

Legal News

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Central- and Eastern Europe

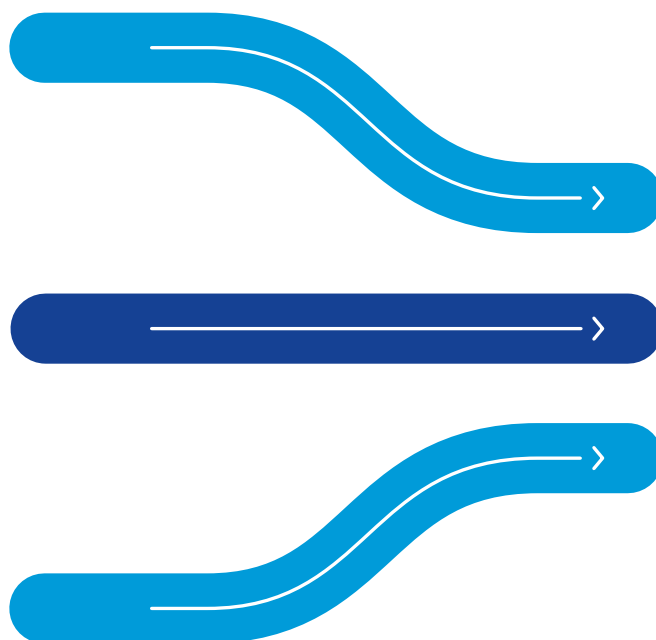


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New Corona-rule on sick pay in Estonia

Employers are liable from the second day of sickness; in return the period is shortened

From January 1 to April 30, 2021, Estonia will have exemption legislation according to which employees will receive continued payment of wages from the employer in the amount of 70% of their average wages (calculated on the basis of the previous six months' wages) from the second to the fifth day of their illness. After that, continued payment of wages is borne by the state health insurance fund. As before, payments are made on the basis of a medical certificate.

Under the previous legislation, employees did not receive any payment during the first three days of illness, either from their employer or from the health insurance fund. They had to bear the consequences of absence from work themselves, unless the employer paid for it voluntarily. From the fourth day onwards, the employer paid for five days of sickness, and thereafter the health insurance started to pay for the remaining illness period.

Although a longer period was initially envisaged for this new regulation, it will now only apply for four months until April 30, 2021, after which the previous legal situation will come into force again.

This change affects Estonian companies and other employment relationships where Estonian labour law applies, such as in some cases of posting employees to Estonia.

The background to these changes is the impact of the Covid 19 pandemic. The intention of this regulation is to prevent employees from appearing at work despite symptoms of illness in order to avoid loss of wages. This is in contrast to the intent of the original regulations to avoid exploitation of such arrangements.



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The regulation, under which the first three days of sick leave are not remunerated, has been in force since the economic crisis of 2008/2009 and was introduced at the time as a temporary measure to ease the burden on the state budget.

Source:

Riigikohus, decision of 20 October 2021, case number 5-20-3;

Law on Amendments to the Law on Financed Pensions and Related Legislation
(mandatory reform of financed pensions)

The effect of COVID -19 vaccine in Hungarian employment conditions

Can an employer obligate an employee to be vaccinated against the coronavirus?

At this stage of the coronavirus pandemic, several countries have begun scheduled vaccination of their citizens. The next chapter against the fight of the epidemic has arrived.

This new chapter poses enormous challenges to society: should the vaccination be mandatory or be up to individuals to decide? Translated into the language of law, the dilemma is whether the individual's right to self-determination enjoys priority over the legitimate interest of society.

The law provides an opportunity to restrict an individual's right to self-determination if the public interest requires. However, the right to self-determination as a fundamental right stated in the Constitution can only be restricted by law. The legal view is consistent, namely that mandatory vaccination could be justified in society.

According to this legal logic, in Hungary mandatory vaccinations are regulated under the Health Act. However, COVID -19 has not yet been declared as a mandatory vaccination.

Let's take a look at whether an employer can require an employee to be vaccinated without the COVID -19 vaccine becoming a general mandatory vaccination.

According to the Labour Code, the employer is responsible for meeting the requirements for safety at work and is therefore obligated to minimize the risk of an employee becoming ill. Under the Safety at Work Act, the employer may also apply health prevention measures if necessary. The question arises as to whether a preventive measure applied legally could make COVID -19 vaccination mandatory for the employee.

The employer may not obligate the employee to be vaccinated without legal

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authorization. The Health Act states that the competence of a minister – and not employers – is required to make a particular vaccination mandatory as a condition of employment in certain jobs. This legal hierarchy and logic did not change at the time of the epidemic: an employer cannot legally prescribe COVID -19 vaccination for employees.

In general, an employer can decide that they also want to protect their employees with a vaccine and provide them with the vaccination at their own expense. However, even in this case they cannot make vaccination mandatory. An employee who does not want an optional vaccination may refuse it and will not suffer any disadvantage in connection with their employment.

As our article well shows, the dilemma is extraordinary, and it will not be easy to find appropriate answers to the social and legal questions that arise in connection with vaccination.

Source:

Act I of 2012 on the Labour Code

Act XCII of 1993 on Safety at Work

Act CLIV of 1997 on Health

Personal liability despite English Limited in Germany

With the end of the Brexit transition phase, the possibility of using the legal form of the British company in Germany with legal certainty ended.

In the past, British companies, such as the so-called Limited, which were founded in Great Britain but primarily operated in Germany and were administered from Germany, were recognized as a British legal form.

This was based on the case law of the European Court of Justice on freedom of establishment.

With the expiry of the Brexit transition period on 31.12.2020, this possibility no longer applies. Since 01.01.2020, the UK has been a third country, and since 01.01.2021 it is also to be treated as such. The negotiated agreements which are intended to mitigate the consequences of the Brexit in some areas, such as the trade agreement between the United Kingdom and the EU of 24 December 2020, do not contain any provisions on the question of the recognition under civil law of companies of British legal forms with their registered office in the United Kingdom and their administrative headquarters in the EU.

Therefore, there is no longer any basis under civil law for such companies, in particular the so-called Limited's ("private company limited by shares").

In this case, the prevailing opinion is that the "domicile theory" of the Federal Court of Justice (BGH) applies. According to this theory, the company statute applicable to a company is determined by the law of the country in which it has its headquarters.

However, since the legal form of the British Limited is foreign to German company law in this form, it is now subject to the regulations of the German standard legal forms, i.e. those of an OHG or GbR. And in instances where there is only one shareholder, he or she becomes a sole proprietor.

This also means that, in accordance with the German regulations, the partners are personally liable for the liabilities created by the company.



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Especially in cases where up to now a legal prosecution or enforcement of claims has not been feasible due to the lack of company assets, there might now be new possibilities to access the assets of the natural persons behind the company.

Both shareholders of Litmed and creditors of such a company should now react to the new legal situation.

Source: BMF Information per 30.12.2020

New year – important new changes in consumer protection and labour law.

Some entrepreneurs are protected by consumer protection, the minimum wage is rising, and specific task contracts must be notified.

Entrepreneurs will be partly covered by consumer protection - with the new year, natural persons conducting business will in some cases be treated in the same way as consumers.

The amendment to the Civil Code and the Act on Consumer Rights assumes that consumer protection covers every natural person conducting business activity who concludes, as a buyer, a sales contract directly related to their business activity - but on condition that the contract does not apply directly to the branch of the entrepreneur according to the classification code of business activities disclosed in Central Registration and Information on Business.

Consumer protection granted to such a person applies to:

- a. abusive clauses (i.e. prohibited contractual provisions)
- b. warranty for defects
- c. the right to withdraw from a distance or off-premises contract.

For sellers, the amendment means, above all, they must include a third type of entity (in addition to consumers and traders, who are not affected by the amendment) in their day-to-day activities, with all the associated legal consequences, such as the need to take account of their returns and complaints. From a practical point of view, sellers should consider changes to their contract templates, general terms and conditions or regulations of online shops.

Increase in the minimum wage - the minimum working wage in Poland is PLN 2 800 gross. The total monthly cost to the employer of someone on the minimum wage is currently ca. PLN 3 370 (i.e. 740 EUR).

Obligation to report specific task contracts to ZUS - all payers of contributions and natural persons who commission a specific task must inform ZUS about



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concluding each contract for a specific task. Exceptions are situations when:

- a. a specific task contract is concluded with their own employee
- b. a specific task contract is concluded with an entity other than the employer, but is performed on behalf of that employer
- c. a specific task contract is concluded with persons conducting business activity by way of performing services that fall within the scope of their activity.

The deadline for submission is 7 days. The obligation applies to contracts concluded after 01.01.2021, so there is no obligation to notify agreements concluded before that date. The obligation to provide information does not mean that a specific task contract will be subject to contributions to ZUS.

Source:

Act on amending certain acts in order to reduce the regulatory burden (Journal of Laws of 2019, item 1495); Regulation on the minimum wage and minimum hourly rate in 2021 (Journal of Laws of 2020, item 1596); Act on the social security system (Journal of Laws of 2020, item 266)

New opportunities for investments in large-scale projects in Lithuania

A new package of measures for promoting large-scale investment projects has entered into force in Lithuania

On the 1st of January 2021 legislative amendments entered into effect in Lithuania, creating more favourable conditions for local and foreign capital investments in large-scale projects in manufacturing, data processing and data hosting services.

The package of measures, also known as the 'Green Corridor' includes amendments to the Laws on Investment, the Legal Status of Aliens, Territorial Planning, Employment, and Corporate Income Tax. These amendments mean that a project will be considered as a large-scale investment project, when:

- at least 20 million euro of capital expenditure (or 30 million euro when investing in Vilnius) is invested; and
- at least 150 new full-time jobs (or 200 when investing in Vilnius) will be created and maintained for at least 5 years.

These indicators must be achieved by the investor within five years from the date of entry into force of a project investment agreement concluded with the Lithuanian Government.

The 'Green Corridor' guarantees investors in large-scale projects:

- tax incentives: exemption of investors in large-scale projects from corporate income tax for up to 20 years, starting from the tax period when the fixed amount of investment and the average number of employees were reached;
- easier recruitment of workers from third countries by exempting them from the obligation to obtain a work permit. They are also not subject to qualification requirements for employment or work experience, and can start work from the day they apply for their Temporary Residence Permit;
- quicker and easier land planning, environmental impact assessment and lease of state-owned land: conditions are created for leasing state land without having to go through an auction, the obligation to prepare detailed



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plans for large-scale projects is waived, the procedure for setting servitudes is simplified.

After concluding an investment agreement on a large-scale investment project with the Lithuanian Government, it will also be granted the status of a project of national significance, which must guarantee faster and smoother decision-making: public administration (apart from some exceptions, e.g., related to national security public disclosure), will have to provide the necessary administrative services within 3 working days and decisions concerning the project will be taken in order of priority.

The 'Green Corridor' package of measures is expected to stimulate investment in innovation and creation of high value-added jobs and will act as a catalyst for quicker transformation of Lithuanian industry.

Digital nomads will find their legal basis in Slovakia

Slovakia modernises 'home office' rules under Employment Law. Digital nomads, or the choice of any place of work in employment contract by employees, will become a reality.

The amendment to the Labor Code, which is already before the Slovak Parliament, will significantly modernise the legal institution of 'home office'. Due to new modern trends, where the permanent presence of employees at the workplace is increasingly dispensed with, the conditions for home office work will be redefined. A home office will no longer be seen as just working from home, but rather employees will have a way to determine their own working hours and actual work location. Digital nomads who move around the world (without having a home) and working from anywhere will finally find their legal basis. In addition, the employer will have to share the costs of employees associated with a home office, such as BYOD costs, electricity costs, high-speed internet, and so on.

Furthermore, the amendment to the Labor Code will also simplify the unpaid temporary employment of employees between group companies. Finally, the law will include the explicit possibility of mutual allocation of personnel costs actually spent.

As a novelty, the amendment to the Labor Code will abolish a Slovak specificity, the so-called meal vouchers. Employees may be given the option of choosing a financial meal allowance instead of meal vouchers.

Employers will no doubt also welcome an important change in collective labour law. The head of the trade union active in a company or persons active in a local trade union body will in future have to be employed by this specific company. This will eliminate such (absurd) situations in which employees are represented by persons who do not work for the employer at all and are therefore fundamentally unfamiliar with local working conditions at the employer.



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Belarus temporarily cancels some benefits under HTP and “Great Stone” Industrial Park regimes

The income tax rate is increased for employees of company residents of the High Technologies Park and “Great Stone” Industrial Park

From 1 January 2021 the rate of income tax on income under employment contracts with residents of the High Technologies Park and residents of the Chinese-Belarusian "Great Stone" Industrial Park is 13% (previously – 9%).

This measure was adopted in order to consolidate budget revenues for battling the COVID-19 pandemic.

The new tax rate will be applied through to 1 January 2023.

Source:

National legal internet portal of the Republic of Belarus (NLIP) 01.01.2021, 2/2792



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Substantial amendments to Romanian fiscal law

Changes introduced by two organic laws amending the Fiscal Code and the Code of Fiscal Procedure

Both the Fiscal Code and the Code of Fiscal Procedure have been substantially amended on the entry into force of two organic laws. Most of these amendments take effect from 1 January 2021. Examples of the new regulations are listed below:

- The deadline for individuals to submit their declaration on income tax and social contributions is now May 25. Before the amendment, the deadline was March 15.
- Employers will no longer be liable for income tax and social contributions on money granted to employees working from home and the cost of epidemiological testing and vaccination of employees. These have been classified as non-taxable income.
- A fiscal consolidation measure has been implemented in the field of profit tax. From a fiscal standpoint, companies can now group in order to compensate profit with loss, with tax payable only on the resulting margin.
- The conditions for deducting loss from uncollected claims have been improved. This concerns adjustment for loss in the value of claims which have become entirely deductible. Before the amendment a threshold of 30% had to be exceeded for them to be deducted.
- Gift vouchers from companies to beneficiaries other than employees have been classified as income from other sources. For these, only the 10% profit tax will be paid, without any other social contributions.



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- Tax exemption of reinvested profit becomes incompatible with deduction from profit tax of the value of the electronic journal cash register. The new regulation expressly prohibits cumulation of these two fiscal benefits.
- New grounds for nullity of acts of tax control authorities have been introduced. For example, failure to take into account court decisions in situations similar to that of a sanctioned taxpayer and failure to comply with instructions of the tax authority that resolved the

Complaint during repetition of tax control will be sanctioned.

For the most part, the amendments are favourable to taxpayers and aim to ease the rigidity of national fiscal legal provisions.

Source:

Law 227/2015 – Fiscal Code;

Law 207/2015 – Fiscal Procedure Code

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