AMENDMENTS TO THE LABOUR LAW

Dear Reader,

The amendments to the Labour Law will enter into force as of 1 January 2015. Those are the most extensive amendments since 2010. This newsletter prepared by the law office RAIDLA LEJINS & NORCOUS provides an overview of the key issues that should be taken into account by employers.

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With kind regards -

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Banning the employee from work due to health condition

The Labour Law is supplemented by a provision which determines that the employer has a duty to ban the employee from work if the employee is unable to perform the agreed work due to health condition which is certified by a doctor's statement. The purpose of the amendment is to guarantee the safety of the employee and other persons in the workplace. It should be noted that the employer will be obliged to continue payment of the agreed salary during this period. The amendments as such do not impose the obligation on an employer to terminate the employment relationship, although the employer is entitled to do so according to Article 101 Paragraph 2 Clause 7.

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Form of employment contract

Similar to the requirements in relation to job advertisements, henceforth it will not be allowed to include in the employment contract a requirement regarding foreign language proficiency unless it is reasonably necessary for performance of job duties.

Although it follows indirectly from the Sate Language Law that an employment contract should be drawn up in Latvian language, henceforth such mandatory requirement will be included also in the Labour Law. If the employee is a foreigner who is not sufficiently proficient in Latvian language, the employer is obliged to inform him in writing regarding provisions of the employment contract in a language that he understands.

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Employment of Management Board members

Provision that the Management Board members should be employed under employment contract unless they are employed on the basis of another contract governed by civil law has been excluded from the Labour Law. Also the provision that an employment contract of a Management Board member shall be concluded for a fixed term has been excluded from the Labour law. Henceforth these issues will be governed solely by the Commercial Law. However, the amendments do not preclude the possibility to conclude an employment contract with a Management Board member if necessary.

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Duration of a fixed-term employment contract

According to the amendments, maximum duration of an employment contract for a fixed term shall not exceed five years, including extensions (at the moment – three years). The period during which a new employment contract entered with the same employer will be considered as an extension of the previous contract is extended from 30 to 60 days in order to reduce unfair use of fixed-term employment contracts by employers.

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Payment of vacation money

The Labour Law has been supplemented by a provision that allows to pay out the salary for vacation time and for the time worked before the vacation at a time other than the last day before vacation. Such payment will be permitted upon receipt of a written request from the employee. However, the payment shall be made no later than on the next regular salary payout day.

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Rest days in the case of blood donation

The amount of paid rest days to be granted to the employee due to blood donation is limited to five days during a calendar year. Moreover, these days shall be granted no later than within one year after the blood donation.

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Calculation of average earnings

The current wording of Article 75 Paragraph 1 of the Labour Law provides that in all cases where an employee shall be paid average earnings, it should be calculated for the period of last six months from the salary, supplementary payments and bonuses. The practice has shown that it is not clear whether "the last six months" refers to calendar months, taking into account only full months before the specific date, or the actual months to be counted backwards from a specific date. This uncertainty has been resolved by the amendments which provide that the calculation shall be performed for the last six calendar months.

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Compensation of employee's tuition expenses

Until now the Labour Law contained rather brief provision – expenses related to professional tuition and raising of qualification shall be covered by the employer. It was established by court practice that it is not allowed to enter into an agreement between the employer and employee according to which the employee is obliged to repay such expenses under certain circumstances. There has been public debate on whether such agreement would be permitted in cases where the tuition is not directly related to performance of the employee's duties.

Amendments to Article 96 of the Labour Law introduce new procedure in relation to compensation of tuition expenses. Key issues to be taken into account:

- It is allowed to enter into agreement on compensation of tuition expenses if the tuition or measures for raising of qualification are not significant for performance of the agreed work (improvement of employee's competitiveness).
- Repayment of expenses may be claimed only in case if the employee has submitted the termination notice (repayment may not be claimed even in case of breaches by the employee).
- Term of the agreement may not be longer than two years from completion of the tuition (issuance of a certifying document).
- Amount to be repaid shall not exceed 70% from the expenses.
- Amount to be repaid shall be proportionally reduced taking into account the number of days elapsed from completion of the tuition until termination of employment
- It will not be possible to claim repayment of expenses if the expenses during a one-year period do not exceed the minimum salary (only the part exceeding the minimum salary may be claimed).
- If the employee terminates employment during tuition or discontinues the tuition illegally, then the employee will have to compensate all actual expenses which the employer may not recover from the educational institution.
- Agreement shall be entered in writing by indicating the minimum amount of information required by the law.

It may be expected that the provision allowing to claim expenses only in case of employee's termination notice will demotivate employers to educate the employees and raise their qualification.

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Reduced collective redundancy timeframe

Timeframe for performance of collective redundancy has been reduced by 15 days. According to the new procedure, notification to the Employment State Agency will have to be submitted 30 days in advance as opposed to 45 days earlier. Accordingly, the employer will be able to submit termination notices to the employees not earlier than 30 days after submission of the said notification.

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Breastfeeding of children

First paragraph of Article 109 of the Labour Law (prohibition of termination during the breastfeeding period), as well as other articles of the Labour Law which contain restrictions related to breastfeeding of children, are supplemented with the maximum breastfeeding period – until the child is two years old.

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Termination of disabled employee

Henceforth, it will be possible to terminate an employee who has been acknowledged as disabled also in cases when the employee does not have sufficient professional skills for performance of the agreed work. Until now termination was possible only in case of breaches by the employee, in case of liquidation of the employer, as well as if the employee is not able to perform the agreed work due to health condition.

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New procedure for delivery of termination notice

New procedure has been provided in relation to delivery of a termination notice which is similar to the one provided in Administration Procedure Law and Notification Law. Main issues to be taken into account:

- Termination notice may be served in person, by a messenger (including court bailiffs), as well as by mail.
- If provided by the employment contract, the termination notice may be sent by e-mail by using secure electronic signature.If provided by the employment contract, the termination notice may be sent by e-mail by using secure electronic signature.
- In case of a registered letter, it is considered that the termination notice has been received on the seventh day after delivery to the post office (even if actually it has been received earlier).
- The recipient can refute this presumption by indicating to objective reasons which are not dependent on the addressee's will.
- In case of an e-mail message, it is considered as received on the second business day after sending (also this presumption may be refuted).

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Payments in case of termination

The Labour Law provides that in case of termination of an employee all amounts due to him by the employer shall be paid on the termination date. There were problems with calculation and payments in cases where the Labour Law provides for immediate termination – employee's termination due to reasons of morality and fairness, employer's termination due to illegal actions of the employee or consumption of alcohol. Henceforth, in such cases it will be possible to make all the payments on the next day after termination.

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Overtime work

It is contemplated that overtime work may on average not exceed eight hours in a seven day period which is calculated in the reference period that may not

exceed four months. In comparison to the previous wording of the law, the amount of allowed overtime hours has been reduced by approximately five hours.

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Aggregated (summed) working time

Amendments provide for separate exceptional cases where in case of aggregated working time it is allowed not to apply the mandatory daily (12 consecutive hours) and weekly (42 consecutive hours) resting period:

- employee must spend long time when travelling to work;
- employee performs security or supervision work;
- due to the nature of the work it is necessary to ensure uninterrupted workflow;
- employee performs work of seasonal nature;
- short term expansion of the company's workload or increase of production output is expected.

Until now there were no such restrictions in case of aggregated working time. Moreover, the employer will have to ensure that during the reference period the daily resting period is not shorter than 12 hours on average and the weekly resting period is not shorter than 35 hours on average, including the daily resting time.

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Annual paid vacation

On 10 November 2010 in the case No. SKC-667 the Senate of the Supreme Court of the Republic of Latvia concluded that the maximum time period for which the employee is entitled to receive compensation for the unused vacation is six weeks. Apparently the legislator considered such court practice as unreasonable since according to the current amendments in Article 149 of the Labour Law it is expressly provided that in case of termination of employment relationship the employee shall be paid a compensation for the whole period during which the employee has not used the annual paid vacation.

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