the employment contract. The place of work can be a permanent location or a wider geographic area as specified in the employment contract. Upon concluding the employment contract the employer must inform the employee of certain important information related to the working conditions, and must confirm those in writing within 15 days.

Period

Unless otherwise agreed by the parties, the employment is established for an indefinite period of time.

The employer and the employee may agree on a fixed term employment also. The duration of employment contracts concluded for a fixed term may not exceed five years (except for executive employees). When examining the overall term of a fixed term contract, the term of another definite term relationship which was terminated within six months of the date of the new fixed term employment relationship must be added together. An employment relationship for a definite period may be renewed or extended between the same parties only if rightful interests of the employer justify such renewal or extension, and that may not aim at compromising the rightful interests of the employee.

If the commencing date of employment is not stipulated in the employment contract, the day following the execution of the employment contract is to be considered to be the commencing date of employment.

Conditions

A pre-employment medical check up is required to be conducted before commencing the performance of work, for each new person whom the employer wishes to hire. It is prohibited to oblige the employee to undergo pregnancy testing.

Due to privacy reasons, the Labour Code significantly restricts the scope of declarations and eligibility examinations that an employer may request from the employees. However, an employer may request an employee upon the establishment of the employment, or even during the employment when appropriate, to sufficiently certify that the employee is not subject to any employment prohibition which may impede the establishment or the maintenance of the employment relationship. The judicial record (in Hungarian: "erkölcsi bizonyítvány") may be appropriate to clarify such circumstances, but it only contains whether the employee is subject to any criminal sanctions. If an employee appropriately certifies the above, the employer will be obliged to reimburse the related costs to the employee.

Unless otherwise provided in the employment contract, the employment is established for a full-time basis.

Probationary Period

Upon concluding an employment contract, a probationary period may be agreed upon between the employer and the employee. The probationary period can not be longer than three months. A probationary period that is shorter than three months can be extended once; provided, however that together with the extension the total term thereof may not exceed three months. A collective bargaining agreement may stipulate a probationary period of six months. Extension of the above determined probationary periods is prohibited and will be deemed null and void.

During the probationary period, the employment may be terminated by either party with immediate effect and without justification.

Working Conditions

Salary

Base Salary

Unless otherwise provided by law, the base salary must be established and paid in Hungarian Forints.

Unless otherwise agreed by the parties or stipulated in labour regulations, the salary must be paid, at the latest, by the tenth day of the month following the relevant month.

The three different arrangements for structuring an employee's salary under the Labour Code are described below.

Fixed (Time-related) Salary

The employee may receive a fixed salary (e.g. monthly or weekly), which is not related either to his/her or the company's performance.

Performance-Related Salary

The salary of an employee may also be linked to his/her performance. In this case the performance requirements and the factors for the calculation of the performance-related salary (the "Requirements and the Factors") must be established

The Requirements and Factors must be established in advance within the frame of a procedure taking into account objective criteria and assessing whether the Requirements and Factors are realizable. When establishing the Requirements and Factors, conditions such as work organization and applied technology at the employer have to be considered.

Before establishing or amending the Requirements and the Factors applying generally to the employees, the employer must request the opinion of the works council, if any.

If an employee receives performance-related salary, a guaranteed salary must be defined and paid, which must be at least half of the base salary of the employee.

The determination of whether a performance requirement is achieved must be objective and may not merely depend on the employer's determination, in its discretion, as to such achievement.

Combination of Fixed and Performance-related Salary

An employee's salary may also be defined as a combination of fixed and performance-related salaries as described above.

Bonus

Apart from the above described salary structure, the employer may grant to an employee a bonus (premium), in addition to his/her salary. Usually, a bonus is granted in addition to a fixed salary. The granting of a bonus is normally in the employer's sole discretion and may not be claimed by the employee; provided that the parties so agreed and the employer reserved the right to do so. However, in the case that the bonus is promised in advance to an employee upon completing a specific task, such bonus can be claimed by the employee.

The terms and conditions of the bonus may be included in the employment contract or a separate bonus policy. If the employer prefers to have a bonus system based solely on its discretion, the respective governing document should provide only for the possibility that the employer may, from time to time and at within its sole discretion, pay bonuses to the employees in addition to their salaries and should retain the right to withdraw the bonus or modify the terms thereof.

Statutory Minimum Wage

Since 1 January 2014, the minimum statutory gross salary for a full-time employee is HUF 101,500 per month (approximately USD 400). Employees employed in a position requiring medium level education or technical qualification are entitled to receive, effective as of 1 January 2014 at least a monthly salary of HUF 118,000 (approximately USD 470). The Government may establish different statutory minimum wages for certain groups of employees and certain geographical areas.

Working Hours and Overtime

Normal Working Time

The general statutory limitation on the length of a normal work day is 8 hours per day and on the length of a normal work week is 40 hours per week. However, the employer and the employee may also agree on a shorter length of daily and weekly working time.

Increased Working Time

If an employer adopts the so called reference period scheduling system, the working time of the employee may exceed the general 8/40 hours limit, but still must be within the 12 hour/day maximum working time limitation and in the average of the reference period must correspond to the general 8/40 hours limit.

A so-called settlement period may also be applicable in the absence of the reference period scheduling system. This means, that the employer is entitled to schedule the employee's one week working time to a later period.

In the case of stand-by duties or if the employee is a close relative of the employer, the employer and the employee may agree on longer working hours not exceeding 12 hours per day or 60 hours per week.

Overtime

In exceptional cases the employee may be required to perform overtime work (according to the terminology of the Labour Code "extraordinary work"). Work beyond the normal scheduled working hours, or beyond the total working time in a reference period, work performed on weekly days off and on public holidays, as well as stand-by at defined places for a specific period of time, qualify as extraordinary work.

Even if the employer orders the employee to perform extraordinary work, the working time can not exceed 12 hours per day and 48 hours a week. There yearly limit on extraordinary work is 250 hours per year, which can be increased to 300 hours per year in a collective bargaining agreement.

The law strictly defines when extraordinary work may be ordered. Employees may be required to do extraordinary work only under justified and not foreseen extraordinary circumstances. Extraordinary work on public holidays can be ordered only if the employee can otherwise be required to work on such day; or in the interest of the prevention or mitigation of any imminent danger of accident, natural disaster or serious damage or of any danger to life, health or physical integrity.

Extraordinary work can not be ordered if it imposes any danger to the physical integrity or health of the employee, or if it constitutes any unreasonable hardship to the employee in respect of his/her personal, family or other circumstances.

Extraordinary work can not be required from pregnant women from the date of the diagnosis of their pregnancy to the time when the child reaches the age of three; men caring for their children as single parents, up to the time when the child reaches the age of three.

In addition to regular wages, employees are entitled to a 50 % wage supplement for extraordinary work performed on normal working days. However, in consideration for extraordinary work performed on normal working days, the employer may decide to grant additional days off from work to the employee instead of wage supplement if the employment contract allows or the employee consents. In consideration for working on the employee's weekly days off employees are entitled to 100% wage supplement for extraordinary work for each additional day worked; or, if the employee receives additional days off, he/she is also entitled to a minimum supplemental of 50% on his/her salary.

Instead of paying after each and every hours of overtime the applicable supplements, a lump sum compensation may be agreed on by the employee and the employer, which is payable to the employee irrespective of the actual amount of extraordinary work. Said lump sum compensation must be indicated separately from the base salary. In the case of paying to an employee a lump sum compensation for extraordinary work, the limitations on the maximum amount of extraordinary work still must be complied with.

Rest Period

Daily Break and Rest

Should the daily working time or the duration of the overtime work exceed six hours, the employee is entitled to at least 20 minutes. In addition to this, the employee is entitled to at least twenty-five minutes of continuous break after nine hours of work. Such break may be increased up to 60 minutes upon the parties' agreement or based on the collective bargaining agreement.

The employees must be allowed at least eleven hours of rest between the end of the daily work and the commencement of daily work on the next day. However, if the employee is employed in a position where the working time is split up over the day, or the employer operates in continuous operation, applies a multiple shift operation, or if the employee is a seasonal worker or is working in an on-call position, he/she is entitled to have at least eight hours of rest. Although a collective bargaining agreement or the agreement of the parties may depart from the above rule, a minimum of eight hours of rest must be provided to the employee.

Weekly Days off

The employee is entitled to two days off weekly or 48 hours uninterrupted rest period (weekly rest period). As a general rule, at least one weekly day off per month must fall on Sunday.

Generally, normal work may not be scheduled to Sundays. However, there are statutory exceptions to the Sunday work prohibition. Sunday work may be allowed in case of Employees employed (i) at an employer normally operating on Sundays due to the nature of its business, (ii) in seasonal work; (iii) in multiple shifts; (iv) in continuous operation; (v) in on-call position; (vi) in part-time only on Saturday and Sunday. In addition to the above, working on Sunday may also be allowed if (vi) the work of the employee is related to services performed by the employer to abroad or the employee works abroad, or (vii) the employer performs public services or services to abroad.

Where the work schedule is determined on the basis of reference periods, instead of permitting two weekly rest days, the employer may permit 40 hours of uninterrupted weekly rest, which should include one full calendar day each week and at least one Sunday each month, in which case the employer must also ensure that the employee receives at least 48 hours of weekly rest calculated over the reference period.

Vacation

Annual leave consists of base vacation and additional vacation. An employee is entitled to 20 days base vacation per year. The employee is entitled to additional vacation days after reaching a given age, as shown in the chart below:

Age	Number of Additional Vacation Days/year	Total number of Annual Leave
under 25	0	20
25	+1	21
28	+2	22
31	+3	23
33	+4	24
35	+5	25
37	+6	26
39	+7	27
41	+8	28
43	+9	29
45	+10	30

An employee is entitled to additional vacation days in that year when he/she reaches a relevant age. If the employment commences during the year, an employee is entitled to vacation days proportional to the period of his or her employment during the relevant year.

Parents shall receive supplementary leave depending upon the number of children below the age of sixteen.

Use of Vacation Days

The general rule is that employees are entitled to take and the employer must grant the yearly vacation days in the year in which they accrue. However, effective as of 1 January 2014, the employer and employee may agree in each year respectively to allocate the additional vacation days of the employee until the end of the following year.

If the employee is ill or if there is another personal and unavoidable reason of the employee, the vacation may be taken later; in which case the vacation must be taken within 60 days of the termination of the cause for the delayed vacation. If the employment started on or after the 1st of October, the annual leave can be allocated until 31 March of the following year.

The employer may re-schedule the employee's vacation or may instruct the employee to interrupt his/her vacation due to exceptionally important business reasons or any other reason affecting directly and seriously its operation. However, in such cases all damages and costs of the employee arising from the interruption of the vacation shall be borne by the employer.

Vacation is to be granted and scheduled by the employer, so the employer decides on the exact dates when an employee is permitted to take his/her vacation. The employer is obliged to inform the employee concerning the scheduled vacation days 15 days in advance. With the exception of the first three months after the commencement of the employment relationship, the employee must be permitted to take 7 days of his/her vacation time on those dates which are requested by the employee. The employee must submit such request for vacation at least 15 days prior to the commencement of his/her vacation.

Unless otherwise agreed by the employer and the employee, annual leave must be provided to the employees at least once a year in such way that the employee be able to take at least 14 uninterrupted calendar days at one time.

Sick Leave

Employees are entitled to 15 workdays of sick leave per year paid by the employer. Employees shall be paid 70 per cent of the so-called absentee fee (to be calculated on the basis of the base salary, and the performance based compensation and wage supplements received in the last 6 months) for the duration of such leave. For the period of sick leave exceeding the 15 days employees are entitled to receive support from the social security authorities. The maximum period of sick leave is one year under the current social insurance system.

The employee is required to submit a doctor's certificate for the time of his/her illness.

Public Holidays

Public holidays are: 1 January, 15 March, Easter Monday, 1 May, Whit Monday, 20 August, 23 October, 1 November, 25-26 December.

Termination of Employment

Pursuant to the Labour Code, an employment may be terminated by: (i) "notice"; (ii) "notice with immediate effect"; or (iii) by mutual consent of the employer and employee.

Termination of Employment by "Notice"

(a) Indefinite term employment

Both an employer and an employee may terminate an employment for an indefinite period by notice.

Reasons

The notice of termination by an employer must contain the employer's clear and justified reasons for termination, unless the employee is an executive of the employer as defined by the Labour Code (e.g., a managing director or a member of the Board of Directors). Termination notices which fail to include justified reasons are unlawful.

The reasons for the termination may only be in connection with: (i) the lack of skills or abilities of the employee; (ii) his/her performance or behaviour in relation to the employment; or (iii) the operations of the employer. The notice of termination must state that the employee is entitled to initiate legal proceedings within a specified period to challenge the termination and must state how to initiate such proceedings.

An employer is not required to give reasons for the termination if an employee qualifies as a pensioner.

In the case of a notice of termination by an employee, no reasons for the termination need to be included in the notice.

(b) Definite term employment

An fixed term employment contract may can be terminated by the employer by way of notice if (i) the employer is undergoing a bankruptcy or liquidation procedure; (ii) the reason of the termination relates to the lack of skills or abilities of the employee; or (iii) the employer cannot maintain the employment relationship for external reasons not attributable to the employer.

Employees may also terminate a definite term employment relationship by notice if there are any circumstances which make it impossible for the employee to maintain the employment relationship or which would result in disproportionate burden on the employee.

Restrictions on Termination by Notice by the Employer

(i) Termination protection

The Labour Code prohibits an employer from terminating employment by notice during a period while an employee (a) is under a treatment related to a human reproduction procedure, for up to six months from the beginning of such treatment; (b) is pregnant; (c) is on maternity leave; (d) is on unpaid leave for nursing and taking care of children, or until age 3 of the child; (e) pursues military service.

(ii) Limitations on termination by the employer

The employment of those employees who are incapacitated to work due to sickness, caring a sick child or a relative, may be terminated by the employer with notice; however, the notice period will only commence once the employee returned to work.

During the period of 5 years before an employee reaches the retirement age, as well as in case of employees who returned to work after maternity leave and have children under the age of 3 (i.e. mothers or single fathers), the employer may only terminate the employment by notice if (i) the employer has no vacant position available at the designated workplace of the employee, which is suitable for the employee concerned based on the employee's skills, education and/or experience, or the employee rejects a job offered by the employer in such position; (ii) the employee breached to a material extent any fundamental obligation arising from the employment wilfully or by gross negligence; (iii) the employee acts in a way which renders the maintenance of the employment impossible for the employer.

Termination of Employment by "Notice with Immediate Effect"

Reasons

- a) Both an employer and an employee may terminate an employment relationship by notice with immediate effect if: (i) any important obligation stemming from the employment is materially breached by the other party intentionally or by gross negligence; or (ii) the other party acts in a way which makes maintaining the employment impossible.

The parties may neither extend nor limit the scope of the reasons which may serve as a basis for the notice with immediate effect. However, the parties may give concrete examples in the employment contract which may result in a termination by way of a notice with immediate effect within the scope defined above. A notice of termination must contain the terminating party's clear and justified reasons for termination.

The party terminating the employment by notice with immediate effect must exercise this right within fifteen days of learning of the cause for such extraordinary termination. However, the terminating party may exercise the right of termination within a maximum period of one year from the date on which the facts giving rise to the right of termination actually arose. Further, if the reason for the termination with immediate effect is a crime committed by the other party, then the party terminating the employment may do so within the statutory limitation period applicable to said time.

- b) In addition to the above, either party may terminate the employment relationship by immediate effect during the probationary period, and no reasoning is required.
- c) Further, the employer (and only the employer) may terminate a fixed term employment if the employer pays to the employee his salary until the end of the fixed term (but maximum 1 year).

Termination by Employee

If the employee terminates the employment by notice with immediate effect, then:

- (i) the employer must pay to the employee those statutory payments which would be due to the employee if the employer terminated the employment by notice; and (ii) the employee may claim damages arising as a result of such termination.

The Notice Period

No notice period applies in the case of a termination with immediate effect, such termination has an immediate effect.

If the employer terminates the employment relationship by notice, the notice period must be at least thirty days but may not exceed one year. In

the absence of any agreement to the contrary, the statutory minimum notice period will apply in the case of a termination with notice by the employer. Unless otherwise agreed in the employment contract, the notice period is thirty days in case of termination of the employment by the employee.

Under the Labour Code, this minimum thirty day notice period is extended if the employer terminates the employee's employment with a notice, depending upon the length of the employee's employment, as follows:

Tenure (# of years)	Extended by X days	Statutory Period	Total Notice days
3-5	5		35
5-8	15		45
8-10	20		50
10-15	25		55
15-18	30		60
18-20	40		70
20	60		90

The above provisions, however, do not apply to executive employees.

Exemption from Work

In the case of terminating the employment by the employer with notice, the employer must release the employee from the obligation to work for up to one half of the total notice period ("exemption period").

The purpose of the exemption from work is to enable an employee to look for another job. Thus, the employee may use up to half of the exemption period to select which days and or hours he/she will be released from the obligation to work. However, at the employer's choice, the employer may release the employee from the obligation to work for the entire notice period.

During the notice period, an employee must continue to receive his/her absentee fee.

Severance Payment

If the employment is terminated by either: (i) a notice issued by the employer for operational reasons of the employer; or (ii) by way of a notice with immediate effect by the employee; or (iii) the discontinuation of the employer's activity without a legal successor, the employee is entitled to a severance payment. The amount of the severance payment is calculated according to the time the employee has worked for the employer as follows:

Continuous Employment	Multiple of Average with Employer (years) Absentee Fee
3-5	1
5-10	2
10-15	3
15-20	4
20-25	5
25-	6

If the termination of employment takes place within five years prior to the date when the employee becomes entitled to an old-age pension, the severance payment must be increased by an amount of 1-3 months of absentee fee, depending on the employee's years of service. No severance payment is due if the reason for termination is related to the behaviour or ability of the employee, or the employee has already become entitled to a pension.

The basis of the calculation of the severance payment is the absentee fee. Pursuant to the Labour Code unpaid leave exceeding thirty days, except leave for caring for a child, maternity leave or military service up to 3 months, should not be taken into account when calculating the above periods of employment.

Mass redundancy

The specific rules on mass redundancy apply and the employer must follow the special procedure related to mass redundancy if the employer terminates the number of employees set out below, within a 30 days period.

Number of employees in employment	Number of employees to be terminated
21-99	10
100-299	10%
300 or above	30

In the case of a mass redundancy the employer must provide certain information to the employees prior to commencing the procedure and the works council (if any operates at the employer) must be consulted at least fifteen days prior to the employer's decision on implementing a mass redundancy. The employer must also provide information to the Labour Center during the process. The relevant Labour Center and the employees to be dismissed must be given a notice in writing relating to such termination at least thirty days in advance.

Consequences of Unlawful Termination

If the employee initiates court proceedings asserting that the employment was terminated unlawfully and the court rules in favour of the employee, then the employer must pay the employee's lost salary; the amount of which, however, cannot exceed the employee's 12 months absentee fee. Further, the employer must pay for all additional damages incurred by the employee. However, the employee is not entitled to get reimbursement for those amounts which the employee was able to recover from other sources (e.g., new employment or unemployment benefits). The employee also has the obligation to mitigate losses, which may also decrease the employer's exposure.

The employee may ask the court to order the reinstatement of an employee to his/her or her original position only in exceptional cases, such as (among others) if the termination by the employer constituted a violation of the requirement of equal treatment or the restrictions on termination by the employer, or if the employer terminated the employment of an employee who also served as a trade union officer without the prior approval of the trade union.

If an employee terminates the employment unlawfully, the employee must pay compensation equal to the absentee fee that would be due to the employee during the notice period in the case of a termination by way of notice. Further, if the employee terminates a fixed term employment relationship, then the employee must pay to the employer an absentee fee which would be due to the employee during the remaining period of the fixed term; however, the amount may not exceed three months absentee fee.

Risks

Employers must be careful in complying with the provisions of the Labour Code on termination. If an employee challenges a termination by its employer before the competent court, the court will firstly determine whether the employer adhered to the formality requirements applicable to termination set out in the Labour Code. This means that prior to deciding on the merits of the termination, the court has to investigate, among other facts, whether the employer provided appropriate reasons for termination, and whether the employer kept the statutory deadlines and restrictions applicable to the termination. If the employer breaches the related rules or is not able to sufficiently prove the existence and validity of the termination reasons, the termination may be unlawful and the employee would be entitled to compensation for damages.

Special Rules Governing the Employment of Executives

With regard to the top management of an employer, provisions different from the general rules of the Labour Code may apply.

Definition of Executives under the Labour Code

For the purposes of the Labour Code, an executive is the head of an employer (i.e. the managing director(s), in the case of a limited liability company, and the members of the board of directors, in the case of a company limited by shares), and his/her deputies who perform their work under his/her supervision and have certain substitution rights.

In addition, the employee may qualify as an executive employee if this fact is especially included in his/her employment contract and if the employee is in a position considered to be of material importance for the employer's operations, or holds a position of trust, and his/her salary is at least seven times the mandatory minimum wage at any time.

Specific Provisions Relating to Executives

The specific provisions of the Labour Code relating to executives are as follows:

- the collective bargaining agreements do not apply in respect of executives;
- the employment of an executive may be terminated by notice without providing any reasons for the termination (however, the employer may not terminate the executive's employment while the executive (i) is pregnant; or (ii) is on maternity leave).
- the employment of an executive may be terminated by notice with immediate effect within three years following the occurrence of the cause of action, instead of the one year limitation applicable under the general rules;
- an executive may not validly establish further employment or another legal relationship aiming at the performance of work;
- an executive may not acquire ownership interest in any business organization – except for public companies – the business activities of which are the same or similar to those of the employer or which maintains regular business relationship with the employer;
- an executive may not enter into any contract in favour of herself/himself within the employer's scope of business;
- an executive is required to notify the employer if any of his/her next of kin (as defined in the Labour Code) acquire equity in a company the business activities of which are the same or similar to those of the employer or maintains a regular business relationship with the employer or establishes an employment relationship with such company as an executive. If these requirements are violated by the executive employee, the employer is entitled to terminate the executive's employment;
- Otherwise, the executive and the employer may deviate from the provisions of the Labour Code (even in a manner being less favourable to the employee); therefore, the executive employee's employment contract is subject to the parties agreement;
- an executive may determine at his/her sole discretion his/her working schedule (i.e. has a flexible working schedule);
- because an executive has flexible working schedule, an executive is not entitled to compensation for extraordinary work; and

- an executive is liable for the total amount of damages caused within the scope of his/her executive activities in accordance with the applicable provisions of civil law.
- executives have unlimited liability for damages caused with negligent conduct as well.

Executives Serving under a Civil Law Mandate

Executives do not necessarily have to be employed, but can also be hired under a contract for services governed by the Act V of 2013 on the Civil Code ("Civil Code"). It is a much more flexible legal arrangement than an employment relationship for various reasons and has numerous advantages and disadvantages for both sides. For example, an executive contractor would not enjoy the general labour law protection applicable to an employment relationship, and the employer could not enforce against the contractor the employment rights which would otherwise be available under the Labour Code.

Non-competition, Confidentiality

Non-Competition Obligation Imposed on Employees

The Labour Code contains non-competition provisions, which apply during the term of the employment of an employee and may also apply subsequent to terminating the employment thereof.

Non-competition Obligation During the Employment

The employee may not enter into another employment relationship simultaneously with his/her existing employment if such employment would endanger the employer's lawful business interests.

Executives are explicitly prohibited by the Labour Code from entering into another employment relationship parallel to their current employment.

Non-competition Obligation After Terminating the Employment

The employer and the employee may agree on post-termination non-compete restrictions, for a maximum period of 2 years following the termination of the employment, whereby the employee may be prohibited from performing activities which could be against or could endanger the lawful economic interests of the employer.

Such prohibition may apply, among others, to establishing employment with an other company which could be deemed as a competitor or potential competitor of the employer, becoming an executive officer at such company or acquiring any ownership interest in such company.

In order to validly establish a non-competition obligation, an employer and employee must enter into an agreement on the subject matter in advance, in which agreement appropriate consideration must be granted by the employer to the employee undertaking such obligation. According to the Labour Code, the amount of compensation paid for the non-compete period may not be less than one-third of the base salary that would be payable during the same period. Said agreement may either be part of the employment contract of the employee or may be in a separate agreement.

Confidentiality Obligations

Pursuant to the Labour Code, an employee is prohibited from disclosing any trade secret and confidential information related to the employer that the employee learned during the term of employment, as well as any information or data that the employee obtained in connection with his/her employment, the disclosure of which could have negative consequences on the employer or any third party. The above obligation to keep trade secrets and other confidential information is binding on the employee after the termination of the employment also without any specific agreement concluded between the employer and the employee and is applicable without any limitation on time. Further to the Labour Code, the Criminal Code, the Civil Code and the Competition Act also have provisions related to infringing trade secrets, all of which laws apply also to the employee.

Transfer of Business

Legal Succession

In the case of a transfer of business, from a labour law point of view, a legal succession occurs between the transferor and the transferee employer; which means that all rights and obligations of the transferor employer arising from the employment relationship existing at the time of the effective date of the transfer are transferred to the transferee employer.

The transferor employer is obliged to inform the transferee employer of such rights and obligations prior to the succession. The transferor employer's failure to inform the transferee employer does not effect the application of the legal consequences of the succession and the enforcement of employees' rights.

Cases when transfer occurs

A transfer of business and, thus, a legal succession occurs if an employer transfers to another employer a business unit, being a separate organized group of its material and/or immaterial assets or resources, on the basis of a legal act.

Liability

For the period of one year following a business transfer, the transferor and transferee employer are jointly and severally liable to employees regarding the employment related claims made by the employees within said period which became due prior to the date of transfer.

Consultation and information Obligations

In the case of a business transfer the transferor and the transferee employer is obliged to inform, 15 days prior to the date of transfer, the works council about (i) the date or planned date of the transfer; (ii) the reason thereof; and (iii) the legal, economic and social consequences of the transfer affecting the employees. If there is no works council operating at the employer, the transferee employer is obliged to inform of the above the employees concerned, at least 15 days prior to the date of transfer.

The transferor and the transferee employer are also required to initiate consultation with the works council, with the aim of reaching an agreement, regarding other planned actions concerning the employees. The consultation has to address the principles of the actions, the methods to avoid detrimental effects to the employees and the instruments used for the reduction of such effects.

The employees do not have the right to object the transfer. However, the employees may terminate their employment after the transfer if the terms and conditions of employment have changed to a material extent due to the transfer, so that the maintenance of the employment would results in disproportionate harm or would be impossible. In that case the employer must exempt the employee from work for half of the employee's notice period and the employee is entitled to severance payment also.

Employment Discrimination

The Act on Equal Treatment declares the prohibition of discrimination with a general relevance for the whole legal system, defines the fundamental terms and establishes rules for specific areas such as employment, health care, education, etc. By the Act on Equal Treatment the relevant EU directive on anti-discrimination have been implemented into the Hungarian legal system.

Equal Treatment

Besides the general provisions of the Equal treatment Act, the Labour Code provides that the equal treatment of employees must be ensured. According to the Act on Equal Treatment the requirement of equal treatment is infringed by the following acts: (i) direct negative discrimination (an action that discriminates based on gender, race, skin color, nationality, ethnic origin, mother tongue, disability, health condition, religious or ideological conviction, political or other opinion, family status, motherhood or fatherhood, sexual disposition and identity, age, social origin, financial condition, the part-time nature or definite term of the employment relationship or other relationship, participation in employee interest groups, or other status, attribute or characteristic); (ii) indirect negative discrimination (an action that does not qualify as direct negative discrimination and seemingly complies with the requirement of prohibition of discrimination; however, in fact discriminates based on the above features); (iii) harassment (a behaviour of sexual or other type violating human dignity in connection with the above features; the aim or effect of which is the creation of hostile, humiliating or assaulting environment); (iv) unlawful separation (a provision that separates persons or groups of persons from other persons being in similar position without the permission of law); (v) retorsion (a behaviour that causes or intends to cause infringement of rights against who raises objection relating to the violation of the requirement of equal treatment).

It is important to note that the provisions of the Act on Equal Treatment apply not only to employment relationships, but also to other legal relationships aimed at performance of work, such as service or agency agreements.

The prohibition applies to the widest range of employment-related actions, such as application for work, public job advertisement, engagement for work, employment and work conditions, establishment of salary, training prior to or during employment, membership in employees' representation, career advancement, establishment of liability for damages and disciplinary liability. Any differentiation reasonably resulting from the type or nature of the work does not qualify as a discrimination (e.g., a differentiation based on performance or certain positions being only available to men or adults because of, for example, the working conditions or rules on work protection). However, with respect to the salaries and benefits of employment any direct negative discrimination violates the general requirement of equal treatment if it is based on gender, race, nationality or ethnic origin. In addition to the Labour Code and the Act on Equal Treatment, the Fundamental Law of Hungary (the Hungarian Constitution), the Hungarian Civil Code also contain provisions prohibiting discrimination. The Act on Ensuring the Rights and Equal Chances of Disabled Persons declares that disabled persons are entitled to integrated or protected employment for the purpose of ensuring these persons' constitutional right to work. The employers may receive subsidies from the central budget for establishing and maintaining work places for disabled persons.

Consequences of Violating the Prohibition on Discrimination

The consequences of breaching the requirement of equal treatment have to be properly remedied. A violation of the principle of equal treatment within the scope of the Act on Equal Treatment is investigated by the Equal Treatment Authority (“the Authority”). The Authority is entitled to initiate an examination of a potential discrimination case *ex-officio*, or to initiate a lawsuit on behalf of the injured party or parties and individual may also make a claim to the Authority.

In the proceedings the person that suffered discrimination must prove that he/she possesses the above mentioned features described by law. If this is proved, the employer must prove that he complied with the requirement of equal treatment.

The remedy for infringement can not result in any violation of or harm to the rights of another employee.

All discriminating terms of an employment agreement are null and void. An employee may challenge before the competent labour court such terms and all discriminative actions of its employer. If the employee is successful, the employer must pay to the employee all damages incurred (including lost 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, an employer must prove that it has not breached the Labour Code and other applicable laws, i.e., the burden of proof is on the employer in labour disputes involving discrimination. Despite the burden of proof and the several legal regulations prohibiting discrimination referred to above, there is only a limited amount of litigation involving the prohibition on discrimination.

The decision of the Equal Treatment Authority can not be appealed in the framework of an administration procedure, but it can be appealed before the civil courts.

If the Authority decides that the equal treatment requirements have been violated, as remedies the Authority may: (i) oblige the employer to discontinue the violating situation; (ii) oblige the employer to restrain from further infringement; (iii) publicise the decision in which the Authority determined that the equal treatment requirements have been violated; and (iv) impose a fine in the amount between HUF 50,000 and 6 million (approximately USD 225 - 27,000), depending on (a) who is/are the injured person(s); (b) the duration, frequency and consequences of the infringement; and (c) the economic capacity of the employer.

In addition, the employee may claim a so-called injury fee, which in fact a damage claim where the employee must only prove that the employer discriminated him/her but does not need to prove the amount of the damage.

Sexual Harassment

Laws on Sexual Harassment

Hungary has not yet enacted specific legislation defining or governing the issue of sexual harassment. Nevertheless, the Act on Equal Treatment applies also to sexual harassment.

Further, in the new Labour Code, which entered into force on 1 July 2012, there are several existing general provisions which a person claiming to be a victim of sexual harassment could use as a basis for commencing a legal action.

For example, the Labour Code establishes the basic rules for the proper exercising of rights and duties and provides that the misuse of rights is prohibited. The exercising of rights is especially not proper if its purpose or result is the curtailment of the legal interest of others, restriction on the assertion of their interest, harassment or the suppression of opinion.

Further, the Labour Code provides for the general requirement of equal treatment as described above.

Also, the Labour Code requires the employer to ensure the conditions necessary to maintain a healthy and safe work environment. This rule may be interpreted to include the requirement of maintaining a psychologically healthy atmosphere in the work place.

However, there is no legal definition of the type of actions that constitute sexual harassment or practical guidance as to the type of recovery which a victim of sexual harassment might have the right to seek before Hungarian courts.

Potential Employee Remedies for Sexual Harassment

A claim of sexual harassment may be submitted to the labour courts on the basis of the above described provisions of the Labour Code. A victim of sexual harassment may recover from his/her employer all damages incurred by the employee in connection with his/her employment, lost salary, any costs occurred in connection with the damage or its prevention and any nonmaterial damage, if applicable.

The Equal Treatment Authority also has authority to examine sexual harassment cases and may impose sanctions against the employer as written above. Furthermore, the Equal Treatment Authority may represent victims before labour courts as well.

Outside the legal sphere, some non-governmental associations and foundations are dealing with the problems and rehabilitation of victims of sexual harassment and other sexual attacks.

Labour Safety

The Hungarian Labour Code contains numerous provisions relating to labor safety, which place significant obligations on the employer - and, to a certain extent, also on the employee - regarding workplace conditions. Those provisions, as well as the relevant provisions of related legislation, are briefly summarized below.

Health and Safety Regulations

The Labour Code requires employers to ensure the safety and health conditions of the workplace by complying with the relevant legislation, including, in particular, the provisions of Safety and Health Regulation Act. Employers are required to establish the appropriate working conditions and methods to be used at the workplace within the framework of the Safety and Health Regulation Act and other legislation and standards. The minimum safety and health requirements applicable regarding special circumstances are specified in various ministerial decrees. The Safety and Health Regulation Act provides generally that employers must, *inter alia*, ensure the "material" and "personal" conditions of safe work. To ensure the "material conditions of safe work", employers must provide employees with, for example, individual protective equipment, adequate materials and tools meeting the requirements specified in the applicable regulations and standards. Further, employers must conduct periodic surveys to verify that the tools, methods and technologies used by the employees do not endanger human health. Such surveys must be completed by technically competent, authorized persons or institutions.

Certain devices (such as cranes, fork-lift trucks, dumpers, etc.) may only be operated if the devices both meet the safety and health requirements for non-dangerous working conditions and they obtain "statement of acceptance" or "certificate of acceptance". In the statement of acceptance, the producer states that the machine or equipment complies with all the legal regulations. While in the certificate of acceptance, a certain organization certifies that the machine or equipment complies with all the legal regulations, but only after carrying out a procedure where the machine or device is examined as to whether it complies with the EU standards. Personal protective equipment may only be provided to the employees if it received a "qualifying certificate". The dangerous device or equipment may only be operated if it undergoes a safety start up procedure. However, a preliminary examination, the aim of which is to see if the device, workplace and technology meet the requirements of material and personal conditions for safe work, cannot be undertaken until all the statements, test results and statements of acceptance are available. For the purposes of creating a safe work environment without harmful affects on the health of the employees, the employer is also required to discuss the health and safety consequences on the employees, in a timely manner, at the earliest during the planning phase of launching a new technology, with the employees and their employment protection representatives.

In order to prevent the hazards of dangerous technologies and techniques, as well as to decrease their harmful effects the employers are also required to evaluate the risks of dangerous materials or formulations present in technologies they use. In the scheme of this criteria it must also be certified by instrumental surveys that the work environment is free of health risks.

The Safety and Health Regulation Act declares generally that the employee may work only in such working environment and for such period of time which do not damage the employee's health and physical integrity. In order to create a safe work environment the employer is also required to take into consideration humanitarian aspects when establishing a workplace, selecting, installing, and operating the work equipment to create a safe work environment. In the scheme of this - irrespective of the type of the position - all employers must pay particular attention to decreasing the time and harmful effects of the monotone, fixed rhythm work, to allotting the work

time appropriately as well as to avoiding the requisite of psychosocial risks related to the work.

The employment inspectors of the Labour Authority are authorized to examine if an employer possesses all compulsory statements of acceptance, certificates of acceptance and qualifying certificates for both dangerous and general devices. If the employer does not possess the compulsory documentation, the employment inspector has the right to immediately suspend the use of the device or personal protective equipment. Employment protection representative/s must be elected in every workplace, where the employer employs at least 50 employees. However, at a workplace where less than 50 employees are employed the trade union or the works council operating at the employer, or in the lack of these bodies the majority of the employees, may also initiate the election of a representative. In both cases the employer is required to organize the election and to pay its costs. At a workplace where less than 50 employees are employed and no employment protection representative has been elected, the employer is obliged to conduct negotiations with the employees regarding the issue. Said representative represents the employees' rights and interests in connection with safe working conditions.

Employers also must ensure that employees are able to obtain sufficient drinking water and clear air and light. Employers must also provide dressing, washing, eating and resting facilities and make available medical aid.

Employers must attend to the tidiness and hygiene of the workplace and to the appropriate treatment of waste.

In addition, employers must arrange that the workplace has adequate alarm and warning systems, taking into consideration the number of employees, and must establish emergency exists.

To ensure the "personal conditions of safe work", employees must submit to a medical examination prior to signing the labour contract. The scope of the examination varies depending on the type of work which the employee will perform. Certain types of work may be performed only by an individual having obtained a specific medical certificate to perform such work. Employers must instruct their employees, before the employees commence work at the workplace, concerning the relevant work safety procedures and periodically supervise or test the employees' knowledge in this regard. Further, if the number of employees exceeds one hundred, the employer must hire a professional to administer and control the work safety procedures. The number of such professionals, the level of their qualification and their daily hours of work must be adjusted to the number of employees and the classification of the employees being administered. An employer must supervise and control the implementation and the effectiveness of the above mentioned requirements through certain safety processes (e.g., examination and analysis of workplace accidents). Further, an employer must investigate and correct any failures or deficiencies discovered in the safety procedures.

As a related matter, pursuant to the Labour Code, certain groups of employees (including women, employees with reduced working ability and employees under the legal working age of 18) are afforded additional protection in respect of work place conditions. For example, such persons may not be employed in certain positions.

In particular, a women - from the date of ascertaining her pregnancy until the third birthday of her child - and a single parent until the third birthday of his/ her child and an employee under the legal age, may not be employed to work at night and may not be requested to work overtime. Further, from the date of ascertaining pregnancy until the first birthday of the child, the woman must be moved to another workplace or the conditions of work must be changed if a medical recommendation so warrants. Such changes to the workplace, however, may be made only with the employee's consent. As well, women and persons under the legal working age may be employed only in such positions which are not harmful to their health and which are suitable taking into consideration their specific physical features.

An employer's failure to comply with the applicable legislative provisions may result in a fine which may range from HUF 50,000 (approximately USD 219) to 10,000,000 (approximately USD 43,865), depending on the circumstances of the case.

Specific Requirements Applicable to Employees Working with Computers

In addition to the legislation summarized above, specific legislation concerning certain worker safety issues also has been enacted. For the establishment of a proper work environment, a specific decree on working in front of a Monitor was created. That affects all employers whose employees work at least four hours per day in front of a monitor. The decree applies not only to employees working at a computer but also to employees merely viewing monitors and not working at a computer. To avoid the deterioration of vision for employees who work at monitors the decree grants employees a ten-minute break for every hour of work. In addition, it prohibits employees from working at a monitor for more than six hours per day. Furthermore, an employer must arrange for, and an employee must submit to, eye examinations every two years. If an examination establishes that an employee's corrective eyewear (including contact lenses) is insufficient for working before a computer monitor, the employer must provide the employee with appropriate eyeglasses. The exhibit to the decree specifies the minimum requirements with which the monitor, the keyboard, the desk on which the monitor is to be located, the chair and the other aspects of the working environment, including lighting, noise, space, reflection, radiation and heating effects, must comply.

Employee Representatives

The Hungarian Constitution grants to each person the right to establish and/or be a member of an organisation in order to exercise his or her economic and social rights. Consistent with this constitutional provision, the Labour Code provides detailed regulations on labour (trade) unions and works councils. In addition to the Labour Code, the Civil Code, other legislation, such as the Act on Strikes and the Act on the Freedom of Association, on Public-Benefit Status, and on the Activities of and Support for Civil Society Organizations, also provide regulations on unions and works councils.

Trade Unions

Definition and Establishment of Trade Unions

The Labour Code defines a trade union as an employee organization whose primary function is the promotion and protection of employees' interests as they relate to the employment relationship.

Ten private individuals may establish a trade union by executing its statutes and electing the union's managing and representative bodies. The trade union is established on the date on which it is registered with the competent court.

The Role and Certain Rights of a Trade Union

The Labour Code permits employees to establish trade unions within the organization of the employer. A trade union may operate local organizations inside a company and may involve its members in such operations.

A trade union may request from an employer information on issues concerning its employees' employment-related economic and social welfare interests. A trade union may inform its members of their rights and obligations concerning their material, social, cultural, living, and working conditions and represent the union members against their employer and/or before state authorities in matters concerning labour relations and employment. A trade union may represent its members, on the basis of a power of attorney, before a court of law or any other authority or organisation, on matters concerning their living and working conditions.

An employer may not refuse to permit a non-employee representative of a trade union to enter the employer's premises if at least one member of the trade union (that the non-employee represents) is employed by the employer. The trade union must inform the employer in advance in writing of any intention to enter the employer's premises. When on the employer's premises, the trade union representative must comply with all regulations of the employer's order of business.

The trade union may provide the employer with the union's position concerning the employer's actions or decisions and, further, initiate consultation in connection with those actions or decisions.

The Collective Agreement

A collective bargaining agreement may be concluded between the employer (or multiple employers) or an organisation that represents the interest of the employer(s), on the one hand, and the trade union or an association of trade unions, on the other hand.

A collective bargaining agreement may regulate the rights and duties arising from the employment relationship, and the relationship between the parties to the collective bargaining agreement. The collective bargaining agreement may deviate from the statutory provisions of the Labour Code, also in a manner being less favourable to the employees than those statutory provisions.

The trade union whose members represent at least 10% of the employees at the particular employer is entitled to conclude a collective bargaining agreement. The employer may not refuse to commence negotiations for concluding a collective bargaining agreement.

Unless otherwise agreed by the parties, the collective agreement may be terminated by either party upon three months' notice, but it may not be terminated within the first six months after the execution thereof.

Financial and Other Benefits Assisting Trade Union Activity

An employer must ensure that its employees' trade union has the opportunity to present public information and announcements and data related to the trade union's activities in a manner that falls within the procedures of the employer or in an another appropriate way. By agreement with the employer, the trade union may use the employer's premises after or during working hours for the purpose of its activities of interest representation. The employer must exempt the trade union officials from work for a certain period of time. The employer must be informed in advance if a trade union official intends to be absent from work due to trade union related activities.

Confidentiality of Trade Union Membership

An employer may not demand from any employee a statement concerning his or her trade union affiliation. Additionally, an employment relationship, or its continuation, may not be made dependent on: (i) whether or not the employee is a member of a trade union; (ii) whether the employee terminates a previous trade union membership; or (iii) whether the employee joins a trade union designated by the employer. It is also unlawful to terminate an employment relationship and/or to discriminate against an employee in any way due to his or her trade union affiliation or activities or to make any work-related entitlement or benefits dependent on affiliation or non-affiliation with a trade union.

Labour Law Protection for Trade Union Officials

The Labour Code contains special rules protecting trade union officials. Among other rules the prior consent of a trade union body, which is above the relevant trade union official in the trade union's hierarchy, is required for the temporary assignment, the transfer to another workplace, the placement to another employer of a trade union official and the termination of the employment relationship with an official by notice. The Labour Code requires the trade union to comment in writing on the above within eight days of the request for such comment.

Works Councils

Election of Works Council or Works Representative

The Labour Code provides that a works council is to be elected at all employers or at all of the employer's independent premises or sites where the number of employees exceeds 50.

If the number of employees (in total or at any independent division of the employer) is less than 51 but exceeds 15, no works council is required to be elected, but a works representative is to be elected by the employees. The Labour Code's provisions regulating the rights and obligations of a works council apply equally to the works representative. Works council and the works representative is elected for a five-year term.

Depending on the number of the employees at the time of the elections of the works council, the works council must be comprised of the following number of members:

Number of Employees	Number of Works Council Members Required
Not Exceeding 100	3
Not Exceeding 300	5
Not Exceeding 500	7
Not Exceeding 1000	9
Not Exceeding 2000	11
Above 2000	13

If the number of works council members does not meet the above requirements over a six-month period, new works council members must be elected to ensure that the above minimum requirements for works council membership are met.

The Labour Code contains detailed provisions regarding the election of the works council members and of the works representative. An employee is eligible to be elected as a works council member if he/ she is able to act in this capacity and has been employed by the employer for at least six months (not required for works councils in newly established employers).

Protection of Works Council Members

The provisions on the protection of trade union officials also apply for the protection of works council members, where the rights of the trade union body are exercised by a works council. In case of a works representative, the rights of the trade union body are exercised by the community of employees if the employee representative is not a trade union official.

Financial and Other Benefits for the Works Council

An employer must ensure that the works council has the opportunity to publish information and announcements related to its activities in a manner customary at the employer's facilities or in any other suitable manner. A works council member is entitled to free time equal to 10 percent of his or her monthly base working hours, and a chairman of a works council is entitled to free time equal to 15 percent of his or her monthly base working hours, in order to perform works council related activities. An employer must also pay the works council member an "absence fee" in respect of this time, which includes the council member's base wage and other ordinary supplementary payments.

An employer must also pay the justified and necessary costs of the election and operation of a works council.

The Rights and Duties of the Works Council

- **The Right of Joint Decision**

A works council has the right of joint decision with the employer in matters relating to the utilization of financial assets designated for welfare purposes (e.g. certain social contributions) as specified in the collective agreement, if any.

- **The Right to Express Opinions**

If those affect a substantial number of employees, at least 15 days before making a decision, the employer must seek the opinion of the works' council regarding the internal policies at the employer, and the actions of the employer with respect to the following:

- measures affecting a large group of employees, particularly those involving plans for reorganization, transformation of the employer, the conversion of an organizational unit into an independent organisation, privatization and modernization;
- introducing production and investment programs, new technologies, or upgrading existing ones;
- processing and protection of personal data of employees;
- implementation of technical means for the surveillance of workers;
- measures for compliance with occupational safety and health requirements, and for the prevention of accidents at work and occupational diseases;
- the introduction and/or amendment of new work organization methods and performance requirements;
- plans relating to training and education;
- use of job assistance related subsidies;

- drawing up proposals for the rehabilitation of workers with health impairment and persons with reduced ability to work;
- laying down working arrangements;
- setting the principles for the remuneration of work;
- measures for the protection of the environment relating to the employers operations;
- measures implemented with a view to enforcing the principle of equal treatment and for the promotion of equal opportunities;
- coordinating family life and work;
- other measures specified by employment regulations.

- The Right to Information

An employer must inform the works council about at least once every six months:

- basic issues affecting the employer's business situation
- changes in wages and earnings, the cash flow related to the payment of wages, the characteristics of the employment and the working conditions and the utilization of working hours, at least once every six months;
- the number of workers in employment and the description of the jobs they perform.

Further, a works council may request information from the employer to assess whether the employer is in compliance with the labour laws, and may request the employer to consult with this regard. The employer may not refuse this request of the works council.

The works council and the employer may enter into a works council agreement, in which they may regulate all issues that can be regulated in a collective bargaining agreement, except for issues related to remuneration. No agreement with the works council can be concluded if the employer is subject to a collective bargaining agreement or if there is a trade union at the employer who is entitled to enter into a collective bargaining agreement. Further, the works council must be impartial in relation to a strike organized at the employer. The works council may not organize, support or prevent a strike. The membership of a works council member participating in a strike is suspended for the duration of the strike.

European Works Council

A specific Act regulates the establishment and operation of European works councils has been enacted in Hungary. The Act has entered into force on the date of Hungary's accession to the European Union.

Under the act, in addition to the already existing local works councils, European works councils have to be formed at companies that operate or belong to a group of companies that operates on a European level (a company or group of companies operates on a European level if the company or group of companies employs at least 1,000 employees in the EEA and at least 150 employees in two or more Member States). The European works council serves to ensure to the employees the right of receiving information and being consulted by the employer in a formalized manner regarding the status of the company and the employees. The European works council has the right to request and receive general information from the company at least once a year and to be informed of certain particular circumstances affecting the employees. Employers will be obliged to ensure, among other things, that the necessary conditions and means exist for establishing and operating the European works councils and for the election of employees' representatives in Hungary for delegation to special negotiating bodies or the European works councils.

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CSB37738