within the EEA or to or from third countries if the employment agreement is established under and governed by the national law of an EEA State.
2. No assessment of the intensity of the work performed while travelling is required.

ECJ 2 September 2021, case C-350/20 (INPS en de maternité pour les titulaires de permis unique), Social Insurance, Work and Residence Permit

OD and Others – v – Istituto nazionale della previdenza sociale (INPS)

Summary

Third-country nationals with a single work permit obtained in Italy are entitled to childbirth and maternity allowances.

Question

Must Article 12(1)(e) of Directive 2011/98 be interpreted as precluding national legislation which excludes the third-country nationals referred to in Article 3(1)(b) and (c) of that directive from entitlement to a childbirth allowance and a maternity allowance provided for by that legislation?

Ruling

Article 12(1)(e) of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State must be interpreted as precluding national legislation which excludes the third-country nationals referred to in Article 3(1)(b) and (c) of that directive from entitlement to a childbirth allowance and a maternity allowance provided for by that legislation.

ECJ 9 September 2021, case C-107/19 (Dopravní podnik hl. m. Prahy), Working Time

XR – v – Dopravní podnik hl. m. Prahy, akciová společnost, Czech case

Summary

A stand-by shift with a required response within two minutes makes a break qualify as working time.

Questions

1. Must Article 2 of Directive 2003/88 must be interpreted as meaning that the break granted to a worker during his or her daily working time, during which the worker must be ready to respond to a call-out within a time limit of two minutes if necessary, must be classified as 'working time' or as a 'rest period', within the meaning of that provision, and whether the occasional and unpredictable nature and the frequency of call-outs during those breaks have a bearing on that classification.
2. Must the principle of primacy of EU law be interpreted as precluding a national court, ruling following the setting aside of its decision by a higher court, from being bound, in accordance with national procedural law, by the legal rulings of that higher court, where those rulings are not compatible with EU law.

Ruling

1. Article 2 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working times must be interpreted as meaning that the break granted to a worker during his or her daily working time, during which the worker must be ready to respond to a call-out within a time limit of two minutes if necessary, constitutes 'working time' within the meaning of that provision, where it is apparent from an overall assessment of all the relevant circumstances that the limitations imposed on that worker are such as to affect objectively and very significantly the worker's ability to manage freely the time during which his or her professional services are not required and to devote that time to his or her own interests.

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2. The principle of primacy of EU law must be interpreted as precluding a national court, ruling following the setting aside of its judgment by a higher court, from being bound, in accordance with national procedural law, by the legal rulings of that higher court, where those assessments are not compatible with EU law.

ECJ 15 July 2021, joined cases C-152/50 and C-218/20 (SC Gruber Logistics), Applicable Law

DG, EH – v – SC Gruber Logistics SRL (C-152/20) and Sindicatul Lucrătorilor din Transporturi, DT – v – SC Samidani Trans SRL (C-218/20), Romanian cases

Summary

If parties choose the applicable law pursuant to Article 8(1) of the Rome I Regulation, the objectively applicable law (ex Article 8(2-4) does not apply with the exception of 'provisions that cannot be derogated from by agreement'. Moreover, the choice for the applicable law must be free, but is considered to be made freely even if the employee merely accepts a clause drafted by the employer.

Questions

1. Must Article 8 of the Rome I Regulation be interpreted as meaning that, where the law governing the individual employment contract has been chosen by the parties to that contract, and that law differs from the law applicable pursuant to paragraphs 2, 3 or 4 of that article, whether the application of the latter law must be excluded and, if so, to what extent?
2. Must Article 8 of the Rome I Regulation be interpreted as meaning that:
    1. first, the parties to an individual employment contract are to be regarded as being free to choose the law applicable to that contract even if a national provision requires the inclusion in that contract of a clause under which the contractual provisions are supplemented by national labour law and
    2. secondly, the parties to an individual employment contract are to be regarded as being free to choose the law applicable to that contract even if the contractual clause concerning that choice is drafted by the employer, with the employee merely accepting it?

Ruling

1. Article 8(1) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as meaning that, where the law governing the individual employment contract has been chosen by the parties to that contract, and that law differs from the law applicable pursuant to paragraphs 2, 3 or 4 of that article, the application of the latter law must be excluded with the exception of 'provisions that cannot be derogated from by agreement' under that law within the meaning of Article 8(1) of that regulation, provisions that can, in principle, include rules on the minimum wage.
2. Article 8 of Regulation No 593/2008 must be interpreted as meaning that:
    1. first, the parties to an individual employment contract are to be regarded as being free to choose the law applicable to that contract even if the contractual provisions are supplemented by national labour law pursuant to a national provision, provided that the national provision in question does not require the parties to choose national law as the law applicable to the contract, and
    2. secondly, the parties to an individual employment contract are to be regarded as being, in principle, free to choose the law applicable to that contract even if the contractual clause concerning that choice is drafted by the employer, with the employee merely accepting it.

ECJ 16 September 2021, case C-410/19 (The Software Incubator Ltd), Miscellaneous

The Software Incubator Ltd – v – Computer Associates (UK) Ltd, UK Case

Summary

The concept of 'sale of goods' referred to in the self-employed commercial agents directive covers the supply of licensed computer software.

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