KOVÁCS RÉTI SZEGHEŐ
ATTORNEYS AT LAW

Labour Law Newsletter
July 2017

Be careful when keeping of records and granting vacation time

The summer is the main period of vacations. It is not often easy to make out among the rules of working time and rest period. In the followings, we wish to assist you in avoiding penalties.

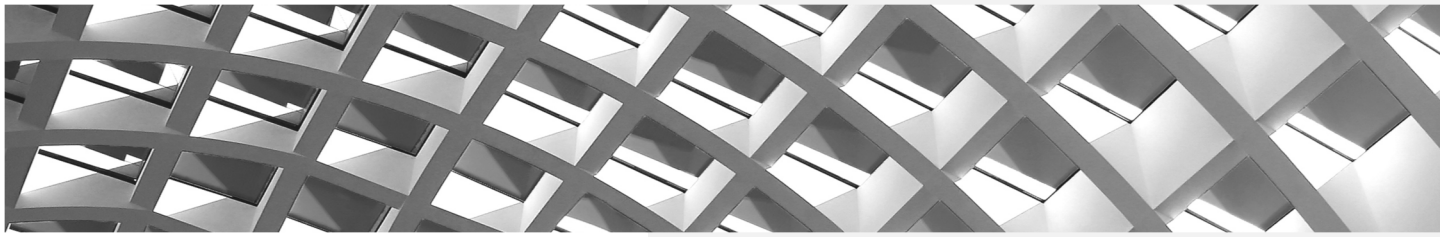
Unless otherwise agreed, vacation time must be granted that the employee is exempt from the obligation to work and to be available for work for at least **fourteen continuous vacation days** once a year. In this respect, in addition to the day, which was granted as vacation time, the weekly rest day (weekly rest period), the holidays and the day-offs under the uneven arrangement of working time can be taken into consideration. The labour inspection will also verify compliance with this rule. If the vacation time cannot be granted in this form or the employee does not wish to take this opportunity, it is essential to agree in writing in the current year.

In case of exceptionally important economic interest or reason, which directly or seriously affects his operation, **the employer is entitled to modify the date notified when the vacation time was granted or he is entitled to interrupt the vacation of the employee**, which has already begun. It is important to know that the employer is required to pay the damages and the costs of the employee incurred in connection with the modification of the date on which the vacation was granted or the interruption of the vacation. Vacation does not include the travel time from the place of stay to the workplace and the time of the return travel, as well as the time spent at work. In this case, the time spent at work is necessarily deemed as extraordinary work (Section 107 of the Labour Code).

Vacation time can be granted for workdays without exception. Thus, it cannot occur that the employee is on vacation in one part of a day and he works in the other part of the day. At the same time, in case of uneven arrangement of working time, vacation time **can be recorded in two different ways**. The employer can decide to keep records of the vacation in working days and in such case, seven days a week count as working days except for the weekly rest period and holidays. The other possibility is that the employer can convert the vacation time into daily working hours and the hours of work under the current work schedule must be deducted from these hours. It is necessary to know in connection with the possibilities of keeping record of vacation time that it cannot be changed during the year.

Contact
Kovács Réti Szegheő Attorneys at Law
1121 Budapest, Zugligeti str. 41
Phone: +36 (1) 275 - 2785
Fax: +36 (1) 275 - 2784
http://www.krs.hu

KOVÁCS RÉTI SZEGHEŐ
ATTORNEYS AT LAW



Possibilities for cost saving in seasonal employment

There are numerous possibilities, which are worth knowing as they have potential for significant cost saving. These are presented in the followings:

The summer is the main period of the **simplified and temporary employment**. This form of atypical employment has two types: the agricultural and tourist seasonal work and the temporary employment. While the advantage of the seasonal work is the possibility for the relatively long- and fixed term employment, the advantage of the temporary employment is the neutrality of sectors. It is relevant for both cases that the minimum wage and the guaranteed minimum wage are 85 % and 87% of the general minimum remuneration, namely it does not have to reach the rate of the minimum remuneration.

Student employment can also have potential for cost saving. It is possible in employment relationship (even within the framework of the simplified employment) or in student employment services. In case of the employment by student employment service, the minimum wage also must be paid and the special rules on employment and rest period regarding persons under the age of 18 specified by the Labour Code must also be complied with; however other labour law requirements are poorly implemented. As the Act on Cooperatives rather than the Labour Code is applicable to the legal relationship of the Parties.

The managing director can also use name stamp instead of the signature, and can remedy his incorrect statement without time limit

Act I of 2017 on the Labour Code has facilitated the life of business associations in several fields. One scope of these facilities involves to make legal statements. However, simpler rules also give rise to problems of interpretation. Decision No. EBH2017. M.8. of the Curia provides greater clarity in this issue.

As a general rule, in the labour law, the legal statements can be made without formalities. It means that the employer can also even orally take valid measures at his discretion. Such legal statement, for example, is the order of extraordinary work and the law does not require that such statement should be validly made in writing. However, the written form is already necessary for the validity of the termination. However, the court does not strictly interpret this requirement either. In its decision No. EBH2018.M8., the Curia explains that it suffices to use a simple form of instrument in the employment relationship and only to put down in writing the essential content of the agreement. If the person exercising employer's right or other person with his consent demonstrably made the legal statement, the legal statement must be considered as relevant from legal point of view. Thus, the usage of the name stamp is also relevant if the employer has not even signed the termination.

Contact
Kovács Réti Szegheő Attorneys at Law
1121 Budapest, Zugligeti str. 41
Phone: +36 (1) 275 - 2785
Fax: +36 (1) 275 - 2784
http://www.krs.hu

KOVÁCS RÉTI SZEGHEŐ
ATTORNEYS AT LAW

Thus, the legal statement can be made in various forms. Moreover, this freedom also applies to the person, who makes the legal statement. For example, it also creates the possibility for that the suitable person exercising employer's right subsequently approves the legal statement if it was made by a person, who is not entitled to do so. Thus, the mistakes previously made can be remedied later. It is also necessary to emphasise that at the time of the remedy the mistake can be remedied by the person exercising employer's right rather than the person who made the mistake.

KRS Attorneys-at-Law has also taken part in the edition of the special issue of HVG Labour Law 2017

HVG also publishes several professional special issues in addition to its economic issue published on a weekly basis. The special issue on labour law is one of these products, which gets to the newsagent's shops every spring. As last year, we also took part in the editing of the professional content this year.

The special issue basically follows the structure of the Labour Code and presents the applicable set of rules and the jurisprudence established in connection with the relevant chapters and it also includes simplified model contracts. It presents the regulation to the readers in the form of questions and answers regarding the chapters, which also raise questions about the interpretation of the law.

The Labour Department of our Law Firm is involved in the professional work on three fields this year. On the one hand, the specialised materials titled 'compulsory minimum wages and the new obligations in the field of occupational safety and health' are promoted by our Law Firm but it was also the work of the department that provided for the substantial part of the questions asked and the answers.

Furthermore, the occupational safety and health is a completely new field, which has not been previously dealt with and it has become the part of the special issue especially on the proposal of the labour law department. The reasons for the proposal were the ongoing essential changes and the increasing importance of the field.

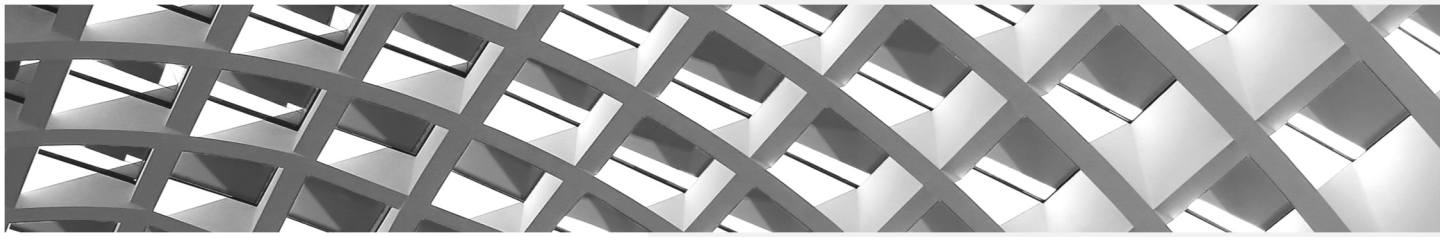
We assist our clients within the framework of data protection compliance and legal counselling services to adapt to the changing environment of data protection

The field of data protection has undergone many changes. Not only the practice of the Hungarian National Authority for Data Protection and Freedom of Information will be changed but the date of the entry into force of an EU regulation is also approaching.

The rate of the fine to be imposed by the latter will be soon adjusted to the global profit of the business association. It is worth starting to prepare for it in time. First of all, the issue of data protection covers the fields of occupational safety and

Contact
Kovács Réti Szegheő Attorneys at Law
1121 Budapest, Zugligeti str. 41
Phone: +36 (1) 275 - 2785
Fax: +36 (1) 275 - 2784
http://www.krs.hu

KOVÁCS RÉTI SZEGHEŐ
ATTORNEYS AT LAW



health (email, usage of internet, location, telephone, cameras etc.) the whistleblowing, the management of the client's data as well as the direct marketing. Self-standing, complex set of rules are applied to each field.

As the application of legal basis, the practice of the Hungarian National Authority for Data Protection and Freedom of Information regarding the workplace inspections and the contribution based on the proposal of the data protection working group of the EU should be avoided. Instead, the legitimate interest of the employer is the appropriate legal basis for data management of the employers. At the same time, the adequate information should be provided prior to the data management and the so-called interest balancing test must be essentially applied.

In respect of the management of the clients' data and the direct marketing, there is also a reason for the consent of the data subject as opposed to the workplace inspection, thus the data management have an opt-in nature as a general rule. However, several factors must be considered when determining the legal basis therefore it matters that it is about the data of a client, who has already been in connection with the business association or only about a potential client, who we wish to address. The law with its slightly complex set of rules provides solutions for each situation. The existing customers can be contacted with opt-out information, and the potential clients can be contacted with opt-in information. However, at the time of the request, it matters that the request occurs by post, by email, by automated or private phone call.

The policies, which are the unilateral legal statements of the employer, are of high importance within the scope of both the workplace inspections and the data of the clients or the direct marketing. Therein, the employer needs to give the necessary, detailed, preliminary information, on which the lawful consent can be based. Furthermore, this information is also necessary to be given if the legal basis is authorised by the law (see: whistleblowing).

Finally, it is vital for business associations to review their policies also for the purposes of ensuring compliance with the general data protection regulation (GDPR) entering into force on 25 May 2018. Although the rules currently in force are still applicable until the entry into force of the regulation, it is worth preparing for its entry into force in advance.

Our Law Firm provides professional assistance both in making policies and in connection with data protection compliance and the provision of legal counselling.

Contact

Kovács Réti Szegheő Attorneys at Law
1121 Budapest, Zugligeti str. 41
Phone: +36 (1) 275 - 2785
Fax: +36 (1) 275 - 2784
http://www.krs.hu

KOVÁCS RÉTI SZEGHEŐ
ATTORNEYS AT LAW

The 106th conference of the International Labour Organisation with the participation of 4000 delegates will be held between 5-16 June 2017, our Law Firm will also be represented on its debate on establishing standards

The International Labour Organisation (ILO) is the first specialised body of the UN, which has the international legislative power in the field of employment. Its parliament is the annual conference, at which the Member States of the UN, both the employers and employees participate in tripartite way. Our Law Firm will participate in the work of the committee dealing with the review of the proposal No.71 on the employment. The second reading will take place in 2017.

If you have any question, please feel free to contact us:

Kovács Réti Szegheő Attorneys at Law
Dr. Ádám Kéri, Head of Labour Law Department
keri.adam@krs.hu

Contact
Kovács Réti Szegheő Attorneys at Law
1121 Budapest, Zugligeti str. 41
Phone: +36 (1) 275 - 2785
Fax: +36 (1) 275 - 2784
http://www.krs.hu