# LABOUR LAW IN THE CZECH REPUBLIC

SECOND EDITION

JAN PICHRT MARTIN ŠTEFKO



## Labour Law in the Czech Republic

Second Edition

#### Jan Pichrt Martin Štefko

This book was originally published as a monograph in the International Encyclopaedia of Laws/Labour Law and Industrial Relations.

General Editors: Roger Blanpain, Frank Hendrickx



Published by: Kluwer Law International PO Box 316 2400 AH Alphen aan den Rijn The Netherlands Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by: Aspen Publishers, Inc. 7201 McKinney Circle Frederick, MD 21704 United States of America Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by: Turpin Distribution Services Ltd. Stratton Business Park Pegasus Drive, Biggleswade Bedfordshire SG18 8TQ United Kingdom Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper

ISBN 97-890-411-5673-0

This title is available on www.kluwerlawonline.com

© 2015, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

### The Authors



Jan Pichrt is a Head of the Department of Labour Law and Social Security Law at the Faculty of Law, Charles University in Prague, where he began his career after graduating from studies in this faculty. He holds a degree as Doctor of Law (JUDr) and has a PhD degree; in 2011 he was appointed Docent (Associate Professor).

Jan Pichrt has lectured in labour law at the Law Faculty of the Charles University in Prague for more than 20 years.

He is an author of European Works Council, Czech Republic (IEL 2006 and 2010) and co-author *Labour Law and Industrial Relations* in the International Encyclopaedia of

Laws, *Czech Republic* (IEL 2009). Additionally, he is author or co-author of numerous articles in the field of labour law, a co-author of a prestigious commentary on the Czech Labour Code and some textbooks on labour law.

Besides publication and scientific activities, Jan Pichrt has practised as a barrister for many years. He is entered into the Bar list of the Czech Bar Association. His particular expertise as a practising barrister has been not only in the area of labour law but above all also in the area of commercial law.

Jan Pichrt decides disputes as an arbitrator entered into the list of arbitrators of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic. He also is a member of the Society for Labour Law and the Security Law and he has participated in various international legal conferences.

He is a co-author of Chapter 1 and author of Chapter 2 in the General Introduction of this monograph. He is the author of Chapters 1, 6, 8 and 10 in Part I, co-author of Chapter 7, in Part I and the author of Part II of this monograph.

#### The Authors



Martin Štefko is a Docent (Associate Professor) at the Charles University Faculty of Law, a correspondent for the Max Planck Institute for International and Comparative Social Security Law in Munich, Germany.

He holds a degree as Doctor of Law (2003) and a PhD degree (2005), both from Charles University. In 2014 he was appointed Docent (Associate Professor). He also continued his studies at the Max Planck Institute in 2007, where he was granted a fellowship focusing on international labour law and social security law matters. Following this fellowship, he went on to conduct research in international labour law at the

European Research and Studies Centre at the Karol Adamiecki University of Economics in Katowice.

He has written many articles published in various European legal journals. He has also written a few books concerning labour law and social security law (he is also a co-author of a prestigious commentary on the Czech Labour Code). He also works as a lawyer at the Czech Social Security Administration in Prague and is a member of the Expert Board at the Labour Office of Prague. Additionally, he has participated in various international legal conferences.

Martin Štefko is a co-author of Chapter 1 and author of Chapters 3–6 in the General Introduction of this monograph. He is co-author of Chapter 7 and author of Chapters 2–5 and Chapter 9 in Part I of this monograph.

The Authors	3
Abbreviations	17
General Introduction	19
Chapter 1. General Background	19
§1. Geography, Location, Size and Boundaries	19
§2. THE POLITICAL SYSTEM	19
§3. VITAL STATISTICS  I. Unemployment  II. Data by Gender and Age Groups, Including Some Projections	22 23 25
§4. ECONOMICS AND EMPLOYMENT	26
§5. UNDERLYING SOCIAL AND CULTURAL VALUES OF SOCIETY  I. Constitutional Framework  II. The State's Duty to Maintain Social Welfare Rights  III. Legal Duty to Respect the Position of an Individual	28 28 29 30
Chapter 2. Definitions and Notions	33
§1. DISTINCTION BETWEEN LABOUR LAW AND OTHER BRANCHES OF LAW I. Distinction between Labour Law and Social Security Law II. Legislation Related to Security in the Case of Unemployment and in the Case of Occupational Accidents and	33 33
Occupational Disease A. Security in Case of Unemployment B. Security in Case of Occupational Accidents and	34 34
Occupational Disease III. Relationship between Labour Law and Civil Law	35 36
iii. Relationship between Labout Law and Civil Law	-//

82.	DEFI	NITIO	ONS OF LABOUR LAW AND THE CONCEPTS WHICH ARE	
32.			EQUENTLY USED IN THIS STUDY	41
			pour Law and Its Functions	41
			plicability of Labour Law	41
			plication and Interpretation of Labour Law	
			ndamental Principles of Industrial Relations)	43
	IV.		ustrial Relations	45
			Types of Industrial Relations	45
			Individual Industrial Relations in General	47
		C.	Collective Industrial Relations in General	48
		D.	Fundamental Industrial Relations - the Most Important	
			Industrial Relations	48
			1. Employment Relationship	48
			2. Agreements to Work Outside the Scope of Employment	49
		E.	Dependent Work	49
		F.		51
			1. The Employer	52
			<ul> <li>a. The employer – a natural person</li> </ul>	52
			b. The employer – legal entity	53
			2. The Employee and the Managerial Employee	55
			a. The employee	55
			b. Managerial employee	56
			Legal Acts of the Employer (Legal Entity)	56
			Content of Industrial Relations	57
		I.	AND TAKEN THE TAKE THE PARTIES OF TH	58
		J.	Alteration of Industrial Relations	59
			Alteration of Subject of Industrial Relations	59
			Alteration of subject of fundamental	50
			industrial relations	59
			b. Alteration of subject of obligations in	7.1
			industrial relations	61
		**	2. Alteration of the Content of Industrial Relations	62
		K.	Extinction of Rights and Duties Ensuing from Industrial	63
			Relations and Extinction of These Relations	64
			1. Extinction of Fundamental Industrial Relations in General	04
			2. Extinction of Rights and Duties Ensuing from Industrial	65
			Relations	65
			<ul><li>a. Death of an employee</li><li>b. Fulfilment of a debt</li></ul>	66
			c. Agreement on extinction of an obligation	66
			d. Waiver of a debt	66
			e. Subsequent impossibility of performance in	00
			industrial relations	67
			f. Lapse of time	67
			g. Set-off in industrial relations	67
			h. Notice of termination	68
			i. Consolidation	68

	L. Securing Rights and Duties (Obligations) Ensuing from	
	Industrial Relations	68
	<ol> <li>Securing of Claim by a Guarantee</li> </ol>	69
	2. Securing of Claim by Creating a Right of Pledge	69
	3. Securing of Claim by Transfer of a Right	70
V.	Labour Law Facts	70
VI.	Legal Acts	71
	A. The Term of a Legal Act in Industrial Relations	71
	B. Expression of the Will and Interpretation of the Will	71
	C. Types of Labour Law Acts	73
	D. Labour Law Contracts	73
	E. Elements of Legal Acts in Labour Law	75
	<ol> <li>Elements Associated with Subjects of Labour Law Acts</li> </ol>	75
	2. Elements Associated with the Will	75
	3. Elements Associated with the Expression of the Will	76
	4. Elements Associated with the Object of the Labour	7.
	Law Act	76
	F. Defects of Labour Law Acts and Their Consequences	77
	The Invalidity of the Labour Law Act	78
	a. Invalidity of the labour law act	78 78
	b. Absolute invalidity and relative validity in labour law	81
	<ol> <li>Nullity of the Labour Law Act</li> <li>The Relative Ineffectiveness of a Legal Act</li> </ol>	81
	3. The Relative Ineffectiveness of a Legal Act G. The Possibility of Withdrawing from a Labour Law Act	82
VII	Representation	83
	Conditions	83
	Lapse of Time as a Labour Law Fact	83
124.	A. Computation of Time	84
	B. Legal Consequences of the Lapse of Time	84
	Procedural Time-limits	84
	2. Statutory Bar	85
	3. Preclusion	85
	4. Periods of Limitation	85
X.	Delivery of Documents in Industrial Relations	87
Chapter	3. Historical Background	90
§1. Med	IEVAL TIMES	90
§2. The	BIRTH OF MODERN LABOUR LAW	90
§3. DEV	ELOPMENTS AFTER WORLD WAR I	93
§4. Unii	ICATION OF LEGAL REGULATIONS	93
§5. THE	LABOUR CODE OF 2006	94

§6.	REFORMS	S TOWARDS FLEXICURITY	95
Ch	apter 4.	Role of Government Institutions in the Shaping and Administration of Labour and Industrial Relations Policy	97
§1.	DEGREE	OF GOVERNMENT INTERVENTION	97
§2.	INCOME	POLICY	99
§3.	I. Min	ENCE OF MINISTRIES AND/OR AGENCIES IN LABOUR MATTERS istry of Labour and Social Affairs trol over Labour Law Regulations	99 99
Ch	apter 5.	Sources of Law	105
§1.	CONCEPT	OF SOURCE OF LAW	105
§2.	LAWS AN	ND SECONDARY LEGISLATION	105
§3.	INTERNA	TIONAL LEGAL SOURCES	106
§4.	COLLECT	TVE AGREEMENTS AND INTERNAL REGULATIONS	108
§5.	EU LAB	OUR LAW	109
§6.	THE HIE	RARCHY OF SOURCES OF LABOUR LAW	110
Ch	apter 6.	International Private Labour Law	112
§1.	Introdu	ICTION AND CONTEMPORARY ISSUES	112
§2.	ROME C	ONVENTION AND REGULATION ROME I	113
§3.	BILATER	AL CZECH-POLISH CONVENTION	115
§4.	NATIONA	AL REGULATIONS	116
§5.	Posting	OF WORKERS	116
§6.		ATIONSHIP BETWEEN INTERNATIONAL, SUPRANATIONAL FIONAL REGULATIONS	118
§7.	ACCESS	TO THE CZECH LABOUR MARKET	119

§8. SPECIAL PROVISIONS CONCERNING EMPLOYMENT RELATIONSHIPS IN THE LABOUR CODE	121
Part I. Individual Industrial Relations	123
Chapter 1. Definitions and Concepts	123
§1. DIFFERENT CATEGORIES OF EMPLOYEE  I. In General on Different Categories of Employee  A. Employees in an Employment Relationship and Employed Employed on the Basis of Agreements to Work outside	123 123
the Scope of Employment  B. Dependent Work Performed in a Service Relationship  C. Other Possible Differentiation of Employees into Specific	123 124 e
Categories  1. Dependent Work Performed in the Private and Publi Sectors	124
Special Rights and Duties Associated with the Employment of Some Employees under the Czech Labour Code	125
<ol> <li>Groups of Employees and Employers Whose Industrian Relations Are also Regulated by Provisions from Ot Branches of Law</li> </ol>	rial
II. Industrial Relations also Regulated by Other than Labour Law Regulations (So-called Other Legal Relations of	126
Participation in Work)  A. Different Variations of the Labour Code's Applicability t Other Legal Relations of Participation in Work	126
<ul><li>B. Enumeration of the Other Legal Relations of Participation in Work</li><li>C. More in Detail on Some Other Legal Relations of</li></ul>	on 126
Participation in Work 1. Industrial Relations of Articled Judges, Public	127
Prosecutors and Articled Attorneys  2. Industrial Relations of Academic Employees at Universities	128
3. Industrial Relations of Officials in Territorial Self-governing Units	129
<ul><li>4. Industrial Relations of Navy Crews</li><li>5. Performance of a Public Office</li><li>III. The Legal Regulation of the Position of Employees in the</li></ul>	129
Public Sector in the Czech Republic  A. Some Matters Related to the Creation (and Termination)	
of an Employment Relationship of Some Employees  B. Exceptions Related to Remuneration and Reimbursemen of Travel Expenses	t 132

		C.	Exceptions Related to Working Time and Holidays	134
	IV.	Ser	vice Relationships	134
		A.	Service Relationships of Members of the Armed Forces	135
			1. Service Relationship of Professional Soldiers	135
			2. Service Relationships of Members of the Security Corps	136
		В.	Service Relationships of Civil Servants	137
	V.		me Other Groups of Employees	139
			Agency Employment of Employees Carried out by Private	
			Employment Agencies with the Aim of Assigning Them	
			to the User Enterprise	139
			1. In General on Agency Employment in the Czech	
			Republic and Its Legal Regulation	139
			2. Some Specific Aspects of Agency Employment in	
			the Czech Republic	143
			a. Employment contract or agreement to perform	
			work entered into between the employment agency	
			and its employee	144
			b. Elements of the agreement between the employment	
			agency and the user on the temporary assignment of	
			an employee of the employment agency	145
			c. Written instruction which assigns the employee for	
			temporary performance of work	146
			d. Working and wage conditions of the temporarily	
			assigned employee	147
			e. Liability related to the temporary assignment	147
		В.	and the state of t	
			(Permanently) away from the Workplace of the Employer	148
		C	Employment of Adolescent Employees, Employees with	
			Disabilities, Female Employees, Mothers, Employees Taking	
			Care of Children or Other Persons	149
			Care of Children of Other Persons	
82	Cor	VTR.	ACTS REGULATING DEPENDENT WORK	149
32.			ferent Categories of Contracts Regulating Dependent Work	150
			aployment Relationship and Employment Contract (and also	
	2.4.4		pointment)	150
		A.	* control of the cont	100
		4.3.	Kinds of Employment Relationship	150
			Employment Contract	151
			2. Appointment	152
		R	Employment Relationship for an Indefinite Period of Time	153
			Employment Relationship for a Fixed Term	153
			Trial Period	155
			Form and Content	155
	Ш		reements to Work Outside the Scope of Employment	157
	111.		Agreement to Complete a Job	159
		В.		159
		D.	Agreement to retroin work	109

Cha	apter 2. Rights and Duties of the Parties during Employment	161
§1.	DUTIES OF EMPLOYEES  I. Basic Duties II. The Duties of Managerial Employees III. Torts on the Part of an Employee A. General Principles, Divisions of Torts B. General Tort C. The Violation of Duty to Prevent Harm D. Loss of Items of Value E. Loss of Tools or Protective Items	161 161 163 163 164 164 165 166
§2.	DUTIES OF THE EMPLOYER  I. Duties of Employers  II. Torts on the Part of an Employer  A. General Tort  B. Liability in Connection with Averting Damage  C. Occupational Accidents or Diseases  D. Liability for the Loss of Employees' Possessions	167 167 167 168 168 168
§3,	CHANGES IN THE EMPLOYMENT RELATIONSHIP  I. Change of Subject  II. Change of Workplace  III. The Change of Work Tasks  IV. Reassignment of the Employee to His/Her Original Workplace	171 171 172 172 173
Ch	apter 3. Working Time and Rest Periods	175
§1.	WORKING TIME, THE PURPOSE OF REGULATION  I. Basic Framework  II. Shorter Working Time  III. Distribution of Working Time  IV. Overtime Work  V. Night Work  VI. Working Time Account  VII. Home Work	175 176 176 176 177 178 178
§2.	Periods of Rest  I. Breaks in Work  II. The Rest Period between Two Consecutive Shifts  III. The Rest Period in a Week  IV. Public Holidays  V. Paid Leave  A. Annual Leave or Its Proportionate Part  B. Leave for Days of Work  C. Supplementary Leave  D. Joint Provisions Regarding Vacations	181 182 182 183 184 184 185 185

Chapter 4. Payment	187
§1. WAGES AND SALARY	187
§2. Functions	188
§3. WAGE AND SALARY PROTECTION  I. Minimum Wage II. The Guaranteed Wage III. Bonuses IV. Joint Provision Concerning Payments	188 188 189 189
§3. DETERMINATION OF WAGES	191
§4. Determination of Salary	191
Chapter 5. Incapacity to Work	193
§1. Impediments to Work	193
§2. REGULATION	193
§3. Training and Study during Employment	194
§4. SERIOUS PERSONAL IMPEDIMENTS TO WORK	195
§5. EMPLOYER'S IMPEDIMENTS TO WORK	196
Chapter 6. Job Security	198
§1. Reaching a Certain Age	198
§2. DIFFERENT METHODS OF TERMINATING THE EMPLOYMENT RELATIONSHIP	198
<ol> <li>Termination of an Employment Relationship on the Basis of a Legal Act of the Participants</li> </ol>	199
<ul> <li>A. Termination of an Employment Relationship by an Agreement of the Participants in the Employment Relationship</li> <li>B. Termination of an Employment Relationship by a Notice</li> </ul>	199
of Termination	200
1. Notice Given by an Employee	201
2. Notice Given by the Employer	202
C. Immediate Termination of the Employment Relationship  1. Immediate Termination of the Employment Relationship	205
Made by an Employer	20€

			2.	Immediate Termination of an Employment	
				Relationship by an Employee	206
		D.	Te	rmination of an Employment Relationship During	
				Trial Period	207
		E.		verance Pay	207
		F.	Co	llective Dismissals	209
			in	ecial Protection Ensuing from Trade Union Participation Termination of Employment	211
		Н.		titlements When Termination of an Employment	0.1.1
		con		lationship is Void	211
		Ter	min	ation of an Employment Relationship due to a Legal Event ation of an Employment Relationship as a Result of an	213
	TEX. 7			istrative Decision	214
	IV.			iate Termination of Employment by the Statutory entative of a Minor Employee	215
Ch	apte	r 7.	W	he Protection of Certain Categories of Vorker, and Protection against Discrimination Employment	216
§1.	Occ	CUPA	TIO	NAL SAFETY	216
§2.	I. II. III.	The Wo Ma	e Pu rk I tern	MPLOYEES  Impose of the Regulation  Prohibited for Pregnant Women and Mothers  ity and Paternity Leave  Special Working Conditions for Women	217 217 218 218 219
§3.	II. III.	The Reg Pro	e Pu gula hib	urpose of the Regulation tions ition of Child Labour I Working Conditions of Minors	220 220 220 220 221
§4.	Dis	ABL	ED-l	EMPLOYEES	222
§5.	ME	ASU	RES	TO PROMOTE EQUAL TREATMENT	223
Ch	apte	er 8	. N	Ion-competition Clause	224
Ch	apte	er 9	. Ir	nventions and Other Creations by Employees	227
§1.	REC	GULA	ATIO	DNS	227
82	Рат	ENT	's E	RIGHTS TO INNOVATION DESIGN RIGHTS	227

§3. Copyright	228
Chapter 10. Settlement of Disputes	229
§1. Grievance Procedures	229
§2. ROLE OF THE COURTS	230
Part II. Collective Industrial Relations	233
Chapter 1. Trade Union Freedom	234
§1. Freedom to Establish and Join Unions	234
§2. FREEDOM NOT TO JOIN  I. Short Introduction to the Development of the Trade	237
Unions' Position  II. Some Questions Resulting from the Judgment of the Constitutional Court of the Czech Republic No. Pl. ÚS 83/06 (Negative Coalition Freedom and Other Matters)	237
Chapter 2. Trade Unions and Employers' Associations	241
§1. DESCRIPTION	241
<ul> <li>§2. Role <ol> <li>Collective Bargaining and Entering into Collective Agreements</li> <li>Co-decision</li> <li>Right to Information and Consultation</li> <li>Information</li> <li>Consultation</li> </ol> </li> <li>IV. The Right to Act on Behalf of Employees in Industrial Relations in Relation to Individual Employees</li> <li>V. Right to Control</li> <li>VI. Joint Role of Trade Union Organizations and Employers' Organizations – the Right to Consult on Bills Relating to Important Employee Interests</li> </ul>	242 242 242 243 243 244 245 245
§3. STRUCTURE	246
Chapter 3. Institutionalized Relations between Employers and Employees	248
§1. At the Individual Employer Level I. Establishment and Competence	248 248

<ul><li>A. Supervisory Boards until 31 December 2013</li><li>B. Works Council and Health and Safety Representatives</li><li>C. Trade Union Section</li></ul>	248 250 252
§2. At Industry Level	253
Chapter 4. Collective Bargaining	255
§1. LEVELS OF BARGAINING I. Collective Bargaining at Undertaking Level, or more precisely	255
at the Level of the Employer (the So-called Undertaking Collective Agreement)  II. Collective Bargaining at the Branch Level, or more precisely at the Level of Employers' Organizations (Associations) and at the Level of Organizations (Associations) of Trade Union	257
Organizations (the So-called Higher-level Collective Agreements)	258
§2. CONTENT OF BARGAINING  I. Normative and Commitment Content of Collective Agreements II. Binding Effect	259 260 260
§3. Extension	261
§4. Interpretation	262
Chapter 5. Strikes and Lock-outs	263
Chapter 6. Settlement of Collective Disputes	266
§1. PROCEEDINGS BEFORE A MEDIATOR	266
§2. Proceedings before an Arbitrator	267
§3. Role of the Government	268
Selected Bibliography	269
Index	272

## Labour Law in the Czech Republic

Second Edition

#### Jan Pichrt Martin Štefko

This book was originally published as a monograph in the International Encyclopaedia of Laws/Labour Law and Industrial Relations.

General Editors: Roger Blanpain, Frank Hendrickx

