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NEWSLETTER LATVIA

Issue:
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SETTING ACCENTS

Topicalities in the labour law

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Content of this issue:

→ Provision of compliant work conditions for employees in summer

Summer has replaced the spring and the hot season may present additional challenges for employers to provide compliant work conditions to their employees.

People who enjoy their vacation are happy about the sun, however, those who have to perform work duties in the hot weather may have a question how hot it can be at the work place and what should be done to protect oneself against overheating. The employer should take care of the compliant micro climate in due time, bearing in mind that an employee has the right to refuse performing the work if the work conditions present a threat to the health.

Permissible temperature for working indoors

The permitted maximum and minimum indoor temperature is defined by Cabinet Regulations No.359 "Labour Protection Requirements in Workplaces". The Regulations stipulate that the employer should provide the micro climate conforming to the nature of the work and the physical load of workers (temperature, relative air humidity, air movement rate) depending on the physical load necessary for the performance of the relevant work.

The permitted maximum and minimum indoor temperature in each season is specified in Annex No. 1 to Cabinet Regulations No. 359. It should be taken into account that the permitted maximum and minimum indoor temperature is different in summer and winter.

In compliance with the Cabinet Regulations, the period where the mean outdoor temperature is +10.0°C or below is considered the cold period of the year. The period when the mean outdoor temperature is above +10.0°C is considered the warm period of the year.

Accordingly, in summer the indoor temperature from 20.0°C to 28.0 °C should be provided for all the employees whose work is not associated with physical effort or requires very little physical effort (for example, all performers of mental work, work with various control panels, work performed while seated, standing or moving, movement of light items (up to 1 kg) (category I).

The indoor temperature from 16.0°C to 27.0°C should be provided for all the employees whose work is associated with medium or large physical effort (for example, continuous lifting and movement of weights (up to 10 kg), welding, metal processing works) (category II).

The indoor temperature from 15.0°C to 26.0°C should be provided for all the employees who perform heavy work (for example, continuous lifting and movement of weights (above 10 kg)) (category III).

When the outdoor temperature approaches +30.0°C and exceeds this level in summer, the indoor air temperature stipulated by the law can only be provided by using air conditioners. According to the provisions of the Cabinet Regulations on labour protection requirements in workplaces, the employer should secure that these devices are cleaned and their efficiency is inspected on regular basis. It should be remembered that the different between the temperature inside and outside premises should not exceed 7.0°C. The higher the temperature difference is, the harder it is for the human body to adjust, which results in employees catching cold more often and an increased risk of cardiovascular diseases.

The relative air humidity should be within the range from 30 percent to 70 percent, and for employees of category I, the air movement rate in premises may be from 0,05 to 0,15 metres per second, for category II – from 0,1 to 0,4 metres per second and for category III – from 0,2 to 0,5 metres per second.

Work conditions for working outside work premises

The legislation of Latvia, unfortunately, does not stipulate an accurate temperature regime for situations when work is performed outdoors in the hot period of the year.

Still, this does not mean that the employer does not need to implement any measures for ensuring the employee well-being working outdoors during the hot period of the year.

Cabinet Regulations No. 359 „Labour Safety Requirements at Work Places" stipulate that the employer should provide that employees who perform their work duties outside work premises are protected against unfavourable weather conditions, and the employer should also provide drinking water and protection against natural optical radiation (solar radiation) for employees.

The employer should also ensure that employees have access to appropriate household and rest rooms and showers. It would be advisable to use work-wear in light colour, produced from natural materials, and it is mandatory to use head covering.

If it is possible, it is advisable to agree on performing work duties during cooler hours of the day, in particular, earlier in the morning or later in the evening, to ensure that employees can rest during the hottest hours of the day, it is also recommendable to reduce working hours, if this is possible.

Provision of compliant work conditions if an employee works remotely

Only the work which can be performed in the company premises, but it is performed at home or another work place based on the employer's and the employee's mutual agreement, is considered remote working.

The above referred regulations regarding the microclimate conditions at the work place should also be complied with if the employee works remotely, and these regulations should be notified to employees. Compliance with these regulations may be more complicated because work is performed in a private territory, where the employer does not have the access rights, or far away from the location of the company. Moreover, remote work can also be performed while moving to various locations, for example, by working at home for a while, then move to a café, a park, etc.

Of course, the employee should also take care of improvement and provision of one's own health, work environment and microclimate conditions, if work duties are performed remotely. Section 8 of the Labour Protection Law provides the obligation of the employee working remotely to cooperate with the employer in evaluation of the work environment risks and to provide information to the employer on the conditions of the place of remote work which may affect the employee's safety and health.

Microclimate conditions may be better suited for working both at the work place and the place where the employee performs work duties remotely, therefore the employer and the employee should communicate in order to find the most suitable place for performance of the work duties. Various restrictions imposed due to the epidemiological situation are released now in summer, which means that working in the office could become a current issue again, still, if it is decided to continue remote working, assistance should be provided to employees, as far as possible, to adapt premises to ensure that microclimate conditions are complied with.

An air conditioner is considered to be the most effective means for ensuring that a particular temperature is maintained in rooms, however, there are additional means allowing keeping rooms cooler and providing well-being of employees working remotely in summer:

- trying to keep the coolness of the evening and night by ventilating rooms as long as possible in evening and also at night, if this is possible;
- keeping windows and doors open at work, thus increasing ventilation, however, in this case it should be supervised to ensure that the draught is not excessive and harmful for the health;
- avoiding use of flooring maintaining heat and accumulating too much dust;
- special films, coating or window blinds used for windows to protect against direct sun radiation;
- it is possible to agree on different working hours, in particular, by setting breaks or shifting the working hours to the coolest time of the day (mornings, evenings);
- installation and use of electrical ventilators.

Additional measures to be implemented at the work place for ensuring employee well-being

Provision of compliant conditions at the work place is very important, as unfavourable micro climate and insufficient ventilation may cause multiple problems for the employees' health and well-being, thus affecting the working ability. Unfavourable microclimate (especially, in combination with unsuitable work-wear) most often causes an increased number of diseases dependent of the work and related to the work (cold, bronchitis, pneumonia, etc.), as well as acute cases of chronic diseases (including, diseases of the upper respiratory tract, cold, bronchitis, etc.). It should be remembered that these diseases considerably affect the number of days of absence, causing direct economic loss for the employer.

In addition to the above described recommendations, the employer can also implement additional preventive measures which would provide compliant microclimate and take care of the employees' health, for example:

- arrangement of the work to avoid working in the hottest hours of the day when the sun activity is highest (from 11:00 to 15:00) and scheduling of work hours during cooler periods of the day (in the mornings or evenings, possibly at night, for example, in road construction, when it also causes less traffic disturbance);

- provision of more frequent breaks in shadow or letting employees to enjoy a siesta;
- provision of free cold drinking water to employees;
- holding meetings outdoors;
- avoiding drinking drinks which contribute to the body dehydration, for example, strong coffee, strong tea, drinks containing sugar, etc.;
- teaching employees to plan lighter meals;
- ensuring that people can have a rest outdoors in a shade;
- provision of information regarding the effect of hot weather on the body and signs of a heat stroke to employees, as well as training regarding first aid in cases when a person has overheated, has a sunstroke. etc.;
- provision of suitable clothing and means of protection to employees when work is performed outdoors (head covering, light clothing, shirts with long sleeves, trousers, suitable sun glasses providing protection against UV radiation), as well as provision of suitable clothing for employees indoors, if this is necessary and the nature of the work requires it;
- provision of sunscreen creams intended for protection against the sun radiation to employees working outdoors;

If it is suspected that a person has overheated, the victim should not be left in the hot sunshine, sweet drinks should not be given and fast cooling in icy water should be avoided. The correct action would be to place the victim in shade or in a cool room, to give cool (and not cold) water, to take off thick clothing, to apply cool compresses on the forehead, chest, to spray cool water, if the condition does not improve, emergency services should be called by calling 113, medical assistance must be sought if a child or an elderly person has overheated.

Employees may refuse to perform work if the work conditions are not compliant

If the employer has not implemented measures for improving work conditions, including measures for reducing heat at the work place, an employee may submit a written application to the State Labour Inspectorate (SLI) by specifying the particular work place and work conditions. The regional SLI will decide on the necessity to perform an inspection at the specified work place based on the application.

If work conditions, including the heat, present a threat to the employee's health, the employee has the right to refuse to perform work. Section 18 of the Labour Protection Law provides the right of the employee to refuse to perform the work is performance of the relevant work causes or may cause a risk to the safety of the employee or other persons and this risk cannot be eliminated in any other way.

→ Covid-19 vaccination and the employer's rights and obligations

Covid-19 vaccination now provides an opportunity for employees to return to their work places and for the employer to discontinue applying some of the epidemiology safety measures. Thus, it is the goal of every employer to achieve as high as possible vaccination rate among employees. However, taking into account that still a large share of people in the society refuse vaccination or take a waiting position, in every office there can be one or several employees not willing to do vaccination now. Therefore, employers have a question to what extent the employer may request employees to do vaccination and what measures the employer can implement to encourage vaccination among its employees.

Voluntary nature of the vaccination

At present Covid-19 vaccination is fully voluntary. The legislation does not provide mandatory Covid-19 vaccination of people.

Part Two of Section 30 of the Epidemiological Safety Law provides that for persons who are engaged in work which is associated with an elevated risk of infection, vaccination is mandatory. Both the jobs and diseases to which mandatory vaccination applies are defined by Cabinet Regulations No. 330 of 2000 "Vaccination Regulations", however, these regulations do not provide for mandatory Covid-19 vaccination. We admit that this regulation could be amended in future and the types of jobs or categories of employees who are

obliged to have vaccinations could be included in this list.

Until the legislator has not decided on including Covid-19 vaccination in regulatory enactments as mandatory for particular groups of professions, the decision to have or not to the have the vaccination is every employee's free choice.

Measures available to the employer to protect other employees and customers from Covid-19

The current regulation provides for the employer's obligation to implement actions for protecting other employees from a potentially infected person, however, does not include the employer's obligation to promote vaccination. In compliance with the Labour Labour and the Law on Labour Protection, the employer should provide safe working conditions not presenting harm to the health. This also includes the employer's obligation to act if there is grounded suspicion of an employee being sick, which causes or may cause threat to his/ her safety or health or the safety or health of others. Thus, if an employee has Covid-19 symptoms and has come to work, the employer should suspend such an employee from work and this employee may only return to work when the doctor has confirmed that the person is healthy and can perform work duties.

The Epidemiological Safety Law and the Cabinet Regulations issues pursuant to it provide additional obligations in relation to all the jobs where an employee has a close contact with the service beneficiary, customer or patient or stays in the same room or the public transportation vehicle during performance of the work duties.

The employer should provide the epidemiological safety measures at the company. For example, the employer encourages remote working according to possibilities and the work specifics. If remote working is not possible, the employer ensures that the following conditions are complied with:

- one person per room;
- provision of minimum 15 m^2 of floor space to each person at open work places;
- keeping distance among employees;
- availability of personal means of protection;
- other measures according to the recommendations of the Disease and Prevention Control Centre.

Promotion of vaccinations of employees at a company

Vaccination is promoted by granting various advantages to vaccinated persons and gradually lifting various restrictions if the legal provisions allow it instead of defining it as mandatory. The advantages, like a permission to resume working in the office, to meet in the common premises of the company, to participate at a corporate event, the right not to use mouth and nose covers at work places and not to make regular tests, promotes the willingness of employees to have vaccination to be able to return to the usual life.

In practice there are cases when employers promote vaccination by paying bonuses and granting paid days off to vaccinated employees. As the state authorities have expressed very much contradicting opinions regarding the admissibility of such promotion measures, each case should be assessed individually and it should be evaluated if the granted benefit presents a particular advantage and if it is not discriminatory.

Processing of vaccination information

The information about an employee being vaccinated or not should be considered as personal data of a special category according to the General Data Protection Regulation, and obtaining or storing of this information is deemed to be data processing. Therefore, information regarding the employee vaccination may only be processed in cases stipulated by Article 9 of the General Data Protection Regulation.

The State Data Inspectorate has issued several clarifications regarding which data and in what scope may be processed by the employer in various situations related to Covid-19 vaccination.

For example, in a situation when the employer only wants to learn the employees' attitude to vaccination, it is not necessary to find out the opinion of each particular employee and an anonymous survey may be organised. In particular, in compliance with the goal of the specific action (to find out the employees' attitude) and the principle of minimisation of data processing, in this case it is not necessary to have each respondent's name and surname.

However, if the employer wants to organise vaccination of its employees and collects information about employees (name, surname and

the Personal ID Code) who are willing to have vaccination for this purpose in order to deliver the relevant information to a medical institution, the employer should receive the employees' written consent to this data processing. It should be taken into account that this consent should comply with the requirements defined by the General Data Protection Regulation, i.e., it is provided free, knowingly, for particular purpose and results from an active action, is clear and can be recalled,

The employer does not have the right to make inquiries as to whether its employee has had vaccination without a valid reason. For example, if an employee works remotely and does not have personal contact with colleagues and customers, the employer does not have the right to ask this information from the employee. However, if an event is scheduled at the work place where employees would gather, the employer has the right to verify compliance of the person with the status of a vaccinated or recovered person according to Regulations No. 360 of 9 June 2020 "Epidemiological safety measures for restricting the spread of Covid-19 infection". The law does not provide that the employer should prepare written record of this information. This check can be done on the spot, by the employee presenting relevant attestations.

→ Remote work from abroad – the employer's rights and obligations

Covid-19 pandemic has resulted in a rapid increase of the number of employees who perform their work remotely from home, as well as some employees having decided to work from abroad. These are mainly employees who need just a computer and the Internet connection to complete their job. The employer often does not even know from where an employee works. Neither do employees consider it is necessary to notify their actual place of work to the employer. On one hand, it may seem that it is not important for the employer from where an employee works, as long as the job is done. However, in practice this matter is not that straightforward, and there is a range of issues the employer should consider and analyse if an employee works remotely from abroad. In some cases, an employee working from abroad may cause a certain risk and liabilities for both the employer and the employee.

We will review 5 important issues which should be analysed by the employer in relation to an employee working from abroad.

Applicable legal provisions

If an employee works remotely from abroad, the question arises as to which national legal provisions are applicable to the legal employment relationship and what mandatory obligations should be performed by the employer in relation to the employee's work abroad. For example, whether the minimum wage stipulated by the legal provisions of Latvia should be provided to the employee, or should the employee receive the Swiss minimum wage if the employee works in the Latvian company from Switzerland. There are also the questions according to which national legislation a vacation should be granted to the employee and if it is necessary to work on a day which is an official holiday in the foreign country from where the employee works.

There is no one clear answer to these questions. Each case is individual and a range of various circumstances should be evaluated in order to give a clear answer. Therefore, answers to the above questions may differ in different situations. Still, it is important that the employee assesses the above questions before the employee starts working abroad and is aware of its obligations. The employer will only find out what additional obligations it should perform (for example, any registration or notification), which are in force in the country from where the employee works, by analysing the defined questions.

Immigration issues

Prior to the employee starting working from abroad, it would be important for the employer to understand if the employee has the right to work in the particular foreign country for the Latvian employer. Immigration and residence regulations differ in different countries. In many countries there are special requirements for employment to be complied with by both the employee and the employer. As remote working develops, some countries have introduced special regulation for remote

working. Therefore, both the employee and the employer should first find out the requirements stipulated in the particular foreign countries for the employee to be able to work from there. If needed, relevant permits should be received to enable the employee to work from abroad.

Taxes

The employer should assess whether the employee working from abroad does not create the employer's obligation to register a permanent representative establishment abroad. There is also the question as to the employee' s tax residence and to whom and in which country taxes should be paid in relation to the employee's employment with the particular employer.

Labour safety

In compliance with the Labour Protection Law, the employer is responsible for the labour safety and it should perform evaluation of the risk of the work environment. The requirement regarding the obligation to perform assessment of the risk of the work environment and to provide safe work conditions presenting no harm to the health applies to both the cases when the employee works at the employer's premises and to the situations when the work is performed remotely. Therefore, the employer should perform all the necessary measures of labour protection in relation to remote working.

Data security and protection

The issue of data security is a very important aspect in case of remote working from abroad. There is a very important question whether data are not transferred to the third country when the employee works remotely in a foreign country.

Personal data protection in the countries of the European Economic Area is regulated by the General Data Protection Regulation, however, if data are transferred outside the countries of the European Economic Area, different legal regulation applies. Transfer of personal data to third countries is quite a broad and complicated question, regarding which it can be stated in brief that transfer without special guarantees is only possible if it is to the countries, like Andorra, Argentina, Canada, Faroe Islands, Guernsey, Israel, Mena Island, Japan, Jersey, New Zealand, Switzerland and Uruguay. If transfer is to any other third country, the data controller should apply special guarantees ensuring that the persons whose data are processes will be provided effective legal remedies and possibilities to exercise their rights as data subjects.

Data subjects should also be notified of transfer of data to third countries, which is manifestation of the data processing transparency principle, in particular, the data subject should be aware of the location of his/ her data.

Considering the above, it should be concluded that it is important for the employer to know from which place the employee works remotely and to identify the obligations the employer may incur in relation to the employee working from abroad.

It should be taken into account that 5 important issues to be considered by the employer if the employee works from abroad were discussed above. Still, it should be remembered that there is a range of legal and practical matters besides the above referred questions and these would need to be discussed and analysed individually in each particular case.

The provision that employees are not allowed to work remotely from abroad would be one of the simplest solutions to eliminate any risks related to the employee working from abroad. Still, most probably this will not be a long-term solutions in the modern changing world. In order to fight for the best talents on the labour market, employers should be able to be innovative and to adjust to changing circumstances. Therefore, we encourage employers to assess the possibilities of remote working from abroad and to introduce procedures which ensure protection of the interests of both the employer and the employee in case of remote working from abroad.

→ Obligation to maintain trade secret

Our work habits have changed drastically during the last year. Working in the office has been replaced by remote working. Various innovations have been introduced in our daily work routines, we have learned various new technologies and tools for communication with colleagues, clients, cooperation partners and exchanging information. The issue of how to protect trade secrets and what should be done if an employee has disclosed the trade secret to somebody, is an important and topical for an employer during this change period.

Employers' obligations to define the trade secret and introduce measures for its protection

In order to an employer to speak about protection of the trade secret, the employer should first do its "home work" and to define in writing what should be considered the employer's trade secret. Usually the employer defines what should be considered the trade secret of the company in the employment agreement, internal rules of procedure or another internal document of the company.

However, just the definition of the trade secret is not sufficient. The law stipulates that, as regards the trade secret, the holder of the trade secret should implement reasonable measures appropriate in the relevant situation for maintaining the secrecy of the trade secret. Actually, the employer should introduce a particular system aimed at maintaining the trade secret. In particular, relevant instructions should be implemented defining how an employee should handle information containing the trade secret and what measures should be implemented to protect the trade secret. The range of possible solutions is very broad, starting from the simplest ones (for instance, documents containing the trade secret are stored at a locked place, a personal computer may not be used for performing official duties, documents may not be accessible to family members) to various complicated IT solutions.

It is important that the employer continuously monitors risks related to maintenance of the trade secret and supplements or amends current procedures upon identification of new risks, and notifies employees accordingly.

Part Two of Section 51 of the Labour Law stipulates that the employer is obliged to provide the work organisation and work conditions to enable the employee to perform the work assigned to him/ her. The employer should define the measures of maintenance of the trade secret that the employee can comply with in practice. For example, if it is provided that documents must be stored in a safe, the employer should first ensure that the employee has access to a safe.

As practice reveals, in case of remote working the employer often is not aware of the working conditions of its employees. However, it is important for the employer to make inquiries regarding the employee's working conditions. Only being aware of the employee's actual working conditions, the employer will be able to assess potential risks regarding disclosure of the trade secret and to implement appropriate measures to ensure maintenance of the trade secret. For instance, various video conferences are popular when working remotely. The employer should not only provide that the employee should ensure that the video conference cannot be heard by the employee's family members, but should also assure whether the employee can comply with this requirement. The employee should be offered to use headphones provided by the employer.

Notifying the employee

It is important that both information about what is the trade secret, and also information about how the trade secret should be maintained is provided to the employee.

There is a number of simple measures that can ensure maintaining the trade secret. On one hand, these matters may seem self-evident, but on the other hand, the employee may not even think about them, therefore, it is worth speaking with employees about it and to remind it (for example, that only safe Internet connection may be used for the job needs, the computer used for working may not be used by family members, computer software should be periodically updates, passwords should be complicated and should be changed from time to time).

Sometimes, it is worthwhile to arrange also special training to train employees about information protection matters and secure use of the Internet. The employee should be able to handle

various IT solutions in practice, thus ensuring higher level of protection of the trade secret. It would also be useful to provide information whom the employee should contact in case of any questions regarding maintenance of the trade secret.

Employee's obligations

The Labour Law stipulates the employee' s obligation not to disclose information at his/ her disposal, which is the employer's trade secret. At the same time, the Trade Secret Protection Law provides the prohibition to obtain and use the trade secret illegally. The above means that the employee does not have the right to disclose the employer's trade secret and the employee may not use the employer's trade secret for own benefit or the benefit of another person. For instance, an employee has learned information about the technological process of development of a particular product. The employee may not use this knowledge to independently develop the same product or a similar one.

It should also be remembered that the obligation to maintain the trade secret does not end upon termination of the employment relationship. Usually it is stipulated in the employment agreement or another document that the obligation to maintain the trade secret is in force also following termination of the employment legal relationship.

Consequences of disclosing the trade secret

There can be various consequences if the employee has disclosed the employer's trade secret.

A disciplinary punishment may be applied to the employee for disclosing the employer's trade secret, i.e. a reprimand or a note may be issued or the employment legal relationship may be terminated. By applying a disciplinary punishment, the employer should follow the procedure defined by the Labour Law for application of a disciplinary punishment.

If damage has been caused to the employer in relation to the disclosed trade secret, the employer may submit a claim of collection of damage against the employee. A claim against a person who has illegally obtained, used or disclosed the trade secret, may be initiated within a period of three years as from the date when the holder of the trade secret learned or should have learned about the illegal possession, use or disclosure of the trade secret.

Compensation of both financial loss and moral damage can be received for a breach of the law of the trade secret.

By claiming compensation of financial loss, the holder of the trade secret may claim one of the below types of financial compensation for every breach:

- compensation of damage;
- recovery of the amount (the licence fee), which could have been received by it for granting the right of use of the trade secret;
- recovery of the profit gained by the person who has obtained, used or revealed the trade secret in an unfair way.

The amount of the compensation of the moral damage is set by the court at its discretion.

At the same time, the holder of the trade secret may request the court to apply any of the legal remedies provided by the law (for example, regarding withdrawal of products from trade or destroying, destroying or submission of materials containing the trade secret).

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