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Employers' Obligation to Provide Employees with Work Certificates and Payslips May Be Enforced by Courts

According to the Finnish Employment Contracts Act, an employee is entitled to receive, upon request and without delay, a written certificate of employment. The requirement is effective for ten years after the termination of the employment relationship. The minimum content requirements of a work certificate include the duration of the employment and the principal work assignments of the employee. In addition, in case the employee expressly so requests, the work certificate must also include the reason for the termination of the employment agreement and an assessment on the employee's skills and behaviour. The employer shall also provide the employee with a payslip including the grounds for the determination of the salary calculation in connection with the payment of wages.

If an employer violates these provisions, the employee may inform the Occupational Safety and Health Inspectorate. The inspectorate may impose a fine on the employer and compel the employer to provide the requested documents. If the employer does not comply with the inspectorate's order, the inspectorate will report the violation to the public prosecutor.

Despite its simple nature, the employer's obligation is frequently violated. In fact, this violation is one of the most common reasons why employees contact the occupational safety and health authorities. The inspectorates send hundreds of document requests on a yearly basis and roughly a fifth of the requests lead to police investigations.

The District Court of Pirkanmaa has recently rendered a judgment following which a private company representative was found guilty of an infringement of the Employment Contracts Act and was sentenced to 15 so-called day fines (in Finnish "päiväsakko"). The defendant, as a representative of the employer, had not provided an employee with the above-mentioned documents despite his statutory obligation and multiple requests.

Sweden

Under Swedish law, an employer is obliged to provide an employee with an employment certificate for the purpose of applying for contribution under the Swedish unemployment insurance. However, the obligation is not sanctioned, and should the employee not obtain an employment certificate from the employer, the law sets forth that the employee should be able to prove the provided information in other ways e.g. with payslips.

In accordance with Swedish case law and certain collective bargaining agreements, an employer is also, upon the employee's request, obliged to provide an employment certificate for purposes other than for an application for unemployment insurance. Such employment certificate should at least include information regarding the position and work assignments, length of service, whether the employment is full-time or part-time and, unless the employee prefers not to include such information, an opinion on the employee's qualifications, behaviour and the reason for the termination of employment. Should an employer not provide the certificate upon the employee's request, the employee may file a claim against the employer in court, asking the court to issue an order, subject to penalty, to the employer to issue the relevant employment certificate.

Russia

In Russia, there is no such notion as "a written certificate of employment", but instead each employee should have a so-called work book. The work book is the source of information on an employee's work history (except for part-time jobs) and it contains information on all employers, positions, rewards at work, and grounds for dismissal. The employer is obliged to maintain the work book, make relevant records in it and return the work book to the employee on the last working day.

In case the employee (during the employment) requests the employer to provide copies of the documents concerning his/her employment (order on employment, work book, information on the salary, etc.), the employer must provide such documents to the employee within three business days.

If the employer violates the rules for maintaining, storing, recording, and issuing labour books, the employee may inform the Labour Inspectorate (and in some cases the Prosecution Office as well) of itThe Labour Inspectorate may impose fines in the amount of up to RUB 20,000 (approximately EUR 310) on the officers of the employer, and in the amount of up to RUB 70,000 (approximately EUR 1,100) on the employer.

The Assessment of Established Terms of Employment in Recent Finnish Case Law

In Finnish legal practice, certain benefits of economic value to an employee may become binding in specific circumstances if an employee has been entitled to it for a long period of time. As an example, if an employee has been entitled to a bonus for a long period of time and the terms of the bonus have not changed, the entitlement to the bonus may be considered a binding term of employment in which case the amendment or termination of the bonus would require express consent from each employee. This matter should always be assessed e.g. in connection with contemplated business transactions, as any binding terms of employment also become binding for a new employer. This is also the case as regards situations of transfer of business (in Finnish "liikkeen luovutus"), as based on Finnish law, any employees who work within the scope of the transferring business, will be automatically transferred to the new employer (i.e. the transferee) based on their applicable terms of employment.

In its recent judgment dated 28 April 2015, the Court of Appeal of Helsinki found that the employee's right to holiday bonus had formed a binding term of employment based on the long-term consistent practise of the employer. The employee had received holiday bonus between the years 2002 and 2008. The Court of Appeal found that the employer had failed to provide sufficient evidentiary support for the argument that the decision to pay holiday bonus had been made by the employer each year separately. The Court of Appeal also ruled that as regards the application of the entitlement to the holiday bonus, the employer had not treated two employees equally in comparison with the company's other employees, as the said employees had not been entitled to the holiday bonus during their employment relationship with the employer at all. The fact that the employer later failed to pay holiday bonus to all employees had no significance as the unequal treatment had already occurred at the earlier stage irrespective of the actual payment of the holiday bonus to other employees.

In this case, the claimant employees had been transferred to the employer on the basis of the transfer of business provision included in the Employment Contracts Act. The new employer claimed that as the receivables of the employees fell due after the transfer of undertaking, the new employer was not liable for these liabilities (sic). The Court of Appeal stated that based on the Employment Contracts Act, the rights and responsibilities related to the employment relationships will, in connection with the transfer of undertaking, be transferred to the transferee at the moment of transfer. According to the Act, the maturity date of the receivables is significant only in the relationship between the transferor and the transferee both of whom are jointly and severally liable for such receivables towards the employees. Thus, in the present case, the maturity date of the receivables had no relevance and the employees were entitled to claim the receivables from the transferee (i.e. the new employer).

Sweden

Similar to the situation in Finland, certain benefits may be considered part of the employee's employment agreement and may hence not be unilaterally changed by the employer. Whether a benefit is considered a one-sided commitment, which may be unilaterally withdrawn or changed by the employer, or part of the employee's employment terms and conditions, which may not be unilaterally withdrawn or changed by the employer, must be assessed based on the particular situation. In general, benefits set forth in a company policy in which it is informed that the policy may change from time to time, is considered a one-sided commitment, which may be unilaterally changed by the employer.

Russia

In Russia, there is no such concept as the Finnish holiday bonus (in Finnish "lomaraha"). Moreover, in Russia, benefits are not binding unless expressly agreed and included in the employment agreement.

Terminating an Employment Agreement on the Basis of Continuous Absences due to Illness

Under Finnish law an employer does not, in principle, have a right to terminate an employment agreement based on the employee's illness or disability. This starting position has also been upheld in recent case law where the employer's general negative attitude towards sick leave had been considered to support the claims relating to unlawful dismissal due to illness.

As an example of such case law, the Court of Appeal of Helsinki found in a recent judgment that since the employee's employment agreement had been terminated immediately following the employee's return from sick leave and since there was evidentiary support suggesting that the company was generally set against absences due to illness, this was sufficient to indicate a factual connection between the termination and the illness. Moreover, the Court of Appeal of Turku recently upheld the decision of the District Court of Länsi-Uusimaa in which the District Court found that as the company's managing director had a generally negative attitude towards absences related to illness and since employees were in principle not allowed to take sick leave, the employee's claim for unlawful dismissal due to illness was supported by evidence.

However, in case the employee's ability to work is substantially reduced for a long period of time, an employer cannot be reasonably expected to continue the contractual relationship. The assessment of whether an employment agreement may be terminated based on such substantial reduction in an employee's working ability must be made on a case-by-case basis. By way of an example of such an assessment conducted by the Court of Appeal of Turku in another recent judgment, the Court of Appeal upheld the decision of the District Court of Varsinais-Suomi in which the lower court had found that a transportation company was not in breach of the Employment Contracts Act when terminating the employment agreement of an employee who was not, based on a medical certificate, able to work night shifts due to sleep apnoea or able to drive any short-distance traffic transportations which required leaving the driving compartment often. The company had taken the view that due to the employee's limitations there were no work assignments which could be offered to him. As the company did not have any other work available to be offered to the employee, the employment agreement was terminated. In addition, the company had calculated that the employee had been on sick leave during the last four years in comparison to regular working hours as follows: 64% in 2009, 85% in 2010, 57% in 2011 and 87% in 2012. Taking into account the amount of absences due to illness and the medical evaluation on the employee's ability to work, the company was found to have sufficient grounds to terminate the employment agreement based on the employee's ability to work having been substantially reduced for a long period of time.

However, as mentioned, the above-mentioned cases are mere examples and the assessment whether an employment agreement can be legally terminated due to an employee's long-term absences due to illness or disability must be made on a case-by-case basis taking into account all applicable circumstances of each respective case.

Sweden

The legal situation in Sweden in respect of termination of employment due to continued absences due to illness is similar to the situation in Finland. In order to terminate an employment on grounds related to the employee's absence due to illness under Swedish law requires, e.g. that the employee's ability to work is substantially reduced for a long period of time and that it may not be anticipated that the employee will return to work in the foreseeable future. Each specific situation must, however, be assessed individually and the question of whether the employer has observed its rehabilitation obligation is an important factor in such assessment.

Russia

Under the Russian Labour Code, an employment relationship may be terminated based on an employee's health in case, based on a medical assessment report, the employee cannot perform his/her employment duties and requires other work that is more suitable for his/her condition, but the employee refuses his/her transfer to such other position offered by the employer. An employment relationship may also be terminated if the employer does not have such a position available to be offered to the employee that would meet the requirements set out in such a medical assessment report. The Russian Labour Code also provides that in case the employee in accordance with medical assessment report is recognised as "unemployable", the employment relationship is terminated.

However, it should be noted that an employee cannot be dismissed during his/her sick leave (except in certain cases, e.g. company liquidation) and that the Russian legislation does not provide any maximum period for a sick leave.

A Practical Checklist for Purposes of Drafting an Employment Agreement in Russia

The Russian Labour Code stipulates certain important terms and conditions that must be included in an employment agreement. These provisions are, however, typically not familiar to Russian companies' foreign headquarters' HR departments and companies may often fail to appreciate the importance of including such clauses in employment agreements. Lack of such clauses may entail negative consequences to an employer e.g. in the form of administrative fines and/or difficulties

in connection with managing the employment relationship with the employee. The below list includes some of the items which should be specified in an employment agreement but which are often neglected or are not paid enough attention when drafting an employment agreement:

Job Description: The employee's job description is a mandatory condition that must be agreed between an employee and an employer. The job description can be indicated directly in the employment agreement or executed as a separate document. Employees with the same position should have identical job descriptions. Different seniorities for similar tasks require different positions such as senior sales manager, sales manager, etc. The job description usually includes, as a minimum, the requirements for the position and a description of the work tasks. When evaluating whether the performance and qualifications of an employee meet the expectations of the employer and what has been agreed between the parties e.g. during a probation period or during the term of employment, the wording of the job description and the employment agreement plays an important role.

Work Conditions: Under Russian law, it is mandatory to define the work conditions of the employee in the employment agreement. Work conditions are defined based on a so-called "workplace attestation" procedure (concerning procedures conducted prior to 2014) or a "procedure of special estimation of work conditions" (concerning procedures after 2014). In case work conditions are considered "harmful" or "dangerous" to employees, the employer must take a number of specific actions, such as making additional payments to a Russian pension fund, providing additional guarantees to employees, taking action in order to improve work conditions, etc.

Probation Period: A probation period, if established in an employment agreement, may be established as a general rule for a maximum of three months. A six-month probation period is permitted for certain categories of employees (e.g., a general director, the general director's deputies, the chief accountant, etc.). However, the termination of an employment agreement during a probation period is strictly regulated and the termination should be based on valid grounds. Nevertheless, an employee may dispute a termination during the probation period and request an expertise evaluation on his/her capabilities for the position. A detailed job description in the employment agreement is very beneficiary in court as evidence of the employee's failure to comply with his/her work duties.

Work Permit: Although it is nowadays common knowledge that foreign employees are entitled to perform labour activities in Russia only upon the receipt of a relevant work permit, it is not always known that such work permit is based both on (i) the relevant company and (ii) the relevant position. Employee may not change the employing company and/or work in a different position with the same employer (apart from special cases provided for in legislation for the period not exceeding one month) with the same work permit. In such a case a new work permit must be applied for.

Employment Agreement with a Foreign Employee: Employment agreements with foreign employees must include information concerning the document on the basis of which the foreign employee is performing the work in Russia (work permit, temporary residence permit, etc.). In certain cases it is also mandatory to include the details concerning a voluntary medical insurance agreement (i.e. a policy) or a medical treatment agreement.

In addition, family members (not Russian citizens) of foreign employees, of highly-qualified specialists who are residing in Russia, must have voluntary medical insurance effective on the territory of Russia.

Mandatory Employment Documentation: The employer should ensure that together with signing the employment agreement with the employee, the employee familiarises him/herself with all of the employment policies and acknowledges these with his/her signature simultaneously with the signing of the employment agreement. Quite often the amount of the mandatory employment documentation required from a Russian employer comes as a surprise to foreign headquarters' HR responsible. Such documentation is subject to the Labour Code's formalistic requirements and includes, among other things, internal labour regulations, personal data regulations, trade secret regulations, occupational safety documents, regulations on salary and bonus payments and various other documents.

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