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Group Publisher
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Published by
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59 Tanner Street
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Fax: +44 20 7407 5255
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Hungary

Hédi Bozsonyik

Szecskay Attorneys At Law

László Gábor Pók

1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The main source of employment law is the Labour Code. Special types of employment are regulated in separate laws (e.g., employment in the public sector). In addition, there are complementary laws (e.g., on strikes or labour protection) and laws affecting labour relations (e.g., equal treatment law, data protection law). Case law also fine-tunes the practice.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

The Labour Code provides the minimum terms and requirements applicable to so-called ordinary workers. Employment contracts may only depart from these minimum terms to the benefit of the workers. Collective bargaining agreements may depart from the minimum terms and provide less favourable terms, unless it is expressly forbidden by the law.

The Labour Code distinguishes between so-called ordinary workers and executives. In the case of executives, a lower level of protection applies as there are no minimum rules and the parties are free to determine the terms of the executives' employment.

Some groups of employees enjoy special protection, like employees under 18, employees with small children and employees close to retirement.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

The parties shall enter into an employment agreement with a contract in writing, containing at least the base wage and the position, and if that differs from the default rules provided in the law, the term of employment, the working hours and place of work. The invalidity of a verbal agreement may only be referred to by the employee and only within 30 days from the start of work.

The employer shall also provide the employee with a written information sheet within 15 days from the start of the employment detailing the rules of the employment, including the daily working hours, benefits, job description, data protection rules, notice periods, whether a collective agreement applies and the person exercising the employer's rights.

Any modification of the employment agreement shall also be made in writing.

1.4 Are any terms implied into contracts of employment?

Unless otherwise agreed in the contract of employment, the default rules of the Labour Code (e.g., the rights and obligations of the parties, termination period, severance payment, holiday, working hours) shall apply to the employment. Employment contracts of so-called ordinary workers cannot provide less favourable terms than the minimum terms provided by the Labour Code. When there is a collective agreement its rules shall also apply. Employers may also issue by-laws in accordance with the Labour Code. Of course, provisions stipulated in the individual employment agreements cannot be overwritten in by-laws.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Yes, the statutory minimum employment terms and conditions are set forth in the Labour Code. Departure from these minimum terms is only allowed if it is favourable to so-called ordinary employees. In the case of executives, the parties are to agree on the terms of employment and there are no minimum terms to observe and apply.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

In Hungary bargaining usually takes place at company level. There are approximately 2,600-3,000 collective bargaining agreements concluded and listed at company level. There are only a small number of collective bargaining agreements concluded at industry level.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Trade unions are associations established with the purpose of protecting the employees' interests. They can be set up with a minimum of ten members by signing a deed of foundation and electing the management and representatives. Its legal existence is subject to registration at court.

2.2 What rights do trade unions have?

The Labour Code lists the rights of trade unions which have representation at the employer. These rights cover the information rights of the employees, the right to represent the employees, the right to request information from the employer and to initiate consultation with the employer. Their most important right is the right to enter into a collective agreement. Collective agreements might provide further rights for trade unions.

2.3 Are there any rules governing a trade union's right to take industrial action?

Only strikes are regulated as industrial action, and strikes can be initiated by trade unions.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

Works councils shall be set up upon the employees' initiative if there are more than 50 employees at any given work place. Central works councils and group level works councils may also be set up. (If there are more than 15 but fewer than 50 employees, a shop steward is elected who has basically the same rights as a works council.)

A candidate may be nominated by 10 per cent of the employees eligible to vote or by 50 employees eligible to vote, or by the local trade union. The preparation and execution of the election shall be carried out in line with the rules detailed in the law by the election committee.

A works council shall monitor the compliance of its employer to employment regulations, e.g., it can request information and can initiate negotiations, it is semi-annually informed about the employer's economic standing, the employment terms and the employees, and it is consulted in matters affecting a large number of employees. Negotiations must be initiated and carried out with the works councils when employers plan mass redundancies and also before the transfer of employees to another employer.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

The works council has co-determination rights in the use of welfare funds.

2.6 How do the rights of trade unions and works councils interact?

There is no interaction. When a large number of employees are affected by a planned action, such as mass redundancies, usually both trade unions and works councils participate in the consultations.

2.7 Are employees entitled to representation at board level?

No. There is mandatory employee representation in the supervisory board if there are more than 200 employees. Some managerial tasks may be allocated to this board.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

The Labour Code declares the obligation of equal treatment especially with respect to wages. The principle of equal treatment is regulated in the Equal Treatment Act, covering all employment and public relations.

3.2 What types of discrimination are unlawful and in what circumstances?

There is discrimination if a person or a group is treated less favourably than another person or group in a comparable situation because of his/her sex, racial origin, colour, nationality, national or ethnic origin, mother tongue, disability, state of health, religious or ideological conviction, political or other opinion, family status, motherhood (pregnancy) or fatherhood, sexual orientation, sexual identity, age, social origin, financial status, due to the part-time nature or definite term of the employment or other employment-related relationship, membership in an organisation representing employees' interests, or other status, attribute or characteristic.

With respect to employment, provisions applied before, during and after the term of employment may qualify as a violation of the law if they are discriminatory.

3.3 Are there any defences to a discrimination claim?

In employment relations, equal treatment is not violated if: the discrimination is proportional, justified by the characteristic or nature of the work and is based on relevant and legitimate terms and conditions; or if the discrimination arises directly from a religious or other ideological conviction or national or ethnic origin which fundamentally determines the nature of the organisation, and it is proportional and justified by the nature of the employment activity or the conditions of its pursuit.

Furthermore, an act, a government decree or a collective agreement may order an obligation of positive discrimination for a specified group of employees in respect of employment or another employment-related relationship, provided however that it applies only for a limited time and does not violate basic rights, provide an unconditional advantage or exclude the consideration of individual circumstances.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Discrimination rights can be enforced in front of the authority set up by the Equal Treatment Act, at the courts for violations of personality rights, labour law and consumer protection rules, and by administrative acts initiated at labour authorities. Whether the employer can settle a claim depends on where and who initiated it.

3.5 What remedies are available to employees in successful discrimination claims?

The claimant may request the termination of the discriminatory behaviour and its future occurrence, verbal or written apologies from the employer, the issuance of a penalty by the authority or damages, imposed by the court, to be paid by the employer.

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

Discrimination on the basis of the part-time nature or definite term of the employment is unlawful. Additional protection applies to temporary agency workers. Their basic working and employment conditions shall be, for the duration of their assignment, at least the same as those available to the workers employed by the user enterprise under full employment relationships. These basic working and employment conditions shall, in particular, cover the protection of pregnant women and nursing mothers, the protection of young workers and the amount and protection of wages, including other benefits. With regards to 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 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, who is recognised as a long-term absentee from the labour market or 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 organisation, and a registered public benefit organisation.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Maternity leave lasts for 24 weeks. Thereafter a mother is entitled to unpaid leave until the child becomes three years old.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

Upon request, the state shall pay 70 per cent of the average wage for the period of maternity leave. The duration of the maternity leave shall count as time spent in work. Thereafter, if the requirement on prior employment is met and the claimant is on unpaid leave, one of the parents can ask for child care until the child becomes two years old. The amount of the child care fee is the lower of 70 per cent of the claimant's average wage or 200 per cent of the statutory minimum wage.

4.3 What rights does a woman have upon her return to work from maternity leave?

Until the child reaches five years old, the mother enjoys (i) a beneficial working schedule, (ii) protection against workplace transfer, (iii) protection against dismissal, and (iv) the possibility of a part-time job. Furthermore, in the first nine months, the mother enjoys nursing time for breastfeeding, and in the first year she is protected from jobs dangerous to her health.

4.4 Do fathers have the right to take paternity leave?

Fathers enjoy a five-day extra holiday, and they are also entitled to unpaid leave (with protection against dismissal if the mother is not on unpaid leave). Employers shall be compensated from the state budget for the payments performed to fathers for the five-day extra holiday.

4.5 Are there any other parental leave rights that employers have to observe?

Employers do not have to observe other parental leave rights, except that parents can take leave if their child is sick, and after the first 15 days of sick leave given by the employer, social security pays a sickness pay up to a defined number of days depending on the child's age.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

There is no right to flexible work, only a right to work part-time.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

The employees employed by the business are transferred to the new owner in an asset transfer if the business is to be performed by the new owner except (i) if the transferee does not belong to the Labour Code, or (ii) if the transfer is made as a result of an insolvency liquidation.

In the case of a share sale there is no change in the employer, and thus there is no employment transfer.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

The terms of the employment agreement do not change, and the non-competition agreements and study contracts are also transferred.

The receiving employer shall maintain the working conditions specified in the collective agreement for one year except if it has its own collective agreement or the transferring employer's collective agreement would terminate within a year.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

If so agreed by the employers, the receiving employer shall inform in writing the works council/shop steward (and if there is no works council or shop steward, the employees affected) at least 15 days in advance of any planned changes, its terms, timing and consequences for the employees and offer negotiations to the works council on actions affecting the employees.

The receiving employer shall inform the employees in writing about the transfer and any change to the terms of employment within 15 days of the transfer.

5.4 Can employees be dismissed in connection with a business sale?

Termination by notice is possible only according to the general rules, e.g., for reasons in connection with the employer's operation, thus when a certain position is eliminated and no longer exists or when two positions are merged. The transfer of business in itself cannot be the reason for dismissal.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

Terms agreed upon and included in the employment agreement cannot be changed unilaterally by the employer without the employee's consent. Other terms of employment can be modified. Employees have the right to terminate their employment and shall be entitled to severance and termination payments if the transfer involves a substantial change in their working conditions to the detriment of the employees and, in consequence, to maintain the employment relationship would entail unreasonable disadvantage or would be impossible.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

The general rule is that employees can be dismissed for cause with a notice period. The notice period is 30 days, which – in case the employer terminates the employment – increases proportionally with the length of the employment with the employer. The parties may agree on a longer notice period of up to six months or the period provided in the collective agreement. There is no need for cause and there is no notice period for dismissal during a probation period and in the case of a fixed-term agreement (in this case provided that wages are paid to the employee for the remaining period, but for a maximum of one year). Executives and pensioners do not enjoy the protection that dismissal is allowed only for cause.

Dismissal is allowed without a notice period if the employee intentionally or by gross negligence seriously breaches any material obligation or otherwise engages in conduct that would render the employment impossible. This termination may be exercised within a limited period of time.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Giving "garden leave" for half of the notice period is an obligation if the employer terminates the employment. Employers may exempt employees from work during the entire notice period.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

The cause of the dismissal shall be clear, true and reasonable, and the burden of proof is on the employer.

An employee is dismissed only if there is a written notice served to the employee expressly stating the dismissal, its date and its reasoning. The notice shall contain reference to the employee's right to challenge the decision in front of court.

Third-party approval is needed only in exceptional cases, such as, e.g., in the dismissal of trade union leaders.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

The employer may not terminate employment with notice during pregnancy, maternity leave, a leave of absence for child caring, military service, or in the case of treatment related to human reproduction procedures, for up to six months from the beginning of such treatment. In the case of pregnancy and human reproduction treatment, the protection applies only if the employer has been informed thereof.

Employees close to the pension age, parents of small children and disabled employees enjoy additional protection against dismissal as they can only be dismissed (i) in the case of serious breach, or (ii) if the reason of dismissal is connected to the employee's ability or the operation of the employer, only if no similar position is available.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

An employer may terminate the employment for reasons related to the individual employee in connection with the employee's abilities or the employee's conduct relating to the employment. An employer is also entitled to terminate the employment for business-related reasons, when due to reorganisation, a position is eliminated, two or more positions are merged or when a quality exchange is necessary (e.g., due to the reorganisation the person filling a certain position needs to be higher qualified). In the case of a serious breach or when the employee otherwise engages in conduct that would render the employment relationship impossible, employers are entitled to dismiss an employee without notice. Business-related reasons cannot serve as a reason for termination without notice.

Employees shall be entitled to severance pay if employed for at least three years, provided that the termination is with notice period or due to the termination of the employer without succession. The employee shall not be entitled to severance pay if he/she is becoming a pensioner, or if the dismissal is due to the employee's behaviour or ability (other than health reasons). The amount of severance pay is one month's absentee pay, increasing proportionally up to six months' absentee pay with the number of years worked at the employer. Employees close to the pension age are entitled to additional severance pay of up to a maximum of three months' absentee pay.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

Dismissals must be in writing and must comply with all formal requirements set forth by the law. The dismissal must also be properly delivered to the employees in order to effectuate dismissal.

On the last day at work (if the employment is terminated with immediate effect, within five working days after such termination) the employer shall settle with the employee all wages due, all accrued and unused vacation time and shall deliver to the employee a certificate of work.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

Employees can challenge their dismissal with success if the employer does not provide clear, true and reasonable cause in the notice and also if formal requirements were not met (i.e., if the

dismissal was not in writing or was not made by the person entitled to exercise an employer's rights, etc.).

If the termination is challenged with success and the termination is considered as unlawful the employee shall be entitled to damages (up to a maximum of 12 months' absence fee as lost income) and in certain very limited cases he/she may request the reinstatement of the employment.

6.8 Can employers settle claims before or after they are initiated?

Employers can settle claims both before and after they are initiated. Though there is a legal claim against an employer's decision only when it is challenged in court by the employee, the employer may also offer settlement to the employee earlier.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

Employers have additional obligations in the case of mass redundancies. When employers are planning to carry out a mass redundancy, they shall initiate negotiations with the works council before a decision is taken. When there is a union, unions are usually also involved in the consultation proceedings.

Negotiations shall last until an agreement is reached and, when no agreement is reached, for at least 15 days. An agreement concluded between employers and work councils may lay down the guidelines for the employer to select the workers affected by the termination of employment relationships.

A decision on mass redundancy may only be taken following the closing of the consultations.

The employers are required to provide a 30-day advance notice to the works council and the employee concerned prior to the delivery of the actual dismissal.

The employers are required to inform the labour authority about the planned dismissal, any agreement reached with the works council and the actual decisions on termination.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

The purpose of the consultations is to reach an agreement on the guidelines used by the employer to select the workers affected by the redundancy (usually by defining the types of employees not affected by the dismissal) and to mitigate the consequences of the termination by negotiating better termination packages. A collective agreement may also provide limitations on the employees to be affected by mass dismissal. If the employer breaches these limitations the termination is unlawful.

The termination is also unlawful if the employer does not provide a 30-day advance notice to the employee, or when the reason for the dismissal is unlawful or untrue.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Employees are prohibited from engaging in any conduct that may jeopardise the employer's economic interest, damage the employer's reputation or the purpose of the employment relationship. The employment agreement may provide limitations on further employments.

Furthermore, employees may not express their opinion in a way which may lead to the causing of serious harm or damage to the employer's reputation or legitimate economic and organisational interests.

The parties can also include a non-competition provision applicable after the termination of the agreement.

7.2 When are restrictive covenants enforceable and for what period?

A covenant not to compete after the termination of employment is enforceable if it covers a maximum of two years and if employees are provided with appropriate financial compensation in return for non-compete undertakings. If the employee terminates the agreement with immediate effect he/she may request release from the non-competition clause.

7.3 Do employees have to be provided with financial compensation in return for covenants?

There is no obligation for additional payment for the covenants resulting from law and/or applicable during employment. A non-compete provision is valid only if adequate compensation is paid to the employee. The amount of the compensation should be proportionate to the scope of the restriction. The amount of adequate compensation should be at least one-third of the base wage.

7.4 How are restrictive covenants enforced?

Restrictive covenants applicable during employment and the non-compete clause shall be enforced in front of labour courts as their breach is considered to be a breach of the employment relationship. It is general practice to secure compliance with the restrictive covenants by stipulating a penalty for the breach of the covenants.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship?

Employers may process the employees' personal data to the extent necessary for the fulfilment of the purposes of the employment. The employees shall be duly informed regarding the processing of their personal data. If the employer wants to process any employee data above that which is absolutely necessary, the consent of the affected employees must be obtained.

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 workers consent.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

Employers shall inform their workers concerning the processing of their personal data.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

Employers can conduct background screening, including criminal record checks, but limitations apply. Screenings are permitted to the extent necessary and proportional with respect to the position of the given employee, provided that the screening does not violate the employee's personal rights.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

Employers, in general, are allowed to monitor the behaviour of workers only to the extent pertaining to the employment relationship. The employer's 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. Employers shall inform their workers in advance concerning the technical means used for the surveillance of workers. Outgoing e-mails can be checked (opened) only when the e-mail box cannot be used for private purposes. Screening incoming mails is even in this case limited. Employers are free to regulate the use of corporate IT tools.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

During the life of the employment relationship, workers must not engage in any conduct which jeopardises the legitimate economic interests of the employer, unless so authorised by the relevant legislation.

In addition to the above, 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 in compliance with the Labour Code. It is important to note that the Labour Code prohibits control over the workers' private life. Employees must also be informed about the technical tools which will be applied to control them (e.g. software checking the activities of the employees on the Internet) in advance.

Employers are free to regulate the use of social media during working hours or on corporate IT tools. It is be important for employees to issue by-laws regarding the use of social media. It is also possible to regulate the use of social media in the employment contract but, in such cases, amendments require the consent of the employee.

According to the Labour Code, employers must obtain the works council's opinion on proposals concerning employer's actions or by-laws if they affect a larger group of the employees. The opinion of the works council must be obtained especially with respect to employer's actions concerning the handling or protection of the personal data of employees or the application of technical tools for the surveillance of employees.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

A special labour court called the Administrative and Labour Court, organised in each county and in Budapest, has jurisdiction in employment-related complaints. The first level court decides the case with the participation of lay persons. The place of work determines the venue of the court. An appeal may be submitted against the judgment of the first instance court and shall be decided at county level.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

Employees may pursue their claims arising from an employment relationship in court, while trade unions and works councils may also pursue their claims arising out of the Labour Code or a collective agreement in court. The statute of limitations is three years (for damages caused by crime, five years, or, if more, the statute of limitations for the particular criminal liability). However, an action can only be brought within 30 days from the employer's act if that relates to a unilateral amendment of the contract, the wrongful termination of employment, sanctions applied for breach of an obligation or payment notice, or an untrue employer statement. Different procedural rules apply when challenging a termination agreement.

In a court case, a duty defined as a percentage of the value, with a minimum and maximum amount – varying between 6-10 per cent and a minimum of HUF 15,000 and maximum of HUF 3.5 million – is payable at each level. The employee is exempted from the payment obligation if he/she is in a difficult financial situation defined by law. Employees are also exempted from the advance payment of fees and duties.

There is a mandatory conciliation only if the collective agreement or the employment agreement so provides.

The employer and the works council/trade union may set up a conciliation committee to resolve their disputes. In a dispute about the term of the works council and the use of welfare funds, an arbitrator shall decide.

9.3 How long do employment-related complaints typically take to be decided?

According to statistics, in the first half of 2014 the first level decision takes 8-9 months on average. Statistics are based on countrywide data. In general, courts in Budapest are far more overloaded than courts in other parts in the country. Therefore, it usually takes longer to have employment-related complaints decided in Budapest than elsewhere in Hungary.

9.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

It is possible to appeal against the first instance decision. According to the above statistics the two levels together mean a 22-month process on average.

Hédi Bozsonyik
Szecskay Attorneys At Law
Kossuth Sqr. 16-17. III.
H-1055 Budapest
Hungary

Tel: +36 1 472 3000
Fax: +36 1 472 3001
Email: hedi.bozsonyik@szecskay.com
URL: www.szecskay.hu

Dr. Bozsonyik is a partner and the lead lawyer for Szecskay Attorneys At Law's Employment practice, which is one of the market-leading Employment practices in Hungary. She leads most of the work involving the big international companies active in this field in Hungary and combines it with her work in other transactional support areas (e.g. corporate, commercial, etc.).

She is a member of EELA (European Employment Lawyers Association), is a contributing author for Oceana Publications and has written a number of articles on employment law.

She is fluent in English.

László Gábor Pók
Szecskay Attorneys At Law
Kossuth Sqr. 16-17. III.
H-1055 Budapest
Hungary

Tel: +36 1 472 3000
Fax: +36 1 472 3001
Email: laszlo.pok@szecskay.com
URL: www.szecskay.hu

Dr. Pók is a partner and a lawyer for Szecskay Attorneys At Law's Employment practice, which is one of the market-leading Employment practices in Hungary. Together with Dr. Bozsonyik, he works on a lot of matters which involve the big international companies active in this field in Hungary and also combines his employment and outsourcing practices with other transactional support areas (e.g. corporate, commercial, etc.).

He has been a member of the Board of the Hungarian Outsourcing Association since 2012 and has written articles in both Hungarian and international publications about employment law issues, including the use of social media at the workplace, cross-border mergers, the legal relationship between executive officers and companies, and trademarks.

He is fluent in English.

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Global Legal Group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk