SK&S – Employment Law Newsletter

New EU Directive regarding employees posted abroad

On 17 June 2014, Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 came into force. The Directive is aimed at facilitating the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, as well as to prevent, avoid and counteract the abuse and circumvention of applicable rules regarding the posting of workers.

Provisions of the Directive provide for a range of reference criteria which are to help the respective authorities determine if the case they are dealing with is, in fact, the posting of workers. For instance, the criteria are supposed to help in determining if a given enterprise really runs its business in the country from which workers are posted or if work is in fact rendered in the host country on a temporary basis. The Directive authorizes Member States to impose certain reporting obligations on employers.

The deadline for the implementation of the Directive by Member States has been set for 18 June 2016.

Proceedings before the Court of Justice of the European Union – a Finnish trade union acts on behalf of Polish workers

Proceedings are pending before the Court of Justice of the EU based on an application of a Finnish court for a pre-judicial decision in a matter where a Finnish trade union representing employees from Poland posted to work in Finland sued their Polish employer for payment of unpaid remuneration (C-396/13).

The basic issue submitted to the Court of Justice pertains to the admissibility of Polish workers assigning to a Finnish trade union claims relating to remuneration for work in order for the union to pursue such claims before court. This solution is allowed under Finnish legislation whilst in contrast, pursuant to Art. 84 of the Polish Labour Code, it is prohibited to assign the right to remuneration to another party. Moreover, the Court of Justice is to answer a question whether particular elements of the remuneration guaranteed in Finland should be included in calculation of the minimum rates of pay and as such, should they be payable to Polish workers posted to Finland.

Supreme Court Judgment – flagrant breaches of occupational health and safety regulations

In a judgment of 6 February 2014 (I UK 318/13), the Supreme Court analysed Art. 36 of the Act on Social Security Relating to Accidents at Work and Occupational Diseases, under which the labour inspectorate may apply to the Social Security Office to increase the contribution rate of accident at work insurance by 100% for remitters who during two consecutive inspections were found to have flagrantly breached occupational health and safety regulations.

In the opinion of the Supreme Court "the flagrant breach of the occupational health and safety regulations" referred to in the aforementioned Act means any breach that exposes employees to a direct threat to life and health. However, the notion of direct threat to life and health should be construed precisely and it should not be expanded across such instances as allowing employees to work without the required occupational health and safety trainings or a failure to inform employees about threats at the workplace. An example of a direct threat to life and health would be e.g. allowing employees to work without any protection against a fall from height.

Supreme Court judgment – the nature of an accident during employee sports competitions

In its judgment of 5 March 2014 (II UK 354/13), the Supreme Court, overturning the rulings of the Courts of the First and the Second Instance, stated that an injury an employee suffered during a soccer tournament organized by the employer was not an accident at work within the meaning of the Act on Social Security Relating to Accidents at Work and Occupational Diseases. The ruling was not influenced by the contention that the tournament took place within the injured party's working hours. The Supreme Court stated that voluntary participation in such tournaments was not connected to the performance of an employee's obligations and may not be deemed to be acting for the benefit of the employer.

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