

The Constitutional Court Amended the Labor Code

In its Decision No. 1/2025 (II.27.), the Constitutional Court remedied an unjust situation that had persisted for years by amending the provisions of the Labor Code related to the payment of absence fees.

A fundamental element of the employment relationship is the employer's obligation to provide work, which must be fulfilled in a way that the employee is only assigned tasks that do not have adverse consequences for their health. Correspondingly, the employee is required to be available for work. This obligation is waived in cases of incapacity for work or if the employee is otherwise medically unfit to perform their job. However, under the Labor Code provisions effective since January 2023, no absence fee was due to the employee during such periods.

In practice, this meant that if a medical examination found an employee medically unfit to perform their job, a stalemate occurred: the employer was not obliged to provide work and was not required to pay either wages or absence fees, nor to terminate the employment relationship. As a result, the employment technically continued, but the employee received no compensation—from the employer or the state—and could only terminate the relationship themselves, forfeiting their entitlement to severance pay. The situation was further worsened by the suspension of the employee's insurance status during the period of unfitness, which could last indefinitely or even permanently.

This situation was addressed by the first individual constitutional review decision of the Constitutional Court in 2025.

The specific case that led to the decision involved an employee responsible for cleaning airplanes. The employee developed a herniated disc and was medically declared unfit to continue working in the position, as it required prolonged physically constrained postures. The employer did not assign any work, did not terminate the employment, and did not provide any financial compensation. The employee requested payment for the period of availability and severance payment. The court handling the case submitted the matter to the Constitutional Court to review the relevant legal provisions on constitutional grounds.

The Constitutional Court found that the provision in the Labor Code exempting the employer from paying absence fees was discriminatory. It noted that "incapacity for work" and "medical unfitness" represent fundamentally different groups:

- Incapacity for work is typically temporary, while medical unfitness is often long-term or permanent;
- Incapacitated workers receive sick pay, while medically unfit workers receive no benefits—neither from the employer nor the state;
- The health insurance status of incapacitated workers remains intact, while that of medically unfit workers is suspended, and they become eligible for social security benefits only once the employment relationship ends.

Despite these substantial differences, the law treated both groups identically, amounting to unlawful discrimination. Additionally, the law placed the burden of the negative consequences arising from the changed life circumstances solely on the weaker party - the employee - without a reasonable justification, which is inconsistent with the state's goal of ensuring social security.

The Constitutional Court thus annulled the second clause of Section 146(2) of the Labor Code („*or otherwise medically unfit to perform their job*”), meaning that in the future, employers must pay absence fees to employees who are medically unfit to work. In practice, this is expected to encourage employers to terminate such employment relationships—triggering severance pay obligations—rather than maintaining them under continuous payment obligations.

The decision (and the amended Labor Code provision) takes effect as of February 28, 2025, and shall be applied to ongoing cases as well.