

# **Act I of 2012**

## **on the Labor Code<sup>1</sup>**

### ***PART ONE***

#### ***GENERAL PROVISIONS***

##### Chapter I

##### Introductory Provisions

### **1. Objective**

#### **Section 1**

This Act lays down the fundamental rules for decent work according to the principle of free enterprise and the freedom of employment, taking into account the economic and social interests of employers and workers alike.

### **2. Scope**

#### **Section 2**

(1) This Act covers:

- a)* employers;
- b)* workers;
- c)* employers interest groups;
- d)* works councils; and
- e)* trade unions.

(2) This Act shall apply to:

- a)* user enterprises (Chapter XVI);
- b)* beneficiaries of services provided by school cooperatives (Chapter XVII).

#### **Section 3**

(1) The provisions of this Act shall apply having regard to the rules of international private law.

(2) Unless otherwise provided for, this Act shall apply to persons who normally work in Hungary.

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<sup>1</sup> Adopted by Parliament on 13 December 2011.

(3) Chapters XIX and XX of this Act shall apply if the employer's registered office or independent establishment is located in the territory of Hungary.

#### **Section 4**

The provisions of this Act pertaining to young workers shall also apply mutatis mutandis to the employment of persons under the age of eighteen within a non-employment relationship.

### **3. Interpretation principles**

#### **Section 5**

(1) The provisions of this Act shall be interpreted in accordance with the legislation of Hungary and the European Union.

(2) Agreements which waive or restrict the rights of a person cannot be broadly construed.

### **4. Common rules of conduct**

#### **Section 6**

(1) Employment contracts shall be executed as it might normally be expected in the given circumstances, unless any legal provision exists to the contrary.

(2) In exercising rights and discharging obligations, the parties involved shall act in the manner consistent with the principle of good faith and fairness, they shall be required to cooperate with one another, and they shall not engage in any conduct to breach the rights or legitimate interests of the other party.

(3) Employers shall take into account the interests of workers under the principle of equitable assessment; where the mode of performance is defined by unilateral act, it shall be done so as not to cause unreasonable disadvantage to the worker affected.

(4) The parties falling within the scope of this Act shall inform each other concerning all facts, information and circumstances, and any changes therein, which are considered essential from the point of view of employment relationships and exercising rights and discharging obligations as defined in this Act.

#### **Section 7**

Wrongful exercise of rights is prohibited. For the purposes of this Act 'wrongful exercise of rights' means, in particular, any act that is intended for or leads to the injury of the legitimate interests of others, restrictions on the enforcement of their interests, harassment, or the suppression of their opinion.

#### **Section 8**

(1) During the life of the employment relationship, workers shall not engage in any conduct by which to jeopardize the legitimate economic interests of the employer, unless so authorized by the relevant legislation.

(2) Workers may not engage in any conduct during or outside their paid working hours that – stemming from the worker's job or position in the employer's hierarchy – directly and factually has the potential to damage the employer's reputation, legitimate economic interest or the intended purpose of the employment relationship. The actions of workers may be controlled as defined in Subsection (2) of Section 9. When exercising such control, the workers affected shall be informed in writing in advance.

(3) Workers may not exercise the right to express their opinion in a way where it may lead to causing serious harm or damage to the employer's reputation or legitimate economic and organizational interests.

(4) Workers shall maintain confidentiality in relation to business secrets obtained in the course of their work. Moreover, workers shall not disclose to unauthorized persons any data learned in connection with their activities that, if revealed, would result in detrimental consequences for the employer or other persons. The requirement of confidentiality shall not apply to any information that is declared by specific other legislation to be treated as information of public interest or public information and as such is rendered subject to disclosure requirement.

## **5. Protection of personal rights**

### **Section 9**

(1) The personal rights of parties falling within the scope of this Act shall be respected.

(2) The personal right of workers may be restricted if deemed strictly necessary for reasons directly related to the intended purpose of the employment relationship and if proportionate for achieving its objective. The means and conditions for any restriction of personal rights, and the expected duration shall be communicated to the workers affected in advance.

(3) On general principle, worker may not waive their personal rights in advance. Any legal statement concerned with the personal rights of a worker shall be formally valid if made in writing.

### **Section 10**

(1) A worker may be requested to make a statement or to disclose certain information only if it does not violate his personal rights, and if deemed necessary for the conclusion, fulfillment or termination of the employment relationship. An employee may be requested to take an aptitude test if one is prescribed by employment regulations, or if deemed necessary with a view to exercising rights and discharging obligations in accordance with employment regulations.

(2) Employers shall inform their workers concerning the processing of their personal data. Employers shall be permitted to disclose facts, data and opinions concerning a worker to third persons in the cases specified by law or upon the worker's consent.

(3) In the interest of fulfillment of obligations stemming from an employment relationship, the employer shall be authorized to disclose the personal data of a worker to a data controller as prescribed by law, indicating the purpose of disclosure, of which the affected worker shall be notified in advance.

(4) Information and data pertaining to workers may be used without their consent for statistical purposes and may be disclosed for statistical use in a manner that precludes identification of the workers to whom they pertain.

### **Section 11**

(1) Employers shall be allowed to monitor the behavior of workers only to the extent pertaining to the employment relationship. The employers' actions of control, and the means and methods used, may not be at the expense of human dignity. The private life of workers may not be violated.

(2) Employers shall inform their workers in advance concerning the technical means

used for the surveillance of workers.

## **6. Principle of equal treatment**

### **Section 12**

(1) In connection with employment relationships, such as the remuneration of work, the principle of equal treatment must be strictly observed. Remedying the consequences of any breach of this requirement may not result in any violation of, or harm to, the rights of other workers.

(2) For the purposes of Subsection (1), ‘wage’ shall mean any remuneration provided directly or indirectly in cash or in kind, based on the employment relationship.

(3) The equal value of work for the purposes of the principle of equal treatment shall be determined based on the nature of the work performed, its quality and quantity, working conditions, the required vocational training, physical or intellectual efforts expended, experience, responsibilities and labor market conditions.

## **7. Employment regulations**

### **Section 13**

For the purposes of this Act, ‘employment regulations’ shall mean legislation, collective agreements and works agreements, and the binding decisions of the conciliation committee adopted according to Section 293.

## Chapter II

### Legal acts

## **8. Agreements**

### **Section 14**

Contracts concluded under this Act constitute the outcome of an agreement resting on mutual consent of the parties.

## **9. Unilateral acts, statements**

### **Section 15**

(1) Rights or obligations may derive from unilateral acts only in cases defined by employment regulations.

(2) Exercising the right of withdrawal as provided for in employment regulations or by agreement of the parties shall terminate the agreement retroactively to the date of conclusion. In the event of withdrawal the parties shall settle accounts.

(3) The provisions on agreements shall also apply to unilateral acts.

(4) A unilateral act shall take effect upon delivery to the recipient and – unless otherwise provided for in this Act – it may be amended or withdrawn only upon the recipient’s consent.

(5) As regards any statement made in the execution of the agreement, other than legal acts, and employer’s acts relating to the management of work processes, these shall be governed by the provisions of Sections 20–26.

## **10. Commitments**

### **Section 16**

(1) Under unilateral commitments (hereinafter referred to as “commitment”) the carrying out of the commitments entered into may be demanded irrespective of the beneficiary’s acceptance. Workers shall be allowed to undertake a statement of commitment only where expressly provided for by employment regulations.

(2) A commitment may be amended to the beneficiary’s detriment, or may be terminated effective immediately in the event of subsequent major changes in the circumstances of the person making the commitment whereby carrying out the commitment is no longer possible or it would result in unreasonable hardship.

(3) Furthermore, the provisions governing unilateral acts shall also apply to commitments, with the exception that the obligor shall not claim invalidity of his legal act, alleging that it was not served upon the beneficiary or that it was served improperly.

## **11. Employer’s internal policy**

### **Section 17**

(1) Employers shall be able to implement the legal acts referred to in Sections 15–16 by means of internal rules established of its own accord or by way of a procedure formulated unilaterally (hereinafter referred to as “employer’s internal policy”).

(2) The employer’s internal policy shall be considered delivered if published by means considered customary for, and commonly known in, the area.

## **12. Information**

### **Section 18**

(1) The provisions on legal acts shall apply where the obligation to provide information is prescribed by employment regulations upon either of the parties. Unless otherwise provided for by employment regulations, information shall be provided at a time and in a manner to permit the exercise of rights and the fulfillment of obligations.

(2) Information shall be considered provided if published by means considered customary for, and commonly known in, the area.

## **13. Conditions**

### **Section 19**

(1) The parties may render the conclusion, amendment or termination of the agreement contingent upon certain future, uncertain events (conditions). Any condition that would alter the employment relationship to the disadvantage of workers, or that would bring about the termination of the employment relationship may not be applied.

(2) Any condition that is contradictory, impossible or unintelligible shall be considered invalid, in which case the agreement shall be treated as if does not contain the condition in question.

(3) As long as a condition is pending, the parties shall refrain from taking any action that would impair the other party's right that is contingent upon that condition. Neither of the parties may allege the realization or frustration of the condition if it results from the party's wrongful conduct.

### Chapter III

#### Means of Legal Acts

#### **14. Representation**

##### **Section 20**

(1) The person exercising employer's rights shall be entitled to take legal acts on the employer's behalf.

(2) The rules for exercising employer's rights shall be laid down – within the framework of law – by the employer.

(3) If employer's rights are exercised by a person (body, organ) other than the one authorized thereto, his actions shall be deemed null and void, unless the person upon whom such rights are vested approved the legal act. A legal act shall be considered valid in the absence of approval if the worker concerned could reasonably infer from the circumstances as to the authority of the acting person.

(4) An employer may allege that its representative exceeded his vested competencies if the worker concerned could not reasonably infer from the circumstances as to the authority of the acting person.

##### **Section 21**

(1) Workers shall take legal acts in person. However, workers shall be entitled to take legal acts also through an authorized representative by means of a power of attorney made out in writing. No power of attorney is required if a worker is represented by his close relative insofar that the worker is unable to execute the legal act in person. In case of dispute the reason for the worker's absence shall be verified.

(2) The employer shall proceed according to the legal act made by the worker if there is any discrepancy between the legal acts made by the worker and by his representative referred to in Subsection (1).

(3) A worker, unless the scope of representation is clearly defined as to limits, may not

allege that its representative exceeded his vested competencies.

(4) The consent of the legal representative is required for the legal acts of persons of limited legal capacity relating to the conclusion, amendment or termination of an employment contract, or to undertaking commitments.

(5) Legal acts on behalf of incompetent persons shall be made by the legal representatives.

## **15. Formal requirements**

### **Section 22**

(1) Legal acts may be made without particular formal requirements, unless otherwise provided for by employment regulations or by agreement of the parties. Upon the employee's request, legal acts shall be made in writing by the employer where this is not otherwise mandatory.

(2) A legal act shall be construed to have been made in writing if executed by means of an electronic document with facilities for retrieving the information contained in the legal act unaltered, and for identifying the person making the legal act and the time when it was made (hereinafter referred to as "electronic document").

(3) Where an agreement had to be made in writing, any amendment thereto and termination thereof shall also be executed in writing.

(4) Unless otherwise provided for in this Act, any legal act made in violation of formal requirements shall be construed invalid. The legal consequences of invalidity shall not apply to any legal act that has been executed upon the parties' mutual consent.

(5) As regards the unilateral acts of employers the reasons must be provided in writing in cases defined by this Act, and workers affected shall be properly informed concerning the means of enforcement of a claim and also of the time limit available, if shorter than the term of limitation. In the event of failure to provide information as to the time limit, the claim may not be enforced after a period of six months.

(6) The requirement for executing legal acts in writing shall be satisfied by means of an authentic instrument or a private document with full probative force if the party (representative) is illiterate or is unable to read or write.

### **Section 23**

(1) The agreement shall be concluded in writing, which shall be provided for by the employer, a copy of which shall be given to the worker affected.

(2) The agreement shall indicate the names of the parties and their particulars of import from the point of view of the performance of the agreement.

## **16. Delivery of legal acts**

### **Section 24**

(1) A legal act made in writing shall be considered served upon delivery to the person concerned or the person authorized to receive it, or at the time when access to the electronic document is provided. The legal act shall also be considered served if the person concerned or the authorized recipient refuses to receive it or intentionally prevents delivery.

(2) In addition to what is contained in Subsection (1), where a legal act is dispatched in

the form of certified mail with certified delivery according to the legislation on postal services, it shall be considered served:

a) if the person concerned or the authorized recipient refused to receive the consignment, or if delivery to the address provided by the person concerned failed and the consignment is returned marked addressee unavailable or address unknown, on the day when delivery was attempted;

b) in all other cases, on the fifth working day following the day when delivery was attempted without success or following the day when the notice was posted.

(3) With respect to any legal act that may be subject to court proceedings under this Act, a petition may be filed to challenge the presumption of service referred to in Subsection (2) simultaneously with filing for court action, within fifteen days from the time of receiving information concerning the presumption of service, or within six months from the actual date of service at the latest. Furthermore, the relevant provisions of the Code of Civil Procedure shall apply to actions to challenge a presumption of service. If the petition to challenge the presumption of service is sustained the time limit for filing for court action shall be considered met.

(4) In case of dispute the burden of proof for having the service of process executed properly lies with the person making the legal act.

## **17. Deadlines and calculation of time limits**

### **Section 25**

(1) Where a time limit is prescribed by employment regulations or by agreement of the parties for making specific legal acts or to do or not to do certain other acts, the relevant time limit shall be calculated according to Subsections (2)–(6).

(2) Unless otherwise prescribed by employment regulations, a day shall be construed as a calendar day.

(3) A time limit shall be calculated from the day following the day on which the action (event) giving rise to the time limit occurred.

(4) A time limit specified in weeks shall expire on the day that, by definition, corresponds to the day of initiation. The day of expiration of a deadline specified in months or years shall be that day the numbering of which corresponds with the day of initiation, or the last day of the month if such day is not available in the month of expiration.

(5) A time limit shall be considered to have elapsed at the end of the final day. A time limit shall be considered to have elapsed at the end of the next working day of normal working schedule, if the last day is a dedicated weekly rest day or public holiday.

(6) Unless otherwise provided for in this Act, a time limit shall be considered met if the legal act is delivered by the end of the last day or certain other actions are carried out by such time.

(7) Failure to meet a deadline shall be excusable if expressly permitted by the employment regulations by which it is prescribed.

(8) A legal act or other action shall be made or carried out without delay, by advancing the costs that should be covered by a party other than the obligor if necessary, where the party is liable to make the legal act or carry out the other action without delay in accordance with the relevant employment regulations.



## **Section 26**

Subsections (4)–(8) of Section 25 shall not apply to calculating any time period, other than time limits, specified by employment regulations or by agreement of the parties; such time periods shall be calculated by the calendar.

## **Chapter IV**

### **Invalidity**

## **18. Nullity**

### **Section 27**

(1) Any agreement that infringes upon any employment regulation, or that is entered into by way of circumvention of any employment regulation shall be null and void.

(2) Artificial agreements shall be null and void, and if such agreement is intended to disguise another agreement, it shall be judged on the basis of the disguised agreement.

(3) An agreement if annulled shall be considered void, unless the relevant employment regulation stipulates another legal consequence. The party concerned may allege the invalidity of an annulled contract without a time limit; the court observes the nullity of the agreement of its own motion.

## **19. Avoidance**

### **Section 28**

(1) An agreement may be avoided if either party was in error regarding any material fact or circumstance at the time of its conclusion, provided that such error was caused or could have been recognized by the other party, or if both parties were under the same mistaken assumption. An agreement may be contested on the grounds of misapprehension of a legal issue if such misapprehension is deemed significant and if the advice of a legal counsel, acting within the scope of his competence, to the parties affected has been manifestly erroneous in terms of the contents of the relevant legislation.

(2) An agreement may be contested if it was obtained unlawfully by duress or coercion.

(3) An agreement may be avoided by a person who has been misled or persuaded unlawfully to make a legal act by duress or coercion, or by a person acting under a mistaken assumption.

(4) The time limit for filing an action for avoidance shall be thirty days, commencing upon recognition of the error or, in the case of duress or coercion, upon cessation of duress. The statute of limitations shall duly apply to the time limit for bringing action for avoidance, with the exception that the right to avoidance shall terminate after six months.

(5) The other party shall be notified in writing regarding the execution of a legal act for avoidance within the time limit specified in Subsection (4) hereof.

(6) An agreement if successfully avoided shall be void.

## **20. Legal consequences of invalidity**

### **Section 29**

(1) Rights and obligations arising from or in connection with an invalid agreement shall be treated as if they existed under a valid agreement. Unless otherwise provided for in this Act, employers shall terminate – with immediate effect – any legal relationships created on the basis of an invalid agreement, if the parties fail to abolish the cause of invalidity.

(2) Employers shall be liable to pay their workers absentee pay covering a period otherwise due in the event of dismissal by the employer, furthermore, the rules on severance pay shall also apply if the employment contract is declared invalid for reasons attributable to the employer and it has to be terminated pursuant to Subsection (1).

(3) If any part of an agreement is deemed invalid, the relevant employment regulations shall be applied instead, unless the parties would otherwise not have concluded the agreement without the invalid part.

(4) As regards the invalidity of unilateral acts, no rights and obligations shall arise from or in connection with such legal acts.

(5) In the case of invalidity of a legal act made for the termination of an employment relationship, the provisions of Sections 82–84 shall apply mutatis mutandis, except where the employer’s own legal act was successfully contested.

### **Section 30**

In the event that the invalidity of an agreement results in damages, the provisions on liability for damages shall be applied.

## **21. Application of civil law**

### **Section 31**

Furthermore, legal acts shall be governed by the provisions of Chapters XVII–XXII of the Civil Code, with the exception that agreements may not be amended in the court of law.

## ***PART TWO***

### ***EMPLOYMENT RELATIONSHIP***

#### **Chapter V**

#### **Parties to Employment Relationships**

### **Section 32**

The parties to an employment relationship are the employer and the employee.

### **Section 33**

‘Employer’ means any person having the capacity to perform legal acts who is party to employment contracts with employees.

**Section 34**

(1) ‘Employee’ means any natural person who works under an employment contract.

(2) Workers must be at least sixteen years of age. By way of derogation from the above, any person of at least fifteen years of age receiving full-time school education may enter into an employment relationship during school holidays.

(3) By authorization of the guardian authority, young persons under sixteen years of age may be employed for the purposes of performance in cultural, artistic, sports or advertising activities.

**22. Entire agreement****Section 35**

No deviation from the provision of Sections 32–34 shall be permitted.

**Chapter VI****Transfer of Employment Contracts Upon the Transfer of Enterprise****Section 36**

(1) Rights and obligations arising from employment relationships, existing at the time of transfer of an economic entity (organized grouping of material or other resources) by way of a legal transaction are transferred to the transferee employer.

(2) In liquidation proceedings the provisions of:

- a)* Subsection (1) of this Section;
- b)* Sections 37–40;
- c)* Subsection (3) of Section 66;
- d)* Subsection (4) of Section 228;
- e)* Subsection (4) of Section 229; and
- f)* Section 282;

shall not apply.

**Section 37**

Before the time of transfer the transferring employer shall inform the receiving employer concerning the employment relationships involved, and also on the rights and obligations arising from non-competition agreements and study contracts. Failure to provide the information shall have no bearing as to the enforcement of rights arising from such covenants on the receiving employer’s part.

**Section 38**

(1) Within fifteen days following the time of transfer, the receiving employer shall inform in writing the workers affected concerning the transfer of employment upon the transfer of enterprise, disclosing the employer’s identification data, and on changes in working conditions under Subsection (1) of Section 46.

(2) If the transferring employer has no works council – due to lacking the number of employees specified in Subsection (1) of Section 236 – and no shop steward had been

elected either, the transferring or – if so agreed by the employers – the receiving employer shall inform in writing the employees concerned not more than fifteen days before the date of transfer of the following:

- a) the date or proposed date of the transfer;
- b) the reason for the transfer;
- c) the legal, economic and social implications of the transfer for the employees; and
- d) any measures envisaged in relation to the employees.

**Section 39**

The transferring the receiving employer shall be jointly and severally liable in respect of obligations towards employees which arose before the date of transfer, if the employee submits the claim within one year from the date of transfer.

**Section 40**

(1) The provisions contained in Section 70 and Section 77 shall apply *mutatis mutandis* if the worker terminates his employment relationship by giving notice because the transfer of employment upon the transfer of enterprise involves a substantial change in working conditions to the detriment of the employee, and in consequence maintaining the employment relationship would entail unreasonable disadvantage or would be impossible.

(2) In accordance with Subsection (2) of Section 67, the employee shall provide the reasons for giving notice of termination as referred to in Subsection (1).

(3) Employees may exercise the right of notice as per Subsection (1) within thirty days from the date of transfer of employment upon the transfer of enterprise.

## **23. Entire agreement**

**Section 41**

Derogations from Sections 36–40 in the collective agreement are allowed only to the benefit of workers.

## Chapter VII

### Commencement of an Employment Relationship

## **24. Employment contracts**

**Section 42**

(1) An employment relationship is deemed established by entering into an employment contract.

(2) Under an employment contract:

- a) the employee is required to work as instructed by the employer;
- b) the employer is required to provide work for the employee and to pay wages.

**Section 43**

(1) Unless otherwise provided for by law, the employment contract may derogate from the provisions of Part Two and from employment regulations to the benefit of the employee.

(2) Such derogations shall be adjudged by comparative assessment of related regulations.

#### **Section 44**

Employment contracts may only be concluded in writing. Invalidity on the grounds of failure to set the contract in writing may only be alleged by the employee within a period of thirty days from the first day on which he commences work.

### **25. Contents of employment contracts**

#### **Section 45**

(1) The parties must specify in the employment contract the employee's personal base wage and job function.

(2) The term of the employment relationship shall be defined in the employment contract. Failing this the employment relationship is concluded for an indefinite duration.

(3) The workplace of the employee shall be defined in the employment contract. Failing this, the place where work is normally carried out shall be considered the workplace.

(4) In the absence of an agreement to the contrary, all employment relations are concluded on general principle for full-time daily employment.

(5) In the employment contract the parties may stipulate a probationary period of not more than three months from the date of commencement of the employment relationship. In the event that a shorter probationary period has been stipulated the parties may extend the probationary period once. In either case, the duration of the probationary period may not exceed three months.

### **26. Employer's obligation to provide information in writing**

#### **Section 46**

(1) The employer shall inform the employee in writing within fifteen days from the date of commencement of the employment relationship concerning:

- a)* the daily working time;
- b)* wages above the base wage, and other benefits;
- c)* payroll accounting, the frequency of payment of wages, and the day of payment;
- d)* the functions of the job;
- e)* the number of days of paid annual leave and the procedures for allocating and determining such leave; and
- f)* the rules governing the periods of notice to be observed by the employer and the employee; furthermore
- g)* whether a collective agreement applies to the employer; and
- h)* the person exercising employer's rights.

(2) The information referred to in Paragraphs *a)–c)* and *e)–f)* of Subsection (1) hereof may also be given in the form of a reference to the relevant employment regulations.

(3) If the employment relationship is terminated before the fifteen-day period lapses, the employer shall perform the obligation referred to in Subsection (1) at the time

specified in Subsection (2) of Section 80.

(4) Employees shall be informed of any change in the name or other major particulars of the employer, or in the details referred to in Subsection (1) in writing within fifteen days of the effective date of the change in question.

(5) The employer's obligation to provide information, except for Paragraph *h*) of Subsection (1), shall not apply if, by virtue of the employment contract:

- a*) the term of the employment relationship does not exceed one month; or
- b*) the working time does not exceed eight hours per week.

#### **Section 47**

In the case of work to be performed abroad for a period of more than fifteen days the employee must be informed in writing at least seven days before the date of departure of the following, in addition to what is contained in Section 46:

- a*) the place and duration of the work abroad;
- b*) the benefits in cash or in kind;
- c*) the currency to be used for the payment of remuneration and other payments; and
- d*) the conditions governing the employees repatriation.

## **27. Commencement of the employment relationship**

#### **Section 48**

The date of commencement of the employment relationship shall be defined in the employment contract. Failing this, the day following the conclusion of the employment contract shall be construed as the date of commencement of the employment relationship.

#### **Section 49**

(1) During the period between the day on which the employment contract is concluded and the date of commencement of the employment relationship the parties may not engage in any conduct to defeat the employment relationship.

(2) During the period referred to in Subsection (1) either party shall be entitled to withdraw from the employment contract in the event of material changes taking place in his circumstances following the date of conclusion of the employment contract whereby carrying out the employment relationship is no longer possible or it would result in unreasonable hardship.

## **28. Entire agreement**

#### **Section 50**

(1) In the agreement of the parties no derogation is allowed:

- a*) from Sections 42–44; and
- b*) from Subsection (1) of Section 45.

(2) In the collective agreement no derogation is allowed:

- a*) from Sections 42–44; and
- b*) from Subsections (1)–(4) of Section 45.

(3) Derogations from Sections 46–47 in the collective agreement are allowed only to the benefit of workers.

(4) The term of the probationary period fixed in the collective agreement may not

exceed six months.

## Chapter VIII

### Performance of Employment Contracts

#### **29. Fundamental obligations**

##### **Section 51**

(1) Employers shall employ their employees in accordance with the rules and regulations pertaining to contracts of employment, employment regulations and the provisions of other relevant legislation, and – unless otherwise agreed by the parties – provide the necessary working conditions.

(2) Employers shall be liable to compensate their employees for justified expenses incurred in connection with fulfillment of the employment relationship.

(3) Workers shall be employed for work of such nature which is not considered harmful with a view to their physical condition or development.

(4) The responsibility for the implementation of occupational safety and occupational health requirements lies with the employers. The employee's fitness for the job for which he is being considered shall be examined free of charge before taking up work and on a regular basis during the life of the employment relationship.

(5) In the employment of persons with disabilities appropriate steps shall be taken to ensure that reasonable accommodation is provided.

(6) The Government is hereby authorized to decree the regulations for the compensation of the justified expenses of employees incurred in connection with fulfillment of the employment relationship.

##### **Section 52**

(1) Employees shall:

- a)* appear at the place and time specified by the employer, in a condition fit for work;
- b)* be at the employer's disposal in a condition fit for work during their working time for the purpose of performing work;
- c)* perform work in person, with the level of professional expertise and workmanship that can be reasonably expected, in accordance with the relevant regulations, requirements, instructions and customs;
- d)* perform work in such a way that demonstrates the trust vested in him for the job in question;
- e)* cooperate with their co-workers.

(2) Employees may not accept and may not lay claim to any remuneration from third parties in connection with their activities performed with the employment relationship without the employer's prior consent.

(3) The employee's wages fixed in the employment contract or by employment regulations may not be reduced on account of the employee having received any remuneration under Subsection (2) upon the employer's prior consent.

(4) The remuneration referred to in Subsection (2) shall cover all forms of valuable

consideration provided by a third party to the employee in addition to the payment otherwise due to the employer.

### **30. Derogation from the employment contract**

#### **Section 53**

(1) Employers shall be entitled to temporarily reassign their employees to jobs and workplaces other than what is contained in the employment contracts, or to another employer.

(2) The duration of employment as referred to in Subsection (1) may not exceed a total of forty-four working days or three hundred and fifty-two scheduled hours during a calendar year. The employee affected shall be informed of the expected duration of work in derogation from the employment contract.

(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.

(4) As regards Paragraph *c)* of Subsection (3) the provision of Subsection (2) of Section 131 shall also apply.

(5) In the case of employment under Subsection (1) the employee shall be entitled to the wage prescribed for the job in question, or at least to the base wage fixed in the employment contract.

### **31. Disobeying instructions**

#### **Section 54**

(1) Employees shall refuse to carry out an instruction if it would result in direct and grave risk to the health of others or to the environment.

(2) Employees may refuse to carry out an instruction if it violates the provisions of employment regulations, or it would result in direct and grave risk to the life, physical integrity or health of the employee.

(3) In the event of refusal to carry out an instruction the employee shall be available nonetheless.

(4) Employees may disobey the employer's instruction to the extent absolutely necessary to protect the employer from suffering losses, and the employer cannot be warned in time. The employer shall be notified thereof as soon as possible.

### **32. Exemption from work duty**

#### **Section 55**

(1) Employees shall be exempted from the requirement of availability and from work duty:

- a)* if unfit for work;



- b) if receiving treatment in a healthcare institution related to a human reproduction procedure, as specified in the relevant legislation; and
  - c) for the duration of mandatory medical examination; furthermore
  - d) for the length of time required for donating blood, for a period of at least four hours;
  - e) if they are nursing mothers, for one hour twice daily, or two hours twice daily in the case of twins during the first six months of breastfeeding, and thereafter for one hour daily, or two hours daily in the case of twins until the end of the ninth month;
  - f) for two working days upon the death of a relative;
  - g) for the duration of classes in the case of employees pursuing elementary school studies, for the duration of training if participating in initial and continuing training by agreement of the parties;
  - h) for the duration of being engaged in fire fighting operations in a voluntary or industrial fire brigade;
  - i) when called upon by the court or an authority, or for the duration of participating in proceedings in person;
  - j) for any duration of absence due to personal or family reasons, or as justified by unavoidable external reasons; furthermore
  - k) for any duration specified by employment regulations.
- (2) The employer, if so required for investigating the circumstances of an employee's breach of obligations, may exempt the employee from the requirement of availability and from work duty for the period required for the inquiry, in any case for up to thirty days.

### **33. Legal consequences for the employee's wrongful breach of duty**

#### **Section 56**

(1) In the event of any infringement of obligations arising from an employment relationship the collective agreement or – if the employer or the worker is not covered by the collective agreement – the employment contract may prescribe detrimental legal consequences consistent with the gravity of the infringement.

(2) The detrimental legal consequence aforementioned may be a sanction related to the employment relationship, altering its terms and conditions for a fixed period, which shall not violate the employee's personal rights and dignity. Where the sanction is of a financial nature, it may not – on the whole – exceed the employee's monthly base wage in effect at the time when the sanction is imposed.

(3) In connection with detrimental legal consequences Subsection (2) of Section 78 shall also apply.

(4) An infringement may not be sanctioned by detrimental legal consequences if the employer has already stated it as the reason for termination of the employment relationship.

(5) The measure imposing detrimental legal consequences shall be put in writing, with reasons provided.

### **34. Entire agreement**

#### **Section 57**

(1) In the agreement of the parties or in the collective agreement no derogation is

allowed:

- a)* from Subsection (3) of Section 52;
- b)* from Subsections (3)–(4) of Section 53;
- c)* from Subsection (1) of Section 54;
- d)* from Subsections (2)–(5) of Section 56.

(2) Derogations from Subsection (1) of Section 55 in the collective agreement are allowed only to the benefit of workers.

## Chapter IX

### Amendment of the Employment Contract

#### **Section 58**

Parties shall be entitled to amend employment contracts by mutual consent. The provisions on the conclusion of employment contracts shall be duly applied for the amendment thereof.

#### **Section 59**

Following the end of the leave of absence defined in Sections 127–133, the employer shall make an offer to the employee for having his wages adjusted, taking into consideration the average annual wage improvement implemented in the meantime by the employer for employees in the same position. In the absence of such employees, the rate of actual annual wage improvements implemented by the employer shall be applied.

#### **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 worker shall be discharged from work duty if no position appropriate for her medical condition is available.

(2) The worker 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**

(1) Employers shall inform their workers concerning the following opportunities, indicating the jobs in which they are available:

- a)* full or part-time work,
- b)* teleworking, and
- c)* permanent employment relationships.

(2) Employers shall respond to the proposition of workers for the amendment of their employment contracts within fifteen days in writing.

(3) Employers shall amend the employment contract based on the employee's

proposition to part-time work covering half of the daily working time until the child reaches the age of three.

### **35. Entire agreement**

#### **Section 62**

(1) In the agreement of the parties or in the collective agreement no derogation is allowed from Section 58.

(2) Derogations from Sections 59–61 in the collective agreement are allowed only to the benefit of workers.

## Chapter X

### Cessation and Termination of Employment Relationships

### **36. Cessation of an employment relationship**

#### **Section 63**

(1) An employment relationship shall terminate:

- a)* upon the employee's death;
- b)* upon the dissolution of the employer without succession;
- c)* upon the expiration of the fixed term;
- d)* in the case defined in Subsection (3) hereof;
- e)* in other cases defined by law.

(2) Where employment is terminated by the employer the worker shall be entitled to a sum equal to the absentee pay due for the period when exempted from work duty if the employment relationship terminates under Paragraph *b)* or *d)* of Subsection (1), except if the worker is not entitled to his wages for the period of exemption, or if otherwise provided for by law.

(3) The employment relationship shall terminate if the employer taking over the economic entity under the legal transaction referred to in Subsection (1) of Section 36 or on the strength of law is not covered by this Act.

(4) In the case defined in Subsection (3), the transferor shall inform the workers affected in writing, fifteen days before the termination of their employment relationship concerning the actual or proposed date of termination, and on the reasons.

### **37. Termination of employment**

#### **Section 64**

(1) An employment relationship may be terminated:

- a)* by mutual consent;
- b)* by notice;
- c)* by dismissal without notice.

(2) The reasoning shall clearly specify the grounds for termination. The burden of proof

to verify the authenticity and substantiality of the grounds of the act of termination shall lie with the party taking the legal act.

### **38. Termination by notice**

#### **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 worker has informed the employer thereof before the notice was given.

(6) The protection referred to in Paragraph *c)* of Subsection (3) shall be available to the mother if unpaid leave has been taken by both parents.

#### **Section 66**

(1) Employers are required to justify their dismissals.

(2) An employee may be dismissed only for reasons in connection with his/her behavior in relation to the employment relationship, with his/her ability or in connection with the employer's operations.

(3) The transfer of employment upon the transfer of enterprise may not in itself serve as grounds for termination.

(4) The employer shall be permitted to terminate the employment relationship of workers, 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 workers' behavior in relation to the employment relationship only for the reason defined in Subsection (1) of Section 78.

(5) The employment relationship of the workers referred to in Subsection (4) may be terminated in connection with workers' 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 worker affected in terms of skills, education and/or experience required for his/her previous job, or if the worker 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).

(7) The employer may terminate by notice the employment relationship of a worker who is receiving rehabilitation treatment or rehabilitation benefits due to the worker's capacity related to medical reasons if the worker can no longer be employed in his/her original position and no other job is available that is considered appropriate for his/her medical condition, or if the employee refuses to accept a job offered by the employer without good reason.

(8) The employer shall be permitted to terminate a fixed-term employment relationship by notice:

- a)* if undergoing liquidation or bankruptcy proceedings; or
- b)* for reasons related to the worker's ability; or
- c)* if maintaining the employment relationship is no longer possible due to unavoidable external reasons.

(9) The employer is not required to give reasons for terminating a permanent employment relationship if the worker affected is a pensioner.

#### **Section 67**

(1) Workers are not required to give reasons for terminating their permanent employment relationship.

(2) Workers are required to give reasons for terminating their fixed-term employment relationship. The reason given for termination may only be of such a nature as would render the maintaining of the employment relationship impossible or that would cause unreasonable hardship in light of his/her circumstances.

### **39. Notice period**

#### **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.

(3) Subsection (2) shall apply in connection with collective redundancies if the conditions specified in Subsection (2) exist at the time when the notification referred to in Subsection (1) of Section 75 is given.

#### **Section 69**

(1) The period of notice is thirty days.

(2) Where employment is terminated by the employer, the thirty-day notice period shall be extended:

- a)* by five days after three years;
- b)* by fifteen days after five years;
- c)* by twenty days after eight years;
- d)* by twenty-five days after ten years;
- e)* by thirty days after fifteen years;
- f)* by forty days after eighteen years;

g) by sixty days after twenty years of employment at the employer.

(3) By agreement of the parties the notice periods referred to in Subsections (1)–(2) may be extended by up to six months.

(4) For the purposes of notice periods, the duration specified in Subsection (2) of Section 77 shall not be taken into consideration.

(5) The period of notice for the termination of a fixed-term employment relationship by notice may not go beyond the fixed term.

#### **Section 70**

(1) In the event of dismissal the employer shall excuse the employee concerned from work duty for at least half of the notice period. Any fraction of a day shall be applied as a full day.

(2) The exemption from work duty shall be allocated in not more than two parts, at the employee's discretion.

(3) For the period of being excused from his duties the employee shall be entitled to absentee pay, except if he would not be eligible for any wages otherwise.

(4) If the employee was excused from his duties permanently prior to the end of the notice period, and the circumstance precluding payment of wages occurred subsequent to having the employee excused from his duties, the wages already paid out may not be reclaimed.

### **40. Provisions relating to collective redundancies**

#### **Section 71**

(1) 'Collective redundancy' shall mean when an employer, based on the average statistical workforce for the preceding six-month period, intends to terminate the employment relationship:

a) of at least ten workers, when employing more than twenty and less than one hundred employees,

b) of 10 per cent of the employees, when employing one hundred or more, but less than three hundred employees,

c) of at least thirty workers, when employing three hundred or more employees, in accordance with Subsection (3), inside a period of thirty days, for reasons in connection with its operations.

(2) For employers in operation for less than six months, the average statistical number of employees referred to in Subsection (1) shall be determined for the period applicable.

(3) Compliance with the requirements specified in Subsection (1) shall be ascertained, where applicable, separately for each place of business; however, the number of workers employed at various locations, but within the jurisdiction of the same county (Budapest) shall be calculated on the aggregate. The employee shall be accounted at the location where he/she works in the position registered at the time when the decision on collective redundancy was adopted.

(4) The provisions on collective redundancies shall not apply to the crews of sea-going vessels.

## **Section 72**

(1) The employer, if planning to carry out collective redundancies, shall initiate consultations with the works council.

(2) At least seven days before the discussions, the employer shall inform the works council in writing regarding:

- a)* the reasons for the projected collective redundancies;
- b)* the number of workers to be made redundant broken down by categories; or
- c)* the number of workers employed during the period specified under Subsection (1) of Section 71;
- d)* the period over which the projected redundancies are to be effected, and the timetable for their implementation;
- e)* the criteria proposed for the selection of the workers to be made redundant; and
- f)* the conditions for and the extent of benefits provided in connection with the termination of employment relationships, other than what is prescribed in employment regulations.

(3) The employer's obligation of consultation shall apply until the conclusion of an agreement, or failing this for a period of fifteen days after the beginning of negotiations.

(4) In order to reach an agreement, the negotiations shall, at least, cover:

- a)* the possible ways and means of avoiding collective redundancies;
- b)* the principles of redundancies;
- c)* the means of mitigating the consequences; and
- d)* the reduction of the number of employees affected.

(5) The agreement concluded in the course of negotiations shall be made out in writing, a copy of which shall be sent to the government employment agency.

## **Section 73**

(1) The decision for the implementation of collective redundancies shall specify:

- a)* the number of workers affected, broken down by job categories; and
- b)* the date of commencement and conclusion and the timeframe of collective redundancy, or the timetable for implementing the said redundancies.

(2) Collective redundancies shall be effected in thirty-day periods. To this end, the timetable indicated in the employer's decision shall be taken into account.

(3) The number of workers shall be calculated on the aggregate, if within thirty days from the date of disclosure of the legal act for the termination of the last employment relationship or from the date of reaching an agreement the employer communicates another statement or concludes an agreement for the termination of employment in a given period.

(4) For the purposes of Subsection (3):

- a)* legal act for the termination of employment shall mean a notice for reasons in connection with the employer's operations;
- b)* agreement for the termination of employment shall be construed as a mutual agreement initiated by the employer.

(5) Termination for reasons in connection with the employer's operations shall cover the employer actions specified in Paragraph *b)* of Subsection (1) of Section 79, and – until proven otherwise – notice of dismissal, if no reasoning is required under this Act.

## **Section 74**

(1) The employer shall notify the government employment agency of its intention regarding collective redundancies, and of the details and aspects defined in Subsection (2) of Section 72, and shall supply a copy thereof to the works council.

(2) The employer shall notify in writing the government employment agency of its decision regarding collective redundancies at least thirty days prior to delivering the notice of dismissal or the legal act defined in Paragraph *b*) of Subsection (1) of Section 79. This aforementioned notification shall contain:

- a*) the identification data;
- b*) the position; and
- c*) the qualification of the employees to be made redundant.

#### **Section 75**

(1) The employer shall notify in writing the workers affected of its decision regarding collective redundancies at least thirty days prior to delivering the notice of dismissal or the dismissal without notice defined in Paragraph *b*) of Subsection (1) of Section 79. The notice of dismissal or the dismissal without notice may be delivered after thirty days following the time of notification.

(2) The notification referred to in Subsection (1) shall be sent to the works council and the government employment agency as well.

(3) Any notice of dismissal delivered in violation of Subsection (1) shall be considered unlawful.

#### **Section 76**

(1) The agreement under Subsection (5) of Section 72 may lay down the guidelines for the employer to select the workers affected by the termination of employment relationships.

(2) Any worker who failed to supply the information necessary for the employer to discharge the obligation referred to in Subsection (1) hereof may not allege any breach of the agreement.

## **41. Severance pay**

#### **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.

(3) Severance pay shall be the sum of the absentee pay due for:

- a*) one month, for up to three years;
- b*) two months, for up to five years;
- c*) three months, for up to ten years;



- d)* four months, for up to fifteen years;
  - e)* five months, for up to twenty years;
  - f)* six months, for up to twenty-five years
- of employment.

(4) The amount of severance pay established according to:

- a)* Paragraphs *a)–b)* of Subsection (3) shall be increased by one month’s absentee pay,
- b)* Paragraphs *c)–d)* of Subsection (3) shall be increased by two month’s absentee pay,
- c)* Paragraphs *e)–f)* of Subsection (3) shall be increased by three month’s absentee pay,

if the employment relationship is terminated as specified under Subsection (1) inside the five-year period before the date when the employee reaches the age limit for old-age pension.

- (5) The employee shall not be entitled to receive severance pay if:
- a)* he/she is recognized as a pensioner at the time when the notice of dismissal is delivered or when the employer is terminated without succession, or
  - b)* he/she is dismissed for reasons in connection with his/her behavior in relation to the employment relationship or on grounds other than health reasons.

## **42. Termination without notice**

### **Section 78**

(1) An employer or employee may terminate an employment relationship without notice if the other party:

- a)* willfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship; or
- b)* otherwise engages in conduct that would render the employment relationship impossible.

(2) The right of termination without notice may be exercised within a period of fifteen days of gaining knowledge of the grounds therefor, in any case within not more than one year of the occurrence of such grounds, or in the event of a criminal offense up to the statute of limitation. If the right of termination without notice is exercised by a body, the date of gaining knowledge shall be the date when the body, acting as the body exercising employer’s rights, is informed regarding the grounds for termination without notice.

(3) In the event of termination without notice by the employee, the employer must proceed in accordance with Subsection (3) of Section 70 and Section 77.

### **Section 79**

- (1) The right of termination without notice may be exercised, without giving reasons:
- a)* by either party during the probationary period;
  - b)* by the employer in connection with fixed-term employment relationships.
- (2) In the case of termination under Paragraph *b)* of Subsection (1), the employee shall be entitled to absentee pay due for twelve months, or if the time remaining from the fixed period is less than one year, for the remaining time period.

## **43. Procedure for the termination (cessation) of an employment relationship**

### **Section 80**

(1) The employee, upon termination (cessation) of employment, shall relinquish his position as ordered and settle accounts with the employer. The employer shall sufficiently provide for the conditions of job transfer and accounting.

(2) Upon termination of the employment relationship by notice, the employee shall be paid his work wages and other emoluments from the last day of work, in any case on the third working day after the termination of employment relationship, and shall be supplied the statements and certificates prescribed by employment regulations and other relevant legislation.

#### **Section 81**

(1) At the employee's request, the employer shall – at the time of termination (cessation) of the employment relationship, in any case within one year from that time – provide a written assessment of the employee's work if the employment relationship lasted for at least one year.

(2) If the assessment contains any false facts the employee may bring action before the court for having such facts abolished or revised.

### **44. Legal consequences of wrongful termination of employment**

#### **Section 82**

(1) The employer shall be liable to provide compensation for damages resulting from the wrongful termination of an employment relationship.

(2) Compensation for loss of income from employment payable to the employee may not exceed twelve months' absentee pay.

(3) In addition to what is contained in Subsection (1) hereof, the employee is entitled to severance pay as well, if:

*a)* his employment relationship was wrongfully terminated; or

*b)* he did not receive any severance pay pursuant to Paragraph *b)* of Subsection (5) of Section 77 at the time his employment relationship was terminated.

(4) In lieu of Subsections (1)–(2), the employee may demand payment equal to the sum of absentee pay due for the notice period when his employment is terminated by the employer.

#### **Section 83**

In addition to what is contained in Subsection (1) of Section 82, at the employee's request the court shall reinstate the employment relationship:

*a)* if it was terminated in violation of the principle of equal treatment;

*b)* if it was terminated in violation of Subsection (3) of Section 65;

*c)* if it was terminated in violation of Subsection (1) of Section 273;

*d)* if the employee served as an employees' representative at the time his employment relationship was terminated;

*e)* if the employee successfully challenged the termination of the employment relationship by mutual consent or his own legal act therefor.

#### **Section 84**

(1) The employee, if having terminated his employment relationship unlawfully, shall be liable to pay compensation in the sum of absentee pay due for the notice period when the employment relationship is terminated by the employer.

(2) The employee, if having terminated his fixed-term employment relationship unlawfully, shall be liable to pay compensation in the sum of absentee pay due for the

time remaining from the fixed period, up to three months' absentee pay at most.

(3) Employers shall be entitled to demand payment for damages if such are in excess of the amount described in Subsection (1) or (2). These sums in total may not exceed the employee's absentee pay due for twelve months.

(4) The provisions on wrongful termination of employment shall apply if the employee fails to leave his post according to regulations.

## **45. Entire agreement**

### **Section 85**

(1) In the agreement of the parties or in the collective agreement no derogation is allowed:

*a)* from Subsection (1) of Section 63;

*b)* from Sections 64–67;

*c)* from Subsection (1) of Section 82.

(2) In the collective agreement derogations:

*a)* from Subsections (2)–(3) of Section 63;

*b)* from Section 68;

*c)* from Sections 71–76;

*d)* from Section 81;

*e)* from Section 83;

are allowed only to the benefit of workers.

(3) The notice period stipulated in the collective agreement may be longer than what is contained in Subsection (1) of Section 69.

## **Chapter XI**

### **Working Time and Rest Period**

## **46. Definitions**

### **Section 86**

(1) 'Working time' shall mean the duration from the commencement until the end of the period prescribed for working, covering also any preparatory and finishing activities related to working.

(2) 'Preparatory or finishing activities' shall mean operations comprising a function of the worker's job by nature that is ordinarily carried out without being subject to special instructions.

(3) Working time shall not cover:

*a)* break-time, with the exception of stand-by jobs; and

*b)* travel time from the employee's home or place of residence to the place where work is in fact carried out and from the place of work to the employee's home or place of residence.

### **Section 87**

(1) 'Working day' shall mean a calendar day or an uninterrupted twenty-four hour period defined by the employer, if the beginning and end of the daily working time as scheduled to accommodate the employer's operations falls on different calendar days.

(2) The provisions of Subsection (1) shall also apply to determining the weekly rest periods and public holidays, where the time period between seven hours and twenty-two hours shall be regarded as a weekly rest day or public holiday.

(3) 'Week' shall mean a calendar week or an uninterrupted one hundred and sixty-eight hour period defined by the employer, if the beginning and end of the daily working time as scheduled to accommodate the employer's operations falls on different calendar days.

**Section 88**

(1) 'Daily working time' shall mean the duration of working time fixed by the parties or specified by employment regulations for:

- a) full-time jobs; or
- b) part-time jobs.

(2) 'Scheduled daily working time' shall mean the regular working time ordered for a working day.

(3) 'Scheduled weekly working time' shall mean the regular working time ordered for a week.

**Section 89**

'Night work' shall mean work carried out between twenty-two hours (22:00) and six hours (6:00).

**Section 90**

The method of organizing the employer's work is:

a) continuous, if the time of stoppage on a given calendar day is less than six hours or if operation is suspended only for the reasons and for the duration required by the technology employed in any calendar year and

aa) the employer is engaged in the provision of basic public services on a regular basis, or

ab) if economic or feasible operation cannot be ensured otherwise for objective and technical reasons;

b) shiftwork, if its duration reaches eight hours in a week;

c) seasonal, if work is to be performed in a specific season or a given time or period of the year, irrespective of the conditions under which the work is organized.

**Section 91**

'Stand-by job' shall mean where:

a) due to the nature of the job, no work is performed during at least one-third of the employee's regular working time based on a longer period, during which – however – the employee is at the employer's disposal; or

b) in light of the characteristics of the job and of the working conditions, the work performed is significantly less strenuous and less demanding than commonly required for a regular job.

**47. Daily working time**

**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.

(4) The regular daily working time may be reduced in full-time jobs pursuant to the relevant employment regulations or by agreement of the parties.

(5) The daily working time applicable for a specific full-time job may be reduced by agreement of the parties (part-time work).

## **48. Working time banking**

### **Section 93**

(1) The employer may define the working time of an employee in terms of the ‘banking’ of working time or working hours as well.

(2) Where working time is established within the framework of working time banking the period covered by the banking of working time shall be arranged based on daily working time and the standard work pattern. In this context the public holidays falling on working days according to the standard work pattern shall be ignored.

(3) In determining the working time according to Subsection (2) the duration of absence shall be ignored, or it shall be taken into consideration as the working time defined by the schedule for the given working day. In the absence of a work schedule the duration of leave shall be calculated based on the daily working time, whether ignored or taken into consideration.

(4) Where working time is defined within the framework of working time banking the beginning and ending date shall be specified in writing and shall be made public.

### **Section 94**

(1) The maximum duration of working time banking is four months or sixteen weeks.

(2) The maximum duration of working time banking is six months or twenty-six weeks in the case of employees:

- a)* working in continuous shifts;
- b)* working in shifts; and
- c)* employed for seasonal work;
- d)* working in stand-by jobs; and
- e)* in jobs defined in Subsection (4) of Section 135.

(3) The maximum duration of working time banking fixed in the collective agreement is twelve months or fifty-two weeks if justified by technical reasons or reasons related to work organization.

(4) Having the collective agreement terminated shall not affect work within the framework of working time banking in progress.

## **43. Procedure upon the termination of employment relationship before the expiry of working time banking arrangements**

### **Section 95**

(1) Upon the termination of employment relationship the employee’s wages shall be calculated based on the standard work pattern, the daily working time and the time

actually worked.

(2) The provisions on overtime work shall apply if the employment relationship ends before the expiry of working time banking arrangements:

- a)* upon the dissolution of the employer without succession;
- b)* upon the expiration of the fixed term;
- c)* upon dismissal by the employer without notice under Subsection (1) of Section 79;
- d)* upon dismissal by the employer for reasons in connection with the employer's operations;
- e)* upon termination by the employee without notice, with the exception of Paragraph *a)* of Subsection (1) of Section 79;

and the employee worked more than the working time determined based on the standard work pattern and the daily working time.

(3) The provisions on downtime shall apply if the employment relationship ends before the expiry of the working time banking arrangements:

- a)* upon the dissolution of the employer without succession;
- b)* upon the expiration of the fixed term;
- c)* upon dismissal by the employer without notice under Subsection (1) of Section 79;
- d)* upon dismissal by the employer for reasons in connection with the employer's operations;
- e)* upon termination by the employee without notice, with the exception of Paragraph *a)* of Subsection (1) of Section 79;

and the employee worked less than the working time determined based on the standard work pattern and the daily working time.

(4) The provisions on debts from repayable advances shall apply if the employment relationship ends before the expiry of working time banking arrangements:

- a)* by notice given by the employee;
- b)* upon termination by the employee without notice under Paragraph *a)* of Subsection (1) of Section 79;
- c)* upon dismissal by the employer without notice under Subsection (1) of Section 78;
- d)* upon termination by the employer for reasons in connection with the employee's behavior in relation to the employment relationship;
- e)* upon termination by the employer for reasons – other than medical – in connection with the employee's ability;

and the employee received wages in excess of the wages due for the scheduled working time.

## **50. Work schedule**

### **Section 96**

(1) The rules relating to work schedules (working arrangements) shall be laid down by the employer.

(2) 'Flexible working arrangement' shall mean when the employer permits – in writing – the employer to schedule at least half of his daily working time in light of the unique characteristics of the job.

(3) In the case of flexible working arrangements:

- a)* Sections 93–112, and
- b)* Paragraphs *a)*–*b)* of Subsection (1) of Section 134

shall not apply, with the exception of this Subsection.

(4) In connection with employment referred to in Section 53 the working arrangements applicable to the place of work shall apply.

#### **Section 97**

(1) Employers shall insure that the work schedule of employees is drawn up in accordance with occupational safety and health requirements and in consideration of the nature of the work.

(2) Work shall be scheduled for five days a week, between Monday through Friday (standard work pattern).

(3) Where working time is defined within the framework of working time banking or payroll period, working time may be determined – in accordance with Sections 101–102 – irregularly for each day of the week or for certain days only (irregular work schedule).

(4) The work schedule shall be for at least one week and shall be made known at least seven days in advance in writing. If not provided, the last work schedule shall remain in force.

(5) The employer may alter the work schedule for a given day upon the occurrence of unforeseen circumstances in its business or financial affairs, at least four days in advance.

#### **Section 98**

(1) Apart from working time banking, work may also be scheduled in such a way whereby the employee completes the weekly working time scheduled based on the daily working time and the standard work pattern over a longer period that the employer has determined, beginning on the given week (payroll period).

(2) The duration of the payroll period shall be determined in accordance with the provisions of Section 94.

(3) In connection with payroll periods, Subsections (3)–(4) of Section 93 and Sections 95 shall also apply.

#### **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, or twenty-four hours in the case of stand-by jobs;

*b)* the weekly working time of employees shall not exceed forty-eight hours, or seventy-two hours in the case of stand-by jobs, if so agreed by the parties.

(3) The scheduled daily or weekly working time of employees may exceed the time limits specified in Subsection (2) 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.

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

*a)* Paragraph *a)* of Section 107 shall be included in the employee's daily working time;

*b)* Paragraphs *a)* and *d)* of Section 107 shall be included in the employee's weekly working time.

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

(6) In the case of an irregular work schedule, Paragraph *b)* of Subsection (2) shall apply with the exception that the duration of scheduled weekly working time shall be taken into

account on the average.

(7) 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) shall not apply in connection with any calendar week when work is performed on Saturday as well.

### **Section 100**

By agreement of the parties, the employer may schedule daily working time in up to two periods split up over the day (split daily working time). Between the split daily working times scheduled at least two hours of rest must be provided.

## **51. Scheduled working time on Sundays or public holidays**

### **Section 101**

(1) Work on Sundays may be scheduled within the framework of regular working time:

- a*) if the employer generally operates on Sundays by the nature of its business;
- b*) in seasonal work;
- c*) if working in continuous shifts;
- d*) for workers working in shifts;
- e*) in stand-by jobs;
- f*) for part-time workers working Saturdays and Sundays only;
- g*) in connection with the provision of basic public services or transfrontier services, where it is necessary on that day stemming from the nature of the service;
- h*) in the case of work performed abroad.

(2) As regards Paragraph *a*) of Subsection (1) the provision of Subsection (3) of Section 102 shall be duly applied.

(3) If an employee working in a stand-by job is scheduled to work on Sunday within the framework of regular working time, he may not be scheduled to work on the preceding Saturday.

### **Section 102**

(1) Public holidays are 1 January, 15 March, Easter Monday, 1 May, Whit Monday, 20 August, 23 October, 1 November and 25–26 December.

(2) Regular working time may be scheduled for public holidays in the cases defined in Paragraphs *a*)–*c*), *g*)–*h*) of Subsection (1) of Section 101.

(3) An employer shall be considered to operate on public holidays by the nature of its business or a specific job shall be approved to operate or to be carried out on public holidays:

*a*) if the service provided is required on that particular day by way of local tradition or commonly accepted social custom directly connected to the public holiday; or

*b*) if provided in the interest of the prevention or mitigation of any imminent danger of accident, natural disaster or serious damage or of any danger to health, the environment or property.

(4) The provisions pertaining to scheduling work on public holidays shall apply if the public holiday falls on a Sunday, or on Easter Sunday or on Whit Sunday.

(5) The minister in charge of employment and labor is hereby authorized to decree the conditions for changes in the work schedule of employees working in standard working arrangement each year – by 31 October of the previous year – as required to accommodate the public holidays of that year. In this process no Sunday may be declared



a working day, and the change implemented shall fall within the same calendar month.

## **52. Rest breaks**

### **Section 103**

(1) If the scheduled daily working time or the duration of overtime work performed under Paragraph *a*) of Section 107:

*a*) exceeds six hours, twenty minutes of break-time shall be provided;

*b*) exceeds nine hours, and additional twenty-five minutes of break-time shall be provided.

(2) The duration of overtime work performed under Paragraph *a*) of Section 107 shall be included in the scheduled daily working time.

(3) The break-time provided to employees by agreement of the parties or in the collective agreement may not exceed sixty minutes.

(4) During the break-time work must be interrupted.

(5) The break-time shall be provided after not less than three and before not more than six hours of work.

(6) The employer shall be entitled to schedule break-times in several lots. In this case derogation from Subsection (5) is allowed, however, the duration of the break provided within the timeframe referred to in Subsection (5) must be at least twenty minutes.

## **53. Daily rest period**

### **Section 104**

(1) Employees shall be afforded at least eleven hours of uninterrupted rest period after the conclusion of daily work and before the beginning of the next day's work (daily rest period).

(2) At least eight hours of daily rest shall be provided to employees working:

*a*) split shifts;

*b*) continuous shifts;

*c*) multiple shifts;

*d*) in seasonal jobs;

*e*) in stand-by jobs.

(3) The daily rest period shall be at least seven hours if it falls on the date of switching to summer time.

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

## **54. Weekly rest day**

### **Section 105**

(1) Workers 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, workers shall be allocated at least one weekly rest day in a given month on a Sunday.

## **55. Weekly rest period**

### **Section 106**

(1) In lieu of weekly rest days, each week workers 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 workers 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) workers 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. Workers shall be provided at least forty-eight hours of weekly rest period as an average of working time banking or the payroll period.

## **56. Overtime hours**

### **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.

### **Section 108**

(1) At the employee’s request overtime work shall be ordered in writing.

(2) Overtime work may be ordered without limitation in the interest of the prevention or mitigation of any imminent danger of accident, natural disaster or serious damage or of any danger to health or the environment.

(3) Overtime work on public holidays may be ordered:

- a*) if the employee can otherwise be required to work on such day; or
- b*) in the case defined in Subsection (2) hereof.

### **Section 109**

(1) In connection with full-time jobs, two hundred and fifty hours of overtime work can be ordered in a given calendar year.

(2) The provisions set out in Subsection (1) shall be applied proportionately:

- a*) if the employment relationship commenced during the year;
- b*) in the case of fixed-term employment relationships;
- c*) in connection with part-time jobs.

## **57. On-call and stand-by duty**

### **Section 110**

(1) An employee may be required to stand by and remain available beyond the regular daily working hours scheduled.

(2) Standing by for a period of over four hours may be ordered:

- a)* in the interest of the uninterrupted provision of basic services for the general public;
- b)* in the interest of the prevention or mitigation of any imminent danger of accident, natural disaster or serious damage or of any danger to health or the environment; and
- c)* for the proper maintenance and safe operation of technological equipment.

(3) When on stand-by duty, the employee shall be obliged to remain in a condition suitable for work and perform work as instructed by the employer.

(4) The employer shall be entitled to designate the place where the employee is required to be available (be on-call) other than that the employee shall choose the place where he is to remain so as to be able to report for work without delay when so instructed by the employer (stand-by).

(5) Subsection (1) of Section 108 shall apply to ordering stand-by duty as well.

(6) The duration of availability shall be made known at least one week in advance, for the upcoming month. The employer shall be entitled to derogate from this provision under Subsection (5) of Section 97.

### **Section 111**

The duration of on-call duty may not exceed twenty-four hours, covering also the duration of scheduled daily working time and overtime work on the first day of on-call duty.

### **Section 112**

(1) The duration of stand-by duty may not exceed one hundred and sixty-eight hours, which shall be taken as the average in the event that banking of working time is used.

(2) The employee may be ordered to stand by not more than four times a month if it covers the weekly rest day (weekly rest period).

## **58. Specific provisions relating to certain categories of workers**

### **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 workers mentioned in Paragraphs *a)–b)* of Subsection (1) may not be ordered to work in night shifts.

(4) The scheduled daily working time of workers 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 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.

## **59. Vacation**

#### **Section 115**

(1) Workers 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 up to thirty days per calendar year;

*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 116**

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

#### **Section 117**

(1) Workers 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) Workers 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 having suffered a degree of health impairment of at least fifty per cent as diagnosed by the body of rehabilitation experts shall be entitled to five working days of extra vacation time a year.

#### **Section 121**

(1) An employee, whose employment relationship was concluded or terminated during the year, shall be entitled to a commensurate portion of vacation time for such year.

(2) Any fraction of a day that comes to half a day shall count as a full working day.

### **60. Allocation of vacation time**

#### **Section 122**

(1) Vacation time shall be scheduled by the employer upon hearing the employee.

(2) Employers shall allocate seven working days of the vested vacation time in a given year in not more than two parts, at the time requested by the employees, with the exception of the first three months of the employment relationship. The employee shall notify the employer of such request at least fifteen days in advance.

(3) Unless otherwise agreed, vacation shall be allocated to contain at least fourteen consecutive days at a time.

(4) Employees shall be notified of the scheduled date of their vacation time no later than fifteen days before the first day of vacation.

(5) With the exception set out in Section 125, vacation time shall not be financially compensated.

### **Section 123**

(1) Vacation time shall be allocated in the year in which it is due.

(2) If the employment relationship commenced on the first of October or subsequently, the employer shall be entitled to allocate vacation time by 31 March of the next year.

(3) If vacation time could not be allocated as under Subsection (1) for reasons within the employee's control, it shall be allocated within sixty days after the cause is remedied.

(4) Vacation time shall be considered allocated during the year when it is due, provided that it begins during that year and the portion allocated in the following year does not exceed five working days.

(5) In the event of economic reasons of particular importance or any direct and consequential reason arising in connection with its operations, the employer:

*a)* may amend the date of vacation previously agreed upon;

*b)* may recall the employee from vacation;

*c)* may allocate one-fourth of the employee's vacation time by 31 March of the following year if so stipulated in the collective agreement.

(6) By agreement of the parties, the employer shall be entitled to allocate one-third of the vacation time specified in Sections 116–117 by the end of the year following the year when due.

(7) Employers shall reimburse the employees for any damages and/or expenses incurred in connection with the modification or interruption of vacation. In the case referred to in Paragraph *b)* of Subsection (5), the time spent by traveling from the place of stay during the vacation to the place of employment, or the return trip and the time spent working shall not be included in the vacation time.

### **Section 124**

(1) Vacation time shall be allocated according to the working days stipulated in the work schedule.

(2) If the work scheduled differs from the daily working time, in the allocation of vacation time the employee shall be relieved from work for the duration scheduled, and the vacation time allocated shall be accounted and recorded in the same amount of hours.

(3) In the absence of a work schedule, the vacation shall be allocated based on the standard work pattern and on daily working time.

### **Section 125**

Upon termination of the employment relationship, compensation shall be provided for any vacation time not previously allocated as due.

## **61. Sick leave**

### **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.

(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.

(4) The provisions of Section 124 shall apply in connection with sick leave, with the exception that if the employee is not required to work on public holidays, such days shall be treated as working days.

(5) The provision of Subsection (2) of Section 121 shall also apply to sick leave.

## **62. Maternity leave, leave of absence without pay**

### **Section 127**

(1) Mothers shall be entitled to twenty-four weeks of maternity leave.

(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 worker 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.

### **Section 131**

(1) Employees shall be entitled to unpaid leave for providing care for a relative in person for any extended period (foreseeably more than thirty days), for the duration of care, in any case for up to two years.

(2) Extended care and its justification shall be certified by the physician of the person in need of care.

### **Section 132**

Employees shall be entitled to unpaid leave for the duration of actual reserve military service.

### **Section 133**

(1) Employees shall convey the request for leave of absence without pay in writing, at least fifteen days in advance.

(2) The leave of absence without pay shall end at the time the employee has indicated, or at the earliest on the thirtieth day from the date of delivery of the legal act for the termination of leave.

(3) The provisions of Subsections (1)–(2) concerning time limits shall not apply to the unpaid leave defined in Section 132.

## **63. Records of working time and rest periods**

### **Section 134**

(1) Employers shall keep records of:

- a)* the durations of regular working time and overtime;
- b)* the durations of stand-by duty;
- c)* periods of leave.

(2) The records aforementioned shall be updated regularly and shall contain facilities to identify the time of commencement and ending of any regular and overtime work and stand-by duty.

(3) By way of derogation from Subsection (2), the records referred to in Paragraph *a)* of Subsection (1) may be maintained in the form of verifying the work schedule made out in writing at the end of the month, updated on a daily basis.

## **64. Entire agreement**

### **Section 135**

(1) In the agreement of the parties or in the collective agreement no derogation is allowed:

- a)* from Subsection (5) of Section 122;
- b)* from Subsections (1)–(2) of Section 127;
- c)* from Section 134.

(2) In the collective agreement derogations:

- a)* from Sections 86–93;
- b)* from Section 95;
- c)* from Subsection (1) of Section 97;
- d)* from Section 99;
- e)* from Sections 101–102;
- f)* from Sections 104–108;
- g)* from Subsection (2) of Section 109;
- h)* from Section 111;
- i)* from Sections 113–116;
- j)* from Sections 118–121;
- k)* from Sections 124–126;
- l)* from Subsection (5) of Section 127;
- m)* from Sections 128–133;



are allowed only to the benefit of workers.

(3) The amount of overtime that may be ordered by the collective agreement is limited at three hundred hours in a given year.

(4) Collective agreements for:

*a)* employees working as navigators, flight attendants and aviation engineers or engaged in providing ground handling services to passengers and aircraft, and participating in or providing direct support for navigation services;

*b)* employees working in travel-intensive jobs in the domestic or international carriage of passengers and goods by road;

*c)* carriers and traffic controllers working in a local public transportation system for the carriage of passengers or in a scheduled intercity transportation system inside a fifty-kilometer radius;

*d)* traveling workers and traffic controllers working in the carriage of passengers by rail and in the carriage of goods by rail;

*e)* employees working in harbors;

may derogate from the provisions contained in Subsection (2) of Section 99 and in Sections 101–109.

(5) The collective agreement may contain provisions in connection with employers operating in the healthcare sector by way of derogation from Subsections (2) and (4)–(5) of Section 99, with the proviso that the weekly working time of employees not working in stand-by jobs or on-call is limited at sixty and seventy-two hours, respectively.

## Chapter XII

### Remuneration for Work

#### 65. Base wage

##### 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 shall be divided:

*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 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 worker 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 per cent 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.

#### **Section 140**

(1) The employees referred to in Paragraphs *d)–e)* of Subsection (1) of Section 101, if required to work Sundays in regular working time, shall be entitled to a fifty per cent wage supplement.

(2) Employees required to work on public holidays in regular working time 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**

In the case of employees working in shifts, if the beginning of their scheduled daily working time 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.

#### **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) 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) for work performed within the framework of working time banking; or

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

(2) 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.

(3) 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).

(4) Where overtime work is ordered on a public holiday, the employee shall be entitled to a wage supplement as under Subsection (3).

(5) The time off or the weekly rest day (weekly rest period) mentioned in Subsection (3) 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.

(6) 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.

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

#### **Section 147**

- (1) In addition to the payments defined in Subsections (1) and (3) 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 for the time when exempted from work.
- (2) In the case referred to in Subsection (1), the employee shall be entitled to a commensurate wage supplement when on sick leave.

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

#### **Section 148**

- (1) The amount of absentee pay shall be calculated based on the base wage in effect at the time when due, and on the performance-based wage and wage supplement paid for the last six calendar months (relevant period).
- (2) The payments for periods of absence to which the employee is entitled shall not be taken into consideration for the purpose of calculating the absentee pay.
- (3) In determining the amount of daily or monthly absentee pay, the absentee pay payable for one hour shall be multiplied by the daily working time, or as specified in Subsection (3) of Section 136, except where Section 149 applies.
- (4) In determining the amount of absentee pay, the sums calculated according to Sections 149–151 shall be applied on the aggregate.

#### **Section 149**

- (1) In the case of monthly salary:
- a*) in determining the amount of hourly absentee pay, the provisions of Subsection (3) of Section 136 shall apply;
  - b*) absentee pay for one day shall be established by multiplying the hourly absentee pay by the daily working time;
  - c*) the amount of absentee pay for a month shall be the same as the base wage.
- (2) In the case of hourly wages:
- a*) the amount of absentee pay for an hour shall be the same as the hourly wage;
  - b*) absentee pay for one day shall be established by multiplying the hourly wage by the daily working time;
  - c*) in determining the amount of absentee pay for a month, the hourly wage shall be multiplied according to Subsection (3) of Section 136.

#### **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) As regards the employees whose income consists of performance-based wage only, 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).

#### **Section 151**

(1) In determining the absentee pay, if the employee was not scheduled to work under the duration of being exempted from work, the wage supplement specified in Sections 141–142 and in Subsection (1) of Section 144 shall be taken into consideration in accordance with Subsections (2)–(3).

(2) 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.

(3) 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.

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

(5) If the employer established a fixed-sum payment specified in Section 145 for the employee in lieu of the wage supplements referred to in Subsection (1), the amount of the fixed monthly payment shall be divided by the number of hours worked in regular working time during the relevant period (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 amount and scope of the mandatory minimum wage and the guaranteed wage minimum (hereinafter referred to collectively as “mandatory minimum wage”) shall be determined by the Government following consultations in the Nemzeti Gazdasági és Társadalmi Tanács (*National Economic and Social Council*).

(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.

## **70. Protection of wages**

### **Section 154**

(1) With the exception of work performed abroad and unless otherwise prescribed by the relevant legislation, all wages shall be established and paid in forints.

(2) Wages may not be paid by means of vouchers or any other means of substitute payment instruments.

### **Section 155**

(1) In the absence of an agreement to the contrary, the wages of employees shall be retrospectively accounted at least once a month.

(2) The payroll statement of wages paid shall be made available in writing by the tenth day of the following month.

(3) The payroll statement referred to in Subsection (2) shall have facilities to allow the employee to check the authenticity of calculations, as well as the grounds and sums of deductions.

(4) The employee affected shall be informed by the twentieth of the following month if the payroll statement of wages for the given month needs to be revised due to reasons arising after the statement was completed. At the same time, the wages owed shall be paid out if the amount the employee originally received was less than the amount shown in the revised payroll statement. If, according to the revised payroll statement, the amount originally paid out was higher than the amount that is in fact due to the employee, the employer may deduct the excess sum in accordance with the provisions on debts from repayable advances.

### **Section 156**

(1) In the case of an irregular work schedule and if wages are paid by the hour, the employer shall account and pay the employee's wages in accordance with Subsection (3) of Section 136, unless there is an agreement to the contrary.

(2) Upon expiry of the working time banking arrangement, the employee's wages shall be calculated based on the standard work pattern and the daily working time, and on the time actually worked.

(3) Within twenty days following expiry of the working time banking arrangement, if the employee was underpaid compared to the amount of wages calculated as under Subsection (2), the difference shall be paid out.

(4) The provisions on debts from repayable advances shall apply if the employee was overpaid compared to the amount of wages calculated as under Subsection (2).

### **Section 157**

(1) Wages shall be paid by the tenth of the month following the month to which it pertains.

(2) In the case of workers whose wages are paid on the basis of performance only, if the result serving as a basis for the employee's wages, in full or in part, can only be established after a period of more than one month, it shall be paid at the time as appropriate. An advance shall be paid at least monthly, amounting to half of the base wage.

#### **Section 158**

(1) Wages shall be paid in cash, or by way of transfer to the bank account the employee has indicated.

(2) If wages are paid by way of transfer to the employee's bank account, the employer shall ascertain that the employee shall have access to his wages on payday.

(3) Payment of wages may not invoke any cost on the employees' part.

(4) Wages shall be paid to the employee or his authorized representative, except if the employee's access is restricted by a court ruling or by resolution of the relevant authority.

#### **Section 159**

(1) If wages are paid in cash, the exceptions set out in Subsections (2)–(6) shall be observed, unless there is an agreement to the contrary.

(2) If payday falls on a weekly rest day (weekly rest period) or a public holiday, the wages shall be paid at the latest on the last preceding working day.

(3) If an employee is not at his place of employment for justified reasons on payday, his wages shall be paid on the last preceding working day spent at such place, or shall be sent to his place of residence at the employer's expense.

(4) The employer shall pay at latest on the working day preceding the date when vacation commences:

*a)* the wages due on a payday falling within the time of the vacation; and

*b)* the wages payable for the time of annual leave taken.

(5) If employment was terminated prior to payday, the employer shall forward the wages to the address indicated by the employee. The costs thereof shall be borne by the employer.

(6) Wages shall be paid at the employee's place of employment or at the employer's main offices during working time. In places of entertainment wages shall only be paid to the persons working therein.

#### **Section 160**

In the event of any delay, interest for late payment shall be paid from the date of default as calculated by the central bank base rate in effect on the last day preceding the calendar half-year to which it pertains.

#### **Section 161**

(1) Deductions from wages shall only be made on the basis of the relevant legislation, or – up to the deduction-free part of the wages – on an enforcement order.

(2) Employers may deduct their claims from wages:

*a)* up to the deduction-free part of the wages based on the employee's consent; or

*b)* if it originates from the provision of an advance.

(3) It is forbidden to implement a wage deduction which benefits the employer, his representative or a mediator in exchange for establishing or sustaining the employee's employment relationship.

#### **Section 162**

No set-off is permitted in relation to wages.

#### **Section 163**

(1) The employee may not waive his claim to his wages by way of a unilateral act.

(2) The deduction-free part of the wages shall not be assigned.

**Section 164**

Any wages paid without legal grounds may be reclaimed after sixty days if the employee should have recognized, or has himself caused, the unsubstantiated nature of the payment.

**71. Entire agreement**

**Section 165**

(1) In the agreement of the parties or in the collective agreement no derogation is allowed:

- a)* from Section 136;
- b)* from Subsection (3) of Section 137;
- c)* from Subsections (1)–(5) of Section 138;
- d)* from Subsection (1) of Section 139;
- e)* from Section 154;
- f)* from Subsections (5)–(6) of Section 159;
- g)* from Sections 161–163.

(2) In the collective agreement derogations:

- a)* from Subsection (6) of Section 138;
- b)* from Section 160;
- c)* from Section 164;

are allowed only to the benefit of workers.

Chapter XIII

Employer's Liability for Damages

**72. Liability for damages caused**

**Section 166**

(1) The employer shall be liable to provide compensation for damages caused in connection with an employment relationship.

(2) The employee shall be relieved of liability if able to prove:

*a)* that the damage occurred in consequence of unforeseen circumstances beyond his control, and there had been no reasonable cause to take action for preventing or mitigating the damage; or

*b)* that the damage was caused solely by the unavoidable conduct of the aggrieved party.

(3) Where the worker is employed by another employer under Section 53, the liability of the employers shall be joint and several.

**Section 167**

(1) The employer shall compensate the employee for all his losses in full. No compensation is required if the employer is able to verify that the occurrence of such loss



could not have been anticipated.

(2) No liability shall apply to the portion of the damage resulting from the employee's wrongful conduct or that was incurred due to the employee's failure to perform his obligations in relation to the mitigation of damage.

(3) The court, under special and equitable circumstances, may grant partial exemption from liability to the employer held liable for damages, upon weighing the financial standing of the parties, the gravity of the infringement and the consequences of providing compensation.

#### **Section 168**

(1) Employers shall be subject to liability in accordance with Sections 166–167 for damages caused to objects and things of the employees brought along to the place of employment.

(2) Employers may require things brought to the workplace to be deposited in a safe place or to have them reported. Articles which are not essential for the commute to and from work, or for the work itself may be carried into the workplace upon the employer's consent. In the event of breaching these rules the employer shall be held liable for damages only if caused willfully.

### **73. Extent and mode of compensation for damage**

#### **Section 169**

(1) For the purposes of determining loss of income from employment, the lost wages and the cash value of the regular benefits for which the employee is entitled on the basis of the employment relationship in addition to his wages shall be taken into consideration, provided that such were regularly received prior to the occurrence of the damages.

(2) Other regular earnings and legitimate income lost due to the grievance shall be compensated for as income lost from gainful activities other than employment.

(3) Damages prevented by the employee by extraordinary work performance in spite of his severe handicap originating from the grievance shall also be compensated.

(4) No liability shall apply for the value of benefits that, by nature, are only provided in connection with work, and for any expense reimbursements.

#### **Section 170**

(1) The value of in kind benefits and the amount of damage to property shall be determined by the retail prices in effect at the time the damage liability is established.

(2) Depreciation shall also be included in the valuation of damage to property. If the damage to property can be repaired without any loss of value, only the repair cost shall be assessed for the amount of damages.

#### **Section 171**

(1) Employers shall also be liable for reimbursing the relatives of employees for any damages incurred in connection with the incidence of damage.

(2) In the event of the employee's death in connection with the incidence of damage, the dependent relative of such employee may demand compensation in substitution for the lost support, in addition to what is contained in Subsection (1), in the amount required to ensure his/her previous living standards, also taking into account of his/her factual or presumably achievable wages or income.

#### **Section 172**

The following shall be deducted from the amount of compensation:

a) benefits provided under the social security system or by a voluntary mutual insurance fund;

b) the income in fact earned by the employee, or which could have been earned in the given situation within reason;

c) the profit earned by the employee (his relatives) through the utilization of the damaged property;

d) the benefit gained by the beneficiary as a result of expenses saved in consequence of the occurrence of the damage.

### **Section 173**

(1) Compensation may be provided in the form of regular payments as well. Regular payments shall, on general principle, be awarded if the compensation is intended to be used for the support of the employee or his relative eligible thereto, or as a supplement to such support.

(2) If the amount of damage, in part or in full, cannot be precisely calculated, the employer shall be liable to pay a general compensation in the amount as is appropriate to provide full indemnification to the aggrieved party. General compensation may also be awarded in the form of regular payments.

### **Section 174**

(1) In the event of any material changes in the circumstances subsequent to the award of damages, both the aggrieved party and the employer, and the insurance company – if indemnification is provided on the basis of liability insurance –, may request the amount of damages to be revised.

(2) The amount of damages awarded to a young worker shall be reviewed upon his reaching eighteen years of age or after one year following his graduation from vocational training, and the damages for the subsequent period shall be established in accordance with any changes in the young person's capacity to work or in his education.

(3) For the purposes of establishing the rate of change in wages applied as the basis for the revision of damages, the rate of change in annual wages actually implemented at the employer's strategic business unit where the aggrieved party was employed at the time of the incidence of damage for the employees working in identical positions shall apply. If there are no employees in identical positions, the average annual change in wages at said strategic business unit shall apply as the basis for such modification.

(4) In the event that the strategic business unit referred to in Subsection (3) is wound up, for the purposes of revision of damages, the rate of change in wages for the employees working in identical positions as the aggrieved party shall apply, or in the absence of such employees, the rate of average annual change in wages actually implemented at the employer shall apply.

### **Section 175**

(1) With respect to the term of limitation, damage claims for the difference between:

a) the loss of income and sick pay;

b) the loss of income and the earnings diminished on account of the grievance;

c) the loss of income and invalidity benefits, accident-related disability benefits, invalidity allowance or rehabilitation allowance;

shall be recognized independently.

(2) If, in connection with a grievance, several additional compensation claims arise each being due at different times, the term of limitation for such claims shall be applied independently, commencing as of the due date of each claim.

(3) Subject to the distinction referred to in Subsection (1), the term of limitation shall

commence:

- a) on the day of the first payment of sick pay;
- b) from the point in time when the diminished capacity to work on account of the grievance, or health impairment first leads to damages manifested in the loss of income;
- c) at the time of payment of invalidity benefits, accident-related disability benefits, invalidity allowance or rehabilitation allowance.

**Section 176**

(1) If necessary, the employer or the insurance company may request the employee or his close relatives to provide proof regarding their income from employment or on their financial situation each year.

(2) The employer shall notify the aggrieved party within fifteen days following the implementation of any change in wages based upon which the amount of compensation may be modified.

**74. Application of civil law**

**Section 177**

Compensation for damages shall, furthermore, be governed by the provisions of Chapter XXXI of the Civil Code.

**75. Entire agreement**

**Section 178**

Derogations from the provisions of this Chapter in the collective agreement are allowed only to the benefit of workers.

Chapter XIV

Employees' Liability for Damages

**76. Liability for damage caused by wrongful acts**

**Section 179**

(1) Employees shall be subject to liability for damages caused by any breach of their obligations from the employment relationship stemming from their failure to act as it might normally be expected in the given circumstances.

(2) The burden of proof to verify the facts referred to in Subsection (1), the occurrence of loss, as well as the causal link lies with the employer.

(3) The amount of compensation payable to the employee may not exceed four months' absentee pay. Compensation for damage caused intentionally or through grave negligence shall cover the full extent of losses.

(4) No liability shall apply with respect to any damage that is considered unforeseeable or that resulted from the employee's wrongful conduct, or that was incurred due to the employee's failure to perform his obligations to mitigate the damage.

(5) Compensation for damages shall be provided as under Section 177.

## **77. Liability for safeguarding**

### **Section 180**

(1) The employee shall be subject to liability concerning the loss of objects received for the purpose of safeguarding with the obligation to return or account for said objects, which are continuously safeguarded and exclusively used or handled by such employee.

(2) The employee shall be relieved of liability if able to prove that the given failure has occurred for a reason beyond his control.

(3) The employee shall be liable to provide compensation for the loss described in Subsection (1), only if signing a list or acknowledgement receipt upon receiving the property. Where a property is given to several employees for the purpose of safeguarding, the list or acknowledgement receipt aforementioned shall be signed by all employees involved. An employee may give authorization to another employee to accept the property in his name and on his behalf.

(4) Cashiers, handlers of money and valuables shall be liable for the money, securities and other valuables they handle, regardless of having the list or acknowledgement receipt specified in Subsection (3).

(5) The burden of proof to verify the conditions specified in Subsections (1) and (3) and the damage lies with the employer.

(6) If a property under safeguarding is physically damaged, the employee shall be relieved of liability if he is able to prove that he has acted in a manner that can generally be expected in the given situation.

## **78. Joint liability of employees**

### **Section 181**

(1) Liability for damages shall be borne by the employees involved consistent with the degree of their culpability, or – if this cannot be determined – in proportion to their respective involvement.

(2) Employees shall be jointly liable for damages if the degree of culpability or involvement cannot be verified.

(3) As regards any loss in property given to several employees for safeguarding, liability shall be borne by such employees in proportion to their wages.

(4) Liability for damages caused willfully by several persons shall be joint and several.

## **79. Inventory liability**

### **Section 182**

(1) Employees shall be liable for inventory shortages irrespective of any wrongdoing.

(2) The following shall be construed preconditions for inventory liability:

*a)* conclusion of an inventory liability agreement for the inventory period;

*b)* proper delivery and receipt of inventory stocks;

*c)* inventory shortage determined by a procedure to include all stocks on inventory and conducted according to inventory regulations; and

*d)* working at the given workplace covering at least half of the inventory period.

(3) If an employee who is not subject to liability for inventory shortages also has access to the inventory stocks, liability shall – furthermore – be contingent upon the prior written consent of the employee responsible for inventory shortages for employment in the given job or workplace.

**Section 183**

(1) Any shortage in the material and/or goods (inventory) or commodity properly deposited and received, for the purpose of resale, supply or management, caused by unknown reasons and in excess of natural quantitative degradation and permissible losses (hereinafter referred to collectively as “marketing loss”) shall be construed as inventory shortage.

(2) Inventory period means the time span between two consecutive inventory controls.

**Section 184**

(1) The inventory liability agreement shall be made in writing.

(2) The agreement must define the specific inventory stocks for which the employee is responsible.

(3) A collective agreement for inventory liability may be concluded if an inventory is administered by more than one employee. Such agreement shall define the positions where an inventory count is to be taken when filled by a new employee.

(4) The inventory liability agreement shall be terminated when the employee no longer handles the stocks due to changes in his position.

(5) The employee shall have the right to cancel in writing – without explanation – the inventory liability agreement effective as of the last day of the inventory period. In the case of a collective agreement for inventory liability, the agreement shall be considered cancelled only in respect of the employee who made the legal act.

**Section 185**

(1) The employer shall establish:

*a)* the scope of materials and/or goods for which marketing loss can be claimed in view of the characteristics and size of the material or of the conditions of warehousing or storage;

*b)* the permissible amount of marketing loss;

*c)* the method and rules of delivering and receiving inventory stocks;

*d)* the procedure for determining inventory shortage or inventory liability;

*e)* the employer’s liabilities for the safe storage of inventory stocks.

(2) The employee shall be informed in writing regarding the conditions prescribed according to Subsection (1) hereof prior to the conclusion of an inventory liability agreement and/or before the inventory period.

(3) When taking inventory, the presence of the employee, or his representative if the employee is not available, or the employees specified in the procedural rules in respect of collective liability, shall be provided for. If the employee fails to attend or delegate a representative, the employer shall appoint an unbiased representative with expertise in the field in question.

(4) The employee affected shall be notified regarding the inventory count and its outcome. The employee may make his opinion known during the procedure, and – unless the employee failed to attend in spite of being duly notified – shall be heard.

**Section 186**

(1) Unless otherwise provided for in the agreement for inventory liability, the employee who permanently handles the inventory stocks by himself shall be liable for the full

amount of shortages.

(2) The employee subject to liability for inventory shortages may only be accountable for up to six months' absentee pay if an employee who is not subject to liability for inventory shortages also has access to the inventory stocks.

(3) In respect of a collective agreement for inventory liability, the amount of compensation for damages may not exceed the aggregate amount of six months' absentee pay of the employees included in the agreement. A collective agreement for inventory liability may specify the sharing of responsibility among the employees concerned; joint and several liability, however, may not be stipulated. If the sharing of responsibility is not specified in the collective agreement for inventory liability, the employees shall bear liability according to the percentage of their respective absentee pay.

#### **Section 187**

When establishing responsibility and/or the amount of damages all circumstances of the case shall be taken into consideration, such as in particular, the ones having an effect on the employee's liability, and which may have influenced the safe and proper administration of inventories, such as the fulfillment of employer's obligations concerning security and the duration of the absence of the employee, if any.

#### **Section 188**

Employers may submit their claims for compensation for inventory shortages during the sixty-day limitation period following the conclusion of inventory control. In the event of criminal indictment, the time limit shall be thirty days and it shall commence on the day following the date when the final decision of the investigating authority or the final ruling of the court is delivered.

### **80. Employee guarantees**

#### **Section 189**

(1) If so agreed by the parties in writing, employees may be required to provide guarantees to the employer if:

*a)* their job involves the handling of cash or other valuables received from, or provided to, third parties; or

*b)* their job involves the exercise of supervision of the transactions referred to in Paragraph *a*).

(2) The amount of guarantee may not exceed the employee's base wage for one month. Any increase in the base wage shall not constitute an entitlement for the employer to demand a higher guarantee.

(3) The employer shall deposit the amount of the guarantee into a discretionary account opened at a credit institution or financial enterprise of its choice on the working day following the date of receipt at the latest.

(4) The employer shall repay the amount of the guarantee, plus interest calculated by the central bank base rate, to the employee without delay if:

*a)* the condition referred to in Subsection (1) no longer applies due to any change in the employee's job; or

*b)* the employee's employment relationship is terminated.

(5) The guarantee may be used only for satisfying compensation claims in accordance with the provisions on deductions from wages.

## **81. Mitigated compensation**

### **Section 190**

The court, under special and equitable circumstances, may grant partial exemption from liability to the employee held liable for damages, upon weighing the financial standing of the parties, the gravity of the infringement and the consequences of providing compensation.

## **82. Entire agreement**

### **Section 191**

(1) Derogations from the provisions of this Chapter in the collective agreement are allowed only to the benefit of workers, excluding the extent of liability for inventory shortages.

(2) Where so provided in the collective agreement, the extent of liability for damages in cases of negligence may not exceed the employee's absentee pay due for eight months.

## Chapter XV

### Special Provisions Relating to Employment Relationships According to Type

## **83. Fixed-term employment relationships**

### **Section 192**

(1) The period of fixed-term employment shall be determined according to the calendar or by other appropriate means. The date of termination of the employment relationship may not depend solely on the party's will, if the duration of the employment relationship is not determined by the calendar. In the latter case the employer is required to inform the employee of the expected duration of employment.

(2) The duration of a fixed-term employment relationship may not exceed five years, including the duration of an extended relationship and that of another fixed-term employment relationship concluded within six months of the termination of the previous fixed-term employment relationship.

(3) Where an employment relationship is subject to official approval, it may only be concluded for the duration specified in the authorization. If the authorization is extended, the duration of the new fixed-term employment relationship may exceed five years together with the duration of the previous employment relationship.

(4) A fixed-term employment relationship may be extended between the same parties within a period of six months, or another fixed-term employment relationship may be concluded within six months from the time of termination of the previous one on objective grounds that have no bearing on work organization, and it may not infringe upon the employee's legitimate interest.

## **84. Call for work**

### **Section 193**

(1) Part-time workers employed under employment contract in jobs for up to six hours a day shall work at times deemed necessary to best accommodate the function of their jobs. In this case the duration of working time banking may not exceed four months.

(2) The employer shall inform the employee of the time of working at least three days in advance.

## **85. Job sharing**

### **Section 194**

(1) The employer may conclude an employment contract with several workers for carrying out the functions of a job jointly. Where any one of the employees to the contract is unavailable, another worker to the contract shall fill in and perform the functions of the job as ordered.

(2) The scheduling of work shall be governed by the provisions on flexible working arrangements.

(3) Wages shall be distributed among the employees equally, unless there is an agreement to provide otherwise.

(4) The employment relationship shall cease to exist when the number of employees is reduced to one. In this case, the employer shall be liable to pay the worker affected absentee pay covering a period that would otherwise be due in the event of dismissal by the employer; furthermore, the rules on severance pay shall also apply.

## **86. Employee sharing**

### **Section 195**

(1) Several employers may conclude an employment contract with one worker for carrying out the functions of a job.

(2) The employment contract shall clearly indicate the employer designated to pay the employee's wages.

(3) The liability of employers in respect of the employee's labor-related claims shall be joint and several.

(4) Unless otherwise agreed, the employment relationship may be terminated by either of the employers or by the employee.

(5) The employment relationship shall cease to exist under Paragraph *b*) of Subsection (1) of Section 63 when the number of employers is reduced to one.

## **87. Teleworking**

### **Section 196**

(1) 'Teleworking' shall mean activities performed on a regular basis at a place other than the employer's facilities, using computers and other means of information technology (hereinafter referred to collectively as "computing equipment"), where the end product is delivered by way of electronic means.

(2) In the employment contract the parties shall agree on the worker's employment by means of teleworking.



(3) In addition to what is contained in Section 46, the employer shall inform the employee:

a) concerning inspections conducted by the employer;  
b) concerning any restrictions as to the use of computing equipment or electronic devices; and

b) concerning the department to which the employee's work is in fact connected.

(4) The employer shall provide all information to persons employed in teleworking as is provided to other employees.

(5) The employer shall provide access to the employee for entering its premises and to communicate with other workers.

#### **Section 197**

(1) Unless otherwise agreed, the employer's right of instruction is limited solely to the definition of duties to be discharged by the employee.

(2) The employer may restrict the use of computing equipment or electronic devices it supplies solely to the work the employee performs on its behalf.

(3) An inspection concerning the completion of the work assignment shall not constitute any right for the employer to inspect any information stored on the computing equipment of the employee used for discharging his duties, which are unrelated to the employment relationship. As regards the employer's right of access, the data necessary for control of the prohibition or restriction prescribed in Subsection (2) shall be considered to be related to obligations originating from the employment relationship.

(4) Unless there is an agreement to the contrary, the employer shall determine the type of inspection and the shortest period of time between the notification and commencement of the inspection if conducted in a property designated as the place of work. The inspection may not bring unreasonable hardship on the employee or on any other person who is also using the property designated as the place of work.

(5) In the absence of an agreement to the contrary, the employee's working arrangements shall be flexible.

## **88. Outworkers**

#### **Section 198**

(1) Outworkers may be employed in jobs that can be performed independently, and that is remunerated exclusively on the basis of the work done [Subsection (3) of Section 137].

(2) The employment contract shall define the work performed by the employee, the place where work is carried out and the method and extent of covering expenses.

(3) The employee's home or another place designated by the parties shall be construed as the place of work.

#### **Section 199**

(1) Unless otherwise agreed, the employer's right of instruction is limited to the specifying of the technique and work processes to be used by the employee.

(2) In the absence of an agreement to the contrary, the employee shall carry out the work using his own means.

(3) In the absence of an agreement to the contrary, the employer shall determine the type of inspection and the shortest period of time between the notification and commencement of the inspection if conducted in a property designated as the place of work. The inspection may not bring unreasonable hardship on the employee or on any

other person who is also using the property designated as the place of work.

(4) In the absence of an agreement to the contrary, the employee's working arrangements shall be flexible.

#### **Section 200**

(1) The employee shall be reimbursed for the expenses actually incurred in connection with the work, or – if the expenses actually incurred cannot be determined – a fixed flat-rate sum shall be paid to the employee.

(2) Payment of remuneration and expenses shall be withheld if the work done is deemed insufficient due to reasons within the employee's control. Payment of remuneration and expenses shall be reduced if the employer is able to use the product the employee makes in part or in whole.

### **89. Simplified employment and occasional work relationships**

#### **Section 201**

(1) Employers and employees covered by this Act may enter into simplified employment or occasional work relationships. Any employment contract for simplified employment or occasional work shall be considered null and void if the parties are engaged under an employment relationship at the time it was concluded.

(2) An existing employment contract may not be modified by the parties to conclude a simplified employment or occasional work relationship.

#### **Section 202**

(1) Section 44 shall not apply to the employment contract. When concluding the employment contract, parties may use the model employment contract specified by law.

(2) The employment relationship shall be considered concluded upon fulfillment of the notification requirement specified by law.

#### **Section 203**

(1) The provisions of:

- a)* Subsection (2) of Section 49;
- b)* Section 53;
- c)* Section 56;
- d)* Section 59;
- e)* Section 61;
- f)* Section 101;
- g)* Sections 122–124;
- h)* Subsection (4) of Section 192; and
- i)* Sections 208–211

shall not apply to the employment relationship.

(2) In addition to what is contained in Subsection (1), the provisions of Section 81, Subsections (4)–(5) of Section 97 and Section 126–133 shall not apply to occasional work relationships.

(3) Upon termination of an occasional work relationship the employee is not required to provide the certificate referred to in Section 80.

(4) By way of derogation from Subsection (3) of Section 97, in an occasional work relationship the employer may set the working time based on an irregular work schedule regardless of any working time banking arrangement or payroll period arrangement.

(5) The provisions of Section 134 and Subsection (2) of Section 155 shall not apply if

the parties used the model employment contract to conclude the occasional work employment contract.

## **90. Employment relationships with public employers**

### **Section 204**

(1) Public employer means a public foundation, or a business association in which the State, a municipal government, an association of municipal governments vested with legal personality, a multi-purpose micro-region association, a development council, a minority self-government body, an association of minority self-government bodies vested with legal personality, a budgetary agency or a public foundation has majority control either by itself or collectively.

(2) ‘Majority control’ means a relationship where a person controls over fifty per cent of the voting rights in a legal person that has dominant influence, directly, or indirectly through another legal person that has voting rights in that legal person (intermediary company). Indirect control shall be determined by multiplying the number of votes held by another legal person in that legal person (intermediary company) by the number of votes held by the holder of a participating interest in the intermediary company or companies. If the ratio of votes controlled by the holder of a participating interest in the intermediary company is greater than fifty per cent, it shall be treated as a whole.

(3) The employee’s wages may not exceed the limit specified by law.

### **Section 205**

(1) In the collective agreement or in the agreement of the parties:

*a)* no derogation is allowed from Subsections (1)–(2) of Section 69 concerning the duration of the notice period;

*b)* no derogation is allowed from Section 77 concerning severance pay;

*c)* the daily working time in full-time positions may not be less than the time specified in Subsection (1) of Section 92.

(2) In the collective agreement no derogation is allowed from Chapter XIX.

### **Section 206**

No derogation is allowed from Chapters XX and XXI.

### **Section 207**

(1) The entity exercising ownership rights shall have the right to define those jobs where an employment contract must be concluded in accordance with Subsection (2) of Section 208.

(2) The entity exercising ownership rights shall have powers to establish performance requirements for the executive employees referred to in Section 208, including the related performance-based wage and other benefits.

(3) A non-competition agreement may be concluded with the executive employees referred to in Section 208 for a period up to one year, subject to approval by the entity exercising ownership rights. The entity exercising ownership rights may define the jobs in respect of which a non-competition agreement can be concluded, and may prescribe further conditions.

(4) The consideration stipulated in the non-competition agreement may not – for the duration of the agreement – exceed fifty per cent of the absentee pay due for such period.

(5) Unless otherwise provided for by law, the entity exercising ownership rights may delegate the rights specified in Subsections (1)–(4) upon another person (organ, body).

## 91. Executive employees

### Section 208

(1) ‘Executive employee’ shall mean the employer’s director, and any other person under his direct supervision and authorized – in part or in whole – to act as the director’s deputy (hereinafter referred to collectively as “executive employee”).

(2) With the exception set out in Subsection (2) of Section 209, the employment contract may invoke the provisions on executive employees if the employee is in a position considered to be of considerable importance from the point of view of the employer’s operations, or fills a post of trust, and his salary reaches seven times the mandatory minimum wage.

### Section 209

(1) The employment contract of executive employees may derogate from the provisions of Part Two of this Act, save where Subsection (2) applies.

(2) Collective agreements shall not apply to executive employees.

(3) Executive employees shall work under flexible arrangements.

(4) Executive employees shall be subject to full liability for damages caused by negligence.

(5) By way of derogation from Subsections (1)–(2) of Section 84, the executive employee, if having terminated his employment relationship unlawfully, shall be liable to pay compensation in the sum of absentee pay due for twelve months.

### Section 210

(1) When employment is terminated by the employer, the following shall not apply:

*a)* Paragraph *c)* of Subsection (3) of Section 65;

*b)* Subsections (1)–(6) of Section 66; and

*c)* Subsection (2) of Section 68.

(2) The right of termination without notice of an executive employee may be exercised within three years of the occurrence of the cause serving grounds therefor, or in the event of a criminal offense up to the statute of limitation.

(3) The employer shall be liable to pay up to six months’ absentee pay due to the executive employee from the remuneration payable upon termination of his employment, if the notice of termination is delivered after the opening of bankruptcy or liquidation proceedings. Any additional sum shall be payable upon the conclusion or termination of bankruptcy proceedings, or upon the conclusion of liquidation proceedings.

### Section 211

(1) Executive employees may not enter into additional employment-related relationships.

(2) Executive employees:

*a)* shall not acquire shares, with the exception of the acquisition of stocks in a public limited company, in a business association which is engaged in the same or similar activities or that maintains regular economic ties with their employer;

*b)* shall not conclude any transactions falling within the scope of the employer’s activities in their own name or on their own behalf; and

*c)* shall report if a relative has become a member of a business association which is engaged in the same or similar activities or that maintains regular economic ties with the employer, or has established an employment-related relationship for an executive office with an employer engaged in such activities.

## **92. Incapacitated workers**

### **Section 212**

(1) Incapacitated workers may conclude employment relationships only for jobs which they are capable to handle on a stable and continuous basis in the light of their medical condition.

(2) The functions of the employee's job shall be determined by definition of the related responsibilities in detail. The employee's medical examination shall cover the employee's ability to handle the functions of the job.

(3) The employee's work shall be supervised continuously so as to ensure that the requirements of occupational safety and health are satisfied.

(4) The provisions of Chapter XIV shall not apply to such employees; furthermore, the provisions pertaining to young workers shall apply.

## **93. Entire agreement**

### **Section 213**

In the agreement of the parties or in the collective agreement no derogation is allowed:

- a)* from Section 192;
- b)* from Subsections (2)–(3) and (5) of Section 195;
- c)* from Section 196;
- d)* from Subsection (3) of Section 197;
- e)* from Section 198;
- f)* from Sections 200–207;
- g)* from Section 212.

## Chapter XVI

### Special Provisions on Temporary Agency Work

## **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 worker 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 worker performs temporary work;

*d)* 'temporary agency worker' shall mean a worker 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 (worker);

*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; this cooperative must satisfy the requirements prescribed in this Act and in other legislation and must be 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 workers is not allowed:

*a)* in the cases specified by the relevant employment regulations;

*b)* with a view to replacing workers on strike;

*c)* if the user enterprise has terminated the employment relationship of the employee in question within six months for reasons in connection with the employer's operations or under Paragraph *a)* of Subsection (1) of Section 79;

*d)* 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 temporary-work agency and the user enterprise shall specify the material conditions of assignment, and the sharing of employer's rights.

Employment may only be terminated by the temporary-work agency. The agreement shall be made in writing.

(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 worker 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 workers 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 worker:

*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) As regards the notice period, if the parties have had several fixed-term employment relationships within two years preceding the date when notice of termination is communicated, the duration of such relationships shall be accounted on the aggregate.

(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 by the employee the user enterprise may demand compensation 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 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 (4) of Section 218.

(2) In the collective agreement derogations:

- a)* from Subsection (3) of Section 218;
- b)* from Subsections (2)–(3) of Section 220;
- c)* from Paragraphs *a)*–*b)* of Subsection (2) of Section 219;

are allowed only to the benefit of workers.

(3) In connection with temporary agency work:

- a)* Sections 193–195;
- b)* Sections 198–200;
- c)* Section 212

shall not apply.

## Special Provisions Relating to Employment Relationships Between School Cooperatives and Their Members

### **Section 223**

(1) A school cooperative (employer) and its full time student (employee) may enter into a fixed-term employment relationship so as to permit such student to perform work at a third party (customer) with a view to supplying services to such third party.

(2) The employment contract shall specify:

*a)* a description of the responsibilities undertaken by the employee;

*b)* the threshold of the employee's base wage for the duration of work performed at the customer;

*c)* the agreed means of communication during the period when the employee is not required to work.

(3) Work may be initiated upon the parties having reached an agreement in writing concerning:

*a)* the person of the customer;

*b)* the job to be performed;

*c)* the base wage;

*d)* the place of work;

*e)* the date when work is to commence;

*f)* the duration of work.

(4) The employer shall inform the employee in writing at the time of taking up work concerning:

*a)* the regular work hours;

*b)* the date of payment of wages;

*c)* the functions of the job;

*d)* the person delegated to give instructions.

### **Section 224**

(1) The customer shall be entitled to give instructions to the employee.

(2) The customer shall cooperate with the employer, such as in particular, providing access for the employer's representative to the place of work, and in making available information for the employer in connection with issues concerning the work.

(3) During the period of work performed by the employee, the customer shall exercise and discharge the employer's rights and obligations relating to compliance with the provisions on:

*a)* occupational safety;

*b)* the employment of women, young workers and persons with reduced ability to work;

*c)* working time, rest period and the records of these.

(4) The basic working and employment conditions under Subsection (2) of Section 219 of the school cooperative's employee shall be, for the duration of work assignment at the customer, at least those available to the workers employed by the customer under employment relationship.

(5) The employer and the customer shall be jointly and severally liable in respect of obligations referred to in Subsection (4).

### **Section 225**

(1) The employment relationship shall be terminated at the time membership ceases to exist.

(2) The length of time when no work is required may not be less than the duration of leave referred to in Sections 116–117.

(3) For the period of time when no work is performed for the employer or the customer the employee shall not be entitled to any pay, with the exception where Section 146 applies.

#### **Section 226**

(1) In connection with any damage caused by the employee the customer may demand compensation from the employee in accordance with this Act.

(2) By agreement between the employer and the customer, the provisions of civil law on the employer's liability for damages caused by an employee shall apply in the case under Subsection (1).

(3) For any damages caused to the employee during work performed for the customer the employer and the customer shall be jointly and severally liable in accordance with the provisions on employer's liability for damages.

### **101. Entire agreement**

#### **Section 227**

(1) In the agreement of the parties or in the collective agreement no derogation is allowed:

- a)* from Subsection (1) of Section 223;
- b)* from Section 224;
- c)* from Subsection (1) of Section 225;
- d)* from Subsection (3) of Section 226.

(2) In the collective agreement derogations:

- a)* from Subsections (2)–(4) of Section 223;
- b)* from Subsections (2)–(3) of Section 225;

are allowed only to the benefit of workers.

(3) As regards the employment relationship under this Chapter:

- a)* Sections 115–133;
- b)* Subsection (2) of Section 192;

may not be applied.

(4) As regards the employment relationship under this Chapter:

- a)* Sections 193–195;
- b)* Sections 198–200;
- c)* Section 228;

shall not apply.

## Chapter XVIII

### Agreement Related to Employment Relationships

#### **102. Non-competition agreement**

### **Section 228**

(1) By agreement of the parties, the employee shall not engage in any conduct – for up to two years following termination of the employment relationship – by which to infringe upon or jeopardize the rightful economic interests of the employer.

(2) In exchange for honoring the obligation defined in Subsection (1) the employer shall be liable to pay adequate compensation. In determining the amount of such compensation, the degree of impediment the agreement has on the employee's ability to find employment elsewhere – in the light of his education and experience – shall be taken into consideration. The amount of compensation for the term of the agreement may not be less than one-third of the base wage due for the same period.

(3) The employee shall have the right to withdraw from the agreement if having terminated his employment according to Subsection (1) of Section 78.

(4) In the case of transfer of employment upon the transfer of enterprise, the rights and obligations arising from the agreement shall be transferred to the receiving employer.

## **103. Study contracts**

### **Section 229**

(1) In a study contract the employer undertakes to provide support for the duration of studies while the employee undertakes to complete the studies as agreed and to refrain from terminating his employment by way of notice following graduation for a period of time commensurate for the amount of support, not exceeding five years.

(2) No study contract may be concluded:

*a)* for providing any benefits which are due on the basis of employment regulations; furthermore

*b)* if the employer ordered the employee to complete the studies.

(3) Study contracts may only be concluded in writing.

(4) In the case of transfer of employment upon the transfer of enterprise, the rights and obligations arising from the study contract shall be transferred to the receiving employer.

(5) In the event the employer severely breaches the study contract, the employee shall be relieved of his obligations set out in the study contract.

(6) The employer shall have the right to withdraw from the study contract and may demand repayment of the support provided if the employee breaches the study contract. Breach of contract shall also cover where the employment relationship is terminated for reasons in connection with the employee's conduct in connection to the employment relationship. The obligation of repayment shall apply in proportion to the length of time that has elapsed from the term of the contract.

(7) The study contract may be terminated by either of the parties effective immediately in the event of subsequent major changes in the party's circumstances whereby carrying out the commitment is no longer possible or it would result in unreasonable hardship. In the event of termination by the employee the employer may demand repayment of the support provided. The employer's right to demand repayment of the support shall apply in proportion to the length of time that has elapsed from the term of the contract. Where employment is terminated by the employer, repayment of the support may not be demanded.

## ***PART THREE***

### ***INDUSTRIAL RELATIONS***

#### Chapter XIX

##### General Provisions

###### **Section 230**

With a view to protecting the social and economic interests of workers and to maintaining peace in labor relations, this Act shall govern the relations between trade unions, works councils and employers, and their interest representation organizations. Accordingly, it shall guarantee the freedom of organization and the employees' participation in the formation of working conditions, furthermore, it shall regulate collective bargaining negotiations, as well as the procedures for the prevention and settlement of employment-related conflicts.

###### **Section 231**

(1) In accordance with the conditions prescribed by law, employees and employers shall have the right to establish together with others, without any form of discrimination whatsoever, interest representation organizations for the promotion and protection of their economic and social interests, and, at their discretion, to join or not to join an organization of their choice, depending exclusively on the regulations of such organization.

(2) Interest representation organizations shall be entitled to establish associations or to join such, including international federations as well.

(3) Employees shall be entitled to set up trade unions at their place of employment. Trade union shall be entitled to set up organs at the employers, and to involve their members in the operation of such.

###### **Section 232**

The employer, the works council and the trade union shall inform each other in writing concerning their authorized representatives and officers.

###### **Section 233**

(1) For the purposes of this Part:

*a)* 'information' shall mean transmission of information specified by law as related to industrial relations or employment relationships in order to enable the recipients to acquaint themselves with the subject matter and to examine it, and to formulate an opinion to prepare for consultations;

*b)* 'consultation' shall mean the establishment of dialogue and exchange of views between the employer and the works council or trade union.

(2) Consultation shall take place with a view to reaching an agreement, in such fashion as consistent with the objective thereof and ensuring:

*a)* that the parties are properly represented;

*b)* the direct exchange of views and establishment of dialogue;

*c)* substantive discussions.

(3) The employer may not carry out the proposed action during the time of

consultation, or for up to seven days from the first day of consultation, unless a longer time limit is agreed upon. In the absence of an agreement the employer shall terminate consultation when the said time limit expires.

**Section 234**

(1) The employer is not obliged to communicate information or undertake consultation when the nature of that information or consultation covers facts, information, know-how or data that, if disclosed, would harm the employer's legitimate economic interest or its functioning.

(2) The representatives acting in the name and on behalf of works councils or trade unions are not authorized to disclose any facts, information, know-how or data which, in the legitimate economic interest of the employer or in the protection of its functioning, has expressly been provided to them in confidence or to be treated as business secrets, in any way or form, and are not authorized to use them in any other way in connection with any activity in which this person is involved for reasons other than the objectives specified in this Act.

(3) Any person who is acting in the name or on behalf of the works council or trade union shall be authorized to disclose any information or data acquired in the course of his activities solely in a manner which does not jeopardize the employer's legitimate economic interest and without violating personal rights.

Chapter XX

Works Councils

**104. General provisions**

**Section 235**

(1) Cooperation between employers and workers, and taking part in the employers' decisions shall be governed by the provisions of this Chapter.

(2) As regards the rights of employees covered by this Chapter, workers shall be represented by the shop steward, the works council, central works council, or the corporate-level works council.

**Section 236**

(1) A shop steward, or a works council shall be elected if, during the half-year prior to the date when the election committee was established, the average number of employees at the employer or at the employer's independent establishment or division (hereinafter referred to as "fixed establishment"), is higher than fifteen or fifty, respectively.

(2) A fixed establishment of the employer shall be considered independent if the head of the establishment is vested with competence in respect of the works council's rights of participation.

(3) Works councils are elected for terms of five years.

(4) The justified expenses incurred in connection with the election and operation of the works council shall be borne by the employer.

**Section 237**

(1) The number of works council members as calculated according to Subsection (1) of

Section 236 shall be:

- a)* three, if the number of employees does not exceed one hundred;
- b)* five, if the number of employees does not exceed three hundred;
- c)* seven, if the number of employees does not exceed five hundred;
- d)* nine, if the number of employees does not exceed one thousand;
- e)* eleven, if the number of employees does not exceed two thousand;
- f)* thirteen, if the number of employees is more than two thousand.

(2) A new works council member shall be elected if the number of employees and the number of works council members are not consistent with the provisions of Subsection (1) for at least six months due to an increase in the number of employees.

#### **Section 238**

(1) Employees nominated as works council members shall have legal capacity and shall have been employed by the employer – other than newly formed employers – for a period of at least six months, and works at the given fixed establishment.

(2) The following may not be elected to serve as members of a works council:

- a)* persons exercising employers' rights;
- b)* relatives of the employer's executive officers;
- c)* members of the election committee.

(3) For the purposes of Subsection (2) above, employers' rights shall be construed as entitlement to establish and terminate employment relationships, or to establish liability for damages.

#### **Section 239**

All workers employed by the employer and working at the given fixed establishment shall be entitled to participate in the election of works council members.

### **105. Election of works councils**

#### **Section 240**

(1) The preparation and execution of elections, and laying down the detailed rules of elections is the responsibility of the election committee.

(2) The election committee shall be set up by the works council from among the employees eligible to vote at least sixty days prior to the election. The election committee shall have at least three members.

(3) Any person who holds a seat in the works council may not serve in the election committee.

(4) In the absence of a works council, the election committee shall be created by the employees.

(5) Members of the election committee shall be exempted from work for the duration necessary to discharge their duties, and shall be entitled to absentee pay for the period of such absence.

#### **Section 241**

A list of the employees eligible to vote and those who have the right to stand as candidates shall be established by the election committee and published at least fifty days before the election. The employer shall supply the information necessary for such list at the request of the election committee within five days.

#### **Section 242**

(1) A candidate may be nominated by at least ten per cent of the employees eligible to

vote or by at least fifty employees eligible to vote, or by the local trade union branch represented at the employer.

(2) The election committee shall register the candidates at least thirty days prior to the election and shall publish this information.

(3) The election committee shall publish the list of candidates at least five days prior to the election.

(4) Nomination of candidates shall be construed valid if the number of candidates reaches the number of members that can be elected to the works council. In the event that the nomination proceedings are considered invalid, the nomination period shall be extended by up to fifteen days.

#### **Section 243**

(1) Members of the works council shall be elected by secret ballot and popular vote.

(2) Eligible employees shall have one vote.

(3) Votes may be cast only for the number of candidates standing to be elected as under Subsection (1) of Section 237.

#### **Section 244**

(1) The results of the ballot shall be announced by the election committee.

(2) The election committee shall draw up a report on the election, which shall, in particular, contain the following:

*a)* the number of those eligible to vote;

*b)* the number of those participating in the ballot;

*c)* the number of votes validly cast, and those declared void;

*d)* the number of votes cast for each candidate;

*e)* the name of the elected works council members and alternate members;

*f)* disputes, if any, related to the election, and the decision thereon.

(3) The election committee shall publish the election report without delay.

(4) The mandate of the works council shall begin on the working day following the day of receipt of the election report.

#### **Section 245**

A vote shall be annulled if:

*a)* it was not cast according to regulations;

*b)* it cannot be established for whom the vote was cast;

*c)* the number of candidates for whom votes are cast is greater than the number of members eligible for election.

#### **Section 246**

(1) The persons receiving the highest number of votes, or at least thirty per cent of the valid votes shall be construed as having been elected members of the workers' council, in the number specified in Subsection (1) of Section 237. In the event of a tie vote, the length of the employment relationship with the employer shall be taken into consideration.

(2) Persons receiving at least twenty per cent of the valid votes shall be regarded as alternate members of the works council.

#### **Section 247**

(1) An election shall be declared valid if more than half of those eligible to vote have participated. To this end, an employee eligible to vote shall not be counted – provided that he did not participate in the election – who, at the time of the election, was:

*a)* incapacitated to work due to illness,

*b)* on leave of absence without pay.



(2) In the event of an invalid ballot, the election shall be repeated within a period of ninety days. The new election may not be held inside a period of thirty days.

(3) The second election shall be declared valid if more than one-third of those eligible to vote have participated. The nominee receiving the highest number of votes, or at least thirty per cent of the valid votes shall be declared an elected member of the works council. If the repeated election is declared invalid, a new works council ballot shall be held after one year at the earliest.

#### **Section 248**

(1) An election shall be declared invalid if the number of candidates specified in Subsection (1) of Section 237 did not receive thirty per cent of the votes cast.

(2) The nominees having received thirty per cent of the votes shall be declared elected members of the works council. A new election shall be held within a period of thirty days to fill the remaining positions. For the new election, new candidates may also be nominated up to the fifteenth day prior to the election.

(3) The second election shall be declared valid if more than one-third of those eligible to vote have participated. The nominees receiving the highest number of votes, or at least thirty per cent of the valid votes shall be declared elected members of the works council.

(4) Persons receiving at least fifteen per cent of the valid votes shall be regarded as alternate members of the works council.

(5) If the repeated election is declared invalid, a new works council ballot shall be held after one year at the earliest.

#### **Section 249**

(1) Employees, employers and local trade union branches represented at the employer may bring a court action in accordance with Section 289 in connection with nominations, the procedure and the outcome of elections.

(2) The court shall annul the results of the election if it finds any material infringement of the relevant procedural regulations. An infringement shall be considered material if it did have an impact on the outcome of the elections. This shall be substantiated in the action.

### **106. Central works councils and corporate-level works councils**

#### **Section 250**

(1) A central works council may be set up by several works councils.

(2) Members to the central works council shall be delegated by the works councils from among their members. The central works council may not have more than fifteen members.

(3) Furthermore, the provisions on works councils shall apply to the central works council as well.

#### **Section 251**

(1) Central works councils or, failing this, works councils may set up a corporate-level works council at a recognized or de facto group of companies.

(2) Members to such works council shall be delegated by the central works councils or the works councils from among their members. The works council may not have more than fifteen members.

(3) The rules of cooperation shall be laid down within the group of companies by the works council having the right to adopt decisions relating to employees and by the

corporate-level works council.

(4) Furthermore, the provisions on works councils shall apply to the corporate-level works council as well.

## **107. Dissolution of works councils**

### **Section 252**

The works council shall be dissolved:

- a*) if the employer is terminated without succession;
- b*) if the condition under Subsection (2) of Section 236 no longer applies;
- c*) if its mandate expires;
- d*) upon resignation;
- e*) if it is dismissed;
- f*) if its membership decreases by more than one-third;
- g*) if the number of employees drops below fifty or decreases by at least two-thirds;
- h*) if the results of the election were annulled by the court; and
- i*) in all other cases prescribed by law.

### **Section 253**

(1) A ballot shall be held with regard to the dismissal of a works council, if so proposed in writing by at least thirty per cent of the employees eligible to vote. The ballot shall be declared valid upon the participation of more than half the employees eligible to vote. More than two-thirds of the valid votes shall be required for dismissal.

(2) A motion for dismissal may not be filed for the second time within a period of one year.

(3) The provisions pertaining to the election procedure shall also apply to the dismissal of a works council.

### **Section 254**

The mandate of a works council, if dissolved on the grounds specified in Paragraphs *b*)–*c*) and *f*)–*g*) of Section 252, shall remain in force until the new works council is elected, or for up to three months from the time of dissolution.

## **108. Termination of the mandate of works council members**

### **Section 255**

The mandate of a works council member shall be terminated:

- a*) under the condition set out in Subsection (1) of Section 238; or
- b*) upon dissolution of the works council;
- c*) under the condition set out in Subsection (2) of Section 238;
- d*) upon resignation;
- e*) upon dismissal.

### **Section 256**

(1) A ballot shall be held with regard to the dismissal of a works council member if so proposed in writing by at least thirty per cent of the employees eligible to vote. The ballot shall be declared valid upon the participation of more than half the employees eligible to vote. More than two-thirds of the valid votes shall be required for dismissal.

(2) A motion for dismissal may not be filed for the second time within a period of one

year.

(3) The provisions pertaining to the election procedure shall be duly applied for the dismissal of a works council member.

**Section 257**

Upon termination of the mandate of a works council member, an alternate member shall be appointed according to the ranking by the number of votes received.

**109. Merger and demerger of economic entities, transfer of employment contracts upon the transfer of enterprise**

**Section 258**

(1) Upon the merger of economic entities, if there is a works council in each one of them, a new works council shall be elected within three months from the date of merger.

(2) Upon the merger of economic entities, if there is a works council in only one of them, a works council member shall be elected within three months for providing representation to the unrepresented employees.

(3) Upon the demerger of economic entities, a works council shall be elected for the new economic entities within three months from the date of demerger.

(4) Subsections (1)–(3) shall apply if the merger or demerger of economic entities takes place due to the transfer of employment upon the transfer of enterprise.

**110. Operation of works councils**

**Section 259**

(1) The works council shall convene within fifteen days following its election, and shall elect a chairman from among its members at its inaugural session.

(2) Members shall attend the works council meetings in person.

(3) The works council's operating regulations shall be laid down based on its order of business.

**Section 260**

(1) With a view to discharging their duties, the chairman of the works council shall be entitled to working time reduction amounting to ten per cent of his monthly working time, while members of the works council shall be entitled to ten per cent. Claiming any working time reduction shall be notified at least five days in advance, except if claimed under unforeseen and overriding reasons of urgency, or under exceptional circumstances.

(2) Absentee pay shall be provided for the duration of working time reduction.

(3) The works council's consent is required for terminating the employment relationship of the chairman of the works council by notice, or for the employer's actions referred to in Section 53.

(4) The works council shall make known its opinion in writing with respect to the employer's action referred to in Subsection (3) above within eight days of receipt of the employer's written notice. If the works council does not agree with the proposed action, the statement shall include the reasons therefor. Failure by the works council to convey its opinion to the employer within the above specified time limit shall be construed as agreement with the proposed action.

(5) Subsections (3)–(4) shall not apply if the employee is entitled to the protection

referred to in Section 273.

#### **Section 261**

Employers shall provide for – by way of the means fixed in the works agreement – the opportunity for works councils to publish information related to their activities.

### **111. Powers and responsibilities of works councils**

#### **Section 262**

(1) Works councils shall monitor compliance with the provisions of employment regulations.

(2) To the extent required for their responsibilities, works councils shall be entitled to request information and to initiate negotiations, with the reason indicated, which the employer may not refuse.

(3) The employer shall notify the works council semi-annually regarding:

*a)* the fundamental issues affecting the employer's economic standing;

*b)* changes in wages, liquidity related to the payment of wages, the characteristic features of employment, utilization of working time, and the characteristics of working conditions;

*c)* the number of teleworkers and temporary agency workers, and the description of the jobs they perform.

(4) The works council shall inform the employees concerning its activities semi-annually.

#### **Section 263**

The employer and the works council shall collectively decide concerning the appropriation of welfare funds.

#### **Section 264**

(1) Employers shall consult the works council prior to passing a decision in respect of any plans for actions and adopting regulations affecting a large number of employees.

(2) In the application of Subsection (1), employer's actions shall, in particular, mean:

*a)* proposals for the employer's reorganization, transformation, the conversion of a strategic business unit into an independent organization;

*b)* introducing production and investment programs, new technologies, or upgrading existing ones;

*c)* processing and protection of personal data of employees;

*d)* implementation of technical means for the surveillance of workers;

*e)* measures for compliance with occupational safety and health requirements, and for the prevention of accidents at work and occupational diseases;

*f)* the introduction and/or amendment of new work organization methods and performance requirements;

*g)* plans relating to training and education;

*h)* appropriation of job assistance related subsidies;

*i)* drawing up proposals for the rehabilitation of workers with health impairment and persons with reduced ability to work;

*j)* laying down working arrangements;

*k)* setting the principles for the remuneration of work;

*l)* measures for the protection of the environment relating to the employer's operations;

*m)* measures implemented with a view to enforcing the principle of equal treatment and

for the promotion of equal opportunities;

- n)* coordinating family life and work;
- o)* other measures specified by employment regulations.

#### **Section 265**

(1) In the case of transfer of employment upon the transfer of enterprise the transferring and the receiving employer shall, within fifteen days before the effective date of transfer, inform the works council concerning:

- a)* the schedule or proposed date of transfer;
- b)* the reasons;
- c)* the legal, economic and social consequences affecting the employees.

(2) At the time referred to in Subsection (1) the transferring and the receiving employer shall – with a view to the conclusion of an agreement – enter into negotiations with the works council concerning other proposed actions affecting employees.

(3) The above-specified negotiations shall cover the principles of the actions, the ways and means of avoiding detrimental consequences as well as the means for mitigating such consequences.

(4) The transferring and the receiving employer shall meet the obligation of information and negotiation if the decision underlying the transfer of employment upon the transfer of enterprise had been adopted by the body or person exercising control over the employer. The employer shall not be excused regarding their failure to satisfy the obligation to supply information and hold talks on the grounds that the controlling organization or person had failed to inform the employer concerning its decision.

#### **Section 266**

Works councils shall remain unbiased in relation to a strike organized against employers, and they may not organize, support or obstruct strikes. The mandate of works council members participating in a strike shall be suspended for the duration of the strike.

## **112. Works agreements**

#### **Section 267**

(1) The employer and the works council may conclude a works agreement for the implementation of the provisions of this Chapter and for promoting their cooperation.

(2) The works agreement may be concluded for a fixed term, extending up to the term of the works council's mandate.

(3) The works agreement may be cancelled by way of a three-month notice.

(4) The works agreement shall be terminated when the works council ceases to exist.

(5) In the works agreement no derogation is allowed:

- a)* from Subsection (4) of Section 236;
- b)* from Sections 238–249;
- c)* from Sections 252–255;
- d)* from Section 259;
- e)* from Section 261;
- f)* from Sections 266–268.

(6) The works agreement may not contain any restrictions concerning the provisions contained in Sections 262–265.

#### **Section 268**

(1) Subject to the exception set out in Chapter XII, the works agreement may contain provisions to govern the rights and obligations specified in Paragraph *a*) of Subsection (1) of Section 277. Such agreements may be concluded on condition that the employer is not covered by the collective agreement it has concluded, or there is no trade union at the employer with entitlement to conclude a collective agreement.

(2) The works agreement concluded under Subsection (1) shall be terminated:

- a*) upon the collective agreement concluded by the employer entering into force; or
- b*) upon the trade union notifying the employer of its entitlement to conclude a collective agreement.

(3) In the cases defined in Paragraph *b*) of Subsection (2) hereof and in Paragraphs *b*)–*g*) of Section 252 the provisions of the works agreement shall remain to apply for six more months following the time of termination.

(4) Works agreements shall be covered by the provisions of:

- a*) Subsections (2)–(5) of Section 277;
- b*) Section 278;
- c*) Subsections (3)–(4) of Section 279;
- d*) Section 280;
- e*) Section 282.

### **113. Shop stewards**

#### **Section 269**

(1) With the exceptions set out in Section 268, the provisions pertaining to works councils shall also apply to shop stewards.

(2) Subsections (3)–(4) of Section 260 shall apply with the exception that the rights of the works council shall be exercised by the body of employees.

## Chapter XXI

### Trade Unions

#### **Section 270**

(1) The rights afforded by this Act to trade unions shall be due to the local trade union branch represented at the employer.

(2) For the purposes of this Act:

*a*) ‘trade union’ shall mean all organizations of workers whose primary function is the enhancement and protection of employees’ interests related to their employment relationship;

*b*) ‘local trade union branch represented at the employer’ shall mean a trade union which, according to its statutes, operates an organization authorized for representation or has an officer at the employer.

#### **Section 271**

(1) Employers may not demand that employees disclose their trade union affiliation.

(2) Employment of an employee may not be rendered contingent upon his membership

in any trade union, on whether or not the employee terminates his previous trade union membership, or on whether or not he agrees to join a trade union of the employer's choice.

(3) The employment relationship of an employee shall not be terminated, and the employee shall not be discriminated against or mistreated by the employer in any other way on the grounds of trade union affiliation or trade union activity.

(4) Any entitlement or benefit may not be rendered contingent upon affiliation or lack of affiliation to a trade union.

### **Section 272**

(1) Trade unions shall be entitled to conclude collective agreements in accordance with the regulations set out in this Act.

(2) Trade unions shall have the right to provide information to workers relating to industrial relations or employment relationships.

(3) Employers – upon consulting the trade union – shall provide the means for the trade union to display information connected to its activities at the employer.

(4) Trade unions may request information from employers on all issues related to the economic interests and social welfare of employees in connection with their employment.

(5) Trade unions shall be entitled to express their position and opinion to the employer concerning any employer actions (decisions), or the draft of such decision, and to initiate talks in connection with such actions.

(6) Trade unions shall have the right to represent their members before the employers or their interest groups concerning the workers' rights and obligations relating to their financial, social, as well as living and working conditions.

(7) Trade unions shall be entitled to represent their members – under authorization – before the court, the relevant authority and other organs with a view to protecting their economic interests and social welfare.

(8) Trade unions shall have the right to use the employer's premises after or during working hours, as agreed with the employer, for the purposes of interest representation activities.

(9) Employers shall not claim any compensation for withholding and transferring membership dues to the trade union.

### **Section 273**

(1) The prior consent of the higher ranking trade union body is required for terminating the employment relationship by notice of an employee designated according to the provisions of Subsection (2) as serving as an elected trade union official, and for the employer's actions referred to in Section 53. Such officials shall be entitled to protection for the duration of their term in office and for a period of six months thereafter, provided that the official held the office for at least twelve months.

(2) The number of officials the trade union is entitled to designate from among the workers employed at a fixed establishment that is considered independent according to Subsection (2) of Section 236, if the average statistical number of employees employed during the previous calendar year is:

- a) less than five hundred, it shall be one;
- b) between five hundred and one thousand, it shall be two;
- c) between one thousand and two thousand, it shall be three;
- d) between two thousand and four thousand, it shall be four;
- e) more than four thousand, it shall be five.

(3) Apart from the employees referred to in Subsection (2) hereof, protection shall also be afforded to one other person designated by the supreme body of the local trade union branch represented at the employer.

(4) Trade unions shall be entitled to replace the employee designated in accordance with Subsections (2)–(3) if the employment relationship or trade union office of such employee has been terminated.

(5) The trade union shall make known its opinion in writing with respect to the employer's action referred to in Subsection (1) above within eight days of receipt of the employer's written notice. If the trade union does not agree with the proposed action, the statement shall include the reasons therefor. Failure by the trade union to convey its opinion to the employer within the above specified time limit shall be construed as agreement with the proposed action.

#### **Section 274**

(1) With a view to discharging their trade union functions of interest representation, employees shall be entitled to working time reduction, and the employees designated according to Subsections (2)–(3) of Section 273 shall be exempted from work for the duration of consultation with the employer.

(2) The total amount of working time reduction available under Subsection (1) in a given calendar year shall be one hour monthly for every two trade union member employed by the employer. The amount of working time reduction available shall be determined based on the number of trade union members registered on the first of January.

(3) Working time reduction shall be provided to the employee designated by the trade union. The trade union shall notify the employer of its intention to claim working time reduction at least five days in advance, except if claimed under unforeseen and overriding reasons of urgency, or under exceptional circumstances.

(4) Working time reduction can be claimed by the end of the given year. Working time reduction shall not be financially compensated.

(5) Absentee pay shall be provided for the duration of working time reduction and for the duration of consultation with the employer.

#### **Section 275**

A person acting on behalf of a trade union who is not employed by the employer shall be admitted onto the employer's premises if any member of the trade union in question is employed by the employer. The person admitted to visiting the employer's premises shall abide by the provisions of the employer's internal policies.

## Chapter XXII

### Collective Agreement

#### **114. Conclusion and contents of collective agreements**

##### **Section 276**

(1) Collective agreements may be concluded:

a) by employers, and by employers interest groups by authorization of their members;



and

*b)* trade unions.

(2) A trade union shall be entitled to conclude a collective agreement if its membership reaches ten per cent:

*a)* of all workers employed by the employer;

*b)* of the number of workers covered by the collective agreement concluded by the employers interest group.

(3) The trade unions defined in Subsection (2) shall be entitled to conclude a collective agreement jointly.

(4) An employer may enter into one collective agreement.

(5) In the application of Subsection (2) hereof, the average number of employees for the half-year period before the date of conclusion of the contract shall be taken into consideration.

(6) Entering into negotiations upon an offer for the conclusion of a collective agreement may not be refused.

(7) Any trade union that meets the requirements set out in Subsection (2) after the collective agreement is concluded shall be able to request an amendment of the collective agreement, and to participate in the negotiations relating to the amendment in an advisory capacity.

#### **Section 277**

(1) The scope of collective agreements may cover:

*a)* rights and obligations arising out of or in connection with employment relationships;

*b)* conduct of the parties relating to the conclusion, implementation and termination of the collective agreement, and concerning the exercise of their rights and obligations.

(2) In the absence of an agreement to the contrary, in the collective agreement derogations are allowed from the provisions of Part Two and Part Three.

(3) The collective agreement:

*a)* may not contain derogations from Chapters XIX and XX; and

*b)* may not contain any restrictions concerning the provisions contained in Sections 271–272.

(4) A collective agreement of limited effect may derogate from one with a broader scope – unless otherwise provided therein – insofar as it contains more favorable regulations for the employees.

(5) Derogations for the benefit of employees shall be adjudged by a comparative assessment of related regulations.

#### **Section 278**

Collective agreements may only be concluded in writing.

### **115. Scope of collective agreements**

#### **Section 279**

(1) The effect of a collective agreement shall apply to any employer who:

*a)* is a party to the collective agreement; or

*b)* is a member of the employers interest group that concluded the collective agreement.

(2) The effect of the provisions of the collective agreement governing the means of communication of the parties shall apply to the undersigning parties of the collective

agreement.

(3) The effect of the provisions of the collective agreement governing employment relationships shall apply to all the workers employed by the employer.

(4) The collective agreement shall enter into effect when published.

## **116. Termination of collective agreements**

### **Section 280**

(1) The collective agreement may be terminated by giving at least three months' notice. A collective agreement that was concluded by more than one trade union may be terminated by either of those trade unions.

(2) Neither of the parties shall be entitled to exercise the right of termination within six months of the conclusion of the collective agreement.

(3) A fixed-term collective agreement shall cease to exist upon the expiry of the fixed term.

### **Section 281**

(1) Upon dissolution of an employer, employers interest group or a trade union without succession, the collective agreement shall be terminated as well.

(2) As regards a collective agreement that was concluded by more than one employer or by more than one employers interest group, the collective agreement shall cease to apply only to the employer or employers interest group terminated without succession.

(3) As regards a collective agreement that was concluded by more than one trade union, the collective agreement shall cease to apply upon the dissolution of all such trade unions without succession.

## **117. Transfer of employment upon the transfer of enterprise**

### **Section 282**

(1) In the case of transfer of employment upon the transfer of enterprise the receiving employer is required to maintain the working conditions specified in the collective agreement covering the employment relationship – apart from working time and rest periods – existing at the time of transfer for a period of one year after the date of transfer.

(2) The obligation referred to in Subsection (1) shall not apply to the employer if the collective agreement expires within one year after the date of transfer, or if the employment relationship is covered by a collective agreement after the date of transfer.

## **118. Entire agreement, authorizations**

### **Section 283**

No derogation from the provisions of this Chapter is allowed, with the exception of:

a) Subsection (4) of Section 279;

b) Subsections (1) and (3) of Section 280.

### **Section 284**

The minister in charge of employment and labor is hereby authorized to decree the regulations relating to notification and registration of the conclusion of collective

agreements.

## ***PART FOUR***

### ***LABOR DISPUTES***

#### Chapter XXIII

##### Enforcement of Labor-law Claims

###### **Section 285**

(1) Workers and employer may pursue their claims arising from the employment relationship or out of this Act, and trade unions and works councils may pursue their claims arising out of this Act or a collective agreement or a works agreement by judicial process.

(2) By way of derogation from Subsection (1), employers may enforce their claims from workers arising from the employment relationship, if less than three times the mandatory minimum wage, by means of a payment notice. The payment notice shall be made out in writing.

(3) A claim may be filed against a decision adopted by the employer within its right of discretion if the employer has violated the provisions pertaining to such decisions.

(4) Employees may bring an action concerning their claims arising under Section 295 in connection with their employment in Hungary before the Hungarian court.

###### **Section 286**

(1) The term of limitation for labor-law claims shall be three years.

(2) The term of limitation for claims for compensation for damages caused by a criminal offense shall be five years, or longer, as consistent with the statute of limitations for such criminal liability.

(3) The lapse of a claim shall be recognized *ex officio*.

(4) Furthermore, periods of limitation shall be governed by the relevant civil law provisions, where the term of limitation for the claims of employees may not be reduced by the parties.

###### **Section 287**

(1) An action shall be brought within thirty days of notification of the employer's act, in connection with:

- a) any amendment of the employment contract implemented by unilateral decision;
- b) wrongful termination of the employment relationship;
- c) the sanctions applied on account of a breach of obligation by the employee;
- d) a payment notice; and
- e) the provisions of Subsection (2) of Section 81.

(2) An action shall be brought within the time limit specified in Subsection (1) hereof, in connection with:

- a) termination without notice by the employee under Section 78; and
- b) wrongful termination of the employment relationship by the employee.

(3) In the case of challenging the termination of the employment relationship by mutual consent, an action may be brought within thirty days from the date when the challenge was declared declined. The challenge shall be declined if the other party fails to respond within fifteen days from the date of delivery, or refuses to accept it.

(4) The deadline for bringing an action shall be considered met if the statement of claim is dispatched on or before the last day of the deadline. A party that misses the deadline shall have the option to file an application for continuation. Claims may not be pursued after six months.

(5) With the exceptions set out in Paragraphs *c*–*d*) of Subsection (1) hereof, such court action shall have no suspensory effect.

#### **Section 288**

If conciliation is stipulated in the collective agreement or in the parties' agreement, this shall have no effect on the time limits specified in Section 287.

#### **Section 289**

(1) The employer, the works council or the trade union may bring an action within five days in the event of any violation of the provisions on information or consultation.

(2) The court shall hear such cases within fifteen days in non-contentious proceedings. The decision of the court may be appealed within five days from the date of delivery of the decision. The court of the second instance shall deliver its decision within fifteen days.

#### **Section 290**

Special provisions for the enforcement of claims on any grounds defined in the collective agreement may be laid down in the collective agreement.

## Chapter XXIV

### Collective Labor Disputes

#### **Section 291**

(1) The employer and the works council or the trade union may set up a conciliation committee (hereinafter referred to as "committee") to resolve their disputes. The works agreement or the collective agreement may contain provisions for a standing committee as well.

(2) The committee shall be composed of an equal number of members delegated by the employer and the works council or trade union, and an independent chairman.

#### **Section 292**

(1) The chairman shall consult with the members delegated by both parties on an ongoing basis, and shall draw up an executive summary upon conclusion of the conciliation process which contains the argument of the members and the outcome of the procedure.

(2) The justified expenses incurred in connection with the committee's proceedings shall be borne by the employer.

#### **Section 293**

(1) The employer and the works council or the trade union may agree in writing in advance to abide by the decision of the committee, in which case the committee's

decision shall be considered to be binding. In the case of a tie vote, the chairperson's vote shall be decisive.

(2) The disputes arising in connection with Subsection (4) of Section 236 and with Section 263 shall be decided by an arbitrator. The decision of the arbitrator shall be binding upon the parties. In the absence of agreement between the parties the arbitrator shall be chosen by random selection from among the persons nominated by the parties.

(3) During the proceedings of the committee or the arbitrator the parties shall not engage in any conduct aiming to frustrate the agreement or the implementation of the decision.

## ***PART FIVE***

### ***CLOSING PROVISIONS***

#### **Section 294**

(1) For the purposes of this Act:

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

*b)* 'relative' shall mean spouses, next of kin, spouse's next of kin, adopted persons, stepchildren, foster children, adoptive parents, stepparents, foster parents, brothers and sisters, and domestic partners;

*c)* 'child' shall mean any child raised or cared for in one's own household according to the regulations on the support of families;

*d)* 'mandatory medical examination' shall mean a medical examination that the worker is required to undergo according to employment regulations, including also the examination prescribed for pregnant women;

*e)* 'employees' representative' shall mean any member of the works council, shop steward, and the workers' representative sitting on the supervisory board of a business association;

*f)* 'employment-related relationship' shall mean an employment relationship, work performed as required stemming from a cooperative membership, contract for professional services, personal service contract, the activities of executive officers and supervisory board members of business associations, and private entrepreneurs;

*g)* 'retired worker' shall mean:

*ga)* any person who has reached the retirement age for old-age pension benefits and has the service time required to receive old-age pension (entitlement to old-age pension benefits),

*gb)* any person who is receiving old-age pension benefits before reaching the legal retirement age, or

*gc)* any person who has reached the retirement age for old-age pension benefits and who is receiving retirement aid (old-age pension) or invalidity benefits provided under the government decree on benefits provided by the Hungarian Creative Art Foundation, pension benefits provided by a church or religious organization registered in Hungary, old-age or occupational disability benefits, increased old-age or occupational disability allowance, or invalidity allowance;

*h)* 'parent' shall mean:

*ha)* the biological and the adoptive parent, and the spouse living with the parent;

*hb*) any person who has filed for the adoption of the child who is living in the same household, and the relevant procedure is already in progress,

*hc*) the guardian,

*hd*) the foster parent and surrogate parent;

*i*) 'single parent' shall mean any person who is raising a child in his/her own household and who is not married, or who is widowed, divorced or separated and who does not have a domestic partner.

(2) An employee shall be considered to receive the benefits referred to in Subparagraph *gb*) or *gc*) of Paragraph *g*) of Subsection (1) if the benefit was awarded by final decision.

### **Section 295**

(1) If a foreign employer employs a worker in the territory of Hungary under agreement with a third party, with the exceptions set out in Subsection (3), 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*) conditions for temporary agency work as per Sections 214–222;

*e*) occupational safety;

*f*) 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) 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.

(3) 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 workers employed for these activities shall be subject to collective agreements covering the entire industry or an entire sector.

(4) The provisions of Subsections (1)–(2) 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 workers 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 (3) of Section 295.

### **Section 297**

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.

#### **Section 298**

(1) This Act shall enter into force on 1 July 2012.

(2) The amendments and transitional provisions related to this Act are laid down in specific other act.

(3) Provisions in derogation from this Act may be introduced by another act in the light of unique sectoral and professional characteristics.

#### **Section 299**

This Act serves the purpose of conformity with the following legislation of the Communities:

*a)* Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship;

*b)* Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship;

*c)* Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC);

*d)* Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work;

*e)* Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC;

*f)* Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services;

*g)* Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC;

*h)* Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies;

*i)* Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP;

*j)* Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;

*k)* Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community;

*l)* Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time;

*m)* Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.