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About this Guide

Employees are key to success – therefore, investors want to know the essence of labor law legislation in the country where they have or plan to have an establishment. This is, however, a challenge for them to familiarize themselves with different legal employment law frameworks all around the world, which are also constantly changing. Therefore, our Firm has prepared and hereby presents this Guide, which provides a comprehensive bird’s eye view of Hungarian labor and employment law legislation.

This Guide sets out the most important provisions of Hungarian labor law (which are set out in the Hungarian Labor Code) to give decisionmakers a general idea of how employment relations work in Hungary.

We hope you will find this Guide helpful – should you need more detailed information, please feel free to contact us – www.fklaw.hu

1. Work permit, registration requirements

As opposed to non-EU citizens, where a work permit is required with just a limited number of exceptions, citizens of EU member states and their family members may be employed in Hungary without a work permit since January 1, 2009. The hiring of an EU citizen does require registration though.

2. Term of the Employment

Employment contracts are usually concluded for an indefinite period of time. However, under the conditions set out in the Labor Code, employment agreements for fixed duration are also allowed.

These conditions include, that the duration of a fixed-term employment relationship (including any extensions thereof) may not exceed five years. The duration of the employment contract concluded within six months of the termination of the previous fixed term employment relationship is to be taken into account when determining if the five-year maximum has been reached. Also, extension of the term of a fixed-term employment or renewal of the employment agreement within six months from the date when the previous contract was terminated requires legitimate interests on the side of the employer.

As mentioned above, employment agreements are, however, usually concluded for an indefinite period of time. For this reason, this Guide primarily focuses on the provisions of the Labor Code pertaining to employment agreements concluded for an indefinite period of time.

3. Employment contract minimums and additional elements of an employment agreement

Employment agreements are to be concluded in writing. However, invalidity on the grounds of failure to set the contract in writing may only be alleged by the employee and only within a period of 30 days from the first day on which he commences work.

3.1. Mandatory elements

By law the parties need to include only the position of the employee and his base salary in the employment agreement.

As far as the base salary is concerned, it needs to comply with the minimum wage in effect in Hungary (currently it is HUF 161,000.- (=ca. EUR 520.-)/month for qualified employees and HUF 127,500.- (=ca. EUR 410.-)/month for all other workers). By law, salaries are to be paid to the employee and accounted for at least monthly in arrears – in Hungary, salaries are usually paid monthly (rather than weekly or biweekly).

3.2. Customary elements

Obviously, however, there are additional questions which the parties also want to regulate in their employment agreements: place of work, daily number of working hours, bonuses or other compensation the employee is eligible to in excess of his base salary, the commencement date of the employment relationship and potential non-compete undertakings are usual elements of an employment agreement. essential items in the contract, which have to be included. Lack of including these items in the agreement will, however, not affect the validity of the employment contract.

Also, any issues the parties did not regulate in their employment agreement will be governed by the rules of the Labor Code. Therefore, if the parties want to deviate from the general rules of the Labor Code, they need to set this out in the employment agreement. The parties' right to deviate from the protective regulations of the Labor Code is limited: unless otherwise specifically stated in law, the parties may deviate from the Labor Code only to the benefit of the employee. Such mandatory regulations of the Labor Code include, inter alia, mandatory minimum wage, rules of termination, maximum working hours, minimum rest periods and vacation periods, anti-discriminatory and work safety rules etc.

Probation is also a typical element of an employment contract: parties may agree on a probationary period not to exceed three months from the date of commencement of the employment relationship. The duration of the probationary period may not be extended, unless the initial duration was shorter than three months – in this case the term may be extended up to three months. (Probationary period can be stipulated both in fixed term and in indefinite employment agreements.)

The benefit of having a probationary period agreed upon is that during the term of the probationary period both parties may terminate the employment relationship with immediate effect without the obligation to deliver a cause.

4. Working hours, vacation days

4.1. Allocation of working hours

The regular daily working time in full time positions in Hungary is eight hours. As a thumb rule, employees are entitled to overtime salary if working in excess of this daily limit. However, if the employee is employed in flexible working arrangement meaning that the employee is entitled to determine his own work schedule (with a view to be able to perform his job duties), he will not be entitled to compensation for overtime work.

If the parties do not opt for flexible working arrangement, then the working hours are allocated by the employer pursuant to the relating provisions of the Labor Code. There are numerous restrictions and rules pertaining to how the working hours may be allocated, which are to be taken into account.

4.2. Vacation days

Employees are entitled to paid annual leave. The number of vacation days an employee is entitled to depends mostly on his age. The minimum number of vacation days is 20, which gradually increases by age up to 30 (for an employee who is at least 45 years old). In addition, pregnant women, new mothers and fathers, parents with children, young workers, employees with a certain health impairment or physical disability (and certain other groups of employees which we do not think are relevant in our case) are entitled to extra vacation days. In addition, subject to certain conditions, the employer will be responsible for the compensation the employee is entitled to while he is on sick leave (to a different extent during the first 15 days and afterwards).

With the exception of seven working days, the annual leave is scheduled by the employer. Accordingly, the employee may request that seven working days are given to him as paid leave at the time of his choice (in not more than two parts).

Unless otherwise agreed, the employer is required to allocate the vacation days of the employee so that it contains at least fourteen consecutive days once in a year when the employee is exempted from work.

5. Termination of employment

Employment relationships in Hungary may be terminated in three ways: a) by mutual consent, b) by notice, c) with immediate effect. Termination of the employment relationship needs to be done in writing.

Obviously, if the employment agreement is concluded for a definite period of time, then the employment agreement automatically terminates with the expiration of the fixed term.

5.1. Termination by mutual consent

The parties may, at any time, mutually agree on the termination of their employment agreement by mutual consent. For the reasons specified below under section 5.2., we usually recommend our clients that they use their best endeavors to terminate the employment agreement by mutual consent rather than by notice (or by notice with immediate effect). It is also important that the process to come to a mutual agreement is well documented and can later be substantiated in case of a lawsuit for wrongful termination.

5.2. Termination by notice

An employment relationship may be terminated by the employee and the employer by notice. Parties may agree that neither of the parties are entitled to terminate the agreement in the first year by notice. (This is more common for high profile jobs where both parties want to secure the relationship.)

The rules of termination by the employer and by the employee are different: while employees may terminate their employment by notice without the obligation to provide a reason, the employer is required to deliver a cause to terminate the employee's contract. Hungarian jurisprudence has developed the criteria with which the reason specified by the employer as the reason for the dismissal of the employee in the termination notice need to comply. The reason must be clear, true, factual and rational.

It is to be noted that Hungarian labor courts tend to favor employees and have set the standards of termination by the employer very high. In addition, the burden of proof is always with the employer, i.e. it is enough for the plaintiff to claim that the termination was unlawful and the employer is required to prove that it was not. Therefore, and also since the consequences of wrongful termination are quite serious (including that the employee may request compensation of damages for his losses incurred in connection with the wrongful termination, including loss of his income up to his average salary for 12 months), we recommend that the clients try to terminate the employment agreement by mutual consent (even if we believe that we have sufficient grounds for dismissal), even if it means that the employer needs to pay additional compensation to the employee for him to agree to termination of his employment by mutual consent. It is usually cheaper and it is a calculated risk while a protracted lawsuit can cause more damage irrespective of its outcome.

Another difference in termination by the employer and the employee is that in case of termination by the employee, (unless otherwise agreed to by the parties) the period of notice is thirty days. Where, on the other hand, if the employment relationship is terminated by the employer, the thirty-day notice period is extended

- by five days after three years;
- by fifteen days after five years;
- by twenty days after eight years;
- by twenty-five days after ten years;
- by thirty days after fifteen years;
- by forty days after eighteen years;
- by sixty days after twenty years

of employment at the employer.

Furthermore, depending on the number of years of employment, the employee will be eligible to a severance payment in case the employment agreement is terminated by the employer. Employees will be first eligible to severance payment after three years of employment – in this case the severance payment is one-month salary. The amount of the severance payment can increase up to as high as six-month salary if the term of employment exceeds 25 years.

It is also to be noted that during certain periods (such as pregnancy, maternity leave etc.) the employer may not terminate the employment relationship of an employee by notice, while in certain other cases the notice of termination can be lawfully delivered, but the period of notice will not start immediately upon delivery (for instance, while the employee is on sick leave).

5.3. Termination with immediate effect

Both parties may terminate an employment relationship without notice if the other party:

- willfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship; or
- otherwise engages in conduct that would render the employment relationship impossible.

The right of termination with immediate effect may be exercised within a period of fifteen days of gaining knowledge of the facts serving as the basis for the termination. In case of termination with immediate effect, both parties are required to include the reason for the termination in the termination letter, and the employer as well as the employee are required to be able to justify the grounds for the termination in a lawsuit potentially initiated by the other party.

DISCLAIMER



Please be aware that the information on legal, tax and other matters contained in this Guide is merely descriptive and therefore not exhaustive. As a result of changes in legislation and regulations as well as new interpretations of those currently existing, the situations as described in this Guide are subject to change. Our Firm cannot, and does not, guarantee the accuracy or the completeness of information given, nor the application and execution of laws as stated.