

RECENT ISSUES IN EMPLOYEE EVALUATION AND ITS LEGAL ASPECTS VIEWED IN THE LIGHT OF CZECH LAW

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Summary: Employee evaluation is without question among the basic tasks of human resource (HR) management. This task has proven to be essential in recent years and is a principal responsibility of each employer and his/her management. The evaluation itself serves to summarise and document the performance of an employee in the period when work was being done. It is a management tool as well as a motivation and stimulus for the development of each employee. It also serves as a means of reciprocal communication among managers and individual employees. The aim of the article below is to review the methods of evaluation, taking into account industrial legislation of selected issues in the Czech body of law.

Key words: human resources management, employee evaluation, motivation, remuneration, Labour code.

Introduction

Business entities have encountered increasingly greater complications in recent years with regards to maintaining their position on the market. They must constantly create new ideas and adapt to the increasingly more dynamic market conditions. The quality of management of a given organisation and its prosperity is primarily

determined by professional marketing, effective management style, use of modern technology, etc. However, the effective use of human potential, which is at present in somewhat short supply, plays a significant role. For this reason, every firm spends a not inconsiderable amount on investment in human resources (HR), as well as on the evaluation of individuals and groups. The evaluation of employees is among the most sensitive topics when working with people. Its interconnection with financial reward and motivation form a cornerstone of organisations both in the public and private sector. The authors of this article aim to elucidate the issue of HR activities in the evaluation of employees with an emphasis on individual methods of evaluation and selected aspects of Czech industrial legislation related to the topic. In the Czech Republic, the key piece of industrial legislation is Act No. 262/2006 Coll. the Labour Code, as amended (hereinafter referred to as the “Labour Code”), which is in relation *lex specialis* to the principle private-law code – Act No. 89/2012 Coll. the Civil Code. Given the incredibly wide nature of the topic, it is unfortunately impossible to touch upon all aspects of the selected material. Therefore, we will focus on the most fundamental.

1. Employee evaluation and its relation to other HR activities

We rank employee evaluation among the key staff-management tasks. Its purpose is to summarise and document the performance of a given employee in a past period. It is a tool for management, motivation and the development of staff. It is also a tool to support their performance, to correct undesirable behaviour and a means of reciprocal communication between a manager and an employee and, finally, a source of inspiration.

The process of employee evaluation has nine phases, which Josef Koubek (Koubek, 2011) analyses in detail within three stages: preparatory stage (four phase); material and information obtainment stage (two phases); work performance information evaluation stage (three phases).

If we summarise the opinions and findings that are connected to the process of employee evaluation, we can conclude that its main function is to monitor and assess the performance of employees, both in how they fulfil their work duties that stem from the requirements of a given job and in their work and social behaviour; knowledge or skills, and treatment of their colleagues, clients and customers. Employee evaluation is thus used to determine the potential of employees, to monitor their performance and is intimately entwined with the system of remuneration, development and career management.

Employee evaluation is interconnected with a spectrum of other specific HR activities. These are in particular:

- a. remuneration of employees: evaluation is undeniably one of the basic

tools of managing remuneration; the transparency of remuneration and its objectivity can be improved with the introduction of the process (Armstrong, 2009); though the body of law of the Czech Republic does not allow an employer to reduce an employee's basic payment based on employee evaluation, especially a negative one, a so-called variable component may be agreed to within the total remuneration, within which the employer may provide his/her assessment about the employee; in the public sphere the law itself even mentions this evaluation, when it implements the personal bonus in the provision of Sec. 13 of the Labour Code— employees that attain very good results or fulfil a greater range of work tasks than other employees may receive from the employer a personal bonus up to 50% of the salary scale of the highest pay grade within the pay class in which the employee falls.

- b. personnel planning; especially from the perspective of internal mobility, staff may be transferred to other positions, relocated for career advancement or from possible fluctuation, etc.;
- c. recruiting and selecting staff; the issue of suitability of methods used for selecting staff, transparency or objectivity of the evaluation process may influence “the reputation” or appeal of the employer; good and bad work performance may indicate the good or bad work of the HR unit, etc.;
- d. education and development; e.g. inadequate work performance may signal the need to address this matter through further education of the given employee, or contrarily the high-quality work performance may signal the employee's further latent potential, which would be appropriate to conceptually develop and improve; primarily based on the regular evaluation of the employee's performance and his/her overall competence, it is possible to plan his/her education and development. Let us add to this that the employee has under the law a responsibility to deepen his/her qualifications in order to perform the agreed work, and the employer may especially require participation in training or studies (Sec. 230 para. 1 of the Labour Code) from an employee in order to deepen a qualification. This participation is thus considered the performance of work, for which the employee is entitled to a salary or wage (based on the position of the employee). The costs of this training will be covered by the employer (Sec. 230 para. 1 of the Labour Code).
- e. employee care, employment relationships; for the reason of safety requiring a level of evaluation of employees to be informed about the process, principles and rules of evaluation affecting a specialist organisation, together with trade unions to resolve or even improve labour and social conditions;
- f. area of the HR information system; HR work may result in an incorrect

decision, e.g. in selection, education or dismissal of employees, based on distorted or incomplete information; poor work performance may be determined by incorrect conclusions from the analysis of a workplace, by incorrect information in terms of personnel planning.

2. Current methods and forms of evaluation of employees in light of recent legislation

We may at present encounter a whole range of methods for evaluating employees. These methods are based on various perspectives or regulations, which use different rules and criteria for evaluation. Each method has its pros and cons. We may thus divide the methods of evaluation, for example, in terms of their focus, the areas evaluated or their timeframe. An employee encounters the first evaluation at the moment when he/she applies for a job. Czech legislation, with exceptions, leaves the selection of employees up to the employer, who may request in this phase details that are directly related to entering an employment contract (Sec. 30 para. 2 the Labour Code).

During an evaluation, the employer is required to abide by the principle of equal treatment and the prohibition against discrimination. According to valid Czech legislation, it in fact holds that employers are required to ensure equal treatment to all employees, as far as it concerns work conditions, remuneration for work and providing other monetary payments and performance of monetary value, qualified preparation and the opportunity to achieve functional or other processes in employment. From the wording of the legal provision, it can be presumed that the employer may not discriminate against individual employees or establish discriminatory criteria during an evaluation. “The regulation of equal treatment of employees and the prohibition against discrimination elaborates on equality in dignity and rights under Art. 1 of the Charter of Basic Rights and Freedoms” as an integral part of the Czech constitutional order. Special legislation, namely Act No. 198/2009 on Equal Treatment and on Remedies for the Protection against Discrimination and on Amendment of Certain Acts, as amended, generally called the Antidiscrimination Act then builds on the legislation of the Charter of Basic Rights and Freedoms. It incorporates, among other things, the relevant legislation of the European Community and focuses on issues of the right to equal treatment and the prohibition of discrimination in all employment matters, service relations and other dependent activities, including remuneration [Sec. 1 para. 1 line c)] that are related to employee evaluation.

As stated above, informal or non-systematic evaluation is evaluation of a more spontaneous, operational and everyday nature, mainly influenced by the subjective approach of the evaluator. Therefore, it is usually not recorded in writing and only very rarely does it lead to a definite HR decision.

It can be generally stated that an evaluation system is intimately connected

above all to its form. From this point of view, we can distinguish between informal and formal evaluation. Informal (ongoing) evaluation is regularly done more at random or as circumstances require or as a part of the everyday superior–subordinate relationship, without clearly pre-defined processes, criteria or methods. It is mainly informal in nature and done orally. If we turn to formal evaluation, we have in mind evaluation that is done at regular periods or under pre-defined circumstances (e.g. when transferring an employee, during sudden or significant changes in an employee's performance, or the quality or quantity of his/her work). And it is done in writing. Another definite form of this systematic formal evaluation is the so-called critical incident evaluation. This evaluation is most often done upon an employee's request for a work assessment or if they request this HR measure within their career.

The regular written formal evaluation is clearly the more acceptable form for the need to deal with HR matters and adopting adequate measures since this systematic and periodic evaluation process is considered as a modern and effective means, even though we may regard it as somewhat bureaucratic. The relevant documents, based on employees' personal files, are mainly acquired in this evaluation. A formal evaluation is measured not only on grading the work performance achieved and its other aspects, but it regularly focuses on the future possibilities as well. Among the basic characteristics of this evaluation are especially rationality, standardisation, periodicity, planning and systemisation (Koubek, 2011, p. 124).

In addition, Koubek states that the advantages of regular formal evaluation include, for example, the fact that the employer "gets to know and rates the employee in a comprehensive manner and in terms of an overview of knowledge, skills and other qualities; he/she better identifies, appreciates and/or develops the employee's strength and also identifies his/her weaknesses, enabling their effective remedying; it better enables identification of the need for education and developmental potential of an employee and his/her suitability for doing more demanding work and systematically directs the employee's attention on performance, etc." (Koubek, 2011, p. 124). There are many specific methods of evaluation, and the majority of them have their own additional contingencies. Given the subject of this article, it is not necessary to comprehensively deal with methods of evaluation in terms of their frequency and breadth. Therefore, we present those methods frequently given in academic literature as the most used in practice.

If we group evaluation methods by time horizons, we may, according to František Hroník, divide them into methods focused on the past – directed mainly at what happened; focused on the present – methods focused on evaluating the current situation; focused on the future – methods directed at a definite prediction of what may happen.

An employee undergoes the first formal evaluation at the end of the trial period. In the Czech body of law, the trial period means a fixed period of employment from its onset up to usually the third or, in some cases, sixth month, during which both participants of the legal relationship, i.e. both the employer and the employee, have

the possibility to assess whether they are interested in continuing the employment. If they are not, the Labour Code allows them to immediately terminate the employment without penalties (The legislation mentions terminating employment in the trial period in Sec. 66 of the Labour Code.) However, the trial period is not stipulated by law, but the parties must arrange it in writing in the employment contract or other document, at the latest on the day that was agreed as the day of starting work. It may be arranged by the third month from entering employment, or by the sixth month for management. However, the trial period is not allowed to be, in any case, longer than half of the agreed employment period (Labour Code, Sec. 35). As Vysokajová (2012) states, Czech employment legislation allows for the negotiation of a trial period with each employee. No type of employees are disadvantaged in this way.

At present, we may come across the claim that, although a successful organisation is immediately measured by results achieved, level of services provides, etc., we primarily regard the competence of the employees, which are viewed as an aggregate of their own work performance (human work) being attained and employees' potential delivered (work human resources) as its foundation. Irena Wagnerová (2008), for example, defines the term competence as the desirable status of development of employment prerequisites (work suitability and qualifications) in a given work category and under specific work conditions. Another possible division of methods is the evaluation of competencies or work performance.

The choice of the specific form and method of evaluation must always correspond to the nature of the situation and the conditions of the organisation in which the evaluation is done. It is generally recommended to always choose one main method and then one or more supplementary methods.

3. The person of the evaluator; principles of delivering evaluation results

The evaluator should be the most suitable person. The most suitable person can usually be considered the direct superior who knows not only the tasks of the specific position, the work conditions and/or their possible influence on work, but also knows the actual employee, his/her personality and/or ability, and frequently his/her background. However, different individuals may do the evaluation, e.g.:

- a. self-evaluation;
- b. evaluation of an external client; it is done in written form, using a standard evaluation form;
- c. evaluation of employees and managers of their internal "clients", i.e. employees of the organisation who use the outcomes for their work; this is a specific form of feedback;

- d. evaluation of employees by their mentors, experienced staff who are responsible for the adaptive process in the organisation.

Individual employees must be informed about the evaluation results, become familiar with them and have the opportunity to comment on them. This right of the employee is reflected in the Czech labour law as well. When finishing a contract, be it full-time, part-time, casual or short-term, the employer has an obligation to issue to the employee a confirmation of employment and to state in this confirmation, among other things, the qualification attained. This information must be in the confirmation, and the employer may not arrange to omit this information from the confirmation (Bělina, 2015).

In addition, an employee may ask the employer to issue a work assessment, and the employer is required to do so in 15 days, even if the request for the assessment was made after the completion of employment. According to the practice of the Czech Supreme Court, it is in fact applicable that “the employer is required to issue to the employee at his/her request an assessment of work activities (work assessment), even if the employee requests the assessment after the termination of his/her employment, unless the employee’s conduct constitutes an abuse of the law.” (Ruling of the Supreme Court of CR from 22nd April 2003, file no. 21 Cdo 1893/2002). The employer provides an evaluation of the employee’s work, his/her qualification, ability and other facts relevant to his/her work performance in the work assessment. At the time when new employers often require a reference from their job applicants, a work assessment may contain decisive information. The Labour Code in fact prohibits the employer requesting, without the applicant’s consent, information other than what may be contained in the work assessment (Sec. 314 Labour Code). Given the significance of the work assessment, as well as the fact that the term “assessment” implies that it contains subjective evaluations, this document may be the subject of a judicial review. If the employer does not agree with the content of the work assessment (or the confirmation of employment), he/she may, within 3 months of learning the assessment’s content, file a complaint with the court to have the employer adequately adjust this assessment.

The evaluation interview, which is a significant component of every evaluation system, is considered the most widely and frequently used form of discussing evaluation results. The evaluation interview may be considered the centre of gravity of official and formal evaluation of an employee, not only from the perspective of his/her performance, but also from the perspective of his/her education, of further development and of overall motivation. This interview essentially represents the conclusion of the evaluation process, which should always aim to achieve definite mutual agreement between the evaluator and the evaluated. It is a component of performance management and, as such, enables the channelling of efforts and personal development of staff. It forms a part of the periodic systematic evaluation. One of the elementary conditions for carrying out a successful evaluation interview is its careful preparation. Preparation of the interview is an important phase because

an interview may be an unpleasant experience both for the evaluated and the evaluator when there is insufficient preparation. The personality of the evaluator and his/her objective approach play an important role in an employee evaluation, but many aspects of evaluated work performance cannot be objectively measured. It is possible in the evaluation process to commit a number of errors that may result in the reduced effectivity of this HR activity or, in the case of actually significant shortcomings, this process may have a negative effect in the management of work performance. Knowledge of possible errors is incredibly beneficial, especially for the reason of prevention. An evaluator may also make a fundamental error in his/her subsequent approach to the evaluated person, who appealed against the evaluation result because he/she has the feeling that the evaluation does not reflect the objective reality. It may happen here that the evaluated is disadvantaged on the part of the evaluator just because it may happen that the evaluated person is disadvantaged by the evaluator precisely because he/she exercised his/her right or demanded “the capacity to have and apply his own opinion”.

Nor can we omit the fact that the employees' evaluation process is not allowed to contravene the applicable laws and human rights, that it is essential to exclude any elements of discrimination from it and everything unrelated to the work performed. It is necessary to respect certain other key legislation governing the conditions of equal access and equal treatment of employees or the prohibition of their discrimination as has been indicated above.

Conclusion

If the system of evaluation is correctly set, this system may be a valuable tool and a kind of aid, especially for remunerating employees. The results of the evaluation may both be reflected in the variable component of pay and influence the amount of the basic pay grade, amount of bonus, etc. The overall evaluation should comprehensively help with a fairer and more motivating payment for work performed and with greater motivation. Legislation, as has been indicated above, governs not only certain crucial milestones in evaluating employees but also the formal approaches that are direct employee evaluation (e.g. work assessment), or indirect (payment increase). Legislation currently aims at the objective approach outweighing the subjective in evaluation and ensuring against discrimination of employees during evaluation.

The selected academic literature shows that the system of evaluation, education, development and remuneration together constitute the whole motivation system. Furthermore, evaluation itself has a definite central role since its outputs should be reflected in the systems of education, development and remuneration of employees. From our research, which was not specifically focussed on the given issue, it emerges, however, that the regular evaluation of employees in the branch of accommodation, boarding and hospitality obviously often has a more formal than formalised character.

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Streszczenie: Ocena pracowników jest bez wątpienia jednym z podstawowych zadań zarządzania zasobami ludzkimi (HR). Zadanie to okazało się w ostatnich latach niezbędne i jest głównym obowiązkiem każdego pracodawcy. Sama ocena służy podsumowaniu i udokumentowaniu wyników pracy pracownika w okresie jej wykonywania. Stanowi to narzędzie zarządzania, a także motywację do rozwoju pracownika. Służy również jako środek wzajemnej komunikacji między menedżerami i pracownikami poszczególnych szczebli. Celem poniższego artykułu jest dokonanie przeglądu metod oceny z uwzględnieniem prawa przemysłowego wybranych zagadnień prawa czeskiego.

Słowa kluczowe: zarządzanie zasobami ludzkimi, ocena pracowników, motywacja, wynagrodzenia, Kodeks pracy.