

News Flash

February, 2016



**Labor Code in Hungary: Protecting
Business Interests after
Employment Termination**

Introduction

In our previous newsletter regarding Hungarian Labor Code, we covered topics such as maternity leave, basic employment agreement details, and employee/employer rights. In this newsletter, we will focus more on protecting your business interests after terminating an employee's contract, as well as some other interesting related topics.

Recognized & Enforced Elements for Business Protection

Employees are prohibited from engaging in any conduct that may jeopardize the employer's economic interest, damage the employer's reputation or the purpose of the employment relationship. The employment agreement may provide limitations on further employments.

Furthermore, employees may not express their opinion in a way which may lead to the causing of serious harm or damage to the employer's reputation or legitimate economic and organizational interests.

The parties can also include a non-competition provision applicable after the termination of the agreement.

A clause not to compete after the termination of employment is enforceable if it covers a maximum of two years and if employees are provided with appropriate financial compensation in return for non-compete undertakings. If the employee terminates the agreement with immediate effect he/she may request release from the non-competition clause.

There is no obligation for additional payment for the clauses/contracts resulting from law and/or applicable during employment. A non-compete provision is valid only if adequate compensation is paid to the employee. The amount of the compensation should be proportionate to the scope of the restriction. The amount of adequate compensation should be at least one-third of the base wage.

Data Protection Policy

Employers may process the employees' personal data to the extent necessary for the fulfillment of the purposes of the employment. The employees shall be duly informed regarding the processing of their personal data. If the employer wants to process any employee data above that which is absolutely necessary, the consent of the affected employees must be obtained.

Employers shall be permitted to disclose facts, data and opinions concerning a worker to third persons in the cases specified by law or upon the workers consent.

Employers shall inform their workers concerning the processing of their personal data.

Employers can conduct background screening, including criminal record checks, but limitations apply. Screenings are permitted to the extent necessary and proportional with respect to the position of the given employee, provided that the screening does not violate the employee's personal rights.

Employers, in general, are allowed to monitor the behavior of workers only to the extent pertaining to the employment relationship. The employer's actions of control, and the means and methods used, may not be at the expense of human dignity. The private life of workers may not be violated. Employers shall inform their workers in advance concerning the technical means used for the surveillance of workers. Outgoing e-mails can be checked (opened) only when the e-mail box cannot be used for private purposes. Screening incoming mails is even in this case limited. Employers are free to regulate the use of corporate IT-tools.

Court Procedure & Practices

A special labor court called the Administrative and Labor Court, organized in each county and in Budapest, has jurisdiction in employment-related complaints. The first level court decides the case with the participation of lay persons. The place of work determines the venue of the court. An appeal may be submitted against the judgment of the first instance court and shall be decided at county level.

Employees may pursue their claims arising from an employment relationship in court, while trade unions and works councils may also pursue their claims arising out of the Labor Code or a collective agreement in court. The statute of limitations is three years (for damages caused by crime, five years, or, if more, the statute of limitations for the particular criminal liability). However, an action can only be brought within 30 days from the employer's act if that relates to a unilateral amendment of the contract, the wrongful termination of employment, sanctions applied for breach of an obligation or payment notice, or an untrue employer statement. Different procedural rules apply when challenging a termination agreement.

In a court case, a duty defined as a percentage of the value, with a minimum and maximum amount – varying between 6-10 per cent and a minimum of HUF 15,000 and maximum of HUF

3.5 million – is payable at each level. The employee is exempted from the payment obligation if he/she is in a difficult financial situation defined by law. Employees are also exempted from the advance payment of fees and duties.

There is a mandatory conciliation only if the collective agreement or the employment agreement so provides.

The employer and the works council/trade union may set up a conciliation committee to resolve their disputes. In a dispute about the term of the works council and the use of welfare funds, an arbitrator shall decide.

It is possible to appeal against the first instance decision. According to the above statistics the two levels together mean a 22-month process on average.

This concludes our two-part newsletter series about Hungarian Labor Code. While there are far more in-depth rules and regulations related to labor/employment process in Hungary, these newsletters should serve as an ideal guide for having basic understanding for both employees and employers.

If you have further questions, please feel free to contact us.

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