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TOPICS

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TRADE UNIONS CAN GO TO COURT TO REVOKE ANTI-MOBGING POLICY

The Supreme Court so ruled in the judgment of 19 March 2024 (III PSKP 8/23). The demand for revocation can be made, for example, on the grounds that the policy conflicts with the law. The Supreme Court also confirmed that the current provisions of Polish law do not impose an obligation on employers to establish such a policy, although they should counteract mobbing (which the Labour Code obliges them to do), in particular by training employees, informing them of the danger and consequences of mobbing, or using procedures to detect and put an end to it.

The judgment does not imply an obligation on the part of the employer to consult or agree on an anti-mobbing procedure with the trade unions or other employee representation. This, however, may change once the whistleblower protection act comes into effect.



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WHISTLEBLOWER PROTECTION TO BE ENACTED STILL THIS YEAR. REPORTS ON EMPLOYMENT LAW VIOLATIONS AND CORRUPTION COVERED BY PROTECTION

After more than two years of work, the government has approved a bill of the whistleblower protection act, which may be enacted in the coming months.



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Employers with more than 50 employees will have 3 months to implement procedures and measures for protection of whistleblowers reporting violations of the law in more than a dozen areas.

The EU Whistleblower Protection Directive imposes an obligation to protect whistleblowers in areas such as [personal data protection, privacy, fair competition or consumer rights, among others. The latest bill of the act implementing the directive in Poland has significantly expanded this catalogue to include labour law violations, corruption, human trafficking and even human and civil liberties and rights.

This is a huge change that means a whistleblower will be able to report all violations of the broader HR law. In addition, the procedures already in place at many companies for reporting incidents of, for example, mobbing will have to be revised to comply with the "EU" whistleblower protection system. The same will apply to reports of violations of working time, occupational safety and health regulations, parental rights and any other employment-related issues. The proposed law will also strengthen the protection for whistleblowers reporting corruption cases, including conflicts of interest and abuse of power.

A whistleblower can be anyone who provides, has provided or was to provide work or services under any contract. The protection will include a prohibition on termination of contracts and deterioration of the whistleblower's working conditions, as long as the reason was the whistleblower's report, but also a prohibition on holding the whistleblower liable on disciplinary, civil or criminal grounds for violation of trade secrets or defamation. The only condition for such protection will be the good faith of the whistleblower - that is, the belief that the report being made was genuine.

Employers need to start preparing internal policies and the organizational structure of the division that accepts reports and conducts internal investigation procedures already now. A three-month implementation period is the minimum time to establish an effective procedure and train the workforce.

IF DIGITAL PLATFORMS EXERCISE CONTROL OVER CERTAIN ELEMENTS OF WORK PERFORMANCE, WE WILL HAVE A PRESUMPTION OF EMPLOYMENT

The directive on improving working conditions through online platforms sets forth criteria indicating when a digital labour platform should be considered to control the performance of work, and the fulfilment of at least two of the following five criteria results in a presumption of an employment relationship:

- setting salary caps,
- undertaking to comply with binding rules regarding the appearance or performance of work,
- supervising the performance of work or verifying its quality,
- restricting the freedom to organize work (including in terms of choosing working hours, periods of absence, accepting and rejecting tasks),
- restricting the possibility to expand the customer base or perform work for third parties.

It will be possible to rebut such a presumption, but the burden of proving the absence of an employment relationship will be on the digital labour platform.

The EU directive will apply to digital platforms, regardless of where they operate, if work through them is performed in the EU.

Once the directive enters into force (which should happen in the coming months), Poland will have two years to implement it.



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EQUALITY AND INCLUSION ALSO FOR NEURODIVERSITY

Employers managing diversity often focus on the so-called primary identity of employees. They support diversity and inclusiveness in terms of gender, age, nationality, race, etc. These are important activities. However, the diversity of these characteristics does not always guarantee the so-called cognitive (cognitive) diversity associated with different thinking styles and different experiences. For example, employees of different genders may have similar education, professional experience, etc., making their thinking styles fairly homogeneous.

However, it is the differing viewpoints, thinking styles and experiences that translate into out-of-the-box solutions, breaking patterns, new perspectives, creativity and innovation. In this context, we often speak about non-neuronormative workers. They are able, for example, to see certain details, patterns or repetitive regularities where neurotypical people do not see them. They are also often characterized by creativity and the ability to find out-of-the-box solutions (so-called thinking outside the box).

Building a cognitively diverse team is not easy. It requires specialized knowledge, careful observation and, most often, also psychological tests showing how team members approach problems, make decisions, etc. Cognitively diverse teams also need the right leader so that strengths are not overshadowed by challenges (e.g., decision-making difficulties, relational conflicts).

VALIDITY OF DISABILITY CERTIFICATES AND DISABILITY LEVEL CERTIFICATES EXTENDED UNTIL 30 SEPTEMBER 2024



Monika Czekanowicz
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Disability certificates and disability level certificates of which:

1. the validity period would have expired by 5 August 2023 (the so-called "covid" certificates, which were extended during the Covid-19 epidemic), and
2. the validity period expired after 5 August 2023 and before 30 September 2024

remain valid until 30 September 2024, unless a new disability certificate or a new disability level certificate issued earlier becomes final.

Employers should verify the employment rate of people with disabilities - application of the extension to certificates that expired during the above period restores their validity.



Anna Nowak
Lawyer

THE GOVERNMENT HAS APPROVED THE "ACTIVE PARENT" BILL, WHICH PROVIDES THREE NEW BENEFITS FOR PARENTS OF YOUNG CHILDREN

The bill of the act law on supporting parents in labour activity and child rearing, "Active Parent," adopted by the Council of Ministers on 9 April 2024, aims to support parents of children of nursery age by allowing them to take advantage of one of three new benefits:

1. "active parents at work" (the so-called granny allowance)

The benefit will be PLN 1,500 per month (PLN 1,900 per month for children with disabilities). Parents of children 12 months and older who are professionally active and entrust the care of the child to a nanny or grandmother, among others, will be eligible to receive this benefit for up to 24 months.

2. "actively in the nursery"

This benefit will be directed to parents of children who attend a nursery, children's club or day care provider. The benefit will be up to PLN 1,500 per month (up to PLN 1,900 per month for children with disabilities). However, the benefit will not be allowed to exceed the amount the parents pay for their child's stay in a child care facility.

This benefit will be available until the end of the school year in which the child turns 3.

3. "actively at home"

The last benefit will be for parents who have decided to stay at home to care for a child between the age of 12 and 35 months and are not professionally active.

The "actively at home" benefit will amount to PLN 500 per month and will be payable on analogous terms to the current family care capital. The only key difference will be the possibility to receive the benefit for each child, including the first and only one.

It will be possible to change (even repeatedly) a given benefit for another depending on the individual situation of the family. However, only one benefit will be allowed for the same child, for the month.

According to the bill, parents will be able to take advantage of the new solutions as of 1 October 2024.

REPROTOXIC SUBSTANCES - NEW OBLIGATIONS FOR EMPLOYERS

Work is underway to implement Directive (EU) 2022/431 of the European Parliament and the Council of 9 March 2022, extending worker protection to include reprotoxic substances, i.e. substances that cause infertility, miscarriage or foetal malformation.

Reprotoxic substances include:

1. inorganic lead and its compounds,
2. N,N-dimethylacetamide,
3. nitrobenzene,
4. N,N-dimethylformamide,
5. 2-methoxyethanol,
6. 2-methoxyethyl acetate,
7. 2-ethoxyethanol,
8. 2-ethoxyethyl acetate,
9. 1-methyl-2-pyrrolidone,
10. mercury and inorganic divalent mercury compounds, including mercuric oxide and mercuric chloride (measured as mercury),
11. bisphenol A; 4,4'-izopropylidene diphenol,
12. carbon monoxide.

It will be the employer's duty to take into account reprotoxic substances in the tests and measurements of factors harmful to health in the working environment, periodic training of exposed employees or keeping a register of work whose performance makes it necessary to be in contact with these substances.

The deadline for implementing the directive was 5 April 2024.



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PLANNED EXTENSION OF THE RIGHT OF RESIDENCE OF UKRAINIAN CITIZENS UNTIL 30 SEPTEMBER 2025, AND THE POSSIBILITY OF SUBMITTING RESIDENCE APPLICATIONS BY NON-WORKING FAMILY MEMBERS

If the amendment enters into force Ukrainian citizens will be able to continue their stay in the territory of the Republic of Poland until 30 September 2025, based on their current status and enjoy the privileges and benefits granted to them by the provisions of the special act. The extension of the right of residence for a further period will remain in effect despite the expiration of EU temporary protection, which will take place on 4 March 2025.

Another proposed change is to allow non-working family members of Ukrainian citizens to apply for temporary residency for up to 3 years. For the time being, the change applies to family members of Ukrainian citizens who reside in Poland on the basis of, among other things, a residence permit for the purpose of working in a highly skilled occupation (EU Blue Card) and a permanent residence permit. The amendment does not apply to family members of Ukrainians residing in Poland on the basis of a temporary residence and work permit. Until now, only citizens of Ukraine enjoying temporary protection in Poland could apply for temporary residence in Poland, if the purpose of their stay in Poland is to perform work, perform work in a highly qualified profession (Blue Card) or conduct business. The new regulations will allow another group of Ukrainian citizens to submit a residency application.

An important change will also be the possibility to extend the right of residence of Ukrainian citizens by submitting a simplified residence application electronically. Obtaining a residence permit in this manner will allow access to the market without a work permit and guarantee the possibility of setting up a sole proprietorship.

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