

## INFORMATION FOR CLIENTS<sup>1</sup>

**February 2012**

### **Illegal work**

Dear Client,

The amendment of Act no. 435/2004 Coll. on employment, effective as of January 1, 2012 (hereinafter “Employment Act”), newly considers the dependent activity of an individual performed outside of an employment relationship as illegal work.

The provision on illegal work is very restrictive and penalties are strict. Currently, how this provision will be interpreted by state authorities and ruled on by courts cannot be foreseen. In the following text we will provide a summary of the basic information available on this issue.

Illegal work carries sanctions for the ordering party in the form of a fine of minimal amount 250 000 CZK up to 10 000 000 CZK for enabling the performance of illegal work and for the individual performing the illegal work a potential fine of up to 100 000 CZK. Further, it can be assumed that in the case of proof of illegal work, tax recovery for taxes on employment will be pursued along with public insurance including applicable penalties.

Controlling is entrusted to the State Labor Inspection Office. Controllers are entitled to require proof of identity from individuals present at the workplace of the inspected entity and performing work for this entity. If the individual in question is not a spouse or child of an individual being checked, it is necessary to prove that this individual is performing work on the basis of employment or on the basis of another contract. For individuals, who are not employees, inspectors will most likely examine if the performance of work by these individuals meets the definition of employment dependent activity.

Dependent activity is defined in § 2 Act no. 262/2006 Coll. of the Labor Code as amended (hereinafter “Labor Code”).

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<sup>1</sup> Material presented on legislative changes is of an informational character only and is in no case a substitute for professional consultation. Do not hesitate to contact our office when resolving a concrete case.



The Labor Code sets the following indicators of dependent activity:

- Work under supervision of the employer and subordination of the employee
- Work in the name of the employer
- Work according to instructions by the employer
- Personal performance of work by the employee

All of the above-mentioned indicators must be present simultaneously; otherwise it is not a case of dependent work.

A result of dependent activity according to the Labor Code is:

- Work for wages, salary or remuneration for work
- Work at the cost of the employer
- Work at the responsibility of employer
- Work performed during working hours
- Work performed at the workplace of the employer, potentially at another agreed-upon location

At the same time, none of the stated results can be excluded.

Even if all indicators and results are not fulfilled, an employment contract can be concluded. If, however, all indicators and results are fulfilled, an employment contract must be concluded.

Partial indicators for evaluating illegal work may be for example:

- Dependent supplier (actual employee) acts as an employee in the performance of work, his or her work is managed in a standard way (directly or indirectly) by a supervising employee of the customer, in the common way as it is for the employees of customers in business relationships;
- Remuneration for work is calculated on the basis of the length of the work period or in a method similar to the compensation of an individual in an employment relationship;
- The dependent supplier (actual employee) uses tools, machines and other equipment owned by the customer;
- The dependent supplier (actual employee) uses personal protective means provided by the customer or work uniform provided by the customer on which the name or logo of the customer is inscribed;
- The dependent supplier (actual employee) has a single customer (exclusive supplier), potentially the contract forbids work for another customer;
- Third parties see the dependent supplier as an employee, the position of the supplier or subcontractor is not clearly indicated in any way;
- In cases of defect in the delivery, responsibility of the dependent supplier toward the highest customer is excluded;
- The legal business relationship is concluded for an indefinite period of time or is long-term – i.e. it is not a case of time or materially limited fulfillment;



- It is a case of a continuous relationship, not on an as-needed basis;
- The amount of remuneration is set by the customer and is practically the same as the amount of wages received by employees of the customer for the same or similar work and is not increased in any way in comparison with these wages;
- Remuneration is paid in the same time periods in which employees are paid wages;
- As a rule, dependent work is the joint work of a group of individuals, whether they are all self-employed individuals or even if one of them is self-employed and the others are employees – where the responsibility of individual self-employed persons for delivery is not at all apparent.

We recommend verifying contractual relationships with suppliers in regard to the risks associated with illegal work.

In case of any questions, we are at your service.

Yours truly,

AUDITOR team