

## **MINIMUM CONDITIONS APPLICABLE** **IN CASE OF POSTING OF WORKERS TO HUNGARY**

According to Section 295 of Act I of 2012 on the Labour Code (hereinafter referred to as 'Labour Code'), if a foreign employer employs an employee temporarily in the territory of Hungary, some minimum conditions apply to the employment relationship even if Hungarian labour law is otherwise not applicable to that employment relationship.

The **most important** provisions of the Labour Code applicable to posting of workers to the territory of Hungary and the minimum conditions that apply in case of posting of workers are presented below.

For the detailed regulations please see the links available on our website.

### *Section 295*

(1) If a foreign employer employs an employee in the territory of Hungary - under agreement with a third party - in an employment relationship that is not covered by this Act pursuant to Subsection (2) of Section 3, with the exceptions set out in Subsection (4), Hungarian law shall apply to such employment relationships in terms of:

- a)* **maximum working time and minimum rest periods;**
- b)* **minimum duration of annual paid leave;**
- c)* **the amount of minimum wages;**
- d)* **the conditions for temporary agency work as per Sections 214-222;**
- e)* **occupational safety;**
- f)* **the conditions of employment or work by pregnant women or women who have recently given birth, and of young people; furthermore**
- g)* **the principle of equal treatment;**

including the provisions of a collective agreement with extended scope as pertaining to the employment relationship in question.

(2) The provisions of Subsection (1) shall also apply where employment is provided at the Hungarian branch of a foreign employer, or of an employer that belongs to the same group of companies as the foreign employer.

(3) In the application of Paragraph *c)* of Subsection (1), the concept of minimum wage shall be understood as the remuneration defined in Sections 136-153. Minimum wage shall not include payments made to voluntary mutual insurance funds, and any remuneration provided to the employee that is not subject to personal income tax.

(4) As regards employers engaged in construction work that involves the building, remodeling, maintenance, improvement or demolition of buildings, thus particularly excavating, earthwork, actual building work, the assembly and dismantling of prefabricated components, fitting and installations, renovation, restoration, dismantling, demolition, maintenance, upkeep, painting and cleaning work, in terms of the requirements specified in Subsection (1) the employees employed for these activities shall be subject to collective agreements covering the entire industry or an entire sector.

(5) The provisions of Subsections (1)-(4) need not be applied if the law governing the employment relationship contains more favorable regulations for the employee in terms of the requirements defined in Subsection (1).

### *Section 296*

(1) The provisions of Section 295 shall not apply to merchant navy enterprises as regards seagoing personnel.

(2) In the case of initial assembly and/or first installation of goods where this is an integral part of a contract and carried out by employees posted by the supplier, the provisions of Paragraphs *b)-c)* of Subsection (1) of Section 295 shall not apply in terms of minimum paid annual leave and minimum rates of pay if the period of posting for working in Hungary does not exceed eight days, with the exception of the activity defined in Subsection (4) of Section 295.

### *Section 297*

(1) Prior to the conclusion of a services contract the beneficiary shall inform the foreign employer in writing concerning the working conditions applicable pursuant to Section 295. In the event of failure to provide the information described above the beneficiary shall be subject to full financial liability for the employee's claims under Section 295.

(2) If the beneficiary knew or should have been aware given reasonable care that the foreign employer failed to comply with the obligation of payment of wages and contributions in connection with the employee's employment, the beneficiary shall be jointly and severally liable with the foreign employer for the payment of wages and other payroll costs otherwise payable by the foreign employer.

(3) The beneficiary shall ensure - for the purpose of verifying compliance with Section 295 - that:

*a)* the employment contract or equivalent other document of posted workers,  
*b)* the time sheets of posted workers, and  
*c)* proof of payment of the wages of posted workers on paper or in electronic format,  
is available during the whole duration of posting, at the place where the work is carried out, and for a period of three years after the end thereof at the employer's registered office or fixed establishment for the purpose of verification.

(4) The foreign employer shall delegate an officer for implementation of communication with the employment authority acting as the designated authority, and for sending and receiving the documents referred to in Subsection (3). The foreign employer shall forthwith notify the employment authority about such delegated officer, including any changes in the person of the delegated officer.

(5) The foreign employer - if other than the delegated officer referred to in Subsection (4) - shall designate a contact person for the purpose of liaison between social partners and the service provider in the interest of collective bargaining for the duration of the service.

(6) If the person designated under Subsection (5) does not permanently reside in Hungary, the contact person appointed must be available upon reasonable and justified request.

### **a) Maximum working time and minimum rest periods**

### *Section 92*

(1) The **daily working time** in full-time jobs is eight hours (regular daily working time).

(2) Based on an agreement between the parties, the daily working time in full-time jobs may be increased to not more than twelve hours daily for employees:

- a)* working in stand-by jobs;
- b)* who are relatives of the employer or the owner (extended daily working time).

(3) For the purposes of Subsection (2), ‘owner’ shall mean any member of the business association holding more than twenty-five per cent of the votes in the company’s decision-making body.

#### Section 99

(1) The **scheduled daily working time** of an employee may not be less than four hours, with the exception of part-time work.

(2) According to the work schedule:

- a) the daily working time of employees shall not exceed twelve hours;
- b) the weekly working time of employees shall not exceed forty-eight hours.

(3) As regards the employees employed under Subsection (2) of Section 92, according to the work schedule:

- a) the daily working time of employees shall not exceed twenty-four hours;
- b) the weekly working time of employees shall not exceed seventy-two hours;

if so agreed by the parties in writing. The agreement may be terminated by the employee with fifteen days notice effective as of the last day of the calendar month, or the last day of the working time banking arrangement if applicable.

(4) The scheduled daily or weekly working time of employees may exceed the time limits specified in Subsections (2)-(3) by a maximum of one additional hour, if the date of switching to winter time falls inside the employee’s working hours as defined in the work schedule.

(5) The duration of overtime work performed according to:

a) Paragraph a) of Section 107 shall be included in the employee’s daily working time [*outside regular working hours*];

b) Section 107 shall be included in the employee’s weekly working time [*outside regular working hours; over and above the hours covered within the framework of working time banking; over and above the weekly working time covered by the payroll period, where applicable; and the duration of on-call duty*].

(6) The scheduled daily working time of employees shall include the entire duration of on-call duty, if the duration of work cannot be measured.

(7) In the case of an irregular work schedule, Paragraph b) of Subsection (2) and Paragraph b) of Subsection (3) shall apply with the exception that the duration of scheduled weekly working time shall be taken into account on the average.

(8) As regards the employers operating by the work schedule specified according to Subsection (5) of Section 102 instead of working time banking, Paragraph b) of Subsection (2) and Paragraph b) of Subsection (3) shall not apply in connection with any calendar week when work is performed on Saturday as well.

#### Section 104

(1) At least eleven hours of uninterrupted rest period shall be provided after the conclusion of daily work and before the beginning of the next day’s work (hereinafter referred to as “**daily rest period**”).

(2) The daily rest period shall be at least eight hours for employees working:

- a) split shifts;
- b) continuous shifts;
- c) multiple shifts; or
- d) in seasonal jobs.

(3) The daily rest period shall be at least ten hours if it falls on the date of switching to summer time, or at least seven hours in the cases under Subsection (2).

(4) Where Subsection (2) or Subsection (3) applies, the total duration of two consecutive daily rest periods shall be at least twenty-two hours.

(5) After an inactive stand-by period the employee shall not be entitled to a rest period.

#### *Section 105*

(1) Employees shall be entitled to two rest days in a given week (**weekly rest day**).

(2) In the case of an irregular work schedule the weekly rest days may be scheduled irregularly as well.

(3) In the application of Subsection (2), after six days of work one rest day shall be allocated in a given week, with the exception of employees working in continuous shifts, shift work or in seasonal jobs.

(4) With the exception set out in Paragraph *f*) of Subsection (1) of Section 101, employees shall be allocated at least one weekly rest day in a given month on a Sunday.

#### *Section 106*

(1) In lieu of weekly rest days, each week employees shall be given at least forty-eight hours of uninterrupted **weekly rest period**.

(2) With the exception set out in Paragraph *f*) of Subsection (1) of Section 101, the weekly rest period of employees shall be allocated at least once in a given month on a Sunday.

(3) In the case of an irregular work schedule, in lieu of the weekly rest period specified in Subsection (1) employees may be allocated - in accordance with Subsection (2) - the uninterrupted weekly rest period comprising at least forty hours in a week and covering one calendar day. Employees shall be provided at least forty-eight hours of weekly rest period as an average of working time banking or the payroll period.

#### *Section 107*

‘Overtime work’ shall mean work performed:

- a*) outside regular working hours;
  - b*) over and above the hours covered within the framework of working time banking;
  - c*) over and above the weekly working time covered by the payroll period, where applicable;
- and
- d*) the duration of on-call duty.

### **b) Minimum duration of annual paid leave**

#### *Section 116*

The amount of vested vacation time shall be twenty working days.

#### *Section 117*

(1) Employees shall be entitled to extra vacation time as follows:

- a*) one working day over the age of twenty-five;
- b*) two working days over the age of twenty-eight;
- c*) three working days over the age of thirty-one;
- d*) four working days over the age of thirty-three;
- e*) five working days over the age of thirty-five;

- f) six working days over the age of thirty-seven;
- g) seven working days over the age of thirty-nine;
- h) eight working days over the age of forty-one;
- i) nine working days over the age of forty-three;
- j) ten working days over the age of forty-five.

(2) Employees shall be first entitled to extra vacation time in the year when reaching the age specified in Subsection (1) above.

#### *Section 118*

(1) Employees shall be entitled to extra vacation time as follows:

- a) two working days for one child;
- b) four working days for two children;
- c) a total of seven working days for more than two children

under sixteen years of age.

(2) The extra vacation time referred to in Subsection (1) shall be increased for children with disabilities by two working days per child.

(3) For the purposes of entitlement to extra vacation time, a child shall first be taken into consideration in the year of his birth and for the last time in the year in which he/she reaches the age of sixteen.

(4) Upon the birth of his child, a father shall be entitled to five days of extra vacation time, or seven working days in the case of twins, until the end of the second month from the date of birth, which shall be allocated on the days requested by the father. Such leave shall be provided also if the child is stillborn or dies.

#### *Section 119*

(1) Young workers shall be entitled to five extra days of vacation time each year. The last time such benefit applies shall be the year when the young workers reaches eighteen years of age.

(2) Employees permanently working underground or spending at least three hours a day on a job exposed to ionizing radiation shall be entitled to five extra working days of vacation each year.

#### *Section 120*

Employees:

- a) having suffered a degree of health impairment of at least fifty per cent as diagnosed by the body of rehabilitation experts,
  - b) eligible for disability allowance, or
  - c) eligible for special aid for the blind,
- shall be entitled to five working days of extra vacation time a year.

### **c) The amount of minimum wages**

#### *Section 136*

(1) The base wage must be at least the mandatory minimum wage.

(2) The base wage shall be specified on a time basis.

(3) In determining the base wage for one hour of the basic monthly salary, the amount of the basic monthly salary projected for one hour under the standard work pattern for the month shall be multiplied by the number of hours scheduled for the same period under the standard work pattern.

#### *Section 137*

(1) Employers may establish wages on a time or performance basis, or by a combination of the two.

(2) Performance-based wage means where wages are paid on the basis of performance-related requirements specified for each employee separately in advance.

(3) Wages in the form of performance-based wages exclusively may be established only if so agreed in the employment contract. This also applies where wages are paid on a time and performance basis combined, if the time rate is lower than the base wage.

#### *Section 138*

(1) If wages are paid on the basis of performance, performance requirements shall be determined by the employer on the basis of preliminary and objective surveys and calculations covering the potential to perform one hundred per cent of such requirements during regular working hours.

(2) Performance requirements are to be established, and employee groups under the same performance requirements are to be determined in a manner consistent with the employer's operating conditions, such as the objective requirements relating to the performance of work, work organization and the technology employed.

(3) In the event of any dispute concerning performance requirements, the burden of proof to verify that the procedure did not violate the provisions laid down in Subsections (1)-(2) lies with the employer.

(4) The employees concerned shall be given written notice of performance requirements and performance-based wage factors in advance.

(5) The performance factors for full-time employees shall be established so that the wages payable upon one hundred percent fulfillment of the normative performance requirement and upon the completion of the full working time shall amount to at least the mandatory minimum wage.

(6) In the case of employees whose wages are paid on the basis of performance only, a guaranteed salary is to be paid of an amount up to at least half of the base wage.

### **66. Wage supplement**

#### *Section 139*

(1) A wage supplement is paid to employees in addition to their wages for regular working time.

(2) Unless otherwise agreed, the amount of wage supplement is calculated based on the employee's base wage for one hour.

(3) In determining the base amount of wage supplement, the amount of the basic monthly salary shall be divided, by way of derogation from Subsection (3) of Section 136:

- a) by one hundred and seventy-four hours in the case of regular daily working time,
- b) by the commensurate part of one hundred and seventy-four hours in the case of irregular daily working time and part-time work.

### *Section 140*

(1) Employees working on Sundays shall be entitled to a fifty per cent wage supplement (Sunday premium):

*a)* if the employee can be ordered to work in regular working time only under the conditions referred to in Paragraph *d)*, *e)* or *i)* of Subsection (1) of Section 101, and

*b)* for overtime work:

*ba)* for the employees referred to in Paragraph *a)*,

*bb)* if the employee cannot be ordered to work in regular working time under Subsection (1) of Section 101.

(2) Employees required to work on public holidays shall be entitled to a one hundred per cent wage supplement.

(3) The wage supplement under Subsection (2) shall be paid for working on Easter Sunday or on Whit Sunday, or on public holidays falling on Sundays.

### *Section 141*

(1) If the beginning of the scheduled daily working time of employees changes frequently, for work performed between eighteen hours (18:00) and six hours (6:00) a thirty per cent wage supplement (special payment for shift work) shall be paid.

(2) For the purposes of Subsection (1), changes shall be considered frequent if - on a monthly basis - the beginning of the scheduled daily working time differs for at least one-third of all working days, and if the earliest and the latest start time are at least four hours apart.

### *Section 142*

Employees - other than those entitled to shift premium - shall be entitled to a fifteen per cent wage supplement for night work, provided that it exceeds one hour.

### *Section 143*

(1) The compensation referred to in Subsections (2)-(5) shall be paid to employees in addition to their wages for regular working time.

(2) In accordance with the relevant employment regulations or by agreement of the parties, employees shall be entitled to a fifty per cent wage supplement or to time off:

*a)* for overtime work performed in addition to the daily working time shown in the work schedule;

*b)* over and above the hours covered within the framework of working time banking; or

*c)* for work performed above and beyond the payroll period.

(3) The duration of time off may not be less than the overtime work ordered or the work performed, and shall be remunerated by a commensurate part of the base wage.

(4) Where overtime work is ordered on the scheduled weekly rest day (weekly rest period), a one hundred per cent wage supplement shall be paid. The wage supplement shall be fifty per cent if the employer provides another weekly rest day (weekly rest period).

(5) Where overtime work is ordered on a public holiday, the employee shall be entitled to a wage supplement as under Subsection (4).

(6) The time off or the weekly rest day (weekly rest period) mentioned in Subsection (4) shall be allocated at the latest during the month following the month when the overtime work was performed, or by the end of the banking of working time or the payroll period in the case

of an irregular work schedule. In connection with work performed in derogation of the above, or over and above the relevant working time banking arrangement, the time off shall be provided at latest by the end of the next working time banking cycle.

(7) By agreement of the parties, time off shall be provided at latest by 31 December of the following year.

#### *Section 144*

(1) For stand-by duty and on-call duty, a twenty per cent and forty per cent wage supplement shall be paid, respectively.

(2) In connection with work performed a wage supplement shall be paid in accordance with Sections 139-143.

(3) In connection with on-call duty, if the work performed cannot be measured a fifty per cent wage supplement shall be paid by way of derogation from Subsections (1)-(2).

#### *Section 145*

(1) By agreement of the parties, the base wage may include the wage supplements referred to in Sections 140-142 as well.

(2) In the employment contract the parties,

a) in lieu of wage supplement;

b) in the case of stand-by and on-call duty; may stipulate a fixed monthly payment covering regular wages and wage supplements as well.

(3) In determining the commensurate part of the fixed supplement Subsection (3) of Section 136 shall apply *mutatis mutandis*.

### **67. Payments for periods of absence**

#### *Section 146*

(1) In the event of the employer's inability to provide employment as contracted during the scheduled working time (downtime), the employee shall be entitled to his base wage, unless it is due to unavoidable external reasons.

(2) If the employee is exempted from work under the employee's consent, remuneration for such lost time shall be paid on the basis of their agreement.

(3) The employee shall be entitled to absentee pay:

a) for the duration of leave;

b) in the cases referred to in Paragraphs c)-g) of Subsection (1) of Section 55 and in Subsection (2) of Section 55;

c) in the case referred to in Paragraph i) of Subsection (1) of Section 55, if heard as a witness;

d) if wages are paid on a time or performance basis for the daily working time, if working time is reduced on account of a public holiday falling on a regular working day;

e) where payment for periods of absence is prescribed by the relevant employment regulations without specifying the actual amount of such payment.

(4) By way of derogation from Paragraph d) of Subsection (3), if the employee is unfit for work on a public holiday, seventy per cent of the absentee pay shall be paid. No absentee pay shall be paid if the employee is drawing sick pay or benefits for accident-related injuries on account of his incapacity for work.

(5) For the duration of sick leave seventy per cent of the absentee pay shall be paid.



### *Section 147*

In addition to the payments defined in Subsection (1) of Section 146, an employee shall be entitled to a wage supplement as well if he would otherwise have been due for a wage supplement based on the work schedule.

## **68. Calculation of absentee pay**

### *Section 148*

- (1) The amount of absentee pay shall be calculated:
  - a) based on the base wage (Section 136) or fixed supplement (Section 145) in effect at the time when due,
  - b) based on:
    - ba) the performance-based wage (Section 150),
    - bb) the wage supplement (Section 151),paid for the last six calendar months (relevant period).
- (2) The due date is:
  - a) the starting date of absence;
  - b) in the case of severance pay:
    - ba) the date of delivery of notice when employment is terminated by the employer,
    - bb) the time of termination of the employment relationship in the cases provided for in Paragraphs *b*) and *c*) of Subsection (1) of Section 77; or
  - c) in connection with liability for damages, the time when the damage occurs, or the time of termination of the employment relationship if employment was terminated previously.
- (3) The payment referred to in Paragraph *a*) of Subsection (1), if the amount is revised during the period of absence, this revised amount shall be taken into consideration for the duration of absence after the revision.
- (4) In determining the amount of absentee pay, the sums calculated under Subsection (1) - according to Sections 149-151 - shall be applied on the aggregate.

### *Section 149*

- (1) In the case of monthly salary, in determining the amount of absentee pay under Paragraph *a*) of Subsection (1) of Section 148, the provisions of Subsection (3) of Section 136 shall apply.
- (2) The amount of absentee pay under Paragraph *a*) of Subsection (1) of Section 148 may be paid, and accounted, by payment of the monthly salary or hourly wage and the fixed supplement for the duration of absence.

### *Section 150*

- (1) In determining the amount of absentee pay, the performance-based wage paid under Subsection (3) of Section 137 shall be taken into account.
- (2) The performance-based wage shall be taken into consideration as commensurate for the relevant period, irrespective of the date of payment.
- (3) In the case of performance-based wages, the base wage shall not apply when calculating the amount of absentee pay.

(4) In determining the absentee pay for one hour, the performance-based wage due for regular working time during the relevant period shall be divided by the number of hours worked in regular working time during the relevant period, for which the performance-based wage was paid (divider).

(5) In determining the amount of absentee pay, where wages are paid on a time and performance basis combined, the pay for work at time rates shall be taken into account in accordance with Paragraph *a*) of Subsection (1) of Section 148.

#### *Section 151*

(1) In determining the absentee pay, Sunday premium, shift premium, night-shift premium and the wage supplement referred to in Subsection (1) of Section 144 shall be taken into consideration in accordance with Subsections (2)-(5) hereof.

(2) A Sunday premium shall be taken into account when determining the amount of absentee pay if the employee was working during at least one-third of the Sundays within his scheduled working time during the relevant period.

(3) A shift premium and a night shift supplement shall be taken into account when determining the amount of absentee pay if the employee was working during at least thirty per cent of the scheduled working time within the relevant period during hours when shift premium or night shift supplement is normally paid.

(4) A wage supplement paid for on-call and stand-by duty shall be taken into account when determining the amount of absentee pay if the employer ordered the employee to work on-call and stand-by duty during the relevant period covering at least ninety-six hours in a month on average.

(5) In determining the absentee pay for one hour, the wage supplement due for the relevant period shall be divided by the number of hours worked in scheduled working time during the relevant period, for which the wage supplement was paid (divider).

#### *Section 152*

(1) In determining the absentee pay, if no wages had been paid during the relevant period, the base wage shall be taken into account.

(2) If the employment relationship was concluded less than six months ago, for the purposes of calculating the absentee pay the calendar months or month shall be recognized as the relevant period. In the absence of a full calendar month, the base wage or the monthly fixed payment shall be taken into account.

### **69. Mandatory minimum wage, guaranteed wage minimum**

#### *Section 153*

(1) The Government is hereby authorized to determine the amount and scope of:

- a*) the mandatory minimum wage, and
- b*) the guaranteed wage minimum,

following consultations in the Nemzeti Gazdasági és Társadalmi Tanács (*National Economic and Social Council*) by means of a decree.

(2) The mandatory minimum wage specified by the Government for certain groups of employees may differ.

(3) The amount and scope of the mandatory minimum wage shall, in particular, be determined based on the requirements prescribed for specific occupations, the indicators of

the national labor market, the status of the national economy, and the unique requirements of certain economic sectors and geographical areas in terms of workforce.

(4) The amount of the mandatory minimum wage shall be reviewed each calendar year.

(5) The Government is hereby authorized to decree - following consultations in the Nemzeti Gazdasági és Társadalmi Tanács - the expected level of pay increases deemed necessary to preserve the net value of wages below 300,000 forints gross, and the level of non-wage benefits that can be taken into consideration within that framework, and the detailed rules relating to the expected level of pay increases.

#### **d) The conditions for temporary agency work as per Sections 214-222**

### **94. Definitions**

#### *Section 214*

(1) For the purposes of this Act:

a) 'temporary agency work' shall mean when an employee is hired out by a temporary-work agency to a user enterprise for remunerated temporary work, provided there is an employment relationship between the employee and the temporary-work agency (placement);

b) 'temporary-work agency' shall mean any employer who places an employee, with whom it has an employment relationship, under contract to a user enterprise for temporary work supervised by the user enterprise;

c) 'user enterprise' shall mean any employer under whose supervision the employee performs temporary work;

d) 'temporary agency worker' shall mean an employee with a contract of employment or an employment relationship with a temporary-work agency with a view to being assigned to a user enterprise to work temporarily, where employer's rights are exercised jointly by the temporary-work agency and the user enterprise (employee);

e) 'assignment' shall mean when the temporary agency worker is placed at the user enterprise to work temporarily.

(2) The duration of assignment may not exceed five years, including any period of extended assignment and re-assignment within a period of six months from the time of termination of his/her previous employment, irrespective of whether the assignment was made by the same or by a different temporary-work agency.

#### *Section 215*

(1) The following may function as temporary-work agencies:

a) a company established in an EEA Member State that is authorized under national law to engage in the activities of temporary-work agencies, or

b) a business association established in Hungary whose members have limited liability, or a cooperative society in respect of employees other than its members,

provided that it satisfies the requirements prescribed in this Act and in other legislation and it is registered by the government employment agency.

(2) Where a temporary-work agency is excluded from the register, the provisions on invalidity shall apply with regard to employment contracts.

#### *Section 216*

(1) The assignment of employees is not allowed:

- a) in the cases specified by the relevant employment regulations;
  - b) with a view to replacing employees on strike;
  - c) beyond the duration specified in Subsection (2) of Section 214.
- (2) The user enterprise shall not have the right to order a temporary agency worker to work at another employer.
- (3) An agreement shall be considered invalid if:
- a) it contains a clause to ban or restrict any relationship with the user enterprise following termination of the employment relationship on any grounds;
  - b) it contains a clause to stipulate the payment of a fee by the employee to the temporary-work agency for the assignment, or for entering into a relationship with the user enterprise.
- (4) The user enterprise shall inform the local works council:
- a) of the number of temporary agency workers employed and of the employment conditions;
  - b) on vacant positions;
- at least once in a six-month period, and shall keep the temporary agency workers it employs informed on a regular basis.

## **95. Relationship between the temporary-work agency and user enterprise**

### *Section 217*

- (1) The agreement between the placement agency and the user enterprise shall specify the material conditions of placement, and the sharing of employer's rights. Employment may only be terminated by the placement agency. The agreement shall be made in writing. An agreement between the temporary-work agency and the user enterprise shall be null and void if:
- a) the temporary-work agency and the user enterprise are affiliated by way of ownership in part or in whole,
  - b) at least one of the two employers holds some percentage of ownership in the other employer, or
  - c) the two employers are connected through their ownership in a third organization.
- (2) The agreement between the temporary-work agency and the user enterprise may contain a clause to stipulate that non-wage benefits shall be provided to the employee by the user enterprise directly.
- (3) The user enterprise shall inform the temporary-work agency in writing:
- a) of its normal course of work;
  - b) of the person exercising employer's rights;
  - c) of the manner and the timeframe within which to supply the information necessary for the payment of wages;
  - d) of the qualification requirements pertaining to the work in question; furthermore
  - e) of all aspects that are considered significant in terms of the employment of the employee in question.
- (4) Unless otherwise agreed, the temporary-work agency shall be required to cover all employment-related expenses specified in Subsection (2) of Section 51, such as the employee's costs of travel and the costs of a medical examination if one is required for employment. When requested by the user enterprise, the temporary-work agency shall, before the first day of employment, supply to the user enterprise:
- a) a notification the temporary-work agency has submitted to the state tax authority concerning the data of the person employed by the employer and the payer, containing the

date of commencement of the insurance relationship, as prescribed by the legislation on taxation; and

*b)* a copy of the document in proof of being admitted into the register of temporary-work agencies in accordance with specific other legislation.

(5) Unless there is an agreement to the contrary, the user enterprise shall supply all information to the temporary-work agency by the fifth day of the month following the current month, which are required for the payment of wages, and for carrying out tax declarations, data disclosure and payment obligations relating to the employment relationship. The user enterprise shall supply the above-specified information to the temporary-work agency within three working days from the last day of employment, if employment is terminated during the month.

## **96. Temporary employment relationships**

### *Section 218*

(1) The employment contract shall contain a clause indicating that it was concluded for the purpose of temporary work, and shall contain a description of the work and the base wage.

(2) At the time of concluding the employment contract, the temporary-work agency shall, in addition to what is contained in Section 46, inform the employee of the registration number assigned.

(3) Before the assignment the temporary-work agency shall provide to the employee the following information in writing:

- a)* the identification data of the user enterprise;
- b)* the beginning date of the assignment;
- c)* the place of work;
- d)* the normal course of work at the user enterprise;
- e)* the person exercising employer's rights on the user enterprise's behalf;
- f)* the particulars on travel to work, room and board.

(4) During the assignment, the employer's rights and obligations relating to:

- a)* occupational safety;
  - b)* the provisions of Subsections (1), (3)-(5) of Section 51; and
  - c)* working time and rest periods, and keeping records thereof;
- shall accrue upon the user enterprise.

## **97. Principle of equal treatment**

### *Section 219*

(1) The basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment, at least those available to the employees employed by the user enterprise under employment relationship.

(2) The basic working and employment conditions referred to in Subsection (1) shall, in particular, cover:

- a)* the protection of pregnant women and nursing mothers; and
- b)* the protection of young workers;
- c)* the amount and protection of wages, including other benefits;
- d)* the provisions on equal treatment.

(3) As regards the payment of wages and other benefits, the provisions on equal treatment shall apply as of the one hundred and eighty-fourth day of employment at the user enterprise with respect to any employee:

*a)* who is engaged with a temporary-work agency in an employment relationship established for an indefinite duration, and who is receiving pay in the absence of any assignment to a user enterprise;

*b)* who is recognized as a long-term absentee from the labor market as defined in Point 1 of Subsection (2) of Section 1 of Act CXXIII of 2004;

*c)* who is working within the framework of temporary agency work at a business association under the majority control of a municipal government or public benefit organization, and a registered public benefit organization.

(4) In the application of Subsection (3), as regards re-assignment to the same user enterprise Subsection (2) of Section 214 shall apply for the calculation of days of the duration of the assignment.

## **98. Termination of employment**

### *Section 220*

(1) In the application of Subsection (2) of Section 66, termination of the assignment shall be construed as a reason in connection with the temporary-work agency's operation.

(2) The notice period shall be fifteen days.

(3) If termination is effected by the temporary-work agency the employee shall be exempted from work during the notice period unless otherwise agreed.

(4) The employee may terminate the employment relationship without notice if the infringement referred to in Subsection (1) of Section 78 is committed by the user enterprise.

(5) The user enterprise shall notify the temporary-work agency in writing concerning any infringement on the employee's part within five working days from the time of gaining knowledge. The time limit mentioned in Subsection (2) of Section 78 commences upon delivery of the information.

(6) The employee shall submit the notice for termination of the employment relationship to the temporary-work agency.

## **99. Liability for damages**

### *Section 221*

(1) In connection with any damage caused, or any violation of rights relating to personality committed, by the employee the user enterprise may demand compensation or restitution from the employee in accordance with this Act.

(2) By agreement between the temporary-work agency and the user enterprise, the provisions of civil law on liability for damages caused by an employee shall apply in the case under Subsection (1).

(3) In the application of the provisions of civil law on the employer's liability for damages caused by an employee the user enterprise shall be construed as the employer, unless there is an agreement between the temporary-work agency and the user enterprise to the contrary.

(4) For any damages caused to the employee, or for any violation of the employee's rights relating to personality committed while on assignment the user enterprise and the temporary-work agency shall be subject to joint and several liability.

## **100. Entire agreement**

### *Section 222*

- (1) In the agreement of the parties or in the collective agreement no derogation is allowed:
- a)* from Sections 214-216;
  - b)* from Subsection (1) of Section 217;
  - c)* from Subsections (1)-(2) and Paragraphs *a)* and *b)* of Subsection (4) of Section 218.
- (2) In the collective agreement any derogation:
- a)* from Subsection (3) of Section 218;
  - b)* from Subsections (2)-(3) of Section 220;
  - c)* from Paragraphs *a)* and *b)* of Subsection (2) of Section 219
- is allowed only to the benefit of employees.
- (3) In connection with temporary agency work:
- a)* Subsections (1)-(2) and (4) of Section 69;
  - b)* Sections 193-195;
  - c)* Sections 198-200;
  - d)* Section 212;
- shall not apply.
- (4) In connection with temporary agency work Sections 71-76 shall not apply.
- (5) In connection with a temporary employment relationship, Subsection (2) of Section 77 shall apply with the exception that for the purposes of entitlement to severance pay the duration of the last assignment during the employment relationship shall be taken into consideration.

### **e) Occupational safety**

The employer must comply with the occupational safety rules applicable to the service provided.

The English version of the the **Act XCIII of 1993 on Labour Safety** can be found here:

[http://www.ommf.gov.hu/index.php?akt\\_menu=551](http://www.ommf.gov.hu/index.php?akt_menu=551)

### **f) The conditions of employment or work by pregnant women or women who have recently given birth, and of young people**

#### **f/1) The conditions of employment or work by pregnant women or women who have recently given birth**

### *Section 53*

(3) An employee may not be transferred to work at another location without the employee's consent:

- a)* from the time her pregnancy is diagnosed until her child reaches three years of age;
- b)* until the child reaches sixteen years of age, if a single parent; and
- c)* if providing long-term care for a close relative in person; furthermore
- d)* if having suffered a degree of health impairment of at least fifty per cent as diagnosed by the body of rehabilitation experts.

### *Section 60*

(1) An employee shall be offered a job fitting for her state of health if considered unable to work in her original position according to a medical opinion from the time her pregnancy is diagnosed until her child reaches one year of age. The pregnant employee shall be discharged from work duty if no position appropriate for her medical condition is available.

(2) The employee shall be given the base wage normally paid for the job offered, which may not be less than her base wage fixed in the employment contract. The base wage shall be payable for the duration of discharge, except if the job offered is refused without good reason.

### *Section 61*

(3) Employers shall amend the employment contract based on the employee's proposition to part-time work covering half of the regular daily working time until the child reaches the age of three, or the age of five in the case of parents with three or more children.

### *Section 65*

(1) An employment relationship may be terminated by the employee and the employer by notice.

(2) If so agreed by the parties, the employment relationship may not be terminated by notice for a period of up to one year from the date of commencement of the employment relationship.

(3) The employer may not terminate the employment relationship by notice:

- a)* during pregnancy;
- b)* during maternity leave;
- c)* during a leave of absence taken without pay for caring for a child (Sections 128 and 130);
- d)* during any period of actual reserve military service; and
- e)* in the case of women, while receiving treatment related to a human reproduction procedure, for up to six months from the beginning of such treatment.

(4) For the purposes of the protection set out in Subsection (3) hereof, the date of giving notice of the dismissal, and in the case of collective redundancies the date of notification referred to in Subsection (1) of Section 75 shall be taken into account.

(5) The provisions of Paragraphs *a)* and *e)* of Subsection (3) hereof shall apply only if the employee has informed the employer thereof. If the employee supplied said information after giving notice, the employer may withdraw the notice of termination in writing within fifteen days upon receipt thereof.

### *Section 66*

(4) The employer shall be permitted to terminate the employment relationship of employees, other than pensioners, concluded for an indefinite duration inside the five-year period before the date when the employee reaches the age limit for old-age pension on the grounds of the employees' behavior in relation to the employment relationship only for the reason defined in Subsection (1) of Section 78.

(5) The employment relationship of the employees referred to in Subsection (4) may be terminated in connection with employees' ability or for reasons in connection with the employer's operations if the employer has no vacant position available at the workplace referred to in Subsection (3) of Section 45 suitable for the employee affected in terms of skills, education and/or experience required for his/her previous job, or if the employee refuses the offer made for his/her employment in that job.



(6) Where the employment relationship of a mother or a single father is terminated by notice Subsections (4)-(5) shall apply until the child reaches the age of three, if the employee is not taking up maternity leave or leave of absence without pay for the purpose of caring for the child (Section 128).

#### *Section 68*

(1) The notice period shall begin at the earliest on the day following the date when dismissal is communicated.

(2) Where employment is terminated by the employer, the notice period shall begin at the earliest on the day after the last day of the following periods:

- a)* duration of incapacity to work due to illness, not to exceed one year following expiration of the sick leave period;
- b)* absence from work for the purpose of caring for a sick child;
- c)* leave of absence without pay for providing home care for a close relative.

#### *Section 77*

(1) An employee shall be entitled to severance pay if his employment relationship is terminated:

- a)* by the employer;
- b)* upon the dissolution of the employer without succession; or
- c)* under Paragraph *d)* of Subsection (1) of Section 63.

(2) Entitlement to severance pay shall only apply upon the existence of an employment relationship with the employer during the period specified in Subsection (3) at the time when the notice of dismissal is delivered or when the employer is terminated without succession. In terms of entitlement for severance pay, any period of at least thirty consecutive days for which the employee did not receive any wages shall not be taken into consideration, with the exception of:

- a)* maternity leave and any leave of absence without pay for nursing or caring for a child (Section 128);
- b)* any leave of absence without pay taken for the purpose of actual reserve military service for a period of not more than three months.

#### *Section 113*

(1) The provisions on working time and rest periods shall apply subject to the exceptions set out in Subsections (2)-(4):

- a)* from the time the employee's pregnancy is diagnosed until her child reaches three years of age;
- b)* until the child reaches three years of age, if a single parent;
- c)* for any employee who works under conditions which may be harmful to his health as defined by the relevant employment regulations.

(2) In the cases referred to in Subsection (1):

- a)* an irregular work schedule may be used only upon the employee's consent;
- b)* weekly rest days may not be allocated irregularly;
- c)* overtime work or stand-by duty cannot be ordered.

(3) The employees mentioned in Paragraphs *a)*-*b)* of Subsection (1) may not be ordered to work in night shifts.

(4) The scheduled daily working time of employees employed under conditions set out in Paragraph *c*) of Subsection (1) shall not exceed eight hours in respect of night work.

(5) Subject to the exception set out in Subsection (2) of Section 108, an employee caring for his/her child as a single parent may be required to work overtime or in stand-by duty only with his/her consent as from the time his/her child reaches three years of age up to the time when the child reaches four years of age.

#### *Section 115*

(1) Employees are entitled to paid annual leave based on the time spent at work, comprising vested vacation time and extra vacation time.

(2) In the application of Subsection (1), time spent at work shall include:

- a*) any duration of exemption from work as scheduled;
- b*) any duration of paid leave;
- c*) any duration of maternity leave;
- d*) the first six months of leave of absence without pay for caring for a child (Section 128);
- e*) any duration of incapacity to work;
- f*) any duration of leave of absence without pay taken up to three months for the purpose of actual reserve military service;
- g*) the duration of exemption from work specified in Paragraphs *b*)-*k*) of Subsection (1) of Section 55.

#### *Section 118*

(1) Employees shall be entitled to extra vacation time as follows:

- a*) two working days for one child;
- b*) four working days for two children;
- c*) a total of seven working days for more than two children under sixteen years of age.

(2) The extra vacation time referred to in Subsection (1) shall be increased for children with disabilities by two working days per child.

(3) For the purposes of entitlement to extra vacation time, a child shall first be taken into consideration in the year of his birth and for the last time in the year in which he/she reaches the age of sixteen.

(4) Upon the birth of his child, a father shall be entitled to five days of extra vacation time, or seven working days in the case of twins, until the end of the second month from the date of birth, which shall be allocated on the days requested by the father. Such leave shall be provided also if the child is stillborn or dies.

#### *Section 126*

(1) Employees shall be entitled to fifteen working days of sick leave per calendar year for the duration of time during which the employee is incapacitated to work.

(2) By way of derogation from Subsection (1), sick leave shall not be available in connection with any duration of being unfit for work due to accidents at work and occupational diseases as specified by social insurance provisions, and to pregnancy with possible delivery problems.

(3) In respect of employment relationships beginning during the year, employees shall be entitled to sick leave as commensurate for the remaining part of the year.

#### *Section 127*

(1) Mothers shall be entitled to twenty-four consecutive weeks of maternity leave, of which two weeks must be taken.

(2) Maternity leave shall also be provided to a woman who has been given custody of a child for the purpose of adoption.

(3) In the absence of an agreement to the contrary, maternity leave shall be allocated so as to commence four weeks prior to the expected time of birth.

(4) If the child receives treatment in an institute for premature infants, the unused portion of the maternity leave may be used after the child has been released from the institute up to the end of the first year following birth.

(5) The duration of maternity leave, except where entitlement is specifically connected to work, shall be recognized as time spent at work.

#### *Section 128*

Employees shall be entitled to unpaid leave at the times requested by the employee for the purpose of taking care of his/her child, until the child reaches the age of three.

#### *Section 129*

(1) The periods of leave referred to in Sections 127-128 shall end:

*a)* if the child is stillborn;

*b)* if the child dies, on the fifteenth day following death;

*c)* on the day following placement of the child - according to the provisions set out in specific other legislation - into temporary custody, temporary or permanent foster care, or in a social institution with room and board for over thirty days.

(2) In the cases described in Subsection (1), the period of leave shall be no less than six weeks from the date of birth.

#### *Section 130*

In addition to what is contained in Section 128, employees shall be entitled to unpaid leave for providing care for a child in person until the child reaches the age of ten, during the period of receiving child-care allowance, child-care assistance benefits.

### **f/2) The conditions of employment or work of young people**

#### *Section 294*

(1) For the purposes of this Act:

*a)* 'young worker' shall mean any employee under the age of eighteen;

#### *Section 21*

(4) The consent of the legal representative is required for the validity of the legal acts of young workers or persons whose legal capacity has been partially limited having regard to employment relating to the conclusion, amendment or termination of an employment contract, or to undertaking commitments.

#### *Section 114*

(1) Young workers may not be ordered to work at night and may not be ordered to work overtime.

(2) The daily working time of young workers is limited at eight hours, and the number of working hours performed under different employment relationships shall be added up.

(3) As regards young workers:

*a)* the maximum duration of working time banking is one week;

*b)* if the scheduled daily working time is over four and a half hours or six hours, the break-time provided shall be at least thirty minutes or forty-five minutes, respectively;

*c)* the daily rest period allocated shall be at least twelve hours.

(4) In the case of young workers Subsection (2) of Section 105 and Subsection (3) of Section 106 shall not apply.

### *Section 119*

(1) Young workers shall be entitled to five extra days of vacation time each year. The last time such benefit applies shall be the year when the young workers reaches eighteen years of age.

### **g) The principle of equal treatment**

The employer must comply with the Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities.

The English version of the Act can be downloaded here:

<http://www.egyenlobanasmod.hu/data/SZMM094B.pdf>