



# Electronic communication in employment relationships

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# Challenges



As an effect of the COVID-19 epidemic, the communication via electronic means will have significance in employment relationships, since, as far as possible, employers adopted measures resulting therein that employees appear at their „usual” place of work seldomly or not at all. This is also true for persons exercising employer’s rights.

Therefore, during the global epidemic, there will be less frequent daily meetings. However, irrespective from the above, there will be a need also in the future to make some written declarations or sign agreements in connection with the employment relationship.

What can we do in this situation without ordering all of the colleagues to appear at the work place? How can issues arising from an employment relationship be addressed electronically? In our summary, we intend to give some guidance and practical solutions to these questions.





# Conditions of electronic communication



The Labour Code provides possibilities to make declarations electronically, provided that such declaration will be considered as a written deed, if the serving thereof is able to



- Be recalled so that the information included therein remain unaltered; and
  - Identify the person making the declaration; and
  - Identify the exact time when the declaration was made

Two stand-points

Necessary to have a document with advanced e-signature

No e-signature is required

From the Labour Code, it cannot be concluded whether it is necessary to prepare a document with advance e-signature. Therefore, an employer cannot only make a electronic declaration in the possession of a digital electronic signature card to which a time stamp is also linked. It is possible to make declarations via e-mail or other by other digitalized means.



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Conditions



Disclosure



Which declarations can be disclosed by electronic means?



Notice of termination



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# Disclosure/serving of the declaration



According to Section 24 of the Labour Code, „***a written declaration shall be considered as being disclosed, if it has been served to the person concerned or eligible to take over the declaration or if the electronic document has become accessible to him/her...***”



It is possible to make declarations via electronic means, however, increased attention to this shall be paid, as in a dispute the burden of proof that the disclosure of the declaration was made appropriately is on the party who made the declaration.

There are several views available in this regard, however, according to the prevailing opinions, an electronic document becomes accessible when the addressee, or the person being entitled to take it over, has the chance to learn the content thereof, i.e. when the electronic document arrives to the e-mail address or other electronic device.

This is also the date of disclosure: the moment it arrives on the electronic device, it is considered served. Thus, a notice contained in a regular electronic document may be deemed to have been served even if the employee refuses to open the e-mail from which he or she concludes that the content is unfavorable to him or her.

However, it is recommended to examine the appropriate method of communication on a case-by-case basis before the serving of each type of juridical act, taking into account the employer's capabilities and the electronic means available to the employees.



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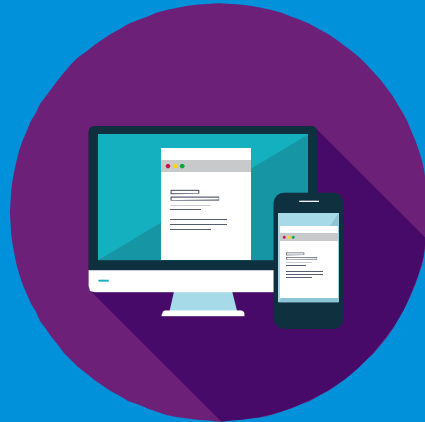
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# Which declarations can be disclosed via electronic means?



**Any statement regarding the employment relationship may be disclosed, and contracts can be concluded too.**

Although it is not a common solution, it can be deduced from the rules of the Labor Code that an employment contract or even an amendment thereof can be concluded electronically. If it is a question of concluding an employment contract, as there is no “e-contract” practice between the parties yet, it may be justified to develop an internal process, Standard Terms of Contract for the employer, and to conclude the contract based on such after its publication. Contract amendments can also be concluded electronically, but it is recommended to provide employees with detailed information on how to do so before such form is introduced.



Other examples - also with regard to case law

- Allowing leave of absence without pay by e-mail;
- Notice of termination may also be served by electronic means;
- Employers’ obligation to provide information can also be fulfilled via e-mail;
- Amendment to an employment contract can also be concluded electronically, e.g. using a platform where the employee, once identified, can review the content of the juridical act and contribute to its content, while the date of the agreement also gets recorded.





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# Notice of termination



*Based on the above, termination can be communicated by electronic means. But certain questions need to be addressed: how, and what does one have to pay attention to?*

As termination by notice is a juridical act that has a very serious impact on the employee's employment, it must be handled with great care and emphasis must be placed on its human side.

- Case law recognized the form of termination which was printed, signed, and then transmitted in image (JPEG) format by an employer to its employee via MSN, by inviting the employee to an MSN conversation after the message was sent, (the latter communication channel was also a previously used channel between the parties) and also sent the document to the employee by post;
- A solution could be, by analogy with the above method, after sending the scanned and signed notice of termination by e-mail, if the employer organizes a skype, Teams meeting with the employee and HR, where the content and details of the document previously sent by e-mail can be discussed once again by the parties. It is IMPORTANT, however, that the communication has already been made in writing beforehand, so there will be no oral termination;
- Sending solely an e-mail as a notice of termination by the employer is not sufficient.

Under the present circumstances, it is recommended to use the form of electronic declarations only if there is no other way or means to make the declaration. It is important, especially in case of a notice of termination, to evaluate which shall be less burdensome to the employee – by suspending the continuous home office work only to travel from country side to the place of work for a day in order for the employer to hand over the notice of termination, or instead, choose the option of electronic communication – and thereafter decide on the proper form and way of communication.





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If there is a dispute between the parties as to whether an electronic document is considered to be written or whether it has been served, it is for the declaring party, in this case the employer, to bear the burden of proof and the adverse consequences of any failure to do so.



The good news is that, due to the principles on the taking of evidence, courts can form an opinion on the electronic document involved in a given case, and even an e-mail or a text message can have probative value.

However, it is not yet possible to rely on widespread judicial practice in relation to electronic legal declarations and serving thereof, which in any case calls for caution on the part of the employers, even in view of the current changed circumstances. This is due, on the one hand, to the expectation of having formal documents and declarations made appropriately, and, on the other hand, the challenges and expectations arising from the COVID-19 epidemic (e.g. as few face-to-face meetings as possible).



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