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Employment

Hungary: Trends & Developments

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Trends and Developments

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COVID-19 and the Hungarian Labour Market

The COVID-19 pandemic has had significant effects on the Hungarian labour market. Despite government subsidies, loans and payroll tax reliefs, the public has seen a number of employers engaging in cutting labour costs, collective redundancies or exiting markets, initiating insolvency or winding-up procedures. These continue to go hand-in-hand with enhanced M&A activity as stronger competitors buy suffering enterprises. While the unemployment rate rises to a level not seen for a long time, the Hungarian labour market is still suffering from a lack of skilled workforce in many sectors.

However, the experience gained by employers during the COVID-19-related emergency situation, in connection with the results and efficiency of their departments and personnel when working remotely, may prove to be of considerable significance in the longer run. Many companies carried out (or are now considering) reorganisations – not just to re-calibrate supply chains, cut costs with respect to recession and operate in the post-COVID-19 era, but to keep and better incentivise the personnel providing real value to business, whether they be talented in digitalisation or simply better at adapting to changes. The signs of this shift towards a digital-ready and adaptable workforce are already visible in the corporate world.

Naturally, the COVID-19 outbreak affected the legal regulation of labour. During the “state of emergency” (henceforth, “SoE”) proclaimed by the Hungarian government on 11 March 2020 and ending on 18 June 2020, Act I of 2012 on the Labour Code (hereinafter, “the Labour Code”) was modified temporarily. The wide application of the temporary new regulations has resulted in a great deal of new information and experience, which will foreseeably trigger further changes in legal regulations.

During the SoE, the relevant government decree allowed employers and employees to deviate from the rules of the Labour Code. This made it possible for many employers to decrease wages, and to agree to the employees being on unpaid leave instead of terminating their employment. However, employers now face the issue that such agreements cannot be maintained any longer, as the SoE is over.

Increased Demand for Working from Home

Another difficulty for the employers’ HR departments is how they manage the fact that employees have an increased demand for working at their homes after the SoE. According to surveys,

approximately 150,000 employees worked from their homes on certain days of the week before the pandemic. The number of such employees has obviously risen during the SoE, when the Government Decree No 47/2020 (on the prompt actions to be taken in order to mitigate the impacts of the COVID-19 pandemic) allowed employers to unilaterally order employees to perform work from their homes during the SoE and a 30-day period thereafter. According to a non-representative survey of EY Workforce Advisory in Hungary, 76% of office employees were ordered to perform work from their homes during this period.

However, since this legislation is no longer effective, employers once again face the issue of how they may order employees to perform work from their homes. The Labour Code regulates “remote work” in an independent chapter; remote work is an atypical form of employment, agreed in an employment contract, according to which the employee must work on a regular basis at a place other than the employer’s facilities, using computing equipment and delivering the results of work by electronic means. On the other hand, the Labour Code does not expressly regulate the matter of when the employee shall work at the premises of the employer but may often (or during certain periods) work at home (either at the employer’s initiative or based on the employer’s unilateral instruction).

It is obvious that the employee may be obliged to perform work from his or her home if such is agreed in the employment agreement, or if the employer does this unilaterally using the legal concept of “employment deviating from employment contract” (which is maximised at 44 working days per calendar year). However, it is less clear what rules apply to working at home: for example, whether (i) all or some of the rules of “remote work” (such as the specific obligations of the employer to establish a safe work environment in the employee’s home, set forth in Act No 93 of 1993 on the Work Safety Act) shall apply to home office work, or (ii) the employer may regulate home office work in internal policies, at its own discretion (limited practically by the rules concerning employer’s policies of the Labour Code).

On 20 July, the government issued an announcement as a conclusion of recognising the pros of home office work during the SoE, stating that their aim is to support the spread of atypical forms of employment, especially home office work. It was declared that working from home was beneficial for both the employers and employees and that it may be a tool to increase

employment in the country and simultaneously help to keep existing jobs.

As a next step, the government announced its plan to comprehensively amend the regulation of remote work and home office work, for which purpose they began discussions with key economic operators. The announcement also contains the main subjects of the proposed amendment, such as the extension of the characterisation of remote work, a redefinition of the agreement between the employer and the employee regarding remote work, an aim to assert the interests of both parties, an intention to provide the employee with the right to choose the place of work (if health and safety requirements are met), and making it possible to choose remote work for only part of the usual working days, based on the agreement of the parties.

It is predicted that the amendments will be debated and voted on by the Hungarian Parliament in the autumn of 2020. Considering that the government is preparing for a second wave of COVID-19 in Hungary in autumn 2020, we can assume that the adaptation period of the new legislation will be short. This may mean that employers will need to adjust their home office policies to the new regulation very quickly.

Shifting Workforce Strategies: the Rise of Soft HR

While eagerly awaiting government decisions on home office legislation, many companies are already working on their new workforce strategies in light of the knowledge obtained during the SoE. They are looking for measures that will not only help them bridge the next wave of the pandemic, but also lead to long-term organisational transformation and increased competitiveness. These efforts will certainly reshape the business landscape going forward.

One such measure broadly discussed in C-suites and local professional communities is that of creating a “hybrid office” arrangement, which essentially means finding the optimal composition of on-site and remote work. This requires careful assessment of health and safety regulations (based on the employer’s general obligation to provide for a safe workplace) that dictate infrastructural design, as well as a detailed evaluation of what jobs can be performed fully or partially remotely in all circumstances. Fortunately, experiences collected hitherto are promising: far more positions may be sustained or formed remotely than originally imagined by HR professionals. In addition, companies must gauge the personal preferences and circumstances of employees to make new arrangements feasible and sustainable for everyone, which is a crucial but legally sensitive factor.

Another challenge is to adjust the organisation to the hybrid set-up, by way of tailoring performance management, com-

pensation and incentive systems to delivered results, changing organisational culture and developing leadership skills in managing people remotely. While it might be said that the common experience of being under lockdown created a positive impact on team coherence, even under remote settings, more must be done to continuously sustain a collaborative culture and good people-management practices. Employees who do not trust their leaders to be able to maintain a positive work environment are planning their exit, even under a pandemic, potentially spreading their sense of disengagement to colleagues. Companies are, therefore, looking at fast-track options for upskilling their managers to avoid losing top talents and to remain an attractive employer on the job market.

The shifting of workforce strategies will likely widen the path for engaging untapped resources on the job market, such as parents with small children, people who engage in caring for elderly relatives, or those with health challenges or disabilities of their own. All these groups could potentially be available to perform work part-time and in remote arrangements, but have not been available for full-time on-site jobs and thus have been sidelined so far.

Another benefit for organisations will be an easing of pressure on administration of recruitment or lay-offs, especially for certain highly skilled jobs that do not require a physical presence in the office. As the pandemic triggered a surge in virtual collaboration, with companies reporting that their employees’ performance remained mostly intact, leadership now has the grounds to assume they can include these solutions more broadly in their long-term strategies. In fact, some organisations have already announced that they are widening their recruitment angle and will source talent from across the country, no longer being limited to recruiting within a certain parameter of their physical location. Obviously, if an employer has the right technology and training in place, it can source skills and capabilities from any labour market around the world. Such measures will also play into re-thinking site functionalities, such as utilising office spaces as collaboration platforms rather than as permanent places for individual work.

It is a food for thought as to how this will affect labour law and its regulations. How will employers succeed in dealing with the different performance of their employees within the law? For example, how will they manage the laying off of those employees who cannot adapt to changes such as effectively working from a remote location and/or quickly learning to use new technologies? Will the requirement of written form loosen further? How will employers stay empathetic – considering that this is a highly emotional and stressful situation for everyone – while remaining in line with their own policies and corporate culture? Should remuneration be higher for those who provide work on-site?

HUNGARY TRENDS AND DEVELOPMENTS

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We are confident that most of the labour law issues triggered by managing these changes can still be tackled. However, the quantity of changes may lead to new regulations – first, potentially, in corporate policies and practices, then in statutory legislation.

Working Time Cycle

Pursuant to the effective provisions of the Labour Code, the maximum period of a working time cycle (cumulative working hours) is four months or 16 weeks; in case of specific circumstances, it can be six months or 24 weeks. If it is justified by objective or technical reasons or reasons related to work organisation, the employer may agree in a collective bargaining agreement to increase the frame period to 36 months.

During the SoE, several companies suffered from a decrease in their orders, which in turn resulted in a setback in their productivity, with less work to perform. To save as many jobs as possible, the government issued a decree increasing the possible maximum length of the frame period to 24 months, without any additional conditions to be met. The end of the SoE does not affect the working time cycles launched during this particular period, so those employers who decided to set the frame period to be 24 months can continue allocating working time in this frame.

Governmental Support to Protect Employees (Kurzarbeit)

During the SoE, the government accepted an action plan to protect employment and the economy. From a labour law point of view, the key measure of this plan was to subsidise the reduction of working hours for a temporary period instead of carrying out redundancies.

Under the short-time work wage subsidy, the state undertook to pay a subsidy to the employee if the employer, instead of dismissal, continued to employ the employee by reducing working time in a range of 25% to 85% of the original working hours for a period during which the subsidy is paid plus one month. The amount of subsidy could be 70% of the net base salary due for the missing working hours, but in no case more than the amount of double the net mandatory minimum wage.

Although this legislation is not yet in force, many expect that if a second (or third) wave of the COVID-19 pandemic reaches Hungary, the government will operate with the same or a similar action plan. This assumption is not ungrounded, as the government announced at the time of introducing its action plan that it wishes to keep fiscal budgetary funds for the protection of the economy and employees in such a scenario.

Implementation of the Reform Directive of the Posted Workers

Member states of the EU had the obligation to implement the content of the Posted Workers Reform Directive (Directive 2018/957) until 30 July 2020, and therefore the Labour Code was amended, thereby taking a further step to achieving equal treatment of all employees. Accordingly, from 30 July 2020, posted workers will be entitled (instead of a “mandatory minimum wage”) to the amount of remuneration “considered standard for the place of employment”, including all salary elements and supplements required by Hungarian law, any benefit provided by the relevant collective bargaining agreements or any employer’s policy. This is applicable irrespective of the country of origin of the employee. In addition, the Labour Code shall apply to the performance of work in case of postings exceeding 12 months.

As a significant number of foreign employees work in the Hungarian labour market, due to the lack of a skilled workforce in many industries and sectors, complying with this obligation will be more and more of a challenge for many employers providing work to a foreign workforce in the framework of posting (eg, Ukrainian and Serbian employees) in the current era when cost optimisation is the top priority.

Increasing Rate of Small Taxpayers’ Lump-sum Tax (KATA)

As of 2021, new rules will come into effect regarding small taxpayers’ lump-sum tax (abbreviated in Hungarian as KATA). If, during the year in question, a disburser – as defined in the Act on Tax Procedures – transfers funds as generating revenue for the same KATA taxpayer business amounting to more than HUF3 million in total from the beginning of the year, then it must pay 40% surtax on the payments over the HUF3 million threshold. This new (but not yet effective) regulation has generated a lot of debate and concern.

The government announced that one of the primary goals of the new regulation is to further reduce disguised employment relationships. This goal is likely to be achieved, however, not because the gap between the costs of a small taxpayer enterprise and those of an employee is reduced but rather because, from 1 January 2021, all invoices issued will be forwarded online to the Hungarian National Tax and Customs Administration, which has already announced enhanced inspections of small taxpayers.

The goal of not allowing the enterprises disguising employment relationships to use KATA could have also been achieved with a better regulation on differentiating employment relationships from civil law contracts – the criteria of which have been well-developed in the practice of the Hungarian courts – if coupled

with a well-designed inspection plan of the labour and tax authorities.

It is also clear that the government expects companies providing work to individuals as small taxpaying entrepreneurs to put them on payroll, thereby raising the national employment rate and obtaining more revenues for the state budget and social security system via taxation. However, it remains to be seen whether the aims of this new piece of legislation will be achieved, with many warning against potential negative effects.

For example, it is argued that the threshold is too low, so the new tax scheme may affect far more enterprises than intended by the government. The monthly average income may not be more than HUF250,000 per client (without reaching the threshold), which is only HUF39,400 more than the guaranteed minimum wage (and almost equals the total employer cost of the guaranteed minimum wage). Accordingly, in practice, it is probable that the amount of annual revenue received from one client exceeds the threshold of HUF3 million.

We presume that many small taxpayer enterprises which currently use KATA as a taxation form will transform their operations and leave KATA, which will then cause a turbulence in the employment market. Some of these enterprises will choose to operate from abroad, opt for another form of taxation, attempt to be engaged by more companies (and not just one or a few), whereas potentially only a minority of this population will establish employment, either because of headcount or cost restrictions; note that the amount of an employer's total cost in employment is higher than the total public levies to be paid in compliance with KATA tax obligations. It is also questionable whether the individuals who wish to choose to be in employment (instead of continuing to run a small enterprise) can do so.

As many of the companies (privately or state-owned) are contracted to small taxpayers, the change will surely lead companies (even those which would not be required to leverage every opportunity to cut labour type costs) to re-assess and re-design the structure of their workforce and their costs, carry out HR restructurings and further rationalise operations.

An Employer-Friendly Environment in Challenging Times

The unemployment rate in the country rose to almost 5% in the first half of 2020 – a percentage not seen since the financial crisis in 2008 – and collective redundancies are still on the agenda of some companies. As the Hungarian Labour Code is one of the most employer-friendly pieces of legislation in Europe and the penetration of trade unions to private sector companies (including the number of collective bargaining agreements concluded) is relatively low, employers do not have serious obstacles if they wish to execute their redundancy plans, provided they planned the restructuring wisely considering their operations.

On the other hand, considering that the annual Hungarian GDP is expected to fall by 5-10%, it is also expected that the government will continue to provide some support (as much as fiscally allowable) to companies employing significant staff if they wish to either carry out massive lay-offs or leave the country.

Therefore, although companies will foreseeably be busy with restructurings and operating in the new circumstances – either in the event of further waves of the pandemic or after the COVID-19 crisis has finally passed – at this moment it seems that they do not have to worry greatly about the changes in Hungarian labour law. While the Labour Code has been materially unchanged (with a few amendments) since 2012, it seems to provide acceptable regulation (and opportunities) to the new issues raised, even if it needs some tailoring to adapt to changes, both currently and in the future.

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and with its tax and advisory practice on the legal aspects of the regulatory issues faced by clients. The firm's recent employment law experience includes advising Accorinvest Group SA on a large-scale multinational transaction, MASTER GOOD Termelő és Kereskedelmi Korlátolt Felelősségű Társaság in the acquisition of Sága Foods Zrt., and providing full (legal, tax and project management) support in confidential reorganisations and collective redundancies.

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Helga Rudas graduated with a law degree from Eötvös Loránd University in 2015 and completed her Bar exams in 2020. She has worked at EY since 2016 and specialises in labour law, corporate law and regulatory matters. Helga has advised on several organisational restructurings

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