



Ius Laboris Poland Global HR Lawyers

Raczkowski

PRO HR

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INSIGHTS

TOPIC 1

New rules of traveller location

As of 17 July 2021 all persons arriving in Poland by plane, before clearance must first fill out what is known as a Traveller Location Card. This Card may be filled out in electronic or hardcopy form.

The data on the Card are conveyed to the State Sanitary Inspectorate. Collecting data is supposed to limit the spread of the coronavirus. If an infected person is on board a given plane, this Card will make it possible to reach all of the passengers traveling by that plane quickly.

We would remind you that limitations are still in force when it comes to crossing the Polish frontiers. According to the general rules, after crossing the border one should undergo a 10-day quarantine in the designated place of residence. The following persons do not have to undergo a quarantine:

- people who have been fully vaccinated with one of the vaccines approved for use in the EU at least 14 days prior to crossing the Polish frontier;
- people who have completed isolation on account of COVID-19 no longer than 6 months prior to crossing the border;
- people who are returning to Poland from another Schengen country and have a negative test result concerning the presence of COVID-19 performed within 48 hours prior to crossing the border, counting from the moment of obtaining the test result.

In every one of these instances, persons crossing the border are obligated to present a document confirming their quarantine exemption to the Border Guard officer.



Michał Kacprzyk, PhD.
Attorney-at-law



Jan Pietruczuk
Immigration Consultant



TOPIC 2

Incorrect outsourcing is even riskier

All ostensible actions taken in business entail legal risks. This also pertains to using employee outsourcing. Until now, the main risks associated with ostensible outsourcing were linked to employee claims, problems posed by the ZUS Social Insurance Institution or the State Labor Inspection Service.

The recent judgment handed down by the District Court in Zduńska Wola on 27 February 2020 shows that the dangers do not end there.

The District Court examined a case in which as a result of the ostensible transfer of a work establishment, one company rendered services to another company with the intermediation of the acquired employees.

The companies executed an agreement to transfer all of the employees and then a service provision agreement was executed. In practice, the employees continued to do what they had done up until then, under the same management, albeit not on the basis of a direct employment relationship but with the intermediation of their new employer.

The District Court ruled that the service agreement was invalid. It challenged the invoices issued by the new employer for the activities performed by its employees. It ruled that the transfer had not taken place and therefore the invoices had been issued groundlessly.

The District Court ruled that the representative of the service recipient (i.e. the original employer) was guilty, among other things, of providing untrue data in tax declarations and causing a risk of VAT tax receivables being reduced and of keeping account ledgers inaccurately, and for that it punished that person with a fine of PLN 9,600.



Katarzyna Sarek-Sadurska
Attorney-at-law / Partner



Katarzyna Soboń
Advocate



TOPIC 3

Temporary residence permit to run a business becomes more accessible to participants in the program entitled *Poland. Business Harbour*



Marta Dudczak
Attorney-at-law trainee



This facility follows from the government's bill concerning the Act of 8 March 2021 on Amending the Act on Foreigners and Some Other Acts. This bill is in the process of agreement, undergoing opinions and public consultations.

This bill calls for modifying the requirements for giving a temporary residence permit to run a business to participants of the support program for foreigners to set up and run a business in Poland. This business activity must be conducted on the basis of an entry into CEIDG, the Central Business Records and Information Service.

According to this bill, obtaining a permit will not depend on demonstrating the fulfilment of the business profitability requirements by the applicant or its favourable impact on the Polish economy. Foreigners will still have to prove that they hold health insurance, a stable source of regular income and a place of residence in the territory of Poland.

The support programs whose participants will be able to obtain a permit following simplified rules are to be defined in a regulation issued by the minister with jurisdiction over economic affairs. However, the justification for this bill has already identified the connection between the proposed modification and a program already in existence, namely Poland. Business Harbour.

The result of this change will involve facilitating the securing of a residential permit valid for three years by persons who are just starting to run a business in Poland and who as a result cannot yet demonstrate, for instance, that they earn a sufficient income.

This change will also contribute to the stability of cooperation between foreign businesses and their service providers as part of B2B contracts. In a broad sense, hiring foreigners in Poland is legal if they have legal grounds for their residence. Obtaining a residence permit will enable its holder to stay longer in Poland than a domestic visa, which is issued for a period of up to one year.

TOPIC 4

Impact exerted on holiday leave by changing working time during a calendar year

Employers frequently grapple with the problem of calculating the length of holiday leave for an employee whose working time has been reduced during a year.

The regulations of the Labor Code do not directly regulate how holiday leave should be calculated in such a situation. It seems that it would be expedient to draw on the rule for pro rata holiday leave referred to in Article 155(1) of the Labor Code. This regulation defines the rules for splitting holiday leave between a current and new employer in the event of termination of employment during a calendar year.

Similarly, the application of the pro rata rule means that holiday leave should be calculated separately for individual parts of the year and then the results should be totalled. The number of days of holiday leave to which an employee has obtained the right by working for a given portion of a full-time equivalent (FTE) should be calculated in this way.

The calendar month corresponds to 1/12 of the portion of the holiday leave due to an employee. Another problem emerges when the portion of an FTE changes in the course of a month. In that case employers should give consideration to embracing one of three solutions:

- setting the amount of holiday leave for that month pro rata to the portion of the FTE according to which the employee works for the bulk of that month;
- counting the month in which the portion of an FTE changes as belonging to the period from prior to the change of the portion of the FTE;
- using the portion of an employee's FTE in force on the first day of the month in which the portion of that employee's FTE is changed.



Natalia Łokińska
Advocate



TOPIC 5

Letter of intent versus a preliminary employment contract

If a letter of intent is signed by both parties to a future agreement and if it contains all of the material elements of employment and designates the deadline for entering into an employment contract, it may be treated as a preliminary employment contract.

In that case each of the parties may insist on the execution of the final employment contract.

In principle, a preliminary employment contract may be executed in any form.



Nicole Gerwat
LL.M. / Attorney-at-law



TOPIC 6

Obligation to notify data subjects of a breach of personal data protection

A controller must promptly notify persons of a breach of their personal data protection if their data is subject to a breach if an incident could cause a high risk of violating their rights or freedoms.

The notification of the data subjects must include, among other things, a description of the possible consequences of violating data protection and the means applied and proposed by the controller to remedy a breach.

In addition, the occurrence of an incident triggers the controller's duties involving the submission of a notification on the breach to the President of the Personal Data Protection Office and recording the incident in the internal records of breaches.

Since a duty of notifying data subjects of an incident only takes place when the risk of violating their rights or freedoms is high, it is necessary to conduct a thorough risk evaluation in each instance.

We recommend the implementation of procedures on how to proceed in the event of a breach of data protection. A properly designed procedure will make it possible to define the level of risk of breaching the rights and freedoms of natural persons and undertake the commensurate actions. As a consequence, the probability of imposing a cash fine on the controller will be mitigated.



Kinga Ciosk
Paralegal



TOPIC 7

The Polish Governance programme – Draft amendments to the laws on income taxes and health insurance laws have been published in the scope of tax and health insurance burdens for employed persons and entrepreneurs

The following changes are the most crucial from HR perspective:

1. **Raising the tax-free income to PLN 30 thousand** per year for taxpayers whose income is subject to progressive taxation. Individual entrepreneurs who pay 19% flat rate tax will not be entitled to use the tax-free income.
2. **Raising the tax threshold to PLN 120 thousand** which means that only income exceeding this threshold will be taxed at 32%; also in the case of individual entrepreneurs whose income is subject to progressive taxation.
3. Introducing tax relief for employees earning income from employment relationship in the amount of PLN 68,412 to PLN 133,692 per year. The relief, deductible from pre-tax income, is intended to ensure that the changes introduced by the Polish Governance will be financially neutral for employees earning income in the above-mentioned bracket. The relief will not be available to employees receiving income subject to 50% tax deductible costs applicable to the exercise of copyrights by authors and related rights by performers.
4. No tax deductibility of health insurance contributions. This change is to affect all insured persons.
5. Persons performing functions on the basis of an appointment and receiving remuneration on this account - e.g. members of the management board who are remunerated on the basis of a resolution of the supervisory board or the shareholders' meeting - are to be subject to compulsory health insurance. The health insurance contribution will amount to 9% of their income.



Katarzyna Serwińska
Tax Advisor / Partner



Tomasz Kret
Senior Lawyer



The Polish Governance programme – Draft amendments to the laws on income taxes and health insurance laws have been published in the scope of tax and health insurance burdens for employed persons and entrepreneurs

6. The health insurance contributions for entrepreneurs are to be calculated based on their income from business activity (after deduction of social insurance contributions paid), with the reservation that the contribution assessment basis cannot be lower than the minimum remuneration as of January of a given year.

In the case of entrepreneurs paying lump-sum tax, the basis for the assessment of the health insurance contribution is to be their monthly revenue from business activity less the amount of paid social insurance contributions. The amount of the contribution is to be 1/3 of the applicable lump-sum tax rate.

7. PLN 250 per month will be the value of a taxable revenue of an employee using a company car for private purposes if the car is an electric or hydrogen one or is powered by a classic engine with a power output not exceeding 50 kW. For other cars, the value of revenue will be PLN 400 per month.
8. Income of illegally employed persons is to be free of tax, where “illegally employed” should be understood as the ones whose employer has not confirmed in writing, within the required time limit, the type of agreement concluded and its conditions. Social security contributions for such persons are to be financed entirely by the payers. This is to encourage those working illegally to report this fact to the relevant authorities.

An employer who uses work of illegally employed person will be obliged to recognize additional revenue in the amount of the minimum remuneration for work plus the remuneration paid to that person; however, that remuneration will not be qualified as deductible cost for the employer.

9. Under certain conditions, persons who transfer their tax residence to Poland and, as a consequence, will be subject to unlimited tax liability here, will be entitled in their tax returns to deduct 50% of the total amount of tax due calculated in accordance with the tax scale or a flat rate. This may apply, inter alia, to expatriates transferring their place of residence to Poland in connection with their assignments to Poland.
10. The rates of lump-sum income tax on income from certain types of business activity will be reduced, e.g.: healthcare services, architectural services, engineering services, software package publishing and consultancy regarding computer hardware.

The above amendments to the legislation are currently subject to public consultations. It should therefore be expected that at least some of the above may still be amended in the course of legislative process.

INSIGHTS

Compliance Day 2021

23 September

The 5th edition of Compliance Day will be held in a hybrid format.

It will be devoted to the topic of HR compliance whistleblowing through the eyes of HR.

Programme and registration coming soon.

10th Edition of the Employment MasterClass | The registration is open

7 October – 3 December

Do you want to broaden your knowledge and skills in HR law?

We do not teach law. We teach to use it as a tool to solve legal problems in HR. To be a Master of employment MasterClass is not only to know the rules, but also to apply them in practice.

Program and registration [LINK](#)

10 Decisions Series

We have completed our video series of the 10 most important HR law decisions of the Supreme Court handed down in 2020, which were discussed in detail at this year's 10 Decisions Conference.

Watch them on our channel on YouTube [LINK](#)

Who's Who Legal 2021 Ranking

For the consecutive year, Bartłomiej Raczkowski has been recognised as a Global Leader in labour and employment, pension and benefits, as well as corporate immigration, in addition to being ranked as a Thought Leader in labour and employment

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PRO HR Library | Employees' parents' entitlements

In the newest publication "Employees' parents' entitlements " by Iwona Jaroszewska-Ignatowska and Zuzanna Rosner-Laskorzyńska published by Wolters Kluwer the authors comprehensively discuss HR processes important for an employee-parent such as - recruitment, remote work or returning to work after parental leave. The publication also contains a database of templates related to the exercise of parental rights.

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