

Petr Hůrka / Nataša Randlová

Labour Code

Commentary



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Dr. Hůrka acts as a mediator and arbitrator in collective labour law disputes, as well as a lecturer and a consultant. He is a member of advisory board of a periodical *Právník*, publishes in expert media and is an author or co-author of several labour law publications.

Sections 1–77, 248–275, 365–393

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Nataša authors many publications on employment law issues and is a frequent lecturer at both international and domestic conferences. She also participated in the legislative process at preparation of new employment law regulations.

The experience of Nataša Randlová is highly valued in many international rankings, such as *PLC Which Lawyer?* and *Chambers Europe*. She was also voted the Czech Lawyer of the Year 2007 for the labour law area.

In preparing this commentary Nataša cooperated with other Randl Partners lawyers – **Romana Kaletová, Daša Aradská, Barbora Suchá** and **Ondřej Chlada**. This enabled her to include a lot of practical experience into the text.

Sections 78–247, 276–364, 393a–396

LEGAL REGULATIONS CITED IN THE COMMENTARY¹

International Treaties

Convention on forced labour (International Labour Organisation), pronounced in the Czech Republic under No. 506/1990 Coll.

**Forced Labour
Convention**

The convention for the protection of human rights and fundamental freedoms (Council of Europe), pronounced in the Czech Republic under No. 209/1992 Coll.

**Convention for the
Protection of Human
Rights and Fundamental
Freedoms**

Legal Regulations of the European Communities

Regulation No. 883/2004/EC of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

**EC Coordination
Regulation**

Council Directive No. 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women

EEC Equal Pay Directive

Council Directive No. 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

**EEC Equal Treatment
of Men and Women
Directive**

Directive No. 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services

EC Posting Directive

Council Directive No. 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

**EC Equal Treatment
Irrespective of Racial or
Ethnic Origin Directive**

Council Directive No. 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

EC General Framework for Equal Treatment Directive

Council Directive No. 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses

EC Transfer Directive

Directive No. 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community – Joint declaration of the European Parliament, the Council and the Commission on employee representation

EC Information and Consultation Directive

Directive No. 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive No. 76/207/EEC

EC Implementing Equal Treatment Amendment Directive

Directive No. 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time

EC Working Hours Directive

Directive No. 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

EC Equal Treatment of Men and Women Directive

Directive No. 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees

EC European Works Council Directive

Legal Regulations of the Czech Republic:

Resolution of the Presidium of the Czech National Council No. 2/1993 Coll., on promulgation of the charter of fundamental rights and basic freedoms

Charter of Fundamental Rights and Basic Freedoms

Act No. 94/1963 Coll., on family

Family Act

Act No. 99/1963 Coll., the civil procedure code

Civil Procedure Code

Act No. 40/1964 Coll., the civil code

Civil Code

Act No. 65/1965 Coll., the labour code

Previous Labour Code

Act No. 20/1966 Coll., on care for health of the population	Public Health Care Act
Act No. 133/1985 Coll., on fire prevention	Fire Prevention Act
Act No. 2/1991 Coll., on collective bargaining	Collective Bargaining Act
Act No. 513/1991 Coll., the commercial code	Commercial Code
Act No. 117/1995 Coll., on state social support	State Social Support Act
Act No. 155/1995 Coll., on pension insurance	Pension Insurance Act
Act No. 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic	Foreigners Residence Act
Act No. 101/2000 Coll., on personal data protection	Personal Data Protection Act
Act No. 219/2000 Coll., on the property of the Czech Republic and its position in legal relations	Act on Property of the Czech Republic
Act No. 245/2000 Coll., on state holidays, significant days and rest days	State Holidays Act
Act No. 435/2004 Coll., on employment	Act on Employment
Act No. 627/2004 Coll., on European Company	European Company Act
Act No. 251/2005 Coll., on labour inspection	Labour Inspection Act
Act No. 379/2005 Coll., on measures for protection against damages caused by tobacco products, alcohol and other addictive substances	Act on Protection against Smoking
Act No. 187/2006 Coll., on sickness insurance	Sickness Insurance Act
Act No. 266/2006 Coll., on accident insurance of employees	Act on Accident Insurance
Act No. 307/2006 Coll., on European Cooperative Society	European Cooperative Society Act
Act No. 309/2006 Coll., on the provision of other conditions of occupational safety and health protection	Health and Safety Act
Act No. 198/2009 Coll., on equal treatment and on legal remedies for protection against discrimination and the modification of certain laws	Anti-Discrimination Act
Government regulation No. 290/1995 Coll., stipulating a list of occupational diseases	Regulation Listing Occupational Diseases
Government regulation No. 495/2001 Coll., stipulating the extent and details of providing personal protective equipment, washing, cleaning and disinfectant agents	Regulation on Personal Protective Equipment

Government regulation No. 567/2006 Coll., providing for the minimum salary, the minimum level of guaranteed salary, the specification of an unfavourable working environment and the amount of the extra pay for work in unfavourable working environment

Regulation on Minimum Salary

Government regulation No. 589/2006 Coll., providing for a different regulation of working hours and periods of rest for employees in transport

Regulation on Working Hours in Transport

Government regulation No. 590/2006 Coll., on the area and scope of other important personal impediments to work

Regulation on Employee Impediments

Government regulation No. 595/2006 Coll., on the manner of calculation of the basic amount that cannot be deducted from the monthly salary of the obliged in case of an execution, and on setting the amount, above which the salary is subject to deductions without limitation

Regulation on Non-Deductible Amounts

Government regulation No. 182/2007 Coll., providing for a different regulation of working hours and periods of rest for members of the corporate fire rescue unit

Regulation on Working Hours for Fire Rescue Units

Government regulation No. 361/2007 Coll., stipulating the conditions of health protection at work

Regulation on Health Protection at Work

Government regulation No. 201/2010 Coll., on the manner of keeping records, reporting them and sending a record of an accident at work

Regulation on Accident Evidence

Government regulation No. 227/2010 Coll., on the modification in regulation of employment relationship of employees with regular workplace abroad

Regulation on Employees Abroad

Decree of the Ministry of Finance No. 125/1993 Coll., stipulating the conditions and the rates of the statutory insurance of employer's liability for damage sustained in connection with an accident at work or an occupational disease

Decree on Accident Insurance

Decree of the Ministry of Health No. 342/1997 Coll., stipulating the procedure in recognition of occupational diseases and issuing a list of health-care facilities which recognize such diseases

Decree on Acknowledging Occupational Diseases

Decree of the Ministry of Health No. 440/2001 Coll., on compensation for pain and diminishing of a social position	Decree on Pain Compensation
Decree of the State Nuclear Safety Office No. 307/2002 Coll., on radiation protection	Decree on Radiation Protection
Decree of the Ministry of Health No. 288/2003 Coll., stipulating work and workplaces that are prohibited for pregnant women, breastfeeding women, mothers to the end of the ninth month after childbirth and minor persons, and the conditions under which minor persons may carry out this work in exceptional cases for reasons of preparation for an occupation	Decree on Prohibited Work
Decree of the Ministry of Finance No. 350/2010 Coll., stipulating the base rates for foreign catering fee for the year 2011	Decree on Foreign Catering Fee
Decree of the Ministry of Labour and Social Affairs No. 377/2010 Coll., changing for the purposes of provision of travel allowances the rates of basic compensation for the use of road motor vehicles and catering fee and stipulating the average fuel prices	Decree on Transport Expenses

¹ **Unless stated otherwise, the legal regulations referred to in the text are cited as amended. The legal regulations were sorted in the following order:**
International Treaties
Legal regulations of the European Communities
Legal regulations of the Czech Republic

INTRODUCTION

This commentary is intended to be used by foreign private sector employers, foreign managers and foreign employees. It is not designed for the public sector. As such, it does not go into detail about other provisions pertaining only to public sector employees, such as those on public sector pay, etc. This commentary is a practical explanation of the Labour Code and points out the most problematic areas; it does not analyze in detail each aspect of employment law or provide extensive theoretical background. The text is complemented with numerous examples in order to clarify key issues, as well as with the text of relevant provisions of the Civil Code (Act No. 40/1964 Coll.). In preparing this commentary the authors have applied their broad practical experience with Labour Code.

The current Labour Code (Act No. 262/2006 Coll.) was adopted after a problematic legislative procedure in 2006 and has been in effect since 1 January 2007, replacing the previous Labour Code adopted in 1965 (Act No. 65/1965 Coll.). The purpose of the current Labour Code was to introduce more flexibility and contractual freedom into employment relationships (the previous Labour Code was based on the concept that what is not expressly allowed by law is forbidden). This goal was not reached, and after being in effect for almost four years it is safe to say that this Labour Code contains many problematic issues which will have to be clarified by an amendment or a new regulation entirely. Some of the problems of the original wording were corrected by a technical amendment to the Labour Code (Act No. 362/2007 Coll.) with effect from 1 January 2008, others by a decision of the Constitutional Court (No. 116/2008 Coll.) repealing numerous Labour Code provisions. However, this decision itself created several new issues, especially as it concerns the invalidity of legal acts.

In 2007-2008, the Ministry of Labour and Social Affairs prepared a draft conceptual amendment to the Labour Code, with the cooperation of a panel of employment law experts that included the authors of this publication. Although this amendment should resolve the problematic issues, due to the political situation in spring 2009 this new regulation was not approved and its future is unclear.

262/2006 Coll.

ACT

of 21 April 2006

The Labour Code

Amendment: 585/2006 Coll.

Amendment: 181/2007 Coll.

Amendment: 261/2007 Coll., 296/2007 Coll., 362/2007 Coll., 357/2007 Coll.

Amendment: 116/2008 Coll.

Amendment: 121/2008 Coll., 126/2008 Coll.

Amendment: 294/2008 Coll.

Amendment: 305/2008 Coll., 382/2008 Coll., 451/2008 Coll.

Amendment: 320/2009 Coll.

Amendment: 326/2009 Coll.

Amendment: 286/2009 Coll.

Amendment: 306/2008 Coll., 462/2009 Coll.

Amendment: 347/2010 Coll., 377/2010 Coll.

The Parliament has passed this Act of the Czech Republic:

PART ONE

GENERAL

TITLE I

**SUBJECT OF THE ACT AND DEFINITION
OF EMPLOYMENT LAW RELATIONSHIPS**

Section 1

This Act

- a) regulates the legal relationships arising within the performance of dependent work between employees and employers; these relationships are employment law relationships;

- b) also regulates legal relationships of a collective nature. Legal relationships of a collective nature that are related to the performance of dependent work are employment law relationships;**
- c) transposes the applicable regulations of the European Communities¹;**
- d) also regulates certain legal relationships existing at a time before employment law relationships pursuant to subparagraph a) above.**

¹ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

Council Directive 99/70/EEC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.

Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

Council Directive 97/74/EC of 15 December 1997 extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

Council Directive 2006/109/EC of 20 November 2006 adapting Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, by reason of the accession of Bulgaria and Romania.

Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

Art. 13 of Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees.

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working hours.

Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work.

Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment law relationship or a temporary employment law relationship.

Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (third individual directive within the meaning of Article 16(1) of Directive 89/391/EEC).

Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently

given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working hours of persons performing mobile road transport activities.

Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector.

Art. 15 of Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

Introductory provisions

These introductory provisions define the scope of the Labour Code. The Labour Code constitutes elemental labour law legislation; it regulates the legal relations that arise in connection with employment. The function and the purpose of employment regulations is to regulate the performance of work by the employee for the employer. On the one hand, the aim of the Labour Code is to provide the employer with tools to organize and to control employee work to achieve the employer's activities (organizational function), and to secure for the employee reasonable working conditions (protective function) on the other hand.

Employment law relationships, therefore, are quite specific compared to other private law relationships. In labour law, contractual freedom (the parties agree to deviate from the law) is more protective of the employee, being the weaker party to the legal relationship. The Labour Code thus quite often stipulates the duty to behave in a certain way and it does not provide for any different conduct, even if the employee consented to it. Labour law stems from the fact that the pressure to get a job may economically and socially determine the employee's free will (e.g. when concluding an employment contract). Therefore, the purpose of employment rules is to counterbalance this inequality through the legal protection

of preferential treatment of the employee; i.e. the weaker party. The aim should be to find a balance, which however is not at all easy.

Scope of the Labour Code

Employment law relationships can be divided into three types – individual, collective and legal relations arising in regards to employment. Individual employment law relationships are deemed to be the legal relations between persons that require the labour force of another person to implement their line of business. Individual employment relations then regulate the rights and the obligations of the person who offers the job and the rights and the obligations of the person who does the job for the person offering it in person and in return for payment. On the other hand, collective employment law relationships regulate employee working conditions and the rights and obligations between the employer and employee representatives. Apart from individual and collective employment law relationships, labour law is also concerned with legal relations that arise in regards to employment. Nonetheless, these legal relations are not of a private nature and they are not contained in the Labour Code but in the *Act on Employment*.

The Labour Code also implements EC regulations, primarily EU directives that regulate employment law relationships and which, most importantly, guarantee employees working in the EU reasonable working conditions and occupational safety. Following the need to observe the rules contained in EU Directives, Member States are obliged to implement these in national legislation, specifically the Labour Code. By doing so, Czech labour law will be in harmony with the legal regulations contained in the Directives. A comprehensive overview of the provisions of the Labour Code that implement EU legislation is provided under *Section 363(1)*.

The Labour Code also regulates certain legal relations that arise prior to the creation of employment law relationships (employment, legal relations established on the basis of agreements for work performed outside an employment law relationship). This primarily concerns the parties' rights and obligations prior to the conclusion of an employment law relationship, where on the one side stands the employer and on the other side stands the natural person – the job applicant (*Section 30 to Section 32*). Until the employment law relationship is formed, the parties' legal relationship cannot be deemed to be an employment law relationship.

Derived then from employment law relationships are the rights and obligations of some persons that are regulated by the Labour Code (e.g. the rights of next of kin, survivors, the obligations of natural and legal persons, for whom the employee is released, etc.). These relations are regulated by the Labour Code, but they cannot be deemed to be employment-related.

Related provisions:

Section 30–32 of the Labour Code – procedure preceding commencement of employment law relationships
Section 363(1) of the Labour Code – list of the provisions transposing EU regulations

Related legal regulations:

Act on Employment – No. 435/2004 Coll.

Section 2

(1) The rights or obligations within employment law relationships may be regulated in derogation of this Act provided that this is not explicitly prohibited by this Act or unless it follows from the nature of its provisions that no derogation is possible. No derogation is possible from the provisions set out in Section 363(1), which transpose the regulations of the European Communities; however, this does not apply if the derogation is for the benefit of the employee.

(2) A derogating regulation of the rights or obligations pursuant to paragraph 1 above may be stipulated by an agreement and, under the conditions set out by this Act, also by an internal regulation.

(3) A derogating regulation of the rights concerning salary rights and other rights in employment law relationships (Section 307) may not be lesser or greater than the right stipulated by this Act, a collective agreement or, as appropriate, an internal regulation as the lowest or highest permissible.

(4) Dependent work that is performed within the relationship of superiority of the employer and subordination of the employee means exclusively personal performance of the employee's work for the employer based on the employer's instructions, on the employer's behalf, for a salary, public sector pay or remuneration for work, during working hours or at an otherwise determined or agreed time at the employer's workplace, or at a place that is otherwise agreed, at the employer's expense and responsibility.

(5) Dependent work pursuant to paragraph 4 above also includes those cases where the employer temporarily assigns its employee for the performance of work to some other employer on the basis of authorization pursuant to a special legal regulation (hereinafter an 'employment agency') and on the basis of an arrangement made in the employment contract or agreement to perform work whereby the employment agency agrees to provide its employee with an opportunity to temporarily perform work according to the employment contract or agreement to perform work for some other employer (hereinafter the 'user') and the employee agrees to perform the work according to the user's instructions and on the basis of an agreement on temporary assignment of an employee of the employment agency concluded between the employment agency and the user.

(6) Work by natural persons under the age of 15 years or aged 15 years and older until the completion of compulsory education is prohibited. These persons may perform only artistic, cultural, advertising or sports activities under the conditions stipulated by a special regulation.

Mandatory and non-mandatory rules

This is a key Section of the Labour Code. On the one hand it stipulates the fundamental concept that ‘what is not prohibited is permitted’ and on the other hand it defines employment as the subject-matter of labour law.

The principle ‘what is not prohibited is permitted’ contained in paragraph 1 ensues from the foregoing general private law principle of autonomy of will, or also contractual freedom. The said principle significantly strengthens contractual freedom in employment law relationships and employment flexibility in general. Parties to employment law relationships may engage in conduct that is not prohibited by a legal regulation or in conduct with regard to which the nature of legal provisions does not clearly state that it may not be deviated from.

Employment law relationship rights and obligations may be regulated at variance with this statute, if the law does not prohibit this. Therefore, parties to an employment law relationship may do everything that is not prohibited by law. The flexible concept of this principle is then unfortunately significantly restricted by a comprehensive list of mandatory provisions which it is not possible to deviate from. The provisions of *Section 2(1)* present three cases when the principle ‘what is not prohibited is permitted’ is restricted. These are as follows:

- statutory prohibition;
- the nature of a provision;
- provisions implementing EU law.

The first category of rules that one cannot deviate from are categorical prohibiting rules; i.e. rules that expressly prohibit certain conduct of entities. The identification of this type of rules should not pose a problem in practice: they should be obvious from the use of the prohibiting imperative, i.e. primarily from using collocations such as ‘it is prohibited, may not, it is not permitted’, etc. Other mandatory rules where the law directly prohibits divergent conduct are defined in *Section 363(2)*.

Nonetheless, most mandatory rules need to be recognized by their nature; i.e. using interpretive rules, the legislator signifies whether a legal rule can or cannot be deviated from. Mandatory rules may be deemed to be rules that permit only one solution, i.e. the recommended solution. The legal sentence will then contain words such as ‘solely, only, expressly’ (e.g. *Section 3*). Moreover, the nature of a provision needs to be established on the basis of its interpretation; the sense, aim and purpose of the given provision should be taken into regard. In other words the aim, purpose and function of the Labour Code and labour law should be reviewed. However,

such a teleological interpretation is no easy thing. Both the organization function and the protective function of labour law need to be taken into consideration. The labour law principles laid down in *Section 13 and Section 14* may be applied. Furthermore, provisions which cannot be deviated from owing to their nature may also be deemed status-related matters, i.e. provisions that regulate the position (status) of the parties – (*Section 6 to Section 12*) and provisions that regulate compensation for damage (*Section 248 to Section 275, Section 365 to Section 393*).

The last category of restrictions of the ‘what is not prohibited is permitted’ principle is described under *Section 363(1)*, which defines the provisions one may deviate from but only in favour of an employee. These provisions are harmonization provisions through which EU law, represented by the Directives of the EC, has been implemented into the law of the Czech Republic. Deviation in favour of an employee in this sense is not a problem since Directives provide only for minimum employee protection that will not be disturbed by deviating from a provision for an employee’s benefit.

Definition and characteristics of employment

The provisions of *Section 2(4) and (5)* define the term ‘employment’. Employment falls under labour law. Thus, it is an activity that is regulated by labour law and as stated under *Section 3*, if the subject-matter of the relationship between the parties is an activity that shows signs of employment, such an activity must be performed under an employment law relationship.

The following is characteristic of employment:

- organizational subordination of an employee;
- employer costs;
- work performed in the name of the employer and at its responsibility;
- work performed during regular hours scheduled by the employer;
- remuneration is subject only to performance of work.

What is typical of employment and contrary to self-employment is the superiority and the subordination of the persons who do the work. Thus, work is performed in the way required by the employer and in accordance with its instructions. The employer also manages and controls the work on an ongoing basis. Thus, the employee performs specific activities on a repetitive basis in accordance with the instructions given to him. The second element that distinguishes employment from self-employment is at whose costs the work is performed. Raw material, energy, material, tools, aids and work space are primarily deemed to be costs. Employment (work performed at the employer’s costs) should mainly be performed on the employer’s premises (at its workplace) using a contractor’s material.

Where employment is concerned, work is performed on behalf of the employer and at its responsibility. The employee does the work on behalf of the employer and should he cause damage to a third person, the employer is liable for such

damage. Similarly, should the employee sustain damage while performing work caused by a third person, the employer is liable for such damage in accordance with employment liability.

Where employment is concerned, the employer allocates work to the employee in accordance with working hours and periods of rest stipulated by the Labour Code. The employer is thus entitled to utilize the employee's work potential only in the time periods and under the terms and conditions set in the Labour Code. Thus, the basic features of employment are scheduling of working hours and allocation of work only during these working hours, observance of the length of working hours and shifts, restriction of overtime and night work, statutory breaks at work and periods of rest, time off in the event of an impediment to work, provision of the employee's vacation and keeping records on working hours.

What is also typical of employment is that salaries are agreed upon as regular payment provided to the employee for performance of work. Salaries are calculated in relation to time, i.e. salaries are remuneration that depends on the number of hours worked during working hours. The employee is entitled to this remuneration periodically for a certain period (generally a calendar month) and only for performance of work and not other activities therewith connected (costs, liability, independent work). Remuneration (the amount) primarily depends on the number of hours worked, or standardization of work, if applicable, and not on the value of the final thing.

Related provisions:

Section 3 of the Labour Code – regulation of dependent work

Section 6–12 of the Labour Code – parties to employment law relationships

Section 13 of the Labour Code – basic principles of employment law relationships

Section 14 of the Labour Code – exercise of rights and performance of obligations arising out of employment law relationships

Section 248–275 of the Labour Code – compensation for damage

Section 363 of the Labour Code – list of provisions transposing EU regulations, list of mandatory rules

Sections 365–393 of the Labour Code – liability of employers for damage in cases of accidents at work and occupational diseases

Section 3

Dependent work may be performed only within an employment law relationship pursuant to this Act unless it is regulated by special legal regulations.² Basic employment law relationships pursuant to this Act include employment law relationship and legal relationships established by agreements on work performed outside an employment law relationship.

² E.g. Act No. 218/2002 Coll., on the service of public servants in administrative authorities and on remuneration of these servants and other employees in administrative authorities (the Service Act), as amended; Act No. 361/2003 Coll., on the service relationship of members of the security corps, as amended.

Dependent work

This Section lays down the rule according to which employment defined under *Section 2 (4) and (5)* of the Labour Code may be performed only under an employment law relationship. Thus, if a natural person does work in person that bears the signs of employment for another natural person or for a legal person, the individual must perform this work under an employment law relationship (he cannot do such work on the basis of, for example, a contract for work done or another type of contract according to the *Civil Code* or the *Commercial Code*). These relationships will also be deemed to be employment law relationships by state bodies in regards to tax or social insurance issues, or by the court in the event of specific legal disputes.

Employment and legal relationships established on the basis of agreements for work performed outside of employment (agreement to complete a job and agreement to perform work) are deemed to be employment law relationships.

Related provisions:

Section 2(4) and (5) of the Labour Code – definition of dependent work

**Section 4:
Repealed**

Relationship between the Civil Code and the Labour Code

This Section was repealed through a judgment of the Constitutional Court with effect as of 14 April 2008. It defined the mutual relationship between the *Civil Code* and the Labour Code given the principle of delegation. According to the principle of delegation the *Civil Code* could be applied to employment law relationships only if the Labour Code so expressly stipulated (refer to the so-called delegation provisions under *Section 13, Section 18*, etc.). The Constitutional Court cancelled this principle on the grounds of its contradiction with the principle of a legal state and in its justification the Constitutional Court stated that the *Civil Code* should continue to be applied in employment law relationships on the basis of the principle of subsidiarity. According to the subsidiarity principle, we always apply the *Civil Code* to employment law relationships if the provisions of the Labour Code cannot be applied.

The problem of this application lies in the fact that this principle is not expressly stated in legal regulations. The Labour Code itself did not take this principle into account, it in no way establishes its position in regards to this principle, it does not contain adequate varying legislation, nor does it specifically exclude the application of certain provisions of the *Civil Code* that are unsuitable when it comes to labour law.

Related provisions:

Section 13 of the Labour Code – basic principles of employment law relationships

Section 18 of the Labour Code – relationship between the Civil Code and the Labour Code

Related legal regulations:

Judgment of the Constitutional Court dated 12 March 2008 – No. 116/2008 Coll.

Section 5

(1) This Act applies to relationships arising out of the discharge of a public office only if explicitly stipulated by this Act or if stipulated by special legal regulations.

(2) If a public office is discharged within an employment law relationship, the employment law relationship shall be governed by this Act.

(3) Labour relationships between a cooperative and its members shall be governed by this Act unless a special legal regulation stipulates otherwise³.

(4) This Act applies to employment law relationships of judicial trainees, State attorneys, State attorney trainees and employees performing State administration in administrative authorities as a service that is provided by the Czech Republic to the general public pursuant to the Service Act only if expressly stipulated by this Act or if stipulated by special legal regulations⁴.

(5) Employment law relationships of trainees preparing for the performance of public service; officers of local governments; academic employees of institutes of higher learning; pedagogical workers^{4a}; directors of public research institutions; captains of vessels and members of crew on seagoing vessels^{4b}; employees of the Probation and Mediation Service; attorneys-at-law performing the legal profession within an employment law relationship^{4c}; assistants of judges^{4d}; assistants of State attorneys^{4e}; the Ombudsman; the Deputy Ombudsman; notarial candidates; notarial trainees^{4f}; distraint candidates; distraint trainees^{4g} and trainee attorneys-at-law^{4h} shall be governed by this Act unless a special legal regulation stipulates otherwise⁵.

³ Section 226 of the Commercial Code.

⁴ Act No. 6/2002 Coll., on courts, judges, lay judges and State administration of the judiciary and on amendment to some other laws (Courts and Judges Act), as amended.

Act No. 283/1993 Coll., on State attorneys, as amended.

^{4a} Act No. 563/2004 Coll., on pedagogical workers and on amendment to some laws, as amended.

^{4b} Section 68 of Act No. 61/2000 Coll., on marine navigation.

^{4c} Section 15a of Act No 85/1996 Coll., on the Bar, as amended by Act No. 79/2006 Coll.

^{4d} Section 36a of Act No. 6/2006 Coll., as amended by Act No. 79/2006 Coll.

^{4e} Section 32a of Act No 283/2008 Coll., on State attorneys, as amended by Act No. 121/2008 Coll.

^{4f} Act No. 358/1992 Coll., on notaries and their activities (the Notarial Code), as amended.

^{4g} Act No. 120/2001 Coll., on judicial distrainers and distraint (the Distraint Rules) and on amendment to other laws, as amended.

^{4h} Section 36 et seq. of Act No. 85/1996 Coll., on the Bar, as amended.

⁵ The Service Act.

Act No. 312/2002 Coll., on officers of local Governments and on amendment to some laws, as amended.

Act No. 111/1998 Coll., on universities and amending and supplementing other laws (Act on Universities), as amended.

Act No. 349/1999 Coll., on the Ombudsman, as amended.

Act No. 257/2000 Coll., on the Probation and Mediation Service and on amendment to Act No. 2/1969 Coll., on establishment of the ministries and other central State administrative bodies of the Czech Republic, as amended, Act No. 65/1965 Coll., the Labour Code, as amended, and Act No. 359/1999 Coll., on social and legal protection of children (the Act on the Probation and Mediation Service).

Relation of the Labour Code to other special legal regulations

This Section defines the relation of the Labour Code to other special legal regulations that regulate special types of employment. It specifies the rules and the extent of application of the Labour Code to the working conditions of these persons. Special legal regulations regulate, for example, the discharge of a public office, employment law relationships between a cooperative and its members, employment law relationships of judicial and legal trainees, prosecuting attorneys, articling attorneys-at-law, regional self-government administrative unit officials, and academic and pedagogical workers. The Labour Code is in most cases regarded as a general legal regulation, whereas special statutes constitute special regulations.

TITLE II
PARTIES TO EMPLOYMENT LAW RELATIONSHIPS

Chapter 1
Employee

Section 6

(1) The capacity of a natural person as an employee to bear rights and obligations within employment law relationships, as well as the capacity to acquire such rights and assume such obligations through own legal acts, shall arise on the day when the natural person reaches 15 years of age unless this Act hereafter stipulates otherwise; however, the employer may not agree with the natural person on a day preceding the day when the natural person completes compulsory education as the day of commencement of work.

(2) Incapacitation or limitation of legal capacity of an employee shall be governed by Section 10 of the Civil Code.

Capacity of natural persons to become employees

This Section deals with the capacity of natural persons to become employees. It defines the statutory requirements placed on natural persons that are to perform employment work under an employment law relationship.

A natural person may become an employee if he has capacity to rights and obligations and if he has legal capacity. A natural person acquires both these capacities upon reaching fifteen years of age. Thus, a natural person may conclude an employment contract, an agreement to complete a job or an agreement to perform work as an employee no sooner than he turns fifteen. The natural person and the employer may agree on the natural person starting work on the date when the natural person completes his compulsory education (the regulation makes a collision between employment and compulsory education impossible). The employment law relationship is deemed established on the date agreed as the commencement of employment.

The Labour Code does not regulate the incapacitation or the limitation of legal capacity; following the principle of the subsidiary application of the *Civil Code*, the provisions of Section 10 of the *Civil Code* apply.

Related legal regulations:

Civil Code – No. 40/1964 Coll.