LEGAL ALERT

SELECTION OF LEGAL UPDATES

August 2024

ŠIROKÝ ZRZAVECKÝ
ADVOKÁTNÍ KANCELÁŘ

New Building Act - permitting of buildings in the transitional period

The new Construction Act has been in force since 1 July, which, instead of the expected simplification of the entire construction procedure, has so far brought more ambiguities into practice. One of them is undoubtedly the so-called transitional period, which is to last until the end of June 2027. During this transitional period, those constructions for which an application was submitted by 30 June 2024 at the latest (i.e. before the new Construction Act comes into force) will still be assessed under the original Construction Act.

The Czech Chamber of Authorised Engineers and Technicians Active in Construction (ČKAIT) contacted the Minister for Regional Development Ivan Bartoš about this fact, asking that all constructions prepared before 30 June this year, but without an application to the construction office, could be completed under the old Construction Act. However, the Minister has ruled out this possibility. He said that this procedure, whereby the new legislation comes into force from a certain date and the new legislation must be applied in practice from that date, and only proceedings already started are treated with transitional provisions, is quite standard. There would also be no advantage in applying the processes under the old Building Act, as it would only be the procedural side of things.

Are the courts entitled to require an official translation of an enforcement order issued within the EU into Czech when ordering an execution?

The judgment of the Regional Court in Brno shows that this court has taken a different position from the previous practice of the courts. The majority requires the translation before the bailiff is authorized to execute the execution. However, this is not entirely consistent with the applicable standards.

The Regional Court in Brno, in its resolution briefly states that the court may request a translation of the writ of execution from the claimant, but it is advisable to direct this rather to the next stage of execution (assuming that it occurs). However, the courts may, in this 'initial stage', require a translation of a certificate which corresponds in its content to the writ of execution and confirms the information contained therein.

(according to the resolution of the Regional Court in Brno, Case No. 20 Co 117/2024)

Obligation for employers to register all employees on a fixed-term contract with the Social Insurance Institution (ČSSZ) and a change in the threshold of the decisive amount for participation in pension and sickness insurance

Starting from 20 August 2024, employers are obliged to electronically report to the ČSSZ a list of all employees on an agreement on the performance of work every month (by the 20th of the month), including the amount of their income. This applies to both insured and uninsured employees (i.e. also those whose monthly earnings do not exceed 10,000 CZK). The employer is to use a new e-Filing ("Statement of income charged by the employer to employees working on the basis of an agreement on the performance of work") for reporting.

From 1 January 2025, the so-called "notified" and "non-notified" agreement regime will also be introduced. Under the "notified" agreement regime, which can only be applied to one employer, the threshold for incurring the obligation to pay insurance will be higher. The decisive amount for participation in the insurance would thus be 25% of the average wage.

The specific amount is announced by the Ministry of Labor and Social Affairs and is likely to be slightly higher than the current limit of 10,000 CZK, i.e. around 10,500 CZK.

In the case of the "non-notified" arrangements scheme, the decisive factor for participation in the insurance will be whether the limit for so-called small-scale employment is exceeded, and for 2024 the amount is 4,000 CZK. Should an employee have multiple agreements on the performance of work with the same employer, the earnings from all these agreements will be aggregated for the purposes of monitoring the limit.

Liability of the employer for the unlawful act of the employee in relation to the consumer in the case of so-called excess

In this case, the complainant (the victim) sought compensation from the Constitutional Court (hereinafter referred to as "the CC") against the employer whose employee's conduct caused the victim's damage. The Court of First Instance ruled that the employee in question was obliged to compensate the victim for the damage. However, the employee had paid only a very small amount. The victim therefore claimed the remainder of the damage from the employer.

The claim was dismissed by both first and second Appeal Courts. The courts concluded that the employer in this case was not liable for the employee's wrongful act committed in the performance of his work duties, as there was an "excess" on the part of the employee.

The CC summarizes that when deciding on the liability of an employer for an unlawful act committed by an employee in the performance of his/her work tasks towards a consumer, the position of the consumer as the weaker party to the contract must be consistently taken into account when interpreting Section 167 of the Civil Code and the interpretation of the statutory provision that is most favorable to the consumer must be chosen. The construction of the employee's excess, as defined by case-law and linked to Section 167 of the Civil Code, cannot be applied when the consumer is a party to the contract if the employee commits an unlawful act in the performance of his or her work tasks.

This case-law construction of the excess exempts the employer from liability for damage caused by the employee's unlawful act beyond the scope of the statutory regulation and is contrary to the constitutional principle of consumer protection.

(according to the ruling of the Constitutional Court, Case No. II. ÚS 288/23)

Is an employee entitled to holiday pay for the period during which a lawsuit over the invalidity of his dismissal was pending if he wins the lawsuit and returns to work?

Until last year, the case law of the Supreme Court (as opposed to the case law of the Court of Justice of the EU ("CJEU") did not grant the employee this entitlement. However, considering recent cases, the Supreme Court has accepted the CJEU's conclusions in this employment case.

In its judgment (C-57/22), the CJEU confirmed that leave during the litigation period is also due to the employee under Czech law, as the amount of the wage compensation during the litigation period is irrelevant in this context. The Supreme Court's case-law to date does not confer entitlement to leave during litigation, which is inconsistent with Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4

November 2003 concerning certain aspects of the organization of working time. That article thus prevents the case-law from continuing.

In the appeal proceedings in which the appellant (the employee) sought a declaration that the dismissal was invalid, the Supreme Court followed the legal opinion of the CJEU expressed in that decision, according to which a right to leave for the period of the litigation accrues, but if the employee worked in another job during the period of the litigation, he cannot claim leave entitlements relating to that period.

In conclusion, therefore, the employee is not automatically entitled to holiday pay for the entire period during which the trial on the validity of the dismissal took place. If during that period he has acquired a holiday entitlement with another employer, he is not entitled to that extent.

(according to the judgment of the Supreme Court of the Czech Republic, Case No. 21 Cdo 1053/2022)

Liability for damage caused by water leakage from the apartment

A recent Supreme Court decision holds that where a tenant of an apartment could not foresee the risk of breaking a defectively installed and defective faucet valve, or recognize a defect in the material or installation of the valve, even if the tenant observed periodic inspections of the faucets, the tenant did not breach a duty to perform routine maintenance of the leased premises and is not liable for damage caused by water leaking into the apartment below.

(according to the judgment of the Supreme Court of the Czech Republic, Case No. 25 Cdo 1999/2022)

***

If you have any questions or need consultation, please do not hesitate to contact us via email at info@sirokyzrzavecky.cz.