



Ius Laboris Poland Global HR Lawyers

Raczkowski

---

# PRO HR

---

**MAY 2024**

# TOPICS

Employers who provide vocational training must adopt standards for protection of minors and vet each person who will be taking care of minors

Remote work does not relieve the employer of the obligation to make sure that there are designated first aid providers and firefighters at the workplace

Compensation for unlawful termination based on a court settlement is taxable

Let's avoid "Diversity washing." We need deep and reliable implementation of the idea of equity

There will be changes to the Personal Data Protection Office's HR and whistleblowing guides. A public consultation has been launched

There will be tightening of procedures for hiring foreigners, curbing abuses, electronization of administrative proceedings, as well as integration programmes for foreigners - there is a draft law on access to the labour market for foreigners

## **EMPLOYERS WHO PROVIDE VOCATIONAL TRAINING MUST ADOPT STANDARDS FOR PROTECTION OF MINORS AND VET EACH PERSON WHO WILL BE TAKING CARE OF MINORS**



**Damian Tokarczyk**  
Ph.D., Advocate

The amendment to the Act on the Prevention of Sexual Offenses (the so-called Kamilek Act) is a response to the numerous cases of violence (including sexual violence) against children, which have been widely publicized in the media. The act, which has already been in effect since 2017, has imposed obligations on a number of entities, including employers, to verify whether those allowed to work with children have a history of criminal convictions for crimes against life and health, sexual freedom or drug offenses. Now these obligations have been expanded.

All units organizing educational or interest development activities by minors (persons under 18) are required to implement standards for the protection of minors. This applies not only to educational institutions (school, kindergartens or universities). Educational activities are also carried out, among others, by employers offering practical vocational training (regulated by the Education Act), internships or various forms of vocational preparation. Finally, the holding of family picnics and other such events by some employers, if minors can participate, obliges them to implement standards.

Employers engaged in the business of educating and caring for minors must also vet each person who will provide such care. This applies to supervisors of training or vocational learning, supervisors or even animators. Before allowing them to do such work, the employer is obliged to check whether such a person's data appears in the Sexual Offender Register. Such individuals should also be required to submit information from the National Criminal Register regarding sexual, life and health and drug offenses, among others. Such a candidate, if not Polish, shall furthermore present a certificate from the country of his/her citizenship and from all countries where he/she has lived in the past 20 years. Finally, the candidate should submit a statement, under penalty of criminal liability, as to whether he/she has been convicted of crimes against the family and guardianship (including bigamy, abuse, inducing minor to drink alcoholic beverages).

Failure by the employer to comply with these obligations is a misdemeanour punishable by arrest, restriction of freedom or a fine from PLN 1,000 to 5,000.



**Monika Czekanowicz**  
Attorney-at-Law

---

## **REMOTE WORK DOES NOT RELIEVE THE EMPLOYER OF THE OBLIGATION TO MAKE SURE THAT THERE ARE DESIGNATED FIRST AID PROVIDERS AND FIREFIGHTERS AT THE WORKPLACE**

Remote work poses the risk of running out of designated employees at the workplace due to performing work remotely on a given day.

The employer is obliged to verify on an ongoing basis whether they are present at the workplace. It is possible to refuse to agree to perform remote work in accordance with the employee's proposal if it would mean that at least one such employee is not available at the workplace.

The employer should also be mindful of its obligation when determining the leave of designated employees or their inability to work.

## COMPENSATION FOR UNLAWFUL TERMINATION BASED ON A COURT SETTLEMENT IS TAXABLE

If an employee files a lawsuit for compensation for unlawful termination of employment and enters into a settlement with his/her former employer under which a certain amount is paid to him/her, this amount is not exempt from personal income tax.

Such conclusions are drawn from the individual tax ruling by the Director of the National Tax Administration, ref. no. 0112-KDIL2-1.4011.475.2023.1.TR.

The authority held that when the amount of compensation is determined through negotiations and mutual concessions of the parties, it cannot be assumed that its amount or rules of determination were directly derived from the provisions of separate laws or from executive regulations, administrative acts or from the provisions of collective bargaining agreements or other collective agreements, regulations or articles of association. Therefore, the exemption provided for in Article 21(1)(3) of the PIT Act does not apply to it.

The authority further held that the compensation is intended to compensate the employee not for the actual damage to his/her property, but for the benefits lost as a result of the termination of the employment contract, i.e. unpaid wages. Therefore, the exemption referred to in Article 21(1)(3b) of the PIT Act also does not apply to the compensation.

Consequently, the compensation should be taxed as ordinary income from the employment relationship.



Tomasz Kret



Zuzanna Rosner-Laskorzyńska  
Attorney-at-law

---

## LET'S AVOID "DIVERSITY WASHING." WE NEED DEEP AND RELIABLE IMPLEMENTATION OF THE IDEA OF EQUITY

Sometimes employers declare support for DEI values, make facade statements that they support diversity and inclusiveness, which gives the illusion that the company cares about DEI, while in reality they remain passive and do not implement initiatives, and sometimes even take actions contrary to their declarations.

For example, the company officially supports the Equality Parade (it even posts on social media). As a result, it gains image-wise. However, in practice, managers look with an unfavourable eye at a rainbow flag on an employee's desk. A similar measure will be promoting candidates from a group vulnerable to discrimination during recruitment, but only for lower positions with no real possibility of promotion.

"Diversity washing" thus represents a discrepancy between what the company claims and what it actually does. Facade DEI does not bring benefits. It does not increase employee engagement, innovation, does not translate positively into results, does not reduce staff turnover, etc. In the long run, it leads to reputational damage.

How to avoid "Diversity washing"? It is necessary to have a well-thought-out and coherent strategy for the implementation of DEI, to actively engage company executives and managers, to collect regular feedback from employees. In practice, implementation audits are also helpful to see to what extent DEI declarations translate into real actions and solutions.

## **THERE WILL BE CHANGES TO THE PERSONAL DATA PROTECTION OFFICE'S HR AND WHISTLEBLOWING GUIDES. A PUBLIC CONSULTATION HAS BEEN LAUNCHED**



**Jan Rabczuk**  
Attorney-at-Law Trainee

The Personal Data Protection Office (PDPO) has announced the start of work on revising its guides. Particularly relevant is the guide on data protection in the workplace, which has not been updated since 2018. It contains guidelines to guide employers, however some of its elements are no longer in line with current realities.

At the same time, the PDPO will update its guide on responding to personal data breaches. It is especially important in crisis situations, such as when there has been a data leak from the company. It is therefore important for data controllers to know what the supervisory authority now expects of them in such situations.

The public consultation process for both guides has been launched. All interested parties can submit comments, questions and suggestions for changes until 21 June through dedicated channels available here. The comments collected will then be published on the PDPO's website and taken into account in the preparation of the new documents.



**Anna Bloch-Kurzyńska**  
Advocate Trainee

## **THERE WILL BE TIGHTENING OF PROCEDURES FOR HIRING FOREIGNERS, CURBING ABUSES, ELECTRONIZATION OF ADMINISTRATIVE PROCEEDINGS, AS WELL AS INTEGRATION PROGRAMMES FOR FOREIGNERS - THERE IS A DRAFT LAW ON ACCESS TO THE LABOUR MARKET FOR FOREIGNERS**

A bill of an act on foreigners' access to the labour market has been published. It is part of a reform that aims to create more effective institutions to support the labour market. An analysis of current regulations has revealed a number of problems, i.e. the abuse of work permit procedures, a lack of response to the real needs of the labour market, or excessive bureaucracy in government offices. The goal of the new act is to sort out the employment of foreigners.

In principle, the bill is based on the current legislation, while introducing a number of important modifications, including: the introduction of mandatory grounds for refusing to grant a work permit when the employer's enterprise operates primarily to facilitate the entry of third-country nationals; Replacement of the labour market test procedure with a list of professions in which it will not be possible to employ a foreigner; Electronization of administrative procedures related to the employment of foreigners.

The new act aims not only to regulate foreigners' access to the labour market, but also to counter negative phenomena such as pushing Poles out of the labour market and undercutting employment standards.

The bill is expected to be approved in the third quarter of 2024.

## follow us



## contact us



[www.raczkowski.eu](http://www.raczkowski.eu)

The PRO HR Newsletter does not contain any legal opinions and cannot be treated as their source. To obtain legal advice about a relevant subject, please contact us at the following address: [office@raczkowski.eu](mailto:office@raczkowski.eu).

Copyright © 2023: Raczkowski sp.k.