

## **Typical HR mistakes in practice**

In the followings, we seek to introduce widespread bad practices in the field of employment law, which may present a risk for undertakings due to their lawful nature. Employment law has plenty of such fields. Its primary reason is that this area of law seems to be very simple at the first sight, thus in many cases no suspicion arises at the time of their choice. Our short analysis seeks to assist in this situation:

### **When “the salary includes all wage supplements”**

Act I of 2012 on the Labour Code includes several revolutionary solutions for employers. Some of them touches upon the working time and rest period, others the remuneration for work. The latter group includes the possibility of wage supplement in form of a fixed monthly payment. Several HR professionals believe that it means that the parties may agree on the basic salary, which also includes the wage supplements possibly arising. However, it is worth noting that such agreement is not effective thus no legal effect attaches to it. There are two possibilities of derogation in connection with the rules regarding wage supplements. The first possibility is that specific wage supplements can simply be merged into basic salary. However, it is possible in case of Sunday premium, holiday premium pay, premium for night work and shift premium only. In addition, merging wage supplement into basic salary is exclusively possible if the contract of employment provides for individually listing the wage supplements. The parties can stipulate a flat-rate amount regarding one or more wage supplement(s) – also in the contract of employment. The flat rate of supplement is always paid with the basic salary on a monthly basis regardless of the fact that whether the conditions of certain wage supplements have been met in the month. It is also important to highlight that this average amount is part of absentee pay thus it must be also taken into account regarding the payment for vacation days, the benefit for the notice period or the severance pay. It is worth noting that there is no need to take into account an actual average during merging wage supplement into basic salary if possible, while in case of flat rate (fixed amount) shall be done this way. Thus, the flat rate is to simplify accounting rather than a possibility to save money.



**“The Parties agree that the job shall be deemed stand-by”**

The motivation of the employment with stand-by nature has a twofold nature. On the one hand, it is mainly applied regarding employees, who spend significantly longer hours with performing work as the daily or weekly hours of work specified in the law. It is applied to a smaller extent if the employer considers the work less demanding.

However, the stand-by employment does not offer an appropriate solution for these underlying problems. The job may only be deemed stand-by under the Labour Code if due to the nature of the job, no work is performed during at least one-third of the employee’s regular working time based on a longer period, during which - however - the employee is at the employer’s disposal. In this instance, the nature of the work rather than the agreement of the parties matters. It can be applied, if conditions are met, to the doormen or security guard position. However, conditions shall be looked into regarding each and every instance relying on the job duties, the job description and the practice (Mfv.10.593/2014/4). For example, in the case of a night doorman, conditions are highly likely met, but not for the job in a drugstore in a mall. The latter case namely requires to inspect the customers on a continuing basis. Stand-by job rules may be applied also if in light of the characteristics of the job and of the working conditions, the work performed is significantly less strenuous and less demanding than commonly required for a regular job. During its assessment, the physical and mental effort of the employee, and the findings of the employment risk assessment must be taken into account. If the job lawfully has a stand-by nature, the daily hours of work may also be 12 hours, which shall be set forth in the contract of employment. The parties may also agree in writing that -on the basis of the arrangement - the daily hours of work can even be 24 hours, the weekly hours of work 72 hours, too. At the same time, if the parties unlawfully apply the rules of the stand-by employment or they apply longer daily working hours without any separate agreements, the employer is obliged to pay wage supplement for excess work performed in the scope of stand-by employment. In addition, the employee may have the right to terminate the employment contract with immediate effect, moreover s/he can also institute a court or administrative proceedings due to violation of the H&S requirements. Consequently, it is worth reviewing the lawful solutions.