

Dear Readers,

In this April edition of *HR Perspectives*, we focus on the practical aspects of applying the new remote working rules and the national regulations arising from the work-life balance directives, in particular:

- 1) **requests for more transparent and secure working conditions** – under the new regulations, which will come into force on 26th April, employees will have the right to request changes concerning their employment (for example, change in the type of work or to change from part-time to full-time employment) and more transparent and secure working conditions. This means new obligations for employers, who will need to check whether such requests can be granted and, if not, provide reasons for refusal. We explain the details below;
- 2) **rules for supervising employees working remotely** – we receive many questions about how to track remote employees' working hours and monitor their performance. Furthermore, we discuss what exactly can be monitored, to what extent and how;
- 3) **additional work breaks** – another issue that we get a lot of questions about is an additional work break under the new regulations; Is an employee entitled to an additional break only if their planned daily working time is more than 9 hours; or also if their daily working time plus overtime exceeds 9 hours? Read on to find out what we think about it.

Enjoy your reading!

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Request to change the type of employment contract - what next?

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Another change awaits employers in the near future, this time coming out of implementing the EU directive on transparent and predictable working conditions. One of the many new employee rights is that an employee can request a change in the type of their employment contract or more predictable and secure work terms and conditions.

Such a request can be made once a year by an employee who has worked for the same employer for at least six months. The request can be made on paper or electronically. The employer will have to respond in the same way, no later than one month from the day the application was received. If the request is denied, the employer must give objective reasons for that decision.

The regulations stipulate that an employer should grant an employee's request if feasible. What does this actually mean and what would be the consequences of not granting it?

The employer should grant an employee's request, for example, to change part-time employment to full-time, if it is feasible and there is a real need for a full-time employee.

If there is no such need/opportunity, the employer does not have to grant the employee's request. After all, the regulations are clear that when deciding whether or not to grant an employee's requests, an employer should consider the interests of both the employee and the workplace.

What is important, submitting such a request cannot constitute a reason for an employer to terminate or prepare to terminate the employment contract with an employee with or without notice.

Notably, even posting a job advertisement on the internet may be considered as making preparations for employment contract termination with or without notice.

Supervising a remote employee

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Part of the salary paid to the employee's account as early as the middle of the month? On 7th April 2023, the Labor Code provisions on remote working became effective, giving new supervisory powers to employers. Employers will have the right to, for example, check whether remote employees are actually working, and whether they comply with health and safety rules, as well as information security and protection requirements, including personal data protection procedures.

Here are the basic rules for supervising remote employees:

- supervision can be carried out by such communication channels as telephone and employee communication apps or directly at the place where remote work is carried out;

- all remote employees can be supervised, regardless of whether they carry out remote work full-time, part-time, or only occasionally;
- the rules for supervision are set out in the agreement made with the trade union at the company, internal rules and regulations, employer request or in an agreement made with the employee;
- the date and purpose of the inspection should be agreed upon with an employee.

Work supervision

Supervision may be carried out to check whether a remote employee actually works on the agreed date, at the specified time and place. Monitoring performance also allows employers to check how the work is carried out and under what conditions.

If employees are given repetitive or short-term tasks, the results of their work will be regularly checked. If employees are engaged in long-term projects, employers can, for example, ask them to file a daily report to keep track of the tasks completed on a given day.

In practical terms, however, supervision is limited by the employees' right to privacy. This means that employees may be supervised by communicating with them directly (telephone, e-mail, chat) or at their place of remote work but, as a general rule, only after prior agreement with the employee.

Health and safety inspection

An employee working remotely is responsible for complying with health and safety rules at their place of remote working. Remote employees should also ensure safe and hygienic conditions in their place of remote working (e.g. adequate hygiene and sanitary facilities must be provided). If an employer carrying out an inspection finds that an employee is non-compliant with health and safety regulations, they may request that employee to remedy the non-compliance within a specified time. Otherwise, the employer can revoke their remote working permission given to the employee.

Checking compliance with information security and protection requirements

Employees working remotely must comply with the company's internal policies and regulations to the same extent as employees working in the office. It also applies to confidentiality policy (including information security and protection) and personal data protection. To this end, employers can request employees to safeguard company documents, use a secure login, and, for example, a privacy screen filter. Furthermore, employers can also check whether employees log off the company server, for example, during work breaks.

Right to work break – would overtime count towards additional breaks?

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More changes in labour law are coming. On 26th April, several amendments to the Labor Code become effective.

Under the new regulations, some employees will be entitled to even three breaks included in working time. If an employee's daily working time is more than:

- 6 hours, the employee is entitled to a 15-minute break,
- 9 hours, the employee is entitled to an additional 15-minute break,
- 16 hours, the employee is entitled to another 15-minute break.

However, what exactly determines the right to a work break and whether it applies to all working time systems remains unclear.

Here's one take on that: an employee's right to a break depends on the employee's planned daily working hours. It means that, in practice, an employee will be entitled to an additional (e.g. the second) 15-minute break only if their daily working time exceeding 9 hours has been scheduled in advance, regardless of any potential over- or undertime.

This interpretation of the regulations means that only employees working under the equivalent working time system would be entitled to additional work breaks.

Another interpretation is that the right to a break depends on the length of time an employee actually worked on a given day (including any overtime). It means that additional work breaks would be available to employees working under any type of working time system, and also to employees who work more than 9 hours because of overtime.

We believe that the first approach is correct. This is because the provision in question specifically mentions "working time" and not the time actually worked.



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