

## **Notion of Liability under Labour Law**

Liability for damage is considered to be one of the most important parts of the labour law. It is stipulated in Part 11 of the Czech Labour Code.

Liability under labour law creates a special liability system which is independent on the civil law system.

It is considered to be a special qualified type of labour law obligation. This means that it is established after breach of primary legal obligation. At the moment of breach of primary legal obligation there must exist a labour relationship (in most cases employment relationship) between an employer and an employee. Than the new relationship established between the employer and the employee is independent on the employment relationship.

The liability is one of the sanctions under the Czech labour law.

A breach of labour law obligation may create various types of liability, except the labour law liability, the administrative law liability, criminal law liability or civil law liability.

### **The liability under labour law has special functions:**

- Preventive and instructive function – both parties should avoid causing damage by respecting duties provided for in Labour Code, or in other rules.
- Punitive function - means a sanction for breach of a legal duty
- Reparative function – a material satisfaction for damage
- Social and protective function – an employee is more protected in employment relationship. When he causes damage by negligence the compensation for damage is limited.

## **The Employer's Liability for Damage caused to his Employee**

This type of liability is always a subjective liability which means a liability for culpable action. One of the basic principles of labour law relation is that an employee may not transfer the risk from performance of dependant work to his employees.

### **Preconditions for establishing the employee's liability for damage:**

- a) Damage caused to the employer
- b) Breach of legal obligation on the employee's side (during performance of working tasks or in direct connection with them)
- c) Causal relationship between the damage and the breach of legal obligation
- d) The employee's culpable action

### **Performance of working tasks means:**

- a) Performance of working duties arising from employment relationship (or from agreements for work performed outside an employment relationship),
- b) Other activity carried out under employer's order;
- c) Activity which is subject-matter of a business trip;
- d) Activity carried out for the employer at the initiative of the trade union organisation, work council, or the representative responsible for the industrial safety and health protection at work, or at initiative of other employees;
- e) Activity carried out at the employee's own initiative provided that the employee doesn't need any authorization for this and there isn't the employer's explicit prohibition;
- f) Voluntary assistance organised by the employer.

**Activity in direct connection with performance of working tasks means:**

- a) Acts required for work performance;
- b) Acts usual in the course of work;
- c) Acts necessary before the start of the work and after its termination;
- d) Acts which are common during the break for meal and rest which take place at the employer's site;
- e) Medical check-ups at the health care establishment if they are carried out at the employer's order, or if they are connected with night-work;
- f) First aid and journey to and from it;
- g) Training of employees organised by their employer or by trade union organisation, or by employer's superior body.

**Activities which are not in direct connection with performance of working tasks:**

- a) A journey to and from work;
- b) Taking meals
- c) Other medical check-ups and journey to them and from them, unless they are carried out at the employer's site.

**The Employer's Liability for Damage caused to his Employee includes:**

**1. General Liability for Damage**

- An employer is liable to his employee for damage which he causes through his own fault by breaching duties during performing his working tasks, or in direct connection with them.
- The employer shall prove that the employee is at fault.
- The employee shall compensate to his employer for the actual damage in money. It is possible to compensate the damage by the restoration of things to its original conditions.
- The amount of damages caused by negligence is limited. It may not exceed the 4,5 times of employee's average monthly earnings.
- The amount of damages caused intentionally is not limited. In this case the employee may require the compensation for damage and a loss of profit.
- If the employee causes the damage as a result of drinking of alcohol or abusing other substance the amount of compensation for damage is not limited too. In this case the employer may not require a loss of profit.

**2. Liability for Failure to Avert Damage**

- It is a special type of liability. The employee may compensate a damage which he did not cause. He is liable because he failed to prevent the creation of damage (he did not warn his boss, or his employer from the threat of damage, or he failed take steps to keep off a damage). This is his duty under Labour Code.
- If the employee takes action for preventing a creation of damage he is not responsible for damage caused by this action. The employee shall act in a way adequate to the situation
- The amount of damages may not exceed the amount of three times of employee's average monthly earnings.
- In this case the circumstances which prevented the employee to perform his duty shall be taken into account. The importance of damage for the employee shall be also taken into consideration.

### **3. Liability for a Deficit on Things of Value Entrusted to an Employee**

- It is a special type of liability. It may only be created if the employer and the employee had concluded the agreement on liability before the creation of damage. The agreement on liability:
  - Must be concluded in writing, otherwise it shall be void,
  - May be concluded with an employee who reached the age of 18,
  - Is dependant on the labour relationship, It shall expire on the day of the termination of the employment relationship.
- The result of the agreement on liability is the fact that the employee is responsible for things of value which have been entrusted to him. These things are subjected to accounting (money, stock of materials, goods).
- The employee may withdraw from the agreement on liability if he is transferred to alternative work, or to alternative place of work, or in other cases provided in the Czech Labour Code.
- If the deficit occurs the Czech Labour Code creates a presumption that the employee is culpable for the deficit. The employee must prove that he did not cause the deficit. He may prove that a deficit has arisen wholly or partly without his fault for example he was not able to dispose with the things of value because of employer's negligence.
- The amount of compensation for damage is not limited.

### **4. Liability for Loss of Things Entrusted to an Employee**

- This special type of liability may arise only if there is a written receipt or agreement on liability for loss of things entrusted to an employee.
- If the value of things exceeds CZK 50 000 the agreement shall be concluded. If the value of things is less the employer may entrust the things against written receipt, or conclude the agreement.
- The result of these acts is the fact that the employee is responsible for tools, equipment or other entrusted things.
- The agreement on liability for loss things entrusted to an employee:
  - Must be concluded in writing, otherwise it shall be void,
  - May be concluded with an employee who reached the age of 18,
  - Is dependant on the labour relationship, It shall expire on the day of the termination of the employment relationship..
- There is a presumption that the employee caused the loss of things entrusted to him if the damage occurs. The employee may prove that the damage was caused without his fault.
- The employee may withdraw from the agreement if the employer has not created conditions for safeguarding of such things.
- The agreement shall expire on the day of termination of the employment relationship between the employer and the employee.
- The employee is obliged to compensate the damage in full amount.

### **The manner of compensation for damage**

The amount of required damages shall be determined by the employer. He shall discuss the amount of damages with the employee concerned. The parties conclude an agreement on the method of settlement of damages. The agreement shall include the amount of damages. It shall be

concluded in writing, otherwise it shall be void. If the employee doesn't recognise his obligation the employer must claim the compensation at court.

The employer shall discuss the content of the agreement and the amount of damages required with competent trade union body. He needn't do so when the amount of damages is less than CZK 1,000.

The Czech Labour Code gives to a court the possibility to proportionally reduce certain damages if there are specific reasons recognised by the court.