SERVICE OF WRITTEN DOCUMENTS TO EMPLOYEE DURING THEIR TEMPORARY INCAPACITY FOR WORK

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Abstract: *The article deals with the issue of serving written documents during the employee's temporary incapacity for work in the conditions of the Slovak Republic. The author points to the issues occurring when the place of the employee's stay during their temporary incapacity for work differs from their address hitherto known to their employer. The given issue has been analysed by the author from the perspective of the term "address for service", in connection with which the Slovak legislation explicitly imposes the notification obligation on the employee. Following the given difference between the Slovak and Czech legislation, the author investigates the possibilities of application of Czech Decision R 25/2016 in the conditions of the Slovak Republic.*

Keywords: *service of written documents, temporary incapacity for work, employee's address, address for service, Decision R 25/2016*

INTRODUCTION

Following the provision of Section 38, par. 1 of Act No. 311/2001 Z. z. Labour Code as amended ("Labour Code" or "LC"), it is necessary to serve a substantial part of the written documents issued by the employer on to the employee's own hands.[2] The need to serve a certain written document may even occur when the employee is found temporarily incapable of work. The period for which the employee is found temporarily incapable of work is characterised by the employee's absence in the workplace. As a result, written documents cannot be served on to them in the workplace. Should the employee is found temporarily incapable of work, they are to stay in the place stated in the document confirming their temporary incapacity for work issued by a physician, which (place) may be different from the employee's address hitherto known to the employer. In conjunction with the above, a question is raised as to which address the employee is to be served with such written documents.

CURRENT STATE OF ISSUE

In accordance with the legislation applicable and effective in the conditions of the Slovak Republic, written documents issued by the employer and concerning the establishment, change and termination of a labour relation, or the establishment, change and termination of the employee's obligations arising from an employment contract, shall be served to the employee's own hands. This applies equally to the written documents con-

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[2] Z. z. – Collection of Legislative Acts of the Slovak Republic.

cerning the establishment, change and termination of the rights and obligations arising from an agreement concerning the work activities performed outside the employment relationship (Section 38, par. 1, sentence one and two of LC). The employer shall serve written documents to the employee at the workplace, employee's habitation, or anywhere where the employee will be reached. Where such an action proves impossible, the written document may be served as a registered mail by a postal company. The written documents served by a postal company shall be sent by the employer as a registered mail to the employee's last address known to the employer, together with a mailing receipt and "to one's own hands" note (Section 38, par. 1, sentences three and four and Section 38, par. 2 of LC).

The need to serve a written document may also occur during the employee's temporary incapacity for work.[3] Temporary incapacity for work is one of the significant personal obstacles to work on the part of employee (Section 141, par. 1 of LC). Labour Code does not define temporary incapacity for work but it connects several legal consequences therewith.[4] A specific feature that may influence the service of written documents during one's temporary incapacity for work is the place of the employee's stay. The place the employee is to stay in at the given time is stated in the document confirming their temporary incapacity for work issued by their physician (Section 12a, par. 2 of Act No. 576/2004 Z. z. on health care, services related to the provision of health care and on amendments and supplements to certain acts as amended ("Act on Health Care and on Services Related to the Provision of Health Care"). An issue arises when the place stated in the document differs from the employee's address currently known to the employer, e.g. the address of their permanent residence, their address for service etc.

The issue of serving written documents on the employee during their temporary incapacity for work has already been dealt with by the Supreme Court of the Czech Republic in their Judgement of 23 June 2015, file No. 21 Cdo 3663/2014 that was published in the Collection of Decisions and Statements, year 2016 under No. 25 ("R 25/2016"). The Supreme Court of the Czech Republic adjudicated the employer's obligation to serve a written document to a temporary address at which the employee is staying at the time given even though they habitually stay in a different place. The Supreme Court of the Czech Republic has based their Decision R 25/2016 on the assumption that there is no procedure explicitly stipulated in the act through which the employer may learn the address to which the employee is to be sent written documents.

[3] During an employee's temporary incapacity for work, it may be necessary to serve various documents. However, as regards legal acts giving rise to serious legal consequences, it should be recalled that, while an employee is declared temporarily incapable of work due to illness or injury, the employer may not give notice to the employee (Section 64, par. 1 (a) of the LC). However, in some EU countries, employees are not provided with protection against dismissal during temporary incapacity for work. See also: BARANCOVÁ, H. New Technologies and the Existing Model of Protection of Motherhood and Parenthood. *The Lawyer Quarterly*. 2017, Vol. 7, No. 4, p. 240. Even in the Slovak Republic, the prohibition of notice during temporary incapacity for work does not apply unconditionally (cf. Section 64, par. 3 of the LC). A specific situation occurs if an employee violates the treatment regime specified by the physician during temporary incapacity for work. See more: ŠTANGOVÁ, V. The Relationship between Social Security Law and Labour Law. *The Lawyer Quarterly*. 2017, Vol. 7, No. 4, pp. 264–265.

[4] TREĽOVÁ, S., PROCHÁZKOVÁ, L. Suspension of Employee's Duties as a Result of Temporary Incapacity for Work in Accordance with Slovak Legal Regulations. *AD ALTA: Journal of Interdisciplinary Research*. 2018, Vol. 8, No. 1, pp. 228–231.

In the conditions of the Slovak Republic, however, one of the employee's fundamental obligations under Section 81 (g) of LC is to inform their employer in writing on all the changes related to their labour relation and to their person, especially a change in their forename, surname, address of their permanent or temporary residence, address for service, health insurance company or the change of their bank connection, if, with the employee's consent, the wage is transferred to an account in a bank or a branch of a foreign bank.

As for the decision-making practices of Slovak courts, their approach to the matter of informing on a change in the employee's address is not unified. The Regional Court in Žilina stated that the employee fulfilled their obligation to notify (that was reviewed by the given court from the perspective of the provision of Section 38, par. 4 of LC) by having submitted a document confirming their temporary incapacity for work to their employer; the court added that: *"the given provision does not imply that this notification to the employer is to be performed in any special official note based on which such a fact is undisputable"*.[5] On the contrary, the Regional Court in Bratislava considered the service to the address of one's permanent residence satisfactory even though there was a different address of employee's stay stated in the document confirming their temporary incapacity for work.[6] The Regional Court in Bratislava also decided in a similar manner in case of a place of holiday stay by stating that *"the claimant's declaring that their superior was supposed to understand that they could not be present at the address of their permanent residence based on the holiday request forms where the address of their holiday stay was stated, is, at the very least, unconvincing as the holiday request forms are not relevant means of informing on the place of one's stay"*.[7]

It must be mentioned that, in the Czech Republic, an amendment to the Act No. 262/2006 Sb. Labour Code (Czech Labour Code) has been made recently.[8] As of 30th July 2020, according to the amendment, the written documents served by a postal service provider shall not longer be sent to the *"employee's last address known to them (the employer, author's note)*" but to the *"employee's last address they informed the employer about in writing*" (Section 336, par. 1 of the Czech Labour Code). The amendment signifies that the findings of Decision R 25/2016 were not accepted in the Czech Republic.

Having considered the current state of the issue, a question on how to approach Decision R 25/2016 in the conditions of the Slovak Republic has been raised. This does not concern only the fact that the Slovak legislation explicitly imposes the obligation to inform

[5] Pursuant to the provisions of Section 38 par. 4 LC the obligation of the employer or employee to serve the document is fulfilled as soon as the employee or employer receives the document or as soon as the postal company returned it to the employer or employee as undeliverable, or if the service of the document was thwarted by the employee's or employer's actions or omissions. The effects of service also occur if the employee or employer refuses to accept the document. Referring to the provision in question, the court found that the service of the document was thwarted by the employer who had sent the document to the employee's permanent residence address. For more details, see Judgment of the Regional Court in Žilina of 29 March 2016, File No. 11 CoPr 6/2015.

[6] Judgment of the Regional Court in Bratislava of 24 October 2017, File No. 5 S 144/2016.

[7] Judgment of the Regional Court in Bratislava of 24 January 2018, File No. 2 S 294/2015.

[8] Act No. 285/2020 Sb. amending Act No. 262/2006 Sb. Labour Code as amended and other related acts (Sb. – Collection of Legislative Acts of the Czech Republic).

on the employee (Section 81 (g) of LC) but, more importantly, the term of the "address for service", which was mentioned by the legislator in the provision of Section 81 (g) of LC. It is the question of the legal basis of the address for service and the mutual relationship between Section 81 (g) and Section 38, par. 2 of LC. Decision R 25/2016 is considered disputable in the Slovak literature. There has been an opinion stated recently that the address for service (Section 81 (g) of LC) and the employee's last known address (Section 38, par. 2 of LC) are two different terms.[9]

In connection therewith, we hereby dare to present a hypothesis that the findings of Czech Decision R 25/2016 related to the service of written documents to the employee's temporary address cannot be used in the conditions of the Slovak Republic. The aim of the article is to review the impact of a change in the place of employee's stay during their temporary incapacity for work on the service of written documents and to verify the truthfulness of the hypothesis of the impossibility to use the findings of Decision R 25/2016 in the conditions of the Slovak Republic.

EMPLOYEE'S PLACE OF STAY DURING THEIR TEMPORARY INCAPACITY FOR WORK

Under Section 12a, par. 2 of Act on Health Care and on Services Related to the Provision of Health Care, if a physician decides upon one's temporary incapacity for work, they will fill in a prescribed form confirming such temporary incapacity for work and will specify a treatment regime. There will be also the place of the employee's stay during their temporary incapacity for work stated in the document confirming temporary incapacity for work. For serious reasons, the physician may allow the person to change their place of stay during their temporary incapacity for work; if so, the physician will record such a change in the document confirming the temporary incapacity for work and in the medical history records of the person temporarily incapable of work (Section 12a, par. 6 and 7 of Act on Health Care and on Services Related to the Provision of Health Care).

Temporary incapacity for work is one of the significant personal obstacles to work (Section 141, par. 1 of LC). As far as the nature of such obstacles is concerned, they are, in principle, not known to the employee in advance. The employee shall inform their employer on the obstacle to work and on its expected duration without delay (obligation to notify). The employee shall also be obliged to prove the existence of such an obstacle to work and of its duration (obligation to provide evidence – Section 144, par. 1, sentence two and Section 144, par. 2, sentence one of LC).

In order to fulfil their obligation to notify, the employee will inform their employer that they were found temporarily incapable of work. In order for the employee to prove their obstacle to work and its duration, they will submit a document confirming their incapacity for work to their employer (a part of such a document that is to be handed over to the employer). On the basis of this source document, the employer will be made familiar with

[9] ŠVEC, M. et al. *Zákonník práce. Zákon o kolektívnom vyjednávaní. Komentár. Zväzok I.* Bratislava: Wolters Kluwer, 2019, p. 365.

the address of the employee's stay during their temporary incapacity for work. The employee will not usually make other written statement, by which the employer is informed under Section 81 (g) of LC that, during the temporary incapacity for work, the address for service is (or is not) to be changed.

The employer shall be informed on the employee's temporary incapacity to work without delay, the address of the place of their stay included, i.e. basically while the given obstacle to work lasts. The knowing of the employee's address is not important only in connection with written document service but it is also a prerequisite for exercising employer's right to review whether the employee temporarily incapable of work stays in the stated place (Section 9, par. 4 of Act No. 462/2003 Z. z. on compensation for earnings during employee's temporary incapacity for work and on amendments and supplements to certain acts as amended ("Act on Compensation for Earnings during Temporary Incapacity for Work").[10]

DIRECT SERVICE

If, in the situation under analysis, the need to serve a certain written document to the employee occurs, the employer, that is bound by the provisions of Section 38, par. 1, sentences three and four of LC, shall proceed from the priority of direct service over the service by a postal company. The basis of direct service is the hand-over of a written document to the employee in person. As, during their temporary incapacity for work, the employee is not present at work and it cannot be insisted on their coming to work for the purpose of written document service, it will not be possible to serve such a document at their workplace.[11] On the other hand, the employer should be informed on the place of the employee's stay during their temporary incapacity for work without delay as stated above.

We believe that, in the situation given, it is necessary to stipulate the employer's obligation to serve written documents directly (direct service) to the location of the employee's stay during their temporary incapacity for work. During temporary incapacity for work it can be legitimately expected that the employee will stay in the given place and, as a result, they will be available in the place given in case of written document service.[12] If so and if the employee accepts (or refuses to accept) the written document, the service shall be considered effective (Section 38, par. 4 of LC).

[10] It may be noted that if the employee does not stay at the stated place without the physicianęs consent, from the date of finding out this fact the employee is not entitled to compensation for earnings during temporary incapacity for work (Section 5, par. 1 (d) of the Act on Compensation for Earnings during Temporary Incapacity for Work). See also: PŘIB, J. The Entitlements of Employees during the First Period of Their Temporary Sick Leave. *The Lawyer Quarterly*. 2017, Vol. 7, No. 4, p. 298.

[11] According to older case-law (Judgment of the Supreme Court of the SSR of 27 August 1981, File No. 5 Cz 17/81, R 43/1984), it follows that *"the fact that the employee did not appear at the employer's competent authority where the employer's document was to be served on him may not be regarded as thwarting the service of the document or the refusal to accept it"*.

[12] Compare provisions of Section 5, par. 1 (d), Section 9, par. 2 and par. 4 of the Act on Compensation for Earnings during Temporary Incapacity for Work, as well as the provision of Section 227, par. 2 (f) of Act No. 461/2003 Z. z. on social insurance as amended.

If, during the first attempt to serve a written document, the employer does not reach the employee, it does not mean that it is no longer possible to re-serve such document directly. In their recent judgement of 7 November 2018, file number 21 Cdo 2036/2017, the Supreme Court of the Czech Republic emphasised a relative vagueness of the legal norm hypothesis stated after a semicolon in the provision of Section 334, par. 2 of the Czech Labour Code (in the conditions of the Slovak Republic, this matches the provision of Section 38, par. 1, sentence four of LC). The court stated that *"in order to decide whether it was (was not) possible for the employer to serve a written document to the employee's own hands on their own, the court can take into account whether the employee was at all (objectively) reachable by the employer's means, whether the employer actually tried to reach them, what the reason of such a failure to serve the document was, whether it was at all reasonable to try to re-serve the document, how urgent it was to serve the document, whether it could have been expected that the service by a postal service provider would have been more successful than the re-service by the employer etc."*[13]

In the matter in question, the Supreme Court of the Czech Republic noticed that in this particular case *"(...) it was Friday and the defendant could have tried to serve the document to the claimant's address of residence (even on Saturday and Sunday) and that by handing the mail over to the postal service provider it could not have been served earlier than on Monday; that day, however, the defendant might have tried to serve the document to the claimant themselves at the workplace"*. In the above context, it may be expected from the employer to try to serve written documents directly again or, should it be to their knowledge that the given incapacity for work is short-term, to wait for the employee's return to work.

On the other hand, however, the employer may, in exceptional cases, proceed with the service by a postal company even without having tried to serve the written document directly. Decision R 25/2016 states that this kind of situation might occur when the employee does not commute to work for a certain period of time or they are in a place different from their workplace and the employer does not have their registered office or their organisational unit's office there. If, however, the employer decides to only serve the documents by a postal company despite being able to do so directly, the service will not be considered effective, except for the case when the employee accepts such a document despite the failure on the part of the employer.[14]

It might be required to serve a written document in the time, when (despite the existence of the employee's obligation to notify and their obligation to provide evidence) the place of employee's stay during their temporary incapacity for work will be unknown. It can happen when the employer has not been provided with the document confirming the employee's temporary incapacity for work yet or when the employer has not learned about such a place in any other way. Even if this is the case, however, the employer has to, in principle, try to serve the written document directly.

[13] Judgment of the Supreme Court of the Czech Republic of 7 November 2018, File No. 21 Cdo 2036/2017.

[14] For more details see: ŽUĽOVÁ, J. Pracovnoprávna úprava doručovania a možnosti jej elektronizácie. In: H. Barancová – A. Olšovská (eds.). *Súčasný stav a nové úlohy pracovného práva*. Prague: Leges, 2016, p. 253. See also: Judgment of the Supreme Court of the Czech Republic of 14 July 2010, File No. 21 Cdo 1350/2009. Also: Resolution of the Supreme Court of the Czech Republic of 20 February 2013, File No. 21 Cdo 4188/2011.

If so, the employer has to serve the written document mainly to the employee's habitation (Section 38, par. 1, sentence three of LC) at the address the employer has hitherto known about. Failure to inform the employer on one's temporary incapacity for work might not necessarily mean that there has been a change in the employee's place of stay. On the contrary, in the given situation the employer has no other option than to assume that the given address has not changed. If the employee continues to stay at the address given and accepts (or refuses to accept) the written document, the service shall be considered effective (Section 38, par. 4 of LC).

Should the employee not be reached and should all the circumstances lead to the impossibility of direct service (see above), the employer will proceed with the service by a postal company. In every instance, regardless of the reason of the employee not being reached when trying to serve a written document directly (e.g. the place of the employee's stay for the period of their temporary incapacity for work has changed and the employee has not informed the employer about it or even when the employee has been at the place given and has not opened the door for the service to be executed), this cannot be regarded as thwarting the service of the document or the refusal to accept it as, in the case of the impossibility to serve a written document directly, the law requires from the employer to serve such a document by a postal company.[15]

LEGAL BASIS FOR SERVING WRITTEN DOCUMENTS BY POSTAL COMPANY

The service by a postal company may only be proceeded with by the employer if a written document cannot be served to the employee directly (Section 38, par. 1, sentences three and four of LC). The relation between the direct service and the service by a postal company is, from the linguistic point of view, expressed in the form of an anaphora, i.e. in the form of an anaphoric reference in the text – *"where that proves impossible, the written document may be served as a registered mail by a postal company"*. The "that" identifier refers to the service at the workplace, in the employee's habitation or wherever else where the employee will be reached.[16]

The written documents subject to service by a postal company shall be sent by the employer to the employee's last address known to the employer (Section 38, par. 2 of LC). It must be mentioned that the legislation concerning the service by a postal company is much stricter than the legislation concerning direct service. In the case of direct service, a written document could have been served wherever the employee could be reached, ergo the employee could not object the place of service. On the other hand, should direct service be proven unsuccessful, it would not be possible (except for the case when the employee refused to accept the written document) to consider the application of the fic-

[15] See also: ŠVEC, M. et al. *Zákonník práce. Zákon o kolektívnom vyjednávaní. Komentár. Zväzok I.* Bratislava: Wolters Kluwer, 2019, p. 361.

[16] On the issue of anaphora in the legal text, see more details: GAHÉR, F., ŠTEVČEK, M., BRAXATORIS, M. Nástroje a pravidlá produkcie a interpretácie koncízneho textu (s osobitným zreteľom na normativitu). *Jazykovedný časopis*. 2019, Vol. 70, No. 1, pp. 75–82. See also: ŽUĽOVÁ, J., BARINKOVÁ, M. *Niekoľko poznámok k porozumeniu Zákonníka práce*. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, 2019, pp. 30–31.

tion of service as, in such a case, the written document has to be served by a postal company. If, however, in conflict with the provision of Section 38, par. 2 of LC, the employer does not send a written document to the employee's last known address when serving such a document to the employee by a postal company, the service will only be effective if the employee accepts the written document from the postal company despite the failure on the part of the employer.[17] In other words, should a written document be sent by a postal company to a wrong address and should it not be accepted by the employee, the service of the written document would not be effective.

As already indicated, the topic of serving written documents to the employee during their temporary incapacity for work has been dealt with by the Slovak and Czech courts as part of their decision-making practices. According to Decision of the Supreme Court of the Czech Republic R 25/2016 *"if the employee stays at a different address hitherto unknown to their employer during their holiday, temporary incapacity for work, when attending to their household member, during their military service or for any other, similar reason, the employer can (may) serve their written documents to the employee via a postal service provider only to this "temporary address"; the service to any other address will not be effective even if the employee stayed there (some other time)"*. The Supreme Court of the Czech Republic stated that if the employer gradually learns more about the employee's address, the service will (may) be performed to that of the several addresses, the employer learned about as the last one, i.e. to the employee's address last known to the employer.

In its Decision R 25/2016, the Supreme Court of the Czech Republic proceeded from the assumption that *"as arising from the provision of Section 336, par. 1, sentence one of Labour Code, there is no explicit procedure stated in the act, based on which the employer learns about the address to which they are to (may) serve their written documents for the employee."* As of 1st September 2011 (Act No. 257/2011 Z. z. amending and supplementing Act No. 311/2001 Z. z. Labour Code and amending and supplementing certain acts), in the conditions of the Slovak Republic, however, the employee's fundamental obligation under the provision of Section 81 (g) of LC is to inform the employer without delay on all the changes related to their labour relation and concerning their person. Such a change is, based on the demonstrative enumeration used in the given provision, a change in the permanent or temporary residence or in the address for service. Considering the above stated, it seems that the Slovak legislation is different from the Czech one (before 30th July 2020), with the given difference relating to one of the basic points supporting Decision R 25/2016. As an additional point, the legislation has been amended in the Czech Republic recently, so it seems that the findings of Decision R 25/2016 are not going to be followed in the Czech Republic. As of 30th July 2020 (Act No. 285/2020 Sb. amending Act No. 262/2006 Sb. Labour Code as amended and other related acts) the Czech Labour Code stipulates the procedure based on which the employer learns about the employee's address as well, since the written documents shall be sent to the *"employee's last address they informed the employer about in writing"*.

[17] See in more detail: the Judgment of the Regional Court in Ostrava of 15 May 1997, File No. 16 Co 176/97.

The fact that the employer learns about the place the employee will (is to) stay at during their temporary incapacity for work from the document confirming the employee's temporary incapacity for work is not, in any way, been called in question. As far as direct service is concerned, as has already been stated, it is reasonable to request the performance of service to this place; the aim of direct service is to reach the employee in person. As far as the service by a postal company is concerned, however, it is necessary to decide whether a change in the employee's address arises from the document confirming one's temporary incapacity for work for the purpose of service by a postal company (Section 38, par. 2 of LC), especially when taking into account the provision of Section 81 (g) of LC. It raises the question whether it can be declared that the place of written document service by a postal company is (due to the provision of Section 81 (g) of LC that uses explicitly the term address for service) formalized in a certain way or that the address for service represents a separate category not bound to the employee's place of stay. In the Slovak literature, the indicated interpretation tendencies have proven to understand the address for service (Section 81 (g) of LC) and the employee's last known address (Section 38, par. 2 of LC) as two different terms.[18]

RELATIONSHIP OF PROVISIONS OF SECTION 38, PAR. 2 AND SECTION 81 (G) OF LABOUR CODE

The indicated issues cannot be resolved without a detailed analysis of the relationship of provisions of Section 38, par. 2 and Section 81 (g) of LC. In connection with the issue, the latest Slovak literature has raised a question whether the provision of Section 38, par. 2 of LC represents *lex specialis* in relation to Section 81 (g) of LC.[19]

In our opinion, however, a different question should be asked. The provisions under review stipulate two different situations. While the provision of Section 38, par. 2 of LC stipulates how the employer is to proceed when serving written documents (i.e. the employer is obliged to send written documents to the employee's last known address), the provision of Section 81 (g) of LC stipulates how the employee is to act in the case of a change in their address for service (i.e. the employee is obliged to inform the employer on such a change). In our opinion, there is no relationship of speciality between the provisions in question. We believe that there is a relation of determination between these provisions.

In our opinion, the question would therefore be whether the interpretation of the legislation is (i) that the obligation stipulated by the provision of Section 81 (g) of LC determines the obligation stipulated by the provision of Section 38, par. 2 of LC or vice versa, i.e. that (ii) the obligation stipulated by the provision of Section 38, par. 2 of LC determines the obligation stipulated by the provision of Section 81 (g) of LC. In other words, it is the question of (i) whether the employee may inform the employer on any address for service

[18] ŠVEC, M. et al. *Zákonník práce. Zákon o kolektívnom vyjednávaní. Komentár. Zväzok I.* Bratislava: Wolters Kluwer, 2019, p. 365.
[19] Ibid.,, p. 364.

and the employer is then obliged to send written documents to the address thus stated or (ii) whether the employee is always to inform the employer on their current address (i.e. the address of the place of their stay) to make sure that a written document can be served to the employee's sphere of reach.

The solution for the outlined issues has to be looked for in the term "address for service". It is necessary to raise the question on the legal basis of this address and what was the legislator's aim of making the obligation to inform the employer on a change of such an address in writing one of the employee's fundamental obligations (Section 81 of LC).

The first interpretation approach (obligation stipulated by the provision of Section 81 (g) of LC determines the obligation stipulated by the provision of Section 38, par. 2 of LC) understands the address for service as any address that the employee selects for the purpose given (even though not staying at such an address). This way, it can be considered the address for service in the autonomous (or, in other words, formal) understanding. Such an address is, at the same time, facultative as the employee can but does not have to select a special address for service. The employee would choose such an address for service within the meaning given if it was practical for them. The given address does not have to be in any way related to the place in which the employee is staying.

On the other hand, according to the second interpretation approach (obligation stipulated by the provision of Section 38, par. 2 of LC determines the obligation stipulated by the provision of Section 81 (g) of LC), the address for service does not represent any autonomous (formal) address that the employee should, as they wish, freely chose for the purpose of written document service. The only thing here is that, under Section 81 (g) of LC, the employee has an obligation to always inform the employer on their current address. Unlike the first understanding, it is the address at which the employee is staying.

We believe that the relationship between Section 38, par. 2 and Section 81 (g) of LC is to be interpreted using the second stated meaning. In relation to the above, the attention is being drawn to the explanatory report to Act No. 257/2011 Z. z. amending and supplementing Act. 311/2001 Z. z. Labour Code as amended and amending and supplementing certain acts, based on which the provision of Section 81 (g) of LC was added to the Labour Code. The explanatory report states that such an amendment represents a stipulation of the employee's fundamental obligation to notify as it is practically necessary. The truth is that the employee's obligation to notify the employer on a change in the address has already been inferred from the legislation by the decision-making practices some time ago even though the obligation has not been explicitly stipulated.[20] The purpose of the amendment given was to legally stipulate the employee's obligation to notify in compliance with the findings of the decision-making practices; the purpose was not to stipulate a completely new legal institute, i.e. the address for service in autonomous (formal) understanding.

Concerning the current Czech legislation, although it stipulates the procedure based on which the employer learns about the employee's address, it is significantly different from the Slovak one. According to the Czech legislation, the place of written document service

[20] POKORNÝ, M. *Sborník stanovisek, závěrů, rozborů a zhodnocení soudní praxe, zpráv o rozhodování soudů a soudních rozhodnutí Nejvyššího soudu.* Prague: SEVT, 1980, p. 44.

is formalized, since the written documents shall be sent to the *"employee's last address they informed the employer about in writing*". If the employee does not make a written statement on the change in the address, their address is not going to be changed (constitutive statement). On the other hand, the Slovak legislation stipulates the obligation to notify the employer on the change in the address, but in fact the employee's address is changed as soon as the employee changes the place of their stay (declaratory notification).

It must be mentioned that this "minor amendment!" to the Czech Labour Code has already been criticized by several Czech authors in connection with the governmental bill amending Act No. 262/2006 Sb. Labour Code as amended and other related acts (Issue 903/0) in 2016.[21] As even suggested by L. Drápal, the Czech Office for Personal Data Protection commented the above-stated governmental bill (issue 903/0) by stating their standpoint that *"(…) it would be, perhaps, more appropriate to stipulate the employee's general obligation to inform their employer on a change in the address for service or, even more generally, all the data necessary for the employment relationship given*".[22] There is, hopefully, no need to emphasize that the Czech Office for Personal Data Protection basically proposed the same legal solution as that used in the Slovak legislation.

The problem of the Slovak legislation seems to be the fact that, apart from the terms of permanent and temporary residence, the legislator also used the term of the address for service for an enumeration in Section 81 (g) of LC. This legislation creates the illusion that the address for service has a formal meaning and that it (apparently) does not have to be the place, where the employee is actually staying at the very moment, just like in the case of permanent or temporary residence (compare Act No. 253/1998 Z. z. on reporting the residency of Slovak citizens and on register of inhabitants of the Slovak Republic as amended).

We are of the opinion that, in order to eliminate the interpretation ambiguities, it would be more appropriate if the Slovak legislator did not use the term of the address for service but expressed the employee's obligation to notify via a normative reference, i.e. so that the employee would be obliged to inform the employer on a change in the *"address under Section 38, par. 2 of LC"*. In every instance, the findings of Decision R 25/2016 are, in principle, applicable in the Slovak Republic. On the other hand, concerning the recent amendments to the Czech legislation, Decision R 25/2016 seems to be obsolete in the Czech Republic. This question, however, exceeds the scope of the issue under review.

[21] L. Drápal pointed out that according to the proposed legislation, an employee would have to reckon in any situation (even if the employee is hospitalized, for example) that the employer can send them a document to the address they have notified the employer in writing. This regulation allows the employer to send the documents to the last address of the employee, which the employee notified the employer in writing, although (from other sources) the employer knows that the employee does not stay at this address, thus giving the employer a fictional service instead of actually serving the document. See more: DRÁPAL, L. O jedné malé změně v zákoníku práce. *Acta Universitatis Carolinae Iuridica*. 2016, Vol. 62, No. 4, p. 36. See also: MORÁVEK, J. O vhodnosti a o nevhodnosti novelizace zákoníku práce. In: Zdeňka Gregorová (ed.). *Pracovní právo 2016. Zákoník práce v novelizaci, důchodová reforma v akci*. Brno: Masarykova univerzita, 2017, pp. 46–47.

[22] See more: Office for Personal Data Protection. *Připomínky k předloze zákona, kterým se mění zákon č. 262/2006 Sb., zákoník práce, ve znění pozdějších předpisů, a další související zákony*. Prague: 2016, čj. UOOU-02768/16-3. According to: DRÁPAL, L. O jedné malé změně v zákoníku práce. *Acta Universitatis Carolinae Iuridica*. 2016, Vol. 62, No. 4, p. 37.

EMPLOYEE'S ADDRESS DURING THEIR TEMPORARY INCAPACITY FOR WORK

Based on the analysis of the relationship between the provisions of Section 38, par. 2 and Section 81 (g) of LC, it is hereby concluded in connection with the service of written documents to the employee during their temporary incapacity for work as follows: The address for service stated in Section 81 (g) of LC does not represent a separate legal term. It is the employee's address just like assumed in Section 38, par. 2 of LC. The provision of Section 81 (g) of LC declares the employee's obligation to notify the employer on changes in this address, which (obligation) has been inferred from the legislation for some time now. The notification of a change in the address shall be performed in writing. The absence of the written form of such a notification shall be considered a breach of the employee's obligation; the absence of the written form, however, shall not change the employer's obligation to serve a written document to the employee's last address known to the employer. If the employee informs the employer on the address of their stay during their temporary incapacity for work or provides the employer with a document confirming their temporary incapacity for work, the employer will gain new information on the place of the employee's stay and therefore will be obliged to serve written documents in the manner assumed in Decision R 25/2016.

Similarly, the temporary address will only be considered relevant in the time, in which, to the employer's knowledge, the employee was actually staying in such a place. We also recognize that the employer can gain their knowledge of the employee's address not only directly from the employee but also from any other source assuming that the employee's stay at the given address can be proven. From this perspective, the employee's declared obligation to notify (Section 81 (g) of LC) does not change the fact that the employer shall send written documents to the employee's last address known to the employer (Section 38, par. 2 of LC); the employer shall not ignore the new information about the employee's address just because this was gained from a different person.

We hereby conclude that the service of a written document will be legally effective if, at the address stated, i.e. in the place of the employee's stay during their temporary incapacity for work, the employee accepts such a document or refuses to do so (fiction of service, Section 38, par. 4 of LC).[23] The application of the fiction of service, however, can also be taken into consideration if the employee does not take the written document under service over within the collection period and, apart from that, naturally, if the employee does not inform the employer on the address of the place of their stay during their temporary incapacity for work, i.e. if they do not inform on any change in the address for service (and the employer does not learn about this address from any other sources) and thus the employer will only send the written document to the last known (yet, not up-to-date) address. In view of the fact that the employee is found temporarily incapable of work, it

[23] Sending a document to an address other than the employee's place of stay during their temporary incapacity for work (if this temporary address was known to the employer as the employee's last address) cannot have effect of service, unless the employee receives the document, see also the Judgment of the Regional Court in Ostrava of 15 May 1997, File No. 16 Co 176/97.

is, however, necessary to consider the circumstances which potentially prevent the employee from accepting a written document or from informing on a change in their address.

Despite all that has been stated about the relationship between the provisions of Section 38, par. 2 and Section 81 (g) of LC so far, it cannot be overlooked that, apart from their address of permanent residence (or, potentially, temporary residence), the employee may inform the employer that they explicitly wish to have written documents sent to a certain (different) address, i.e. to an address for service in autonomous (formal) understanding.[24] The legal effects of such informing by the employee are disputable. Even though the purpose of the provision of Section 81 (g) of LC was not the stipulation of the address for service in autonomous (formal) understanding, the stating of such an address is not explicitly forbidden.

In every instance, if we allow for the employee to state an address for service in autonomous (formal) understanding as a result of their explicit wish, then, in our opinion, the conclusion of Decision R 25/2016 stating that if the employer gradually learns more about the employee's address, the service will (may) be performed to that of the several addresses, the employer learned about as the last one, can no longer be argued. We believe that, in connection with the employee's explicit wishes to state an address for service in autonomous (formal) understanding, the change of such an address must be performed by an explicit notification, i.e. the employee must explicitly state that they wish to change the address for service in question. In this case, it is not sufficient that the employee submits a document confirming their temporary incapacity for work to their employer. It is not only the matter of how the applicant for appeal review (in the proceedings preceding the issuance of Decision R 25/2016) demonstrated that it was not possible to justifiably require from the employer to recognize whether the later notified address was to be also considered the employee's new address for service in each particular case. If the employee firstly explicitly stated a certain address as their address for service and later the employee informed the employer about a different address which was not denoted in this manner, the employer is absolutely not to (not entitled to) add or replace the employee's wishes. In such a case, the employer will continue serving the written documents to the address the employee explicitly stated as their address for service.

CONCLUSION

While being temporarily incapable of work, the employee stays in the place stated in the document confirming their temporary incapacity for work issued by their physician under Section 12a, par. 2 of Act on Health Care and on Services Related to the Provision of Health

[24] The employee shall state the address at which, for practical reasons, it is convenient for them to receive the documents, e.g. the address of his workplace with another employer. The latest Slovak literature states that the Labour Code does not restrict the employee in connection with the place where they state the address for service of documents – the restriction is, however, the prohibition of abuse of rights (Section 13, par. 3 of LC) and the prohibition of conduct contrary to good morals. See: ŠVEC, M. et al. *Zákonník práce. Zákon o kolektívnom vyjednávaní. Komentár. Zväzok I.* Bratislava: Wolters Kluwer, 2019, p. 364.

Care. The address of the place in question is to be, together with the relevant part of a document confirming their temporary incapacity for work, provided to the employer by the employee without delay.

If, in the situation given, the need to serve a certain written document to the employee occurs, the employer that is bound by the provisions of Section 38, par. 1, sentence three and four of LC, shall proceed from the priority of direct service over the service by a postal company. Direct service may be performed to any address at which the employee will be reached. It can be expected during the employee's temporary incapacity for work that they will stay in the place stated in the document confirming their temporary incapacity for work and the employer is therefore obliged to try to serve a written document to this place if there are no circumstances due to which the employer cannot perform direct service (e.g. the distance of the place given). The employer might purposefully connect direct service with the inspection of whether the temporarily incapable employee is staying in the stated place under Section 9, par. 4 of Act on Compensation for Earnings during Temporary Incapacity for Work.

Should it be impossible to serve written documents directly, the employer may proceed with their service by a postal company. If this is the case, the employer will be obliged to serve written documents to the employee's last address known to the employer. On the basis of a detailed analysis of the relation between the provisions of Section 38, par. 2 and Section 81 (g) of LC, we came to conclusion that the document confirming the employee's temporary incapacity for work issued by their physician, as well as other notification of the employee (of some other person) informing on the employee's place of stay during their temporary incapacity for work, are legally relevant source documents for becoming informed on a new place of the employee's stay. We state that, as a result of a detailed analysis, the declared hypothesis, i.e. the findings of Decision R 25/2016 cannot be applied in the conditions of the Slovak Republic, proved to be false. The applicability of the findings of Decision R 25/2016 might, however, be limited to a certain extent by the fact (if considering the possibility given) that the employee explicitly states a certain place to be their address for service.