

# Labour Law Newsletter

## February 2017



### **dr. Attila István Simon, Deputy Secretary of State for the Labour Market has given an interview to our Law Firm**

As last year, we asked the Deputy Head of the Ministry about governmental conceptions and actualities that have been recently implemented and planned in the field of employment. The version of the complete interview is expected to be published in the near future. Let us see the main issues:

The government evaluates last year to be successful, as employment has further increased, which currently exceeds 4,400,000. Not only the number of employees increased but real wages also continue to grow in the economy. However, while last year wages primarily increased due to labour shortage, this year, the government also significantly contributes to the increase in the wages, as both the minimum wage and the guaranteed minimum wage were increased by double-digit. It will in all likelihood shift the complete domestic wage scale upwards, or otherwise it would lead to wage pressures.

He acknowledged that SMEs will be more severely affected by the increase in the minimum wage. However, considering that the government also decreased tax burdens incurred on employment contemporaneously with the increase of minimum wages, according to the Ministry this way every employer will be able to cover the wage increase. If SME's still have difficulties in generating the increased amount of minimum wage, it could not be excluded that the State will provide support for the payment of minimum wages.

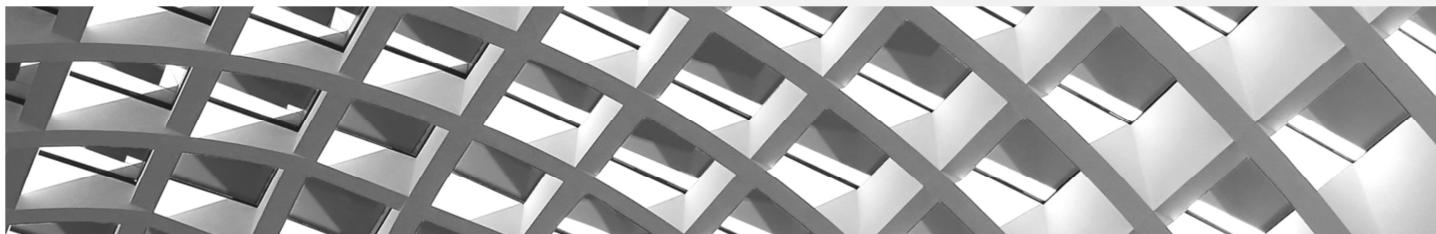
The government hopes that more favourable income conditions will also mitigate labour shortage, which however does not currently hinder economic development. In addition to the minimum wage increase, it was also the aim of the government's measure when the government already facilitated the conditions of employers from third countries to a significant extent last year. They are first of all highly needed in the processing industry.

In the field of labour inspections, in addition to those contained in the inspection plan, compliance with the rules for minimum wages will also get an essential role. Labour inspection will play a more significant role in the emerging economy. In this context, the Deputy Secretary of State pointed out to significant legislative changes, while our Law Firm to the

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tightening legal practice of the Curia as well. Our Law Firm continues to report on the actualities of labour and labour safety inspections in our newsletter and in analyses and provides compliance services to its clients, in the framework of which it investigates the compliance with the legislation.

Finally, the government expects a decrease in the role of public employment and it supports the integration of public employees to the labour market by all means. Finally, the government expects a decrease in the role of public employment and it supports the integration of public employees to the labour market by all means.

### **KRS received a position paper from the Ministry for National Economy regarding guaranteed minimum wage**

**Government Decree No. 430/2016 (XII.15.) on establishing minimum wage introduced a significant minimum wage increase as from 2017. However, it cannot be clearly determined in many cases as to who is exactly entitled to receive minimum wage. The position paper that our Law Firm asked for and received from the Ministry provides greater clarity in this issue.**

The government decree provides that employees employed in employment requiring at least secondary education or intermediate skills are entitled to receive guaranteed minimum wage as minimum wage. Firstly, it must be examined in all

cases whether it is that particular type of employment. The qualification requirement, if it actually exists, must be identified on the basis of its level. The National Qualifications Register (Government Decree No. 150/2012 (VII.6.): National Qualifications Register), Act CLXXXVII of 2011 on Vocational Education and Training, as well as Act CXC of 2011 on National Public Education but most of all the National Qualification Register are relied upon in identifying the level. If the level is classified as intermediate, it must be examined whether the employee has that specific and required qualification. Employees need to have intermediate qualifications for a specific job rather than in general.

The National Qualification Register precisely defines as to which vocational qualification (sub-speciality) corresponds to which level. According to the explanation of the National Qualification Register, level 34 (and above) is qualified as intermediate-level vocational training, which is based on primary school education or competences for admission specified in professional and examination requirements, and can be typically acquired in school-based vocational education. The Supervision integrated into the Ministry for National Economy at the same time takes the view that level 31 also entitles to guaranteed minimum wage (please see: security guard: level 32).

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The judicial practice laid down as a principle that if certain elements of the employment of the employee requires intermediate qualification, while other elements requires lower qualification, the employee is also entitled to receive guaranteed minimum wage.

### **The rules for the reimbursement of travel expenses have been changed**

**The employer is required to reimburse the employees for their expenses reasonably incurred by the performance of employment. One of its form is travel reimbursement, which is regulated by a Government Decree. Nevertheless, on 13 January, the legislator restored the original text of the rules as they were before being amended which entered into force on 1 January 2017.**

Government Decree No. 39/2010. (II.26.) on work travel expenses set this rate in the amount of HUF 9 per kilometre a long time ago, which the employer must pay to the employee as travel reimbursement. The rate of this reimbursement of expenses was increased by HUF 15 per kilometre as from 1 January 2017 according to the expectations but it did not take long. As a government decree restored the original rate of travel reimbursement to HUF 9 on 13 January 2017.

However, simultaneously with the amendment, the legislator allowed employers to further increase the margin of HUF 6 per kilometre within their discretionary power. Furthermore, the

reimbursement paid by employers up to HUF 15 per kilometre does not qualify as taxable income, although above HUF 15 per kilometre it qualifies as income from non-independent activity. However, HUF 15 per kilometre remains eligible without certificates for business, official trip.

### **More stringent conditions apply to temporary agency work. In case of default, deletion can be expected!**

Temporary employment relationship is an atypical form of employment, in the framework of which a significant number of employees are employed. Therefore, from many points of view, the new Labour Code grants more favourable treatment to atypical employers considered as strategic partners from the middle of 2012 (please see: entitlement to severance pay). The current amendment at the same time requires higher financial security.

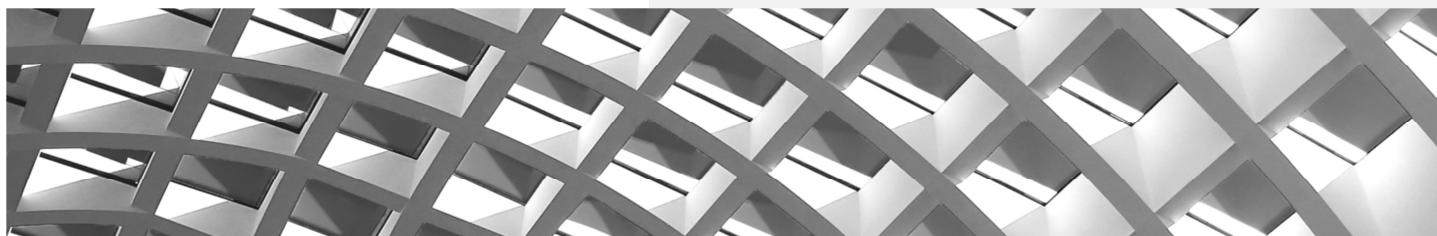
The government agency competent according to the registered seat of the leasing firm authorises the pursuit of manpower leasing activity, if

- a) it is registered in the Company Registry or in the required registry – if the conditions for operation is to be registered in court or official registry, and its deed of foundation includes the pursuit of temporary agency work.

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- b) the applicant or at least one person employed by it for at least twenty working hours a week – has the qualification or vocational qualification, practice specified in Annex No. 1,
- c) it has an appropriate office to pursue the activity, furthermore
- d) it verifies to have lodged the financial security stipulated by the decree.

At the same time, the amount of the deposit will be increased from HUF 2,000,000 to HUF 5,000,000. The manpower leasing companies already in operation must pay this surplus amount to the escrow account separated for this purpose till 28 February 2017, and provide relevant certificate to the government agency of registration. The government agency will delete the temporary employment agency failing to certify the payment from the registry.

**The Curia held that employers have a large discretion in case of termination based on loss of confidence**

The judicial practice is consistent in the question that lawful termination can be established on loss of confidence provided that the employer subsequently terminates the employment relationship within reasonable period of time. The Curia also established that trustworthy behaviour is also a basic requirement in the absence of detailed regulations.

In the specific case, the reason was to terminate the employment relationship that the employee did not leave the articles for personal use left by the customer at the place of administration but he took it home without notifying his colleagues or his superior. The employee appealed against the termination of employment stating that there had been neither internal regulations for handling lost properties nor criminal proceedings were initiated. The Curia emphasised that the employee's behaviour does not meet the requirements of reasonable diligence in the absence of requirements set out in the regulations. Moreover, the employee is required to behave in a way that complies with the confidence expected in the job, which, if violated, requires no criminal proceedings to be brought. The article on the decision of the Curia of Attila Penz is available on the website of our Law Firm.

- <http://www.krs.hu/tudastar/bizalomvesztes-mint-azonnali-hatalyu-felmondasi-ok>

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## The Labour Law Department of KRS Attorneys-at-Law attends the annual conference of Piac & Profit and the Budapest Chamber of Commerce and Industry as presenter: the Workforce-2017 Conference

The National Conference of Employers, which the managing directors of nearly 200 SMEs is expected to attend by the organisers, focuses on the problems arising from wage growth and labour shortage, as well as on the answers to be given. The head of our Labour Law Department has already made an in-depth analysis of the issue on the website of Piac & Profit. Now, those interested may also listen to him personally and put questions to him. The professional publication, which deals with the issue of multiple legal relations, is available at this link:

- <http://www.hrportal.hu/hr/hogyan-lehet-attolni-a-szabadsagot-a-jovo-evre-20161114.html>

The program of the event and the application form are available at the following link:

- <http://www.piacesprofit.hu/konferenciakozpont/munkaero-2017/>

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