



Ius Laboris Poland Global HR Lawyers

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PRO HR

TOPICS

Vaccinations for COVID-19 are voluntary. Employers cannot compel employees to be vaccinated but they do have certain obligations

Recalculating benefits in connection with reduced working time and subsidizing salaries

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Granting overdue holiday leave for 2020

Employers will be able to check their employees' sobriety

INSIGHTS / WEBINARS

TOPIC 1

Vaccinations for COVID-19 are voluntary. Employers cannot compel employees to be vaccinated but they do have certain obligations

The SARS-COV-2 virus is a biological factor that is harmful to health in the third group of risk. It may cause severe illness in people, it is dangerous and its transmission in the human population is highly probable.

The regulations obligate employers to assess the extent of exposure to biological factors in their work establishment and undertake all available means to eliminate that exposure, and if that is not possible, to curtail the extent of that exposure with the appropriate utilization of scientific and technical achievements.

Therefore, one should promptly establish what work can still be done effectively from home, and what work requires presence in the office. In the latter case, one must additionally consider whether this work is done in a manner that involves exposure to the SARS-COV-2 virus.

If so, are the means currently used to eliminate / curtail the extent of exposure to this factor sufficient, or should a recommendation be additionally given to these employees to be vaccinated, and what should be done if they refuse.

Acting not just in the interests of the employer but also in the interests of society, it is also worthwhile to consider how to encourage employees to be vaccinated, e.g. by preparing a clear message concerning these vaccinations or awarding additional benefits to encourage employees to be vaccinated.

Consideration should also be given to a new organization of work having in mind that there will be two groups of employees in the work establishment: vaccinated and unvaccinated.

Finally, the issue of collecting data about vaccination should be scrutinized. Will that be possible, and in what situations, and what changes will be necessary to the data protection documentation due to this.



Edyta Jagiełło
Attorney-at-law



TOPIC 2

Some benefits should be calculated using the former salary levels, not the reduced salary levels

In some instances, guardianship, sickness and maternity benefits should be calculated using the higher level of employee salaries, not their reduced salaries if an employer has reduced employees' working time on the basis of the Anti-Crisis Shield.

Benefits are recalculated in response to an employee's request.

However, this does not apply to all employees, but rather is only applicable if:

- working time is reduced in the period of drawing benefits; and
- there is no interruption or an interruption of less than 3 months between the periods of drawing former and current benefits.

These rules are in effect as of:

- 31 March 2020 – if Article 15g or Article 15zf of the special law is used,
- 24 June 2020 – if Article 15gb of the special law is used.

The equalization of the benefits will affect the settlement of the subsidy. For ultimately the employer will pay the employee more than shown in the settlement.



Ph.D. Iwona Jaroszevska-Ignatowska
Attorney-at-law / Partner



Natalia Basista
Advocate



TOPIC 3

There will be new opportunities to obtain support – PFR 2.0 financial shield

The Polish Development Fund (PFR) will release the long-awaited funds under the PFR 2.0 Financial Shield on top of the industrial shield that is already in force.

This programme worth up to PLN 35 billion is a continuation of the programmes available to microbusinesses, the SME sector and large entities that had been announced during the first wave of the pandemic.

Its major objective is to help companies maintain their liquidity and financial stability by providing them with funding on preferential terms, and to protect jobs.

It will be possible to submit applications for support in the cooperating banks through their electronic banking platforms. The plan is for subsidies to be disbursed from the 15th of January to the 28th of February.

The 2.0 Financial Shield targets approximately 45 of the industries that have suffered the most damage because they have had to curtail or suspend their operations due to COVID-19 restrictions.

The amount of the available subsidy for microbusinesses will depend on the size of the decline in revenue with a maximum of PLN 324 thousand. The amount of the available subsidy for SMEs will depend on their gross loss with a maximum of PLN 3.5 million.



Ph.D. Michał Kacprzyk
Attorney-at-law



TOPIC 4

The PIT-11 tax form must contain the right tax identifier

Employers are obligated to enter their employees' correct taxpayer identification number or PESEL number on this form.

Foreign employees who do not run a business and live in Poland should obtain a PESEL number, which is also used as an identification number for tax purposes. Only if the competent authority refuses to assign a PESEL number should an employee submit an application to receive a taxpayer identification number.

In practice, it rather frequently occurs that a foreigner does not manage to obtain either of these tax identifiers prior to the date of filing the PIT-11 tax form.

The Ministry of Finance takes the stance that in such an instance the employer of the foreigner should not enter a series of identical numbers (e.g. 0000000000 or 9999999999) in the field set aside for providing the taxpayer's identifier.

However, a form whose taxpayer identifier field is empty cannot be filed electronically, and that is why this solution, even though the Ministry of Finance deems it to be incorrect, may be the only way to submit the PIT-11 tax form on time.

Moreover, incorrect data in a form transmitted to the tax office may have additional consequences for an employee. For the lack of a number to identify a taxpayer unambiguously may hinder him or her from filing his or her tax declaration using the Your e-PIT service and cause difficulties when filing tax declarations using the e-Declarations system.

At the same time, we would remind you that the PIT-11 tax forms for 2020 should be filed using version number 26 of this form.



Tomasz Kret
Senior Lawyer



Adam Alkadi
Tax Advisor



TOPIC 5

Employers may unilaterally grant overdue holiday leave for 2020 to their employees

The anti-covid law allows employers to extend unused holiday leave to their employees at a time of their choosing without obtaining employee consent and regardless of the holiday leave schedule.

This right may be exercised during the epidemiological threat or during the epidemic. Employers may extend holiday leave for a maximum of 30 days under this procedure.

Since the epidemic is still in effect in Poland employers may unilaterally extend holiday leave unused in 2020 to their employees. The fact that a new calendar year has begun does not mean, however, that the 30 day limit is renewed.

Thus, it is worth checking before extending overdue holiday leave to an employee whether and if so, to what extent, an employee was “sent” to take overdue holiday leave last year.

Extending overdue holiday leave to employees without their consent was and is also possible on the basis of the regulations of the Labour Code.

The Supreme Court judgment of 24 January 2006, I PK 124/05 permits this to take place. In such an instance, however, the employer should first attempt to agree with the employee on what date or dates he or she will take overdue holiday leave. Only if an employee fails to reach an agreement may the employer unilaterally extend such holiday leave to that employee.



Wojciech Kwiatkowski
Attorney-at-law



TOPIC 6

Employers will be able to check their employees' sobriety



Kinga Ciosk
Trainee



The Ministry of Development, Labour and Technology has advised the Commissioner for Human Rights of the work being done on the bill to regulate the issue of introducing preventive employee checks to test for the presence of alcohol or substances that act similarly.

This bill is currently in the pre-legislative phase with work underway inside the ministry. The Ministry is collaborating with the Personal Data Protection Office to define the purposes for an employer to process data on the presence of alcohol or other substances.

The information the Ministry has forwarded to the Commissioner for Human Rights indicates that this law will cover two types of situations.

The first one will be to enable employers (provided that certain conditions yet to be defined are satisfied) to conduct preventive checks of employees.

Moreover, this law will specify two procedures for not allowing an employee in a state of intoxication with alcohol or some other substance to begin work during working time:

- on the basis of an employer's justified suspicion – in reference to employees who have not been checked (if an employer has not introduced such a check and if the employees do not satisfy the statutory prerequisites to be subject to such a check);
- as a result of introducing a preventive check and obtaining an outcome indicating that an employee is in a state of intoxication with alcohol or some other substance.

How the group of employees meeting the statutory prerequisites for being subject to a check will be crucial for this law. If it is defined too narrowly, then this regulation may be illusory in nature.

INSIGHTS

WEBINARS / ONLINE MEETINGS

Webinar | Employees from Ukraine in Poland, Poles in Ukraine – where to pay the taxes and where contributions?

26.01.2021 / 11-12 am

Raczkowski and VASIL KISIL & Partners (Ukraine) invite you to a common webinar, where we will discuss such issues as tax residence of Ukrainian citizens working in Poland, income taxation in Poland and Ukraine obtained by Ukrainian citizens working in Poland, controversial tax interpretations exempting Ukrainian tax residents working in Poland from Polish taxation, among others things.

Details and registration: [LINK](#)

Paperless HR | Employee e-files – how to implement it step by step

28.01.2021 / 10-11 am

There are many solutions available on the market for keeping e-files. At the next webinar, Nicole Gerwat (Raczkowski) Marcin Pichur (DocuWare Europe) and Stefan Podedworny (DocWay) will present on one of them: DocuWare.

Details and registration: [LINK](#)

PRO HR Cafe | Episode 2 | A new challenge for HR – the COVID-19 vaccine

04.02.2021 / 10-11 am

Vaccination against COVID-19 has started. What does this mean for employers?

During the second episode, Bartłomiej Raczkowski and Łukasz Kuczkowski will talk about whether it is possible to require vaccinations from employees, draw negative consequences for those refusing vaccinations, or whether vaccinated employees can be rewarded.

Details and registration: [LINK](#)

CONTEST | Who asks... may win a book on personal data protection in employment

We invite you to participate in our contest! To do this, join our new group on LinkedIn [#ProHRodo](#) and ask a question about GDPR.

The price is the "Personal Data Protection in Employment" specially signed by Ph.D. Dominika Dörre-Kolasa.

Details and regulations: [LINK](#)

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