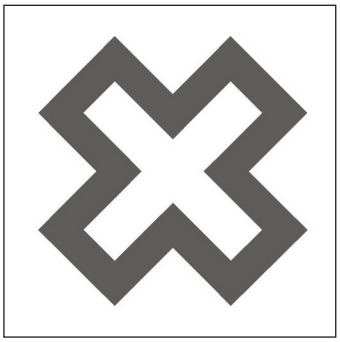
newsletter
labour and employment law
WARDYŃSKI & PARTNERS
04-06/2017

I Changes in law

Employment of temporary workers

On 1 June 2017, the Act Amending the Act on Employment of Temporary Workers and Certain Other Acts entered into force. It introduced a number of changes, in particular, those relating to a temporary work agency, but also imposed new obligations on employers-users.



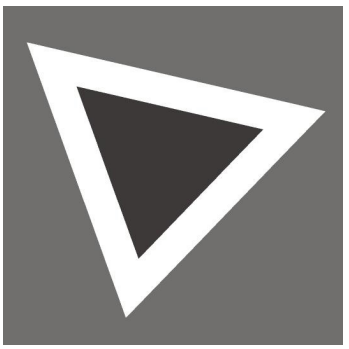
Employers-users are required to keep records of persons performing temporary work under employment and civil law contracts. The amendment provides also for the extension of information obligations of an employer-user in relation to a temporary work agency, including the obligation to immediately inform the agency in writing of a change of internal regulations on the remuneration of employees and to communicate the content of such regulations at agency request. Employers-users should also inform the agency in writing that no circumstances stipulated in the act exist, which would prevent performance of work by a temporary user.

Other changes include the introduction of detailed principles of payment and calculation of equivalents in lieu of holiday leave and elimination of the possibility to entrust temporary workers with work that requires the arming of a worker.

The changes also concern calculation of the limits of temporary work for the same employer-user. From now on, they will be established with respect to the employer-user, regardless of whether the worker is assigned to this work by one or more agencies during the entire period of its performance. Furthermore, in order to prevent circumvention of provisions relating to the maximum period of work for the same employer-user, temporary work agencies are required to provide information on each employer-user for whom a worker has worked under an employment contract and periods of performance of such work in a work certificate issued to a temporary worker.

The act also states that principles set forth in Art. 177 par. 3 of the Labour Code relating to extended duration of an employment contract up to the date of childbirth apply

to female temporary workers having a total temporary work assignment period by a given agency under an employment contract of at least two months.



Harsher penalties for non-respect of provisions relating to temporary work have been imposed. Among others, a fine of up to PLN 100,000 was introduced for providing temporary work services or job matching assistance for persons assigned to work abroad at foreign employers without being entered in the register of employment agencies, as required.

List of tasks that are prohibited for pregnant and breast-feeding women

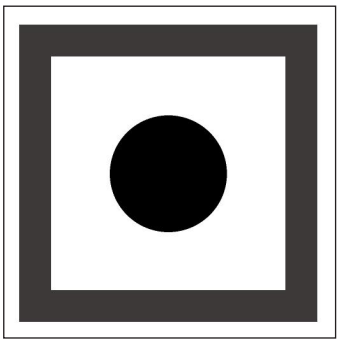
On 1 May 2017, a list of tasks that are burdensome, dangerous or harmful to the health of women who are pregnant or breast-feeding a child entered into force (Regulation of the Council of Ministers dated 3 April 2017, Journal of Laws, item 796). This change requires updating of internal regulations of employers.

Compared to the existing binding regulation on tasks that are burdensome or harmful to the health of women dated 10 September 1996, crucial changes addressed work by pregnant women in positions equipped with an electronic visual display. According to the current list, pregnant women in such positions may work up to 8 hours a day, while at least a 10-minute break should follow work with an electronic visual display every 50 minutes. This counts as work time and does not have to be time off from work, only a break from work with an electronic visual display.

Work certificates

As of the 1 June, the issue of work certificates covered in a Regulation of the Minister of Family, Work and Social Policy dated 30 December 2016 (Journal of Laws, item 2292) was subject to change. In addition to the above change on issuing work certificates to temporary workers, deadlines associated with amendments to work certificates in case of lawsuits regarding rectification of a work certificate or termination of employment being allowed by a labour court were extended from 3 to 7 days. The regulation was also supplemented with provisions on amendment and issue of new work certificates in case of in-court settlements being concluded in such cases.

The work certificate template was also modified.



The Social Security Institution will issue a decision determining the remitter of contributions

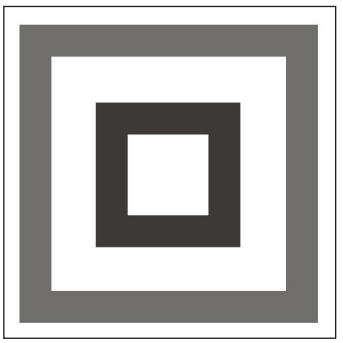
Since the 13 June 2017, the Social Security Institution (ZUS) is authorised to determine the remitter of social security contributions by means of an administrative decision (Art. 83 par. 1 pt. 1a of the Social Security System Act). If an SSI inspector concludes that the remitter of contributions should be an entity other than that which actually registered the insured persons for social security within the framework of a conducted investigation or audit, , the ZUS may issue a decision establishing the remitter, which is addressed to the entity registering the insured persons for social security as well as the remitter of contributions determined in this decision. In practice, such a situation may arise, for example, if the ZUS concludes that persons employed at one entity actually work for another entity, thus, the latter should pay appropriate contributions. Previously, such conclusions required two different decisions – one for the entity that registered insured persons for social security and one for the entity identified as the remitter. The ZUS decision acknowledged overpayment of contributions by the entity that actually paid contributions, whereas the second entity became responsible for overdue contributions.

Art. 38a of the Social Security System Act, as an amendment, states that if it is confirmed that the contribution remitter is the entity determined by the ZUS due to a decision determining the remitter becoming final, contributions that were unduly paid by the entity that initially registered the insured persons for the period indicated in the decision will be ex officio set off against contributions due from the remitter determined in the ZUS decision. Furthermore, the ZUS will ex officio draw up documents for this remitter that are associated with social security provided in the Act for the period indicated in the decision.

II Work in progress...

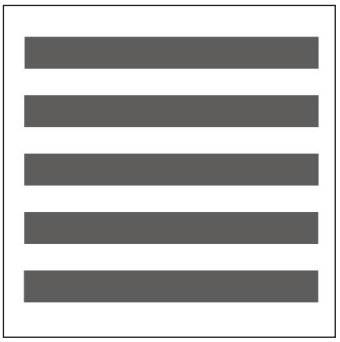
Seasonal and short-term work of foreigners

On 20 June 2017, after a second reading in parliament, the Bill on Amending the Act on Promotion of Employment and Labour Market Institutions and Certain Other Acts was sent to a parliamentary committee for further elaboration (Sejm paper no. 1494). The bill addresses the issue of access by citizens of all countries outside the EU and EEA to seasonal and short-term work in Poland and is aimed at adapting national law to a EU directive on conditions of entry and stay of third-country (non-EU) nationals for the purpose of employment as seasonal workers.



Authors of the bill assume that new regulations will become effective as of 1 January 2018, whereas there will be a transitional period until the end of 2018 for work based on previously registered declarations , also for seasonal work.

Minimum remuneration in 2018



At a meeting on 6 June 2017, the Council of Ministers adopted a proposal, according to which minimum remuneration for work in 2018 shall be PLN 2,080 gross. This means an increase of 4% (PLN 80) in comparison to 2017. If minimum remuneration is set in the amount proposed by the government, the minimum hourly rate for persons employed under civil law contracts in 2018 will be PLN 13.50.

The government's proposal will now be presented to the Council of Social Dialogue, while a final decision on minimum remuneration in 2018 may be expected in September 2017.

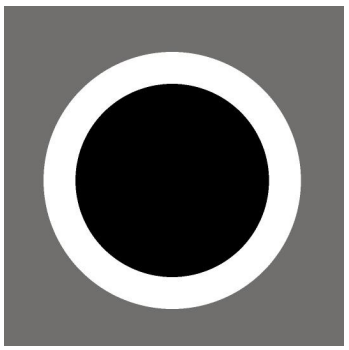
Presidential Bill on Amendment of the Labour Code

In June 2017, the Presidential Bill on Amendment of the Labour Code and Certain Other Acts (Sejm paper no. 1653) was sent to work in parliament. The amendments in the bill are based on an analysis of complaints addressed to the President and essentially cover the following areas: parenthood-related rights of employees – other immediate family members, discrimination, mobbing and issue of work certificates.

The bill provides that employees – other family members on maternity or parental leave will be covered by special protection of continuity of employment and will be granted

rights analogous to those already possessed by parents on such leave.

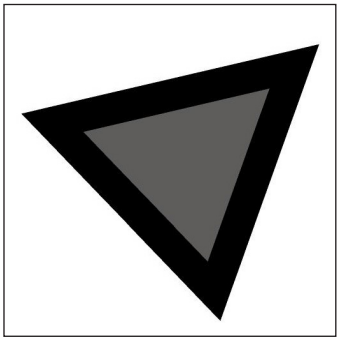
As for discrimination, the bill seeks to ensure that any unequal treatment of employees for no objectively justified reason shall be deemed discrimination, regardless of discrimination criteria.



The bill also provides an explicit indication in the Labour Code that an employee may claim compensation for being subjected to mobbing, regardless of terminated employment.

Changes in the issue of work certificates provide that deadlines by which employees may raise claims concerning rectification of work certificates shall be extended to 14 days and – in certain cases – allow employees to demand a judgment in court that substitutes a work certificate.

III From the courtroom



At times it may be necessary to inform the employer of intent to seek additional employment –Supreme Court ruling dated 19 January 2017 (I PK 33/ 16)

Failure to inform an employer of additional activity – though not competitive toward the employer – may in certain cases justify termination of employment without notice.

According to facts of the case through which this judgment was rendered, an employer providing brokerage services ordered its employees in internal "Regulations on preventing conflicts of interests associated with additional professional activity of employees" to report intent to seek additional work. The plaintiff failed to comply with this obligation, even though he set up a company in the course of employment in which he assumed the function of management board chairman. This failure was the reason why his employer delivered a statement to the employee on termination of employment due to a serious breach of basic employee duties.

Courts of both instances that heard the employee's appeal against termination of employment, as well as the Supreme Court itself, found this termination justified. The Supreme Court concluded that regulations on prevention of conflicts of interests are a collective instruction concerning work that is justified by the particular nature of employer

activity and therefore legal. In such a situation, conscious failure to provide the employer required information was reasonably deemed a serious breach of basic employee duties justifying termination of employment.

It is possible to terminate a trade union activist who committed a crime –Supreme Court ruling dated 11 April 2017 (I PK 142/16)

Protection of trade union activists against termination of employment raises many doubts, both in theory and practice. Under Polish law, the system of protecting trade union activists is very broad, but not absolute – as already stated earlier in case-law.

This was also confirmed by the Supreme Court in its ruling dated 11 April 2017 (I PK 142/16). The court stated that termination of employment without trade union consent of a doctor and – at the same time – trade union activist, who was convicted for committing a series of intentional crimes against patients, is not contrary to the law. Trade union protection in such situation would be contrary to its aim and public policy, as trade union protection cannot favour an employee without justification.

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