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MEDICAL EXAMINATIONS OF EMPLOYEES

One of the duties an employer has toward its employees is to arrange for medical supervision, including preventive medical examinations as relates to their work. The type and frequency of the preventive medical examinations an employer must arrange for its employees are governed by Act No. 124/2006 Coll. on safety and health protection at work and (hereinafter “**act on OSHA**”) and Act No. 355/2007 Coll. on the protection, promotion and advancement of public health (“**act on public health protection**”). This document focuses on the issues of mandatory medical examinations and related employer duties, especially in light of the current legislation, which came into force on 1 May 2008.

Preventive Medical Examinations

According to the act on OSHA, an employer must secure preventive medical examinations for its employees. Examinations must be performed at regular intervals, depending on the nature of the work and the working conditions at the workplace.¹ In addition to the medical examinations set out by law, which we will further address below, an employer must also arrange for a medical examination **if requested by an employee**.

Jobs are assigned to four categories based on the level and nature of the job factors and work environment which may affect the health of employees, assessment of health risks and on the basis of changes in the medical condition of employees.

Jobs which pose no risk to the health of employees from the effects of the work and the work environment are classified into **category one**.

Category two includes those types of jobs where, in view of the risks, no injury to health is presumed, primarily:

- a) jobs where the factors of the work and work environment do not exceed the limits set out by special regulations,²
- b) jobs where the risk factor is ionizing radiation, provided that the structural, technical and organizational precautions guarantee that the radiation to which employees are exposed, even over periods of long-term exposure, does not exceed the limits of worker radiation set out by special regulations.³

Category three contains:

- a) jobs where employee exposure as a factor of the work and work environment is not reduced by technical precautions to the designated level, and in order to reduce the risks organizational

¹ Assessment of health risks and categorization of jobs are governed by § 31 of the act on public health protection.

² Such as Slovak Government decree 355/2006 Coll. on protection of workers from risks associated with exposure to chemical factors at work, as amended by Slovak Government decree 300/2007 Coll.

³ § 11 of Slovak Government decree 345/2006 Coll.

measures and other specific protection measures must be taken, including the use of personal protective work implements,

b) jobs where employee exposure as a factor of work and the work environment is reduced by technical measures to the designated limit, but where the combination and effect of the factors of the work and the work environment may cause injury to health,

c) jobs where there are no limits designated, but where the exposure factor of the work and the work environment may injure an employee's health,

d) jobs performed in a controlled zone where, in view of the level and fluctuation of radiation parameters, it is necessary to use personal protection work implements and carry out additional technical, organizational or other specific protection measures in order to limit employee radiation to the designated limits.

Category four contains, and only extraordinarily and for a limited period of time not to exceed one year:

a) jobs where employee exposure as a factor of the work and the work environment cannot be reduced by technical or organizational precautions to the designated level, the exposure as a factor of the work and work environment exceed the limits, changes are detected in the health of employees as relates to the factors and technical measures and other specific protection measures must be taken, including the use of personal protective work implements,

b) jobs belonging to category three according to the level of exposure of the individual factors of the work and the work environment, but a combination of work and work environment factors increase the risk of injury to health,

c) jobs performed in activities that lead to radiation, where the employee radiation exposure exceeds the radiation limits and such radiation was assessed by the public health office pursuant to sub-paragraph seven of § 13.5a).⁴

High-risk jobs pursuant to the act on public health protection are those jobs classified into category three and four. The regional office for public health decides on classifying jobs into categories three and four on the basis of a proposal from the employer or of its own volition.⁵

Frequency of Mandatory Medical Examinations

The type and frequency of mandatory medical examination which the employer must ensure will thus depend on the employee's classification in the relevant category.

It is important to note that effective as of 1 May 2008⁶, the scope of employees obliged to undergo mandatory medical examinations has been significantly narrowed. Through the end of April of this year, practically all employees were obliged to undergo mandatory medical examinations, but now only certain categories of employees will be subject to the mandatory medical examinations.

Employees in Categories One and Two

⁴ The office of public health decides on proposals for extraordinary radiation in activities leading to radiation exposure.

⁵ In the case of high-risk work, the employer has specific duties as relates to the regional office of public health, which are set out in § 31.7 of the act on public health protection.

⁶ The change was adopted by Act No. 140/2008 Coll., which amends and supplements the act on safety and health protection at work, as well as the act on public health protection (hereinafter "**amendment**").

The amendment to the act contains a new provision⁷ regarding employees in categories one and two. The wording of this provision is as follows:

“In the event of jobs in categories one and two, preventive medical examinations related to work, for a natural person applying for a job, an employee and a natural person-entrepreneur who employs no other natural persons, where health qualifications for said job are required according to special regulations, 35a), shall be performed by physicians in accordance with subsection 11.”

The amended act contains no other provisions pursuant to which employees in categories one and two would be required to undergo medical examinations. It follows then, that for jobs in categories one and two only those employees (or job applicants and natural persons-entrepreneurs who employ no other natural persons) as required by special regulations will be obliged to undergo preventive medical examinations. The notes under 35a) enumerate these special regulations demonstratively - meaning that in addition to those enumerated there may be other special regulations currently in existence or that may exist in the future. The following three special regulations are stipulated:

1. Slovak National Council Act No. 164/1996 Coll. on railways and on amending and supplementing Act No. 455/1991 Coll. on trade licensing (trade licensing act), as amended,
2. Slovak National Council Act No. 315/1996 Coll. on road traffic, as amended,
3. Act No. 473/2005 Coll. on provision of private security services and on amending and supplementing certain acts (act on private security), as amended by Act No. 330/2007 Coll.

These special regulations also define the employees obliged to undergo mandatory medical examinations and under what conditions and how often they are to undergo these examinations.

Another change relating to employees in categories one and two concerns the designation of the physicians who will be permitted to perform the mandatory medical examination. Preventive medical examinations may be performed by (i) occupational health service physicians specializing in occupational medicine, clinical occupational medicine and clinical toxicology and health services at work, as well as (ii) physicians specializing in general medicine or general pediatrics and adolescent medicine, who are not occupational health service physicians. Until the amendment came into force, only occupational health service physicians were permitted to perform these medical examinations.

Employees in Categories Three and Four

Preventive medical examinations for jobs in categories three and four apply to employees (as well as natural persons-entrepreneurs who employ no other natural persons and applicants for these types of jobs) under conditions similar to those prior to the amendment. In this case, preventive medical examinations are performed:

- a) prior to entering an employment or similar labor relationship or prior to the commencing of work of a natural person-entrepreneur who employs no other natural persons,

⁷ § 30.5 of the act on public health protection.

- b) in association with work performed,
- c) prior to a change in job classification,
- d) upon termination of an employment or similar labor relationship or upon termination of the work of a natural person-entrepreneur who employs no other natural persons if such termination is for health reasons,
- e) upon termination of an employment or other similar labor relationship if requested by the employee.

Medical examinations are carried out in association with work (i.e. continually throughout the work)

- once every two years for jobs in category three, and
- once per year for jobs in category four and on workers in category “A”.⁸

Preventive medical examinations for jobs in categories three and four are performed by occupational health service physicians specializing in occupational medicine, clinical occupational medicine and clinical toxicology and health services at work. At the request of the occupational health service physician, additional necessary preventive examinations are performed by other physicians with the relevant specializations.

Penalties

If a legal entity or natural person-entrepreneur fails to comply with the obligations, it will be deemed an OSHA administrative tort. As was the case prior to the amendment, there may be a fine anywhere from SKK 50,000 to SKK 1,000,000 for such a violation, and repeat offenders may be fined double. The public health authority takes into account the gravity, manner, duration and consequences of the illegal actions when determining the amount of the fine.

⁸ Annex 1, section A, subsection 39 of Slovak Government decree 345/2006 Coll.: “A category A worker is a worker whose effective dose of radiation on the job may be greater than 6 mSv over a period of one calendar year or where the equivalent dose of radiation on the job may be greater than three-tenths of the designated radiation limits for the eye lens, skin and extremities set out in § 11” of this decree.