

New trends in case law – employee dismissal due to absence from work 3/24/25

An employee's absence from work can be grounds for termination of the employment contract. But what happens if the employer has not specified a particular place of work? Could this affect the termination? The case law (20 May 2025) provides answers that help clarify the nuances of the dismissal process in such a case.

Under Section 101, Paragraph One, Clause 1 of the Labour Law (LL), a significant breach of the employment contract or work regulations without a justified reason may serve as grounds for termination. Consequently, one might assume that an employee's absence from work could automatically be considered a sufficient reason for termination. However, the legal instruments set out in the Labour Law and case law have been refined to establish certainty based on specific criteria, preventing arbitrary dismissals.

Some context leading up to the 20 May 2025 ruling

Under the criteria established in case law (Judgment of 9 November 2012, in Case No. SKC-1275/2012; Judgment of 20 December 2016, in Case No. SKC-2241/2016), it is not sufficient to merely establish the fact of the employee's absence. To terminate a contract based on a serious breach, it is necessary to establish that:

- a. The procedure established in the employment contract or employment documents has been violated;
- b. There is no justified reason; and
- c. The breach is significant — the employee's actions have caused or could have caused losses to the employer, disrupted the normal workflow, or led to other negative consequences.

Therefore, the failure to specify the workplace may potentially affect the identification of criteria (1) and (2). This aspect is particularly important in light of the ruling dated 20 May 2025.

Findings of the 20 May 2025 ruling

Under Section 40 of the Labour Law, an employment contract may provide for several places of work, and this was precisely the case in the judgement. The employment contract contained a clause allowing the work to be performed in different locations, but no specific location was specified. In practice, such conditions are not uncommon in employment contracts.

The court found that in such cases, the employer is obliged to indicate the actual place of work clearly, comprehensibly and in good time so that the employee knows when and where to report for work. The employer can communicate this either in writing or by technical means, including telephone communication. Furthermore, this information must be provided in good time before the start of work.

Furthermore, the court pointed out that if an employee is absent from work for an extended period, the employer has the right to determine which specific case of absence constitutes a serious breach of the employment contract.

The conclusion is that if the employer has not specified a specific place of work or has not done so in good time before the start of work, this may affect the employer's right to give notice of termination. Under such circumstances, the requirement that the condition must be included in the employment documents

(criterion a)) may not be met, or the employee's absence may be justified (criterion b)), as the employee may not have known the place of work.