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Raczkowski

PRO HR

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TEMATY

The employer must check the legality of the stay of foreign workers and have documents on file to prove it

We need to add a new part to the personnel file - "Part E" - if we want to check the sobriety of employees under the new regulations; and we put documents on remote work in Part B

Occasional remote work for up to 24 days a year, at the request of the employee, which, however, is not binding, without the formalities associated with "regular" remote work.

New entitlements are being prepared for parents of children under the age of 8 - they can enjoy flexible work arrangements, cannot be ordered to work overtime or be posted off-site, and more

Lack of criteria regarding personal circumstances in a job cut may expose the employer to a charge that the termination is contrary to the rules of social intercourse

Additional exemption from work for blood donors and blood donor candidates, up to 48 days a year!

Lump sum calculator as a solution to correctly determine the amount of the lump sum

NEWS / EVENTS

TOPIC 1

The employer must check the legality of the stay of foreign workers and have documents on file to prove it



Anna Bloch - Kurzyńska
Lawyer



At the end of last year, the State Labour Inspection Service announced that it would carry out 60,000 inspections, covering 35,000 entities. The announced inspections are a good opportunity for employers hiring foreigners to verify whether there are documents in the personnel files to confirm the legality of their stay and work in Poland.

The employer is authorized to demand documents from the foreigner that confirm the legality of their stay in Poland even before the work begins. Such documents include, for example, a passport with a valid visa or a residence decision. In addition, the employer must keep in the employee's file documents proving the legality of the work performed. This will be, for example, a work permit, a statement of assignment of work, or a notification of assignment of work to a Ukrainian citizen. In the case of employees exempted from the obligation to have a work permit, the employer should attach to the file a document that confirms the exemption, such as a copy of the diploma of graduation, a copy of the Pole's Card or a copy of a student ID.

The employer should also make sure that the documents legalizing the stay are valid, as well as monitor the course of the residence permit proceedings pending before the Voivode. If the validity of the foreigner's residence documents has expired, the employer should ask the employee to present a stamp in the passport which will confirm that the application for a residence permit has been submitted correctly and that the application has no formal deficiencies. In the event of a State Labour Inspection Service or Border Guard inspection, a copy of the stamp in the passport will serve as a confirmation of the legality of the stay and work.

TOPIC 2

We need to add a new part to the personnel file - "Part E" – if we want to check the sobriety of employees under the new regulations; and we put documents on remote work in Part B



Anna Nowak
Lawyer



21 March 2023 is the effective date of the obligation to add Part E to personnel files, in which employers will be required to include documents related to sobriety checks or checks for the presence of other substances if the result is positive, i.e. if it reveals the presence of alcohol or such substances.

The employer will be able to keep this information for a maximum of one year, and in the case of application of a disciplinary penalty until the punishment is declared non-existent.

Information on the introduction of the checks is attached to the expanded Part B of the personnel file (confirmation of informing the employee about the introduction of the checks, the group of employees subject to the checks and the way in which they are carried out).

From 7 April, in turn, when the new type of work comes into effect, we will also add documents relating to its performance to Part B.

TOPIC 3

Occasional remote work for up to 24 days a year, at the request of the employee, which, however, is not binding, without the formalities associated with “regular” remote work.



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



It comes into effect as of 7 April this year. An employee may request it occasionally or incidentally, that is, for example, when there is a snowstorm, when they don't feel well or when they want to work from another location. It will be applicable to employers who will not introduce remote work at all, as well as to companies that will use remote work. The employer may refuse to agree to it. It does not have to give any special reasons. It can also refuse to agree to such work by pregnant workers and workers raising children under the age of 4.

The full 24 days are available in 2023, even though the act takes effect during the year. Also part-timers are entitled to the full 24 days. The remote work days can be used separately or accumulated. The employer does not have to reimburse or pay a lump sum for the days of such work. It does not need bylaws or an agreement with the trade unions. However, it must use the other documentation required for “regular” remote work.

TOPIC 4

New entitlements are being prepared for parents of children under the age of 8 - they can enjoy flexible work arrangements, cannot be ordered to work overtime or be posted off-site

The implementation of two EU directives - on transparent and predictable working conditions and on work-life balance for parents and carers - is imminent.

The acceleration of the work is justified - the deadline for implementing both directives passed in August 2022, and the European Commission has already taken the first steps against Poland in connection with the delay.

The proposed regulations grant some special rights to, among others, parents of children up to the age of 8 (rather than up to the age of 4, as before). In practice, this group of eligible employees may be one of the most numerous groups at many employers.

The employer will not be able to order them to work:

- overtime;
- at night time;
- under an intermittent working time system;
- or post them outside their permanent place of work without their consent.

Employees will also be able to request flexible work arrangements, including remote work, a shortened work week, a weekend work system or an individual work schedule. The employer will be required to process the request within 7 days.



Edyta Jagiełło-Jaroszewska
Attorney-at-law



Małgorzata Bojsza
Lawyer



New entitlements are being prepared for parents of children under the age of 8 - they can enjoy flexible work arrangements, cannot be ordered to work overtime or be posted off-site

The filing of the request cannot constitute a reason justifying termination of the employment contract or its termination without notice.

The amendment also provides for other significant changes in labour law, among others:

- an obligation to justify the termination of a fixed-term employment contract;
- making the length of the trial period dependent on the expected duration of the fixed-term employment contract, as well as the type of work;
- two additional breaks for the employee counted as working time;
- the right to parallel employment;
- unpaid care leave of 5 days to provide personal care or support to relatives;
- force majeure exemption for urgent family matters due to illness or accident of 2 days or 16 hours.

Employers should keep a finger on the pulse as they will have 21 days to implement the changes.



Edyta Jagiełło-Jaroszewska
Attorney-at-law



Małgorzata Bojsza
Lawyer



TOPIC 5

Lack of criteria regarding personal circumstances in a job cut may expose the employer to a charge that the termination is contrary to the rules of social intercourse



Piotr Lewandowski
Attorney-at-law



The employer, when making partial job cuts within a professional group, is obliged to apply the criteria for selecting employees for termination of their employment contracts.

The selection criteria are not listed in any regulation. Among the most important ones are the employee's performance appraisal, the employee's suitability for the job, their qualifications and professional skills, work experience, length of service and record of previous work, and availability to the employer.

The employer is not required to apply criteria relating to the employee's personal circumstances, such as the need to support a family, having other employment, or the employee's age making it easier for them to find a job. If such criteria are used, they should be of auxiliary nature.

Failure to apply the so-called life criteria may expose the employer to a charge that the termination is contrary to the rules of social intercourse. In court, such an allegation can be successful if the dismissed employee demonstrates that their personal situation is significantly worse than that of the other employees on the jobs subject to cuts.

Lack of criteria regarding personal circumstances in a job cut may expose the employer to a charge that the termination is contrary to the rules of social intercourse



Piotr Lewandowski
Attorney-at-law



The use of an auxiliary criterion can be problematic. As a rule, employers do not know the exact life circumstances of their employees (or even should not know it). The need to establish these circumstances would generate an obligation to obtain detailed information from employees. The employer would also have to indicate to employees for what purpose it wants to obtain such information which, in turn, could lengthen the dismissal process or make it impossible in part, for example, due to employees' use of sick leaves.

Auxiliary criteria would be easier to apply in the case of job cuts in a small professional group. In a larger group, it can be difficult to assess which employee is in a more difficult situation, e.g. whether the employee is a single parent raising children or their spouse is disabled.

In court, employees rarely challenge the termination notices handed to them by relying on their personal circumstances. Thus employers, when considering the use of auxiliary criteria, should consider potential gains and losses. In the case of larger job cuts, the potential loss in the form of, for example, a lost lawsuit, may be considered lesser than the gain in the form of, for example, an efficiently implemented job reduction.

TOPIC 6

Additional exemption from work for blood donors and blood donor candidates, up to 48 days a year!

The National Cancer Network Act permanently introduces two days of paid leave for a Distinguished Honorary Blood Donor and an Honorary Blood Donor.

When donating blood at maximum frequency, this can mean an additional 12 days off for an employee (8 days off for a female employee due to the lower maximum frequency of blood donation). The liquid part of blood can be donated more often. In this case, an employee can get an additional 48 paid days off.

Another planned change introduced by the Blood Donation and Haematology Act, which is currently being worked on in the Parliament, is a paid exemption from work for the duration of the medical examination for a blood donor candidate. In this case, there is no limit to the maximum number of days an employee can take advantage of in exercising their entitlement.



Monika Czekanowicz
Lawyer



TOPIC 7

Lump sum calculator as a solution to correctly determine the amount of the lump sum

Agreeing on performance of remote work with the employee is only the first step to properly regulate this work model in the company. Another extremely important obligation of the employer is to cover the cost of electricity and telecommunications services, as well as the cost of installation, servicing and maintenance of provided materials and work tools. The employer may also cover the cost of other workplace equipment.

And here a number of doubts arise as to how to determine the lump sum in order to avoid accusations from inspection authorities that the provided benefit is an additional bonus or raise for the employee.

The amount of the lump sum should correspond to the expected costs incurred by the employee. Of course, this is not about strict calculation of the costs, but approximate costs. A slight “upside” is built into the essence of the lump sum. Importantly, there must be a direct link between these costs and the remote work performed.

The problem is serious because the reclassification of the lump sum as employee income means that it will be subject to tax and social security contributions, just like a salary. A lump sum calculator makes it possible to quickly and correctly calculate the lump sum due to the employee, taking into account the amount of work in the remote form and any equipment that the employer chooses to provide to the employee.



Monika Czekanowicz
Lawyer



Raczkowski Law Firm once again ranked the best law firm in Poland in the Chambers and Partners Europe 2023 ranking!

We are in Band 1 position in the “Employment” category.

Our Partners received distinctions in the Employment & White-Collar Crime category of the Chambers and Partners Europe 2023 ranking

Individual nominations in the Employment category went to:

- Bartłomiej Raczkowski - Band 1
- Iwona Jaroszevska-Ignatowska Ph.D. - Band 3
- Katarzyna Dobkowska – Band 4

and

- Janusz Tomczak is a recommended lawyer in the White-Collar Crime category - Band 2.

Special thanks for this award go to our clients. We have been supporting and building awareness in employee relations for 15 years.

We are a People & Culture law firm. This is because we understand - like no one to date - the role and the importance of the employee to the organization.

Thanks to you, we are invariably seen as an extremely responsive and pragmatic team. Your positive feedback allows us to change for the better and maintain the strong status of our brand.

Thank you for your trust and appreciation. We look forward to continuing to work with you and wish both ourselves and our clients continued success.



NEWS / EVENTS

TRAINING | Immigration and Global mobility - current challenges for employers April 4 | 10:00 am - 2:00 pm | Warsaw | Hybrid training

It has been more than a year since the outbreak of the conflict in Ukraine. The war in our immediate neighbourhood has brought challenges regarding global mobility and People&Culture. The new regulations have not bypassed HR departments, which must measure up to the new regulations, including in the area of immigration and global mobility.

Join us for a workshop on hiring foreigners, during which we will discuss:

- changes in regulations that will take effect as early as 1 April,
- the most important elements of the process of hiring foreigners,
- we will tell you how to avoid mistakes and share the solutions we have developed.

Paid event

→ [Details and registration](#)

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