



April, 2012

## **Performance of illegal work, controls at workplace**

As we have already informed you in our Infoservice of February 2012, with the effect from 1 January 2012 the definition of illegal work has been changed, in consequence of which number of related provisions were changed as well. Because the performance of illegal work is sanctioned with heavy fines and because the Labour Inspection plans to carry out considerably more controls of employers this year (the control will be carried out by more than twice as many inspectors, the inspectors will have at their disposal the so called mobile offices), we consider this topic to be still up-to-date and we dare inform you in this way about further risks and liabilities connected with the performance of illegal work.

### **1. Guarantee for settlement of fines imposed on sub-supplier**

Not only the performance of dependent work by a natural person outside of an employment law relationship is deemed to be an illegal work (see the Infoservice of February 2012). According to the Employment Act, the performance of illegal work may also consist in

- the performance of work by a natural person - foreigner contrary to issued working permission, or without this permission, if required by law, and
- the performance of work by a natural person - foreigner without a residence permit in the Czech Republic, if such permit is required by law.

By amendment No. 1/2012 Coll., new provisions of the Employment Act with the effect from 1 January 2012 were introduced, regarding the guaranties of legal entities for settlement of fines imposed on sub-supplier for enabling the performance of illegal work, if the illegal work consists in the last mentioned (third) definition.

If a legal entity or a natural person (the employer) enables the performance of illegal work which consists in performance of work by a natural person – foreigner without a residence permit in the Czech Republic, if such permit is required by law, this person (the employer) can be imposed a fine of CZK 250,000 to CZK 10,000,000 and furthermore, this person shall i.a. pay the outstanding salary to the foreigner, who has performed such illegal work, including the costs connected with the payment (even abroad). However, if another company accepted any performance from this person (the employer) within the scope of their business relation, be it directly or be it via intermediary, this company guarantees (by virtue of law) the settlement of the above mentioned payments. The intermediary guarantees it in the same way.

This guaranty by virtue of law, however, exists only then, if these persons knew about the illegal work, or under reasonable care should and could have known about it.

Within 90 days of the day of the legal force of the decision on infliction of a fine at the latest, the Labour Office will initiate a procedure to determine, if the mentioned guaranty exists and who the guarantor is.

## **2. The duty to present documents at workplace during a control of the Labour Inspection**

According to the Employment Act all employers shall have at their workplaces copies of documents which prove the existence of employment law relationships (i.e. employment contracts, agreements to complete a job or agreements to perform work) and copies of documents which prove the residence permit in the Czech Republic (up to 3 years from the end of the employment of the foreigner).

With the effect from 1 April 2012 a new guideline of the Czech Labour Inspection entered into force. This guideline is binding on all inspectors and other persons, who participate in the controls. This guideline specifies the process of the control and, among others, it states how the breach of the above mentioned duty will be qualified.

This guideline states that during the control the employer is obliged to present the above mentioned documents (its copies) at the workplace, where the control is taking place, in paper form.

If the employer has more workplaces with a small number of employees or if it is required by the special character of its activity, the above mentioned obligation is deemed to be fulfilled if the copies of employment contracts, agreements to complete a job or agreements to perform work (scanned original contracts e.g. in pdf format) are presented in electronic form, i.e. CD, DVD, flash disc and IT media with the possibility of printing out the documents so that the results of the control may be justified.

If the documents are not presented by the employer right during the control at the workplace, the inspector shall record this fact into the protocol on control results as a performance of illegal work. A consecutive presentation of the documents has no influence on this qualification. However, some labour law experts do not agree with the above mentioned conclusion. As the legal regulation is quiet ambiguous, we can probably assume that further amendments of the subject provisions will be made.