THE END OF AN ERA OR A PERMANENT LIFE (EMERGENCY) SITUATION? THE (AFTER)EFFECTS OF THE "CORONAVIRUS DECREES" IN EMPLOYMENT RELATIONS: PART 1*

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During the past three-year period, the rather complex and intricate situation caused by COVID-19 has also had a particularly significant impact on individual economic employment relationships. In this regard, the aim of this study is to examine the situation of the parties involved in the employment relationship, mainly from the perspective of "home office" work, which can be defined as a new form of employment. Despite the fact that the legislation – i.e. the government decrees – that forms the basis of the above categories is mostly no longer in effect, employer decisions that were made based on them can still have important consequences. In this study, I intend to give an overview of the dichotomy between remote working and home office, as well as the range of cases that have arisen in connection with their current status.

1. Amendments to the Labor Code: who, what, how and when?

As of June 1, 2022, Government Decree 181/2022 (V.24.) terminated the state of emergency previously declared in Hungary due to the SARS-CoV-2 coronavirus pandemic. At the same time, this piece of legislation also repealed several government decrees, as a result of which the temporary rules for remote work (*távmunkavégzés* is oftentimes also dubbed in translations as teleworking) under emergency conditions could no longer be applied from June 1. In place of these, however, an amendment, which has since been justified in the relevant literature, entered into force in relation to Act I of 2012 on the Labor Code (hereinafter LC).

Based on the amendments that became effective on June 1, 2022, the hybrid form of work called "home office" was regulated within the framework of remote working, resulting in a rather flexible concept that can be handled more easily by the actors in the employment relationship (Herdon & Rab 2020). Pursuant to § 196(1) of the amended LC: "*Teleworking' shall mean activities performed partly or fully by the employee at a location other than the employer's facilities."* On the basis of the provision cited, it is evident that working at a place separate from the employer's premises, either partially or during the entirety of the employment relationship, is still a pivotal point of the definition. I consider it necessary to highlight that, in my opinion, employees – depending on the intention of the parties involved – can still perform work from home in two way (Molnár 2020). One of these is the remote working arrangement modified

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with the LC amendment, which the parties are obliged to stipulate in the employment contract, while the other one is the unilateral right of instruction arising from the employer's authority, i.e. the application of the legal institution of employment other than the employment contract contained in § 53 of the LC. However, the latter – in addition to the fact that the employer can order the performance of tasks at a different place of work at almost any time – can only be applied for a specific period of time. In this case, the duration of employment may not exceed a total of forty-four working days or three hundred and fifty-two hours per calendar year (Kárpáti 2022, 30).

Nonetheless, based on the above legal provision – if, due to the nature of the job tasks to be performed by the employees or to the employees' state of health, there is a realistic chance that the employees will carry out their activities from home, even for a short time, during the employment relationship – the (partial) duration of working from home can also be recorded in the employment contract. In my opinion, this would make it possible to avoid the unpleasant situation that could arise in connection with exceeding the duration of the unilateral act of employment and the enforcement of the resulting claims, which is less than rewarding for either of the parties involved.

Another important element is that the change in the legal definition omits the part about working with a computing/IT device, as one of the former defining elements of remote work. As a result, remote work – or the hybrid "home office" – now means not only work performed with the help of computing devices and its transmission electronically but, in addition to the typically intellectual work, tasks can also be carried out in the framework of remote work for which computing devices are not, or are not exclusively, necessary.

2. Parallel changes affecting employer rights: the "digitalization" of employer control

In order to see how significant the changes that have been made in the scope of employer control related to remote working are, I think it is necessary to point out the nature of its previous framework(s). First and foremost, it should be noted that, in the absence of a different agreement based on the previous regulation, it was the employer that established the method of inspection and the shortest period between the notification about and the commencement of the inspection in the case of an inspection in the area of the property serving as the place of work. Here, too, the law provided a greater degree of protection to the employee, since it also stipulated as a limitation that the employer could not create a disproportionate burden either to the employee using the property as a place of work or to any other person using the same property.

By contrast, the provisions applicable as of June 1, 2022 finalize the temporary provision used as a guideline during the state of emergency, according to which, in the absence of a different agreement, the employer exercises its controlling right remotely, using an information technology tool (Sipka & Zaccaria 2018). For this, however, it is primarily necessary to ensure the availability of the required technical conditions both on the employer's and the employee's side, such as ensuring the use of certain working-hours-registration software, and possibly establishing online contact. In this respect, I believe that the creation of a properly drafted, all-encompassing internal regulation that respects the employees' rights and guarantees their integrity while protecting the

legitimate economic interests of the employer may be of paramount significance to provide sufficient information for both those employed in remote work and those employed in the general "typical" form of work. This obligation to provide information (Sipka & Zaccaria 2019) – irrespective of the changes in the law – continues to rest with the employers, whether they check their employees with the help of an information technology device or on the basis of their presence at the place of work. The reason for this is that, in addition to allowing the former option to be possible, the latter is not excluded either as an option to maintain legitimate control (Sipka 2020).

3. The absence of working flexible hours, as the rise of employer instructions

In addition to the above, a serious change was also introduced regarding work order/schedule. The flexible work schedule, which had been present as a general rule, was removed from the provisions of the LC in the case of remote work as of June 1, 2022. This gave the employers a chance to instruct the employees in addition to defining the tasks themselves to be performed according to the general rules, also regarding their scheduling and assignment. Nonetheless, it needs to be emphasized that the law does not exclude the flexible work schedule: tasks related to the organization and scheduling of work can still be delegated to the employees if the employers make this possible (Kártyás 2020).

4. Tax law overview: reimbursement as an employee entitlement?

In spite of the fact that the legal provisions related to remote work have undergone radical changes, it is positive that Act CXVII of 1995 [hereinafter *Szja.tv.* (Personal Income Tax Act)] on personal income tax continues to make it possible to request reimbursement of the costs incurred by working at home from the employer up to an amount equal to 10% of the minimum wage.

It should be underlined, however, that the above option does not create an automatic entitlement to the payment of the amount for the employees: the reimbursement may be settled at the employers' discretion as a potential way of reimbursing the reasonably incurred costs (Mélypataki, Máté & Rácz 2020).

Overall, it seems clear that some of the standards created during the state of emergency prompted by COVID-19 were integrated into the "permanent" legislative environment, although with a somewhat different content, yet filling in the gaps created by the digital revolution and the needs of new generations. I do believe that reconsidering the regulation and making it more flexible was justified and necessary, as this could make it easier to clarify the elements of the employment relationship combined with remote work in the future. However, since some elements of judicial practice developed in relation to the provisions of § 196 of the LC are no longer applicable in all cases, it will be the task of legal practitioners to uncover and correct possible errors resulting from the amendment.

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