MASTERS OF EMPLOYMENT LAW

We are pleased to inform you that we have begun enrolment for the second edition of the School for Employment Law Masters, **a unique training programme conducted by Poland's best employment law experts**. Should you have any questions or wish to enroll, please contact: office@raczkowski.eu.

THURSDAY BREAKFASTS

We look forward to seeing you at our Thursday Breakfasts, free workshops dedicated to practical aspects of employment law. At the upcoming meeting we are going to discuss the issue of **"Employee dismissal: prevention as the best way to avoid litigations"**. The meeting will be held on **26 March 2015** in our Warsaw office. There is a limited number of places available. If you wish to enroll, please contact: office@raczkowski.eu.

CHANGES IN LEGISLATION

Compensation and damages exempt from tax

On 4 October 2014, an amendment to the Personal Income Tax Act took effect. Pursuant to amended Article 21 sec. 1.3 of the Act, the personal income tax exemption applies not only to damages or compensation whose amount or rules for determination follow directly from provisions of separate acts or implementing regulations issued thereunder but also to damages or compensation whose amount or rules for determination result directly from provisions of collective labour agreements or other collective arrangements, regulations or statutes based on the Act, as referred to in Article 9 §1 of the Labour Code. Additionally, it is worth noting that the exemption was not applicable and still does not apply to severance pays and compensations for shorter notice periods specified in the employment law, severance money paid under provisions on specific rules for termination of employment with staff for reasons not attributable to employees and damages awarded under regulations on prohibition of competition, damages resulting from contracts made or settlements other than made in court.

Payments dedicated to protect workplaces

1 February 2015 marks the entry into force of a regulation by the Minister of Labour and Social Policy of 29 January 2015 on granting

EVENTS

31 March, 2015

10 MOST SIGNIFICANT JUDICIAL DECISIONS, KATOWICE

A unique training programme held by attorneys and legal counsels, who are considered leading specialists in Poland on labour law.

March, 2015

EXPERT ADVICE

One-day trainings for whom employment law becomes necessary as a tool in their everyday work. The training is conducted by advocate Piotr Wojciechowski - former Labour Inspector and Deputy Director of the

payments to protect jobs (Journal of Laws of 2015, item 167). The regulation was issued under Article 17 of the Act of 11 October 2013 on specific solutions intended to protect jobs (Journal of Laws of 2013, item 1291). The regulation defines template documents for granting payments to protect jobs funded from the Guaranteed Employee Benefits Fund (GEBF). The regulation provides that an entrepreneur, within max. 30 days of receipt of funds from the GEBF, shall return the difference between the amount of funds received and the amount spent for the aforesaid purposes to GEBF account from which the funds were paid, and submits a list of employees eligible to GEBF payments to the Province Marshall with confirmation of payment receipt, or submits certified copies of payment confirmations.

Minimum wage for a foreigner and a residence permit

23 January 2015 is the effective date of the Regulation of the Minister of Internal Affairs of 10 December 2014 concerning the amount of minimum wage required to grant a temporary residence permit to a foreigner to perform work requiring high qualifications. The amount of such minimum wage is PLN 5,475.09.

Initial medical examination not always required

1 April 2015 is the planned date of entry into force of the Act on Facilitation of Business Activity providing for the possibility to employ a person on the basis of a valid medical certificate issued during employment with the previous employer.

To use this possibility, it will be necessary that:
- the conditions of work in the new position (the new employing establishment) correspond to those which the medical certificate issued for the previous employer applied to, and also
- the employee starts the new job within 30 days of discontinuing work for the previous employer.

If this is the case, the new employer will not be obliged to refer the employee for initial medical examination prior to admittance to work.

The possibility can also be applied in a situation where the previous employer re-employs a staff member within 30 days of the end of the previous employment to perform the same or other type of work, provided that the conditions of the other work correspond to those in which the staff member worked previously.

Legal Department of State Labour Inspectorate.

To obtain more information, please contact:
office@raczkowski.eu

DRAFT AMENDMENTS TO LEGAL ACTS

New rules for specific-term employment

Works are in progress over the draft amendment to the Labour Code concerning in particular conclusion and termination of specific-term employment contracts.

The amendment assumes, inter alia, the restriction of the possibility to enter into specific-term contracts not only in terms of the number of such contracts but also of their duration. Pursuant to the amended Article 25(1) § 1 of the Labour Code:

- the period of employment under a specific-term contract of employment and the overall period of employment under subsequent specific-term contracts concluded by the same parties cannot be longer than 33 months,
- and also no more than three such specific-term contracts can be concluded altogether by the same parties; the fourth contract would, by operation of law, be considered a contract for indefinite term.

The proposed changes also apply to termination of specific-term contracts. The draft provides that the periods of termination notice would depend on the length of service, just as in the case of indefinite term contracts.

Additionally, the amendment applies to the types of contracts of employment, the reasons for employing staff under contracts for a trial period (the employer would be entitled to enter into another contract of this type with an employee provided that another type of work is offered to the employee), and release from the obligation to work during the termination notice period subject to the right to receive remuneration.

The work on the draft is currently at the stage of public consultations.

Compensation for work on days off work

MPs have presented a draft amendment to the Labour Code regulations concerning compensation for work on days off work resulting from the work schedule in an average five-day working week (form No 2777). The proposed solution is that if no day off work can be given in return, the employer can compensate for such work with an allowance in the amount stipulated in Article 151(1) §1.1 of the Labour Code (i.e., a 100% allowance) per each hour of work on a day off work. This form of compensation can also be used where the employee has applied for payment of an allowance in place of a day off work. Currently, the same possibility exists only with respect to work on Sundays and statutory holidays (Art. 151(11) § 3 of the Labour Code). The proposed change is intended to unify the regulations in this respect.

The draft is currently at the stage of social consultations.

More rights for parents

The President has prepared a draft pro-family act which is to protect parents taking child care leaves against employment contract termination. The document is currently subject to public consultations.

The draft provides that a parent who exercises all the rights and entitlements related to having a child will be protected against dismissal for as long as 40 months. The current period of such protection is maximum 33 months.

The draft also provides for changes to the length of maternity and parental leaves. The parental leave would be 32 weeks (compared to 26 weeks at the moment). Moreover, if a parent decides to combine the parental leave and work, the period during which they can use the leave would be longer. Consequently, also the period of special employment protection for the parent resulting from taking the leave would be extended. No such mechanism is envisaged in the legal regulations currently in force.

Inspection without warning

The MPs filed a draft amendment to the Freedom of Business Activity Act ("the Act"), which provides in

particular for cancellation of the obligation for the State Labour Inspection to warn the employer of a planned inspection. The current Act provides for the rules of notifying the entrepreneur of the intended inspection by the inspection authority. The inspection is made no earlier than upon the lapse of 7 days and no later than 30 days from the date of delivery of a notification of an intended inspection. If an inspection is not commenced within 30 days of delivery of said notification, another notification must be made for the inspection to occur. The Act provides for numerous exceptions from this rule.

THE MOST INTERESTING JUDICAL DECISIONS

The Employer not to be bound by prohibition of competition after transfer of the employing establishment

A new employer who takes over an establishment with personnel employed shall not be bound by non-competition agreements concluded with the staff by the previous employer, even if such a clause was part of the contract of employment. This standpoint was expressed by the Supreme Court in the judgment of 11 February 2015, file I PK 123/14. So far it was considered that a non-competition agreement after termination of employment was of mixed nature, i.e., by function it related to employment, while at the same time, to some extent, it was specific for a contract regulated by the provisions of the civil code. Since it was considered that the "employment" component of the agreement was important, it was assumed, also out of caution, that upon takeover of the employing establishment, non-competition agreements following employment termination were taken over as well. The Supreme Court held that it could not be considered that a new employer acquires also the obligations under the non-competition agreements upon takeover of the employing establishment together with workers in accordance with the provisions of Article 231 of the Labour Code. This follows from the fact that the employing establishment takeover by another employer involves the employment commitments only, and not the anti-competition agreements. An anti-competition agreement is separate from the employment contract and it does not matter that the parties resolved to include it in the same document as the contract of employment.

A foreign trade union to assist posted workers

Poles sent to work abroad may rely on assistance provided by local unions. They are also entitled to be paid the minimum wage as specified in the collective agreements for a given industry. Such was the standpoint expressed by the European Court of Justice in the judgment of 12 February 2015, Case No C-396/13. The Court held that no reasons existed why a foreign trade union should not represent posted workers in their fight for remuneration. The Court further held that it was not only the general provisions but also sector-specific collective agreements that were applicable to the minimum rates of pay to posted workers. Moreover, the Court pointed out that the minimum wage also encompassed an allowance specific to the posting.

Social criterion not to be recognized when awarding payments from the Company Social Benefits Fund

The notion of social activity of the employer, within the meaning of provisions of the Act on Company Social Benefits Fund, is not equivalent to the social activity under the public law and broader as regards the obligation to satisfy the employee's social needs as referred to in Article 16 and Article 94.8 of the Labour Code, and it must not be manifested with respect to an individual staff member only, but also to an increased number of eligible parties, which in a specific situation, taking into account the nature of the service or payment financed from the Fund, may put in doubt the purpose of application of the social criteria mentioned in Article 8 sec. 1 of the Act. Deviation from the said criteria for awarding payments from the Fund should, however, be of exceptional nature and convincingly justified by the circumstances of a case. This standpoint was expressed by the Supreme Court in the judgment of 10 July 2014, file II UK 472/13.