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# TOPICS

Best practices – Affirmative action in companies

If the court orders a dismissed employee to be employed for the duration of the trial and then the employer wins the case he cannot claim the wages back

Employer will not recover erroneously overpaid benefits

Pay Transparency Directive – you need to prepare already now

Increase in the charge for the Company Employee Benefits Fund (ZFSS) to PLN 2,417.14

Minimum pay threshold for Blue Card applicants increases to PLN 10,733.22

## BEST PRACTICES – AFFIRMATIVE ACTION IN COMPANIES

Diversity, Equity & Inclusion programs are growing in importance. With that said, employers are generally more cautious about "hard" affirmative action (e.g. promotion based on ethnicity), and place more emphasis on measures such as, for example, implementing supportive initiatives for the general workforce (increasing safety and psychological well-being at work), eliminating biases (training, policies), organizing mentoring programs and employee diversity and exchange groups, and increasing corporate social responsibility initiatives.

Tips on how to create a DE&I environment: identify the needs of employees and groups in need of DEI activities, link DEI values to HR processes, build awareness of DEI, and actively engage managers and P&C teams.



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### **IF THE COURT ORDERS A DISMISSED EMPLOYEE TO BE EMPLOYED FOR THE DURATION OF THE TRIAL AND THEN THE EMPLOYER WINS THE CASE HE CANNOT CLAIM THE WAGES BACK**

If the employer has fired a protected employee, the court may order that the employee be employed until the trial is complete. However, for all employees (protected and unprotected), if the court of first instance reinstates an employee, it can order that the employee be employed until the final conclusion of the proceedings.

Thus, it may be that the employer hires the dismissed employee during the trial or between instances, and then wins the trial. However, even a win does not give it the basis to claim back the wages paid.

This is because the employee performed work from which the employer benefited. There is no way to reimburse him or her for this time or the benefits that the employer gained through it. Therefore, there is no basis for claiming back the wages or other work-related benefits granted during this period.

If the employer does not have the option to assign the employee to his or her current job and decides to pay downtime wages, there are no grounds for claiming reimbursement either. An employee can claim that he or she was ready to do the work and would have taken it up if only given the opportunity.

## EMPLOYER WILL NOT RECOVER ERRONEOUSLY OVERPAID BENEFITS

Payment of wages in an inflated amount due to an employer's error does not obligate the employee to refund the overpayment. An employee who has received an overpayment has the right to believe that the employer - a professional entity - that uses "specialized services" calculating the wages is able to properly calculate the salary and therefore has paid the wages in the correct amount. Consequently, an unjustly enriched employee does not have to face the obligation to refund the overpayment received. Any deduction of this excess from the next salary is possible only with the written consent of the employee.

Similarly, if the employer-professional mistakenly approves an employee's leave at a higher rate than he or she is entitled to, and the employee has already taken this additional leave, the employer has no grounds to demand that these days be worked off or deducted from future leave.



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## PAY TRANSPARENCY DIRECTIVE – YOU NEED TO PREPARE ALREADY NOW

**Natalia Krzyżankiewicz,**  
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Member states have until 7 June 2026 to implement the Pay Transparency Directive. However, employers must not delay action. They should already be taking appropriate steps to meet the new regulations.

One of the main tenets of the Directive is for employers to have compensation systems that provide equal pay for equal work or work of equal value. Every employer should look at and revise current compensation structures, as well as value jobs. Employees will gain greater access to pay information, such as access to the criteria used to determine the pay (which must be gender-neutral), pay levels and pay progression. They will be able to request information on the salaries of employees performing the same work or work of equal value. This means defining gender-neutral criteria for raises and specific pay rates and levels for all employees. Devising a proper compensation structure will be a long-term process and it will not be a one-off task. It will be necessary to periodically verify that the system meets the requirements following from the Directive.

Another revolutionary change is the reporting of the wage gap (i.e. the difference between the average salaries of men and women). Employers should count the wage gap now to know whether they need to take corrective action. A result of at least 5% should be a warning to employers. It will then be necessary to take measures to reduce the wage gap until the directive is implemented.

The directive will also introduce new requirements for the recruitment process. Changes in this area will be inevitable. Candidates will have the right to "informed" negotiations. This means communicating the salary range or minimum salary for the offered position before the first interview (e.g. in the content of job advertisements). Questions about past salaries will be unacceptable, and job offers will have to be gender-neutral (feminitives and musculatives for the names of all jobs).

## **INCREASE IN THE CHARGE FOR THE COMPANY EMPLOYEE BENEFITS FUND (ZFŚS) TO PLN 2.417,14**



**Jan Rabczuk,**  
Lawyer

The amount of the basic charge for the social fund will be PLN 2,417.14. This represents an increase of more than PLN 500. This is a consequence of the increase in the average monthly salary in the second half of 2023 (announcement by the President of Statistics Poland on 16 February) and the unfreezing of the charge, after holding it steady for several years.

Such an increase in the charge for the Company Employee Benefit Fund means that employers establishing the fund must set aside significantly more money for this purpose. On the other hand, there will be more money in the funds' accounts this year, which opens up new possibilities for financing social activities.

Companies' expenses will also increase when they do not establish a fund, but pay vacation benefits to employees. This is because the amount of such benefit also depends on the amount of the charge.



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## **MINIMUM PAY THRESHOLD FOR BLUE CARD APPLICANTS INCREASES TO 10.733,22 ZŁ**

In 2024, foreign workers applying for a temporary residence permit to work in an occupation requiring high qualifications (Blue Card/EU Blue Card) must demonstrate that their monthly gross salary is not less than PLN 10,733.22 per month. This is an increase of PLN 1,214 compared to 2023. The new amount of the minimum wage is also applied to applications submitted in the period from 01 January 2024 to the date of the announcement of the average wage, i.e. 09 February 2024. Foreigners applying during this period should verify whether they still meet the condition of earning a sufficiently high salary. In proceedings started in 2023 we apply the 2023 amount, i.e. PLN 9,519.22.

The increase in the minimum threshold required to obtain an EU Blue Card is related to Statistics Poland's announcement of the average salary in the economy in 2023, which amounted to PLN 7,155.48. One of the conditions for applying for an EU Blue Card is to show that the foreigner earns a salary of no less than the equivalent of 150% of the amount of the average pay in the national economy in the year preceding the application.

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