



Ius Laboris Poland Global HR Lawyers

Raczkowski

PRO HR

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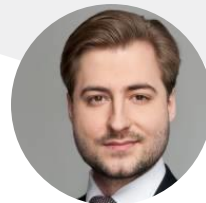
TOPIC 1

End of ban on additional employment

As of 26 April 2023, employers will not be able to prohibit their employees from additional employment (including that based on civil-law contracts). This is a result of the implementation of Work-Life Balance Directives.

Such a ban has often been used by employers. However, the change does not mean that employers' hands are tied. The ban on additional employment is still possible, but limited to competitive employment. You need to sign non-compete agreements for the duration of the employment relationship. The employee's refusal to sign such an agreement justifies termination.

In addition, it is worth reviewing and updating conflict of interest procedures. For additional employment in the case of such conflict may violate the good of the work establishment and justify sanctions, if any (such as termination of a disloyal employee).



Piotr Graczyk
Senior Lawyer



TOPIC 2

Shortening the period for taking paternity leave

On 26 April 2023, an amendment to the Labour Code implementing the EU Work-Life Balance Directive will come into force. One of the changes is the shortening of the period for taking paternity leave. According to the new regulations, an employee being a father raising a child is entitled to paternity leave for no longer, however, than until the child turns 12 months old or until the expiration of 12 months from the date on which the decision declaring the adoption of the child becomes final, and no longer than until the child turns 14 years old. Previously, an employee-father could take additional leave up to the 24th month of the child's life or 24 months from the date the decision declaring the adoption of the child became final. The length of paternity leave remains unchanged at 2 weeks, which can be taken once or in no more than two parts. However, one part must not be shorter than one week. The employee should submit the application no later than 7 days prior to the scheduled commencement of the leave. The employer is obliged to grant leave on the date indicated by the employee.

Employees who are fathers raising a child who, on the effective date of the amendment, are entitled to paternity leave under the previous rules may take the additional leave no longer than until the child turns 24 months old or 14 years old, provided that 24 months have not passed from the date on which the decision declaring the adoption of that child became final.



Anna Bloch-Kurzyńska
Lawyer



TOPIC 3

Shorter, 7-day deadline for appealing certain decisions of the Border Guard Commander-in-Chief; changes in deadlines for stays in Poland



Agnieszka Szymańska
Immigration Consultant



As of 7 April, there is a shorter, 7-day deadline for appealing against decisions of the Border Guard Commander-in-Chief regarding:

- issuance and revocation of a permit for tolerated stay or stay for humanitarian reasons, as well as documents related to this type of stay;
- decisions to expel and oblige a foreigner to return, the deadline for voluntary departure and the ban on re-entry.

The following periods have been increased:

- the deadline for voluntary departure - from 15 to 30 days to 8 to 30 days;
- the maximum period of the ban on re-entry - from 5 to 10 years, with the possibility of extension for another 5 years;
- the maximum length of a foreigner's stay in detention - from 12 to 18 months.

At the same time, the regulation extending the time limit for obliging a foreigner to return (and in some other cases) is repealed in the case of appealing the decision to the court and filing a request to suspend the execution of the decision.

In addition, the act extends the possibility of issuing a Polish travel document to, among others, foreigners who have a temporary residence permit, satisfy the given conditions and have a specified citizenship.

A regulation will also expand the catalogue of acceptable certificates confirming the knowledge of the Polish language, necessary in the procedure for obtaining a residence permit for a long-term EU resident.

The amendment also refers to the so-called Special Ukrainian Act by allowing Ukrainian citizens to download, store and present an electronic document in the mObywatel app containing the child's data, if the PESEL of the legal guardian is included with it.

TOPIC 4

It will be possible to extend a probationary employment contract by vacation time and other excused absences from work



Katarzyna Soboń
Advocate



Such a possibility is provided by a recent amendment to the Labour Code. Previous regulations did not provide for this possibility. If an employee became ill during the probationary period and did not work, the employer had no real possibility to check his or her qualifications and skills.

The arrangement regarding the extension of the contract will have to be incorporated into the probationary employment contract. Introducing such an arrangement into a contract already at the contracting stage can create room for abuse by employees. It is not difficult to imagine a situation in which an employee at the end of the probationary period "escapes" on long-term sick leave, while staying on payroll and blocking the job. This is especially possible if the employee already knows that the next contract will not be concluded with him or her. He or she has nothing to lose then.

There is no obstacle to adding such a provision to the contract by an annex, after the absence has actually occurred. This is certainly safer for employers and fulfils the actual purpose of the provision.

TOPIC 5

More changes are coming: EU Pay Transparency Directive

On 30 March the European Parliament adopted a directive on pay transparency. It still has to go through a further legislative path before it enters into force.

The directive's provisions are aimed at enforcing gender pay equality (including the rights of non-binary people) in member states and preventing a wage gap.

The directive will impose new obligations on employers, such as the requirement to report the wage gap. Employees will have greater access to salary information, and salary information will have to be provided already at the recruitment stage.



Natalia Krzyżankiewicz
Lawyer



TOPIC 6

Whistleblower under protection despite disclosure of documents subject to professional secrecy



Ewelina Rutkowska Ph.D
Lawyer



The European Court of Human Rights in the *Halet v. Luxembourg* judgment ruled that there had been a violation of the freedom of expression of a whistleblower who disclosed documents subject to the auditor's professional secrecy to the media.

The case pertained to the high-profile "LuxLeaks" scandal. The complainant was an employee of a well-known international consulting firm. As a result of his actions, the tax returns of the employer's clients were made public. He wanted to draw public attention to the tax optimizations of large companies and the favourable disposition of Luxembourg's tax authorities.

The (former) employee was validly convicted in criminal proceedings before national courts for theft and violation of legally protected secrecy laws. The ECtHR, however, found the disclosure of the case in the media acceptable given the importance of the report and the public interest in obtaining information about tax schemes. The Court confirmed that the conviction of the whistleblower had a "chilling effect" and violated the rights of the complainant, who acted in good faith.

The ruling is another step toward strengthening the protection for whistleblowers. Although the provisions of the Whistleblower Protection Directive have still not been implemented in Poland (the deadline for implementation passed in December 2021) employers are not exempt from the obligation to provide a work environment free of abuse, which implies the requirement to account for any irregularities in the organization.

Raczkowski Top Tier employment law firm in LEGAL 500 ranking

Heads of practice:

- Bartłomiej Raczkowski,
- Dominika Dorre Kolasa,
- Łukasz Kuczkowski

and

- Katarzyna Dobkowska,
- Dr Iwona Jaroszevska-Ignatowska.,
- Katarzyna Serwińska,
- Janusz Tomczak
- Michalina Kaczmarczyk

individually ranked.

Bartłomiej Raczkowski Top Tier and Hall of fame lawyer The Legal 500 EMEA 2023.

Raczkowski white-collar crime practice Top Tier.

- Janusz Tomczak,
- Łukasz Kuczkowski,
- Damian Tokarczyk
- Ewelina Rutkowska

individually ranked.

Janusz Tomczak ranked in Leading Individuals as well. The Legal 500 EMEA 2023

Thank you to Clients and Peers for their support and feedback!



Raczkowski Law Firm once again ranked the best law firm in Poland in the Chambers and Partners Europe 2023 ranking!

We are in Band 1 position in the “Employment” category.

Our Partners received distinctions in the Employment & White-Collar Crime category of the Chambers and Partners Europe 2023 ranking

Individual nominations in the Employment category went to:

- Bartłomiej Raczkowski – Band 1
- Iwona Jaroszewska-Ignatowska Ph.D – Band 3
- Katarzyna Dobkowska – Band 4

and

- Janusz Tomczak is a recommended lawyer in the White-Collar Crime category – Band 2.

Special thanks for this award go to our clients. We have been supporting and building awareness in employee relations for 15 years.

We are a People & Culture law firm. This is because we understand - like no one to date - the role and the importance of the employee to the organization.

Thanks to you, we are invariably seen as an extremely responsive and pragmatic team. Your positive feedback allows us to change for the better and maintain the strong status of our brand.

Thank you for your trust and appreciation. We look forward to continuing to work with you and wish both ourselves and our clients continued success.



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