

Parallel run of notice period and severance pay is back

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The Amendment to the Labor Code, which should go into effect on January 1, 2013, has advanced to the second reading. The final decision about the parallel run of notice and severance pay, one of the most controversial regulations, should be known by the end of October 2012.

The actual suggestion cancels the mandatory determination of the notice period and defines only its minimum duration.

The duration of the notice period itself remains unchanged (a minimum of 1, 2 or 3 months depending on the reason for termination, the duration of employment, and whether the notice was given by the employee or by the employer). The Amendment allows a longer notice period if both parties agree.

Severance pay should represent a specific form of compensation provided to an employee who is terminated for reasons beyond his control. The most frequent causes of this type of termination are organizational changes when the employee becomes redundant or the change of the company's seat and therefore also the change of place of work performance which the employee does not agree with. However, not all employees will be entitled to severance pay. The employer must take into consideration if the employee was given notice or the agreement on termination of the employment relationship was made with him. The duration of employment must be considered as well.

The Amendment to Labor Code specifies the severance pay for both cases - notice and agreement on termination of employment relationship – separately.

Notice and Severance Pay

If the employment relationship is terminated by giving notice, only those employees who have

been working for the employer for at least two years are entitled to severance pay. Severance pay varies according to duration of the employment relationship as follows:

- for an employment relationship between two years and five years, the severance pay will be equal to the average monthly salary;
- for an employment relationship between five and ten years, the severance pay will be at least twice the average monthly salary;
- for an employment relationship between 10 and 20 years, the severance pay will be at least three times the average monthly salary;
- for an employment relationship longer than 20 years, the severance pay will be at least four times the average monthly salary.

How can employers behave?

A production company has 20 employees. As a result of long-term decline in sales, the company is forced to close a production plant and dismiss five employees. How should this company proceed?

It is safe to assume that the company will choose to dismiss the employees with the shortest employment relationship—this will minimize severance payment costs. In general, staff turnover may increase in many companies. Employers may want to dismiss their employees before their employment relationship exceeds two years and replace them with

new staff in order to avoid high severance pay costs.

Agreement on Termination of Employment Relationship and Severance Pay

Other conditions will be applied in cases where the employer agrees on termination of the employment relationship with the employee and the employee will be entitled to severance pay. The compensation varies as follows:

- for an employment relationship shorter than two years, the severance pay will be equal to the average monthly salary;
- for an employment relationship between two and five years, the severance pay will be at least twice the average monthly salary;
- for an employment relationship between five and ten years, the severance pay will be at least three times the average monthly salary;
- for an employment relationship between 10 and 20 years, the severance pay will be at least four times the average monthly salary;
- for an employment relationship longer than 20 years, the severance pay will be at least five times the average monthly salary.

It is really questionable if the employers will be so “generous” and agree with their leaving employees on termination of the employment relationship and pay appropriate severance pay, especially when both the tax and social security costs are going to increase in the future.

The New Labor Code May Have a Wider Impact

Employees' representatives - The new regulations introduced by the Amendment should substantially strengthen the position of employees' representatives. The Labor Code will at the same time define the rules how to proceed when there are no such representatives in the company.

Flexible working time - The regulation of flexible working time known as “flexikonto” may also be changed. After the written agreement with employees' representatives is completed, the working time account could be used instead.

Holiday planning - The employer will have to plan holidays further in advance. If the employer does not manage to decide about the holiday planning by June 30, the next year employees will be able to spend their holidays when they wish. In this case, the employee needs only to deliver a written announcement to the employer 30 days before the vacation starts. This may bring serious complications for employers who are not able to predict and plan staffing needs far in advance.

Overtime - Regulations on overtime will probably change as well. The maximum extent will be limited to 400 hours in a calendar year. Therefore, employees will be not allowed to work up to 550 hours of overtimes as they can now. Overtime work will be regulated and allowed only in cases of temporary or urgent work needs or in cases of public interest.



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