

We bring you the first issue of **SOÓS HR News** – a regular and free update **in the field of employment and human resources** from the new Soós Law Firm. We will issue HR News in more or less monthly intervals, always focusing on current issues in the field of both Hungarian and European employment law. We trust that the information in HR News will be useful for you.

In our May news we inform about the **introduction of the Fair Trials Act**, which regulates whistleblowing in Hungary from 1 May 2010. Due to this Act, employers need to introduce policies and inform all employees. Furthermore, we inform about **new rules on the support of new-mothers and pregnant women** and their consequences. As for case law, we inform about the development of **time limits to file claims for unlawful dismissal** by employees.

NEW FAIR TRIALS ACT

After a long-lasting dispute the Hungarian Parliament passed an Act on Fair Trials. The main purpose of the Act is to **stop or at least reduce corruption** and to provide incentive to all citizens who provide information to the state authorities (for example in anti-trust cases the individual who provides information to the competition authority may receive an extremely high amount from the state). *Act No CLXIII of 2009* adopts the recommendations of international organizations and among others **regulates also “whistleblowing” at work place.**

Concept of whistleblowing

Most people may recall high-profile cases reported in the media. In the days of the 2009-crisis there have been numerous examples of whistleblowing. Whistleblowing means when an employee provides certain types of information about the other employees to the employer. The Hungarian data protection commissioner has expressed his view on whistleblowing several times and highlighted that all employees must be aware and informed about the mechanism and procedure of whistleblowing.

Important notes

Both employers and employees may profit from a well-working whistleblowing process. A fair and clear procedure for raising sensitive or illegal issues mitigates the risks for the employers and provides an opportunity to stop an unfair procedure in time. Further it is important for employees to learn that there are no adverse affects for sharing information with the employer.

Although the whistleblower is usually not directly affected by the danger or illegality, he/she may be sanctioned by the other employees or by the employee organizations. Therefore, the protection of whistleblowers is highly recommended. A solution could be that employees who make a ‘protected disclosure’ are protected from being treated unfairly or even being dismissed.

Moreover, the chain of information received through whistleblowing raises serious data protection concerns. Managers may need training to ensure that matters brought to their attention are resolved in line with the policy and in a way which will cause least damage to the organization. Policies need to have full support of directors and senior managers and be communicated to all employees.

Content of a Whistleblowing Policy

The Data Protection Commissioner has published his view in 2007 (652/K/2007). The new Act incorporated his suggestions. Employers should regulate the procedure and make clear to all employees how to

report the suspected issues. The policies may at least contain the following:

- every employee must be aware of the existence and operation of the whistle-blowing procedure and in particular of the possible legal consequences, in particular the kinds of actions which may raise concerns or which may be unacceptable to the employer;
- to set up a procedure and information-line and to point out relevant line managers or single responsible persons. The scheme must be in line with WP 117 of the Working Group 29;
- in order to protect whistleblowers the employers should provide possibility for asking confidentiality;
- no penalties for the whistleblowers and on the other hand the employees may not be required to use

Registration of the Whistleblowing Policies

Based on a statement of the data protection commissioner, in most cases there is no need for special registration.

If however an **external service provider is involved**, that qualifies as data processor and its services may be engaged by the employer and notified to the data protection office.

the whistle-blowing hotline scheme, i.e. they may not be ordered by the employer to make reports.

NEW RULES FOR MOTHERS

An amendment to the Act on Financial Supports to Families entered into force on May 1, 2010, affecting thousands of families. However, the changes affect those families “only” whose child will be born after May 1, 2010. Those families whose child has been born (or TGYÁS was requested) before April 30 are subject to the previous legislation. This is based on the decision of the Constitutional Court.

Comparison with previous regulation

Before April 30, in order to receive TGYÁS the necessary minimum length of being an employee registered for social security was 180 calendar days. The total length of such period covered by social security insurance was calculated within the period of 2 years before the date of giving birth to a child. While the basic period of 2 years has not been changed, the necessary minimum period has been doubled and increased to 365 calendar days.

The same increase of the necessary minimum period of being covered by social security insurance has been implemented with regard to GYED: the previous 180 calendar days was increased to 365 calendar days. The conditions and length of entitlement to receive TGYÁS, GYED and GYES have been changed

significantly as of May 1. TGYÁS is a financial support to parents for 24 weeks after the birth of a child,

however, in some cases it may be even requested a short period prior to the birth of a child; while GYED is a long-term payment after TGYÁS expires, until the age of 2 of the child. GYES is rather a payment supplement based on its really low sum.

Consequences for mothers

This change means that fewer mothers may be entitled to receive a financial support from the Hungarian state while they are on an unpaid leave and may not work and earn salary; and therefore more mothers will be forced to go back to work as soon as possible. Even if someone is entitled to GYED, receiving GYED excludes the possibility of working and earning salary, therefore, she must choose between (i) unpaid leave and GYED and (ii) salary and leave the baby with the grandmother or baby-sitter. If GYED is excluded because its pre-conditions are not met, the only option for mothers are to go back to work, unless the family can afford to live-on the salary of the father as the only income of the family.

Another relevant change in the act is to decrease the period of being able to receive GYES from the age of 3 of the child to the age of 2. While before April 30 the mothers (fathers or even grandmothers) were entitled to receive such financial support until the 3rd birthday of the child, as of May 1 they are entitled to such support until only the 2nd birthday of the child. The rules regarding twins and permanently ill children have not been changed. In case of twins the mothers are entitled to GYES until the end of the year when the children are obligated to attend the primary school, while if a child is permanently ill the mother (father or grandmother) is entitled to GYES until his / her 10th birthday.

State allowances and options

The previous line of TGYÁS – GYED – GYES has been changed to TGYÁS – GYED / GYES (alternatively) as now both GYED and GYES may be paid only up to the age of 2 of the child. It is important to highlight that if a mother is entitled to GYED, because of its much higher sum, she would never chose GYES instead of GYED, unless she goes back to work and will receive her salary in addition to GYES. While GYED is calculated based on the average salary of the mother according to a very detailed legal regulation, and the mother may receive even 70% of the calculated average salary, although its maximum is limited to gross HUF 102,900 (approximately EUR 380), GYES is determined by legal regulation in the sum of HUF 28,500 (approximately EUR 105).

Difference between GYES and GYED

A mother may work when she receives GYES, however, she may not be entitled to GYED if she works (including owning shares in several companies), the new rules may encourage mothers to go back to work after the child reaches the age of 2. According to Hungarian practice, mothers usually stayed at home

until their children reached the age of 3 and went back to their work place only after they were not entitled to any kind of financial support from the Hungarian state.

In some cases, depending on the profession of the mother, they went back to work after the age of 2 of their children and received GYES in addition to their salary.

In order to help families to get used to the new regulations, the mothers who give births after May 1 and are not entitled to TGYÁS and GYED according to the new rules, however, they would be entitled to such supports according to the old

rules, they will receive both TGYÁS and GYED for at least one year but up to the period during which they were covered by social security insurance within the basic period of 2 years before the birth of the child.

CASE LAW

Recent court cases question the practice of labour courts accepting employee claims for unlawful dismissal long after the lapse of the legal period.

An employee may file a claim against his/her employer arguing that the dismissal was unlawful within 30 days from the receipt of the notice of the employer. In the past 30 years the courts accepted the employees' claims within 3 years provided that the employer did not inform them properly (in writing) about the deadline.

In some very recent decisions the Metropolitan Labour Court tends to overrule the previous practice and argues that every employee must be aware of the provisions of the Labour Code. For example all information is available via internet and there are many places where free of charge legal advice may be requested (including the service of the court or pro bono possibilities of the Chambers). It is not realistic that employees are not aware of the 30-day deadline in the absence of written information of the employer.

In a very recent court case when an executive employee filed a claim with the labour court after more than one and half a year from the receipt of the alleged unfair dismissal, the court of second instance refused his claim arguing it was late. The employee initiated a procedure of the Supreme Court, therefore the decision is not binding yet, however it shows that in the future Hungarian courts may cease to favour employees without due justification.

SOÓS
Law Firm

Andrássy út 126.
1062 Budapest
Hungary
Tel.: +36.20.310.2274

<http://www.sooslaw.hu/>