

Hot Issues in Hungarian Labor Law

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The Hungarian labor law is regulated by the Act XXII of 1992 on the Labor Code (hereinafter referred to as Labor Code). This article is dealing with one of the hottest topics of Hungarian labor law, namely the termination of the employment relationship.

1. Termination of an Employment Relationship

1.1. Termination of the Employment Established for an Indefinite Period of Time

Under Labor Code an employment contract established for an indefinite period of time may be terminated by

- a) mutual consent of the employer and the employee,
or
- b) ordinary dismissal, or
- c) summary dismissal.

1.1.1. The employment relationship may be terminated by mutual consent at any time, but of course it requires the full agreement of the parties in all issues (e.g.

termination date of the employment, potential severance payment or similar remuneration, etc.).

1.1.2. The conditions of an ordinary dismissal are strictly regulated by the Labor Code and, in a potential legal dispute, have to be proved by the employer.

Reasons for an ordinary dismissal may be the following:

- a) disability of the employee to perform his obligations,
- b) bad behavior in relation to the employment relationship,
- c) reasons in connection with the employer's operations.

1.1.3. The summary dismissal qualifies as an exceptional method of terminating the employment relationship and under the strict rules of Labor Code may be exercised in two cases:

- a) if the employee commits a material breach of employment contract,



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b) if the employee otherwise engages in conduct rendering further existence of the employment relationship impossible, e.g. he/she is not suitable for his/her job or part, takes in a business competing with the employer's one.

1.1.4. Termination by reason of redundancy qualifies as a special sub-category of ordinary dismissal for reasons in connection with the employer's operations as described in Section 1.1.2.

1.1.5. The Labor Code also acknowledges the term collective redundancy, in which case special procedural rules apply. Collective redundancy means when an employer, based on the average statistical workforce for the preceding six-month period, intends to terminate the employment relationship

- a) of at least ten workers, when employing more than twenty (20) and less than one hundred (100) employees,
- b) of 10 per cent of the employees, when employing one hundred (100) or more, but less than three hundred (300) employees,
- c) of at least thirty (30) persons, when employing three hundred (300) or more employees within a period of thirty (30) days for reasons in connection with its operations.

1.2. Notice Period

Under Labor Code in the case of ordinary dismissal the notice period shall be minimum 30 days and maximum one year. The 30-day notice period shall be extended

- a) by five days after three years,
- b) by fifteen days after five years,
- c) by twenty days after eight years,
- d) by twenty-five days after ten years,
- e) by thirty days after fifteen years,
- f) by forty days after eighteen years,
- g) by sixty days after twenty years of employment at the employer.

1.3. Severance Payment

According to the Labor Code an employee shall be entitled to get severance pay if his employment

relationship is terminated by ordinary dismissal of the employer, the summary dismissal of the employee and in consequence of the dissolution of the employer without legal succession. According to the Labor Code, unless there is an agreement to the contrary, the severance pay shall be the sum of the average earnings

- a) one month for at least three years;
- b) two months for at least five years;
- c) three months for at least ten years;
- d) four months for at least fifteen years
- e) five months for at least twenty years
- f) six months for at least twenty five years service period of the employee.

1.4. Termination of an Employment Contract Established for a Fixed Term

An employment established for a fixed term shall only be terminated by mutual consent or by summary dismissal or, if a trial period applies, with immediate effect.

If an employer terminates the employment relationship of an employee employed for a fixed term under conditions other than those described above the employee shall be paid one year's average salary or his average salary for the period remaining if such period is less than one year.

1.5. Protected Employees

1.5.1. Restrictions

1.5.1.1. Employers cannot terminate an employment relationship by ordinary dismissal during the periods specified below:

- a) incapacity to work due to illness, not to exceed one year following expiration of the sick leave period, furthermore, for the entire duration of eligibility for sick pay on the grounds of incapacity as a result of an accident at work or occupational disease;
- b) for the period of sick leave for the purpose of caring for a sick child;
- c) leave of absence without pay for nursing or for providing home care for a close relative;



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- d) during a treatment related to a human reproduction procedure as specified in specific other legislation, during pregnancy, for three months after giving birth, or during maternity leave;
- e) leave of absence without pay for the purpose of nursing or caring for children, until the child reaches the age of three, irrespective of any leave of absence without pay,
- f) during regular or reserve army service, from the date of receiving the enlistment orders or the notice for the performance of civil service;
- g) the entire duration of incapacity for persons receiving rehabilitation benefits in accordance with specific other legislation,
- h) in connection with placing a child under mandatory care in accordance with specific other legislation prior to adoption, six months from the time of placement under mandatory care in respect of the proposed adopting parent - or if adoption is planned by the spouses jointly - in respect of the parent taking a greater role in raising the child, or the duration of mandatory care if the child is removed from care before the six-month period expires.

1.5.1.2. The notice period of dismissal, if the duration of termination restriction described in Section 1.5.1.1.

- a) is more than fifteen days, may commence after another fifteen days,
- b) is more than thirty days, may commence after another thirty days.

1.5.1.3. The restriction stipulated in Section 1.5.1. above shall not apply to the termination of an employee who qualifies as a pensioner.

1.5.2. Limitations

1.5.2.1. An employer is not allowed to terminate an employee's employment within the five-year period preceding the date when the employee attains the age limit for old-age pension by ordinary dismissal only in particularly justified cases, unless the employee is already receiving some form of pension benefits.

1.5.2.2. The prior consent of the higher ranking trade union body is required for terminating the employee's employment by ordinary dismissal.

2. Procedural Requirements for Redundancy Dismissals

2.1. Formal Requirements

Any sort of dismissal should be issued in written form and supplied with the reasoning with the exception if the employee is considered a pensioner.

2.2. Settlement of Accounts

Upon termination of his employment, the employee shall vacate his position as ordered and settle accounts with the employer. The employer shall sufficiently provide for the conditions of job transfer and accounting. Upon termination of the employment relationship, an employee shall be paid his work wages and other emoluments, and shall be supplied the statements and certificates prescribed by provisions pertaining to labor relations and other legal regulations.

2.3. Certificates to be Issued by the Employer

2.3.1. Certificates to be Issued Mandatorily

Upon termination of an employment relationship, the employer shall present the employee with a certificate containing the information as follows:

- a) the employee's personal data (name, maiden name, mother's name, place and date of birth),
- b) the employee's social security number,
- c) the length of time spent in the employer's employment;
- d) any debt to be deducted from the employee's wages on the basis of a final resolution or pursuant to a legal regulation, as well as the entitlement thereto;
- e) the amount of sick leave taken by the employee during the year when the employment relationship was terminated;
- f) the amount of extra severance pay the employee has received.
- g) the fact that the employee's wages are not encumbered by any debt.



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The certificate shall contain the name, address and bank account number of the private pension fund that the employee has joined. If a first-time employee, who is subject to statutory membership, has not joined any fund, it shall be noted on the certificate along with the name and address of the fund responsible for the area indicated.

2.3.2. Certificate to be Issued Upon the Employee's Request

At the employee's request, upon termination of his/her employment, or within a year thereof, the employer shall provide a work certificate, which should contain:

- a) the job profile filled by the employee at the employer;
- b) an evaluation of the employee's work.

The employer shall be required to disclose information regarding the evaluation of employee's work only upon the employee's express request.

3. Wrongful or Unfair Dismissal

3.1. Litigation

For the enforcement of employment-related claims, employees may institute a legal action. The term "employment-related claims" covers the situation when the employees deem that their dismissal was wrongful and/or unfair. Employment-related legal disputes shall be decided in court. A lawsuit may be filed within thirty days of the notification of the action in connection with the termination of the employment relationship. The deadline for filing a lawsuit shall be considered met if the suit is sent to the court by mail and dated on or before the last day of the deadline. A party that misses the deadline shall have the option to file an application for extension.

3.2. Potential Outcomes and Consequences

- 3.2.1. 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 original position.

- 3.2.2. At the employer's request the court shall exonerate reinstatement of the employee in his original position if the employee's continued employment cannot be expected of the employer.

- 3.2.3. The provisions of 3.2.2. will not be applied if

- a) the employer's action violates the requirements of the proper execution of law, the principle of equal treatment, or restriction of termination, or
- b) the employer has terminated the employment relationship of an employee under labor law protection prescribed for elected trade union representatives in violation of the provisions of Labor Code.

- 3.2.4. If the employee does not request or if upon the employer's request the court exonerates reinstatement of the employee in his 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.

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

- 3.2.6. If employment is terminated unlawfully the employee shall be reimbursed for lost wages (and other emoluments) and compensated for any damages arising from such loss. The portion of wages (other emoluments) or damages recovered elsewhere shall neither be reimbursed nor compensated.

4. Executive Summary

In our opinion the employees are adequately protected by the Labor Code and the regulations on the termination of the employment relationship are harmonized to the EU labor standards. If you are an employer and you want to terminate an employment relationship you have to make sure whether your contemplated letter of dismissal meets the substantial and formal requirements.