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TOPICS

Global remuneration policies must disappear at Polish employers

The performance of services similar to those performed for a current or former employer by the entrepreneur entitles him or her to taxation at a flat rate or as a lump sum

As of 1 April 2024, accident insurance premium rates will change for some activity groups

Candidate data can be processed up to 3 years after the end of the recruitment process

DEI programmes benefit employers and employees

Temporary protection for those with UKR status extended until 30 June 2024

Free training constitutes income for entrepreneurs

End of checks at the border with Slovakia

GLOBAL REMUNERATION POLICIES MUST DISAPPEAR AT POLISH EMPLOYERS

The Equal Pay Directive (2023/970), which will be implemented in Poland, allows employees to compare each other in terms of pay (its amount and components) not only within the same Polish employer and the same category of employees. In order for employees to compare across the group, it is sufficient that another company sets the remuneration rules (single source principle). This can occur when the parent company imposes remuneration policies, bonuses and incentive plans on its companies. In such a case, an employee of a Polish employer will be able to compare his or her remuneration to that of an employee of the company setting the terms of remuneration, e.g. the foreign parent company. And if these employees perform the same work or work of equal value, the Polish employee will be able to claim, among other things, compensation to the foreign company employee's salary.

Therefore, global remuneration policies should be reviewed and the application of the single-source principle should be avoided.



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THE PERFORMANCE OF SERVICES SIMILAR TO THOSE PERFORMED FOR A CURRENT OR FORMER EMPLOYER BY THE ENTREPRENEUR ENTITLES HIM OR HER TO TAXATION AT A FLAT RATE OR AS A LUMP SUM

Sole traders performing activities for their current or former employer that correspond to duties previously performed under an employment relationship may not benefit from preferential tax rates until the end of the relevant or subsequent tax year.

However, according to the Voivodeship Administrative Court in Wrocław (ref. no. I SA/Wr 710/23), this restriction applies only if the services provided to the former or current employer are the same (identical) as the activities the entrepreneur performed under the employment relationship. 'Partially identical' and 'identical' activities are two different concepts. Activities are not identical when, despite the presence of common elements in both activities carried out by the taxpayer, their scope is not identical and does not fully overlap.

This means that even small differences between B2B activities and employee duties entitle the employee to benefit from preferential taxation of business activity income without time limits.

AS OF 1 APRIL 2024, ACCIDENT INSURANCE PREMIUM RATES WILL CHANGE FOR SOME ACTIVITY GROUPS

As of 1 April 2024, new risk categories and new accident insurance premium rates will apply to 33 groups of activities:

1. an increase in the risk category and thus an increase in the premium rate will apply to one activity group - mining of black coal and brown coal (lignite) - the rate will increase from 3.06% to 3.33%;
2. a reduction in the risk category and thus in the interest rate will affect 32 groups of activities, including land transport, construction works associated with erection of buildings or production of beverages - depending on the category, the rates will fall between 0.27 and 1.06 percentage points.

In the remaining 31 activity groups, the risk categories and accident insurance premium rates will not change.

In the case of premium payers who enroll at least 10 insured persons for accident insurance and have been obliged to submit ZUS IWAs for the last three calendar years, the final premium rate will be determined by ZUS, which will take into account not only the percentage rate set for this group of activities, but also an individual adjustment factor in the range of 0.5 to 1.5.



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CANDIDATE DATA CAN BE PROCESSED UP TO 3 YEARS AFTER THE END OF THE RECRUITMENT PROCESS

We won a precedent-setting case before the Supreme Administrative Court concerning retention of recruitment data (ref. no. III OSK 2700/22) against the President of the Personal Data Protection Office. Candidate data does not need to be deleted immediately after recruitment.

Contrary to the previous position of the previous President of the PDPO, the processing of candidates' personal data after the recruitment is completed is not 'in-advance' processing, but is necessary for possible claims of unequal treatment and discrimination.

The employer has a purpose, arising from its legitimate interests, in retaining the candidates' personal data after the recruitment has been completed for the period of the statute of limitations for claims (i.e. 3 years from the date the claim became due).

It is worth remembering that retention of the CV will only defend the employer against claims if the candidate, after submitting the CV, did not qualify for the next stage and did not participate in any recruitment activities due to non-fulfillment of the requirements specified for the position. As for the subsequent stages, the employer should retain such data as will allow it to demonstrate that the entire recruitment process was based on merit.

DEI PROGRAMMES BENEFIT EMPLOYERS AND EMPLOYEES

Diversity, Equity & Inclusion programmes and initiatives are delivering tangible benefits. They positively influence employee engagement, wellbeing, cooperation, productivity and creativity and translate into a positive corporate image. They help to retain the best employees and at the same time reduce excessive staff turnover, attracting the most valuable candidates. They promote the exchange of diverse ways of thinking and perspectives. They allow employers to achieve better financial results, better empathise with and understand the customers' needs and win new business. They increase competitiveness and productivity.

According to some studies, companies with diverse teams achieve higher (by up to 19-20%) innovation revenues.

Implementing DEI strategies and initiatives is quite a challenge for employers. It requires adequate investment, resources, experience, a series of coordinated and well-considered actions. However, the benefits of the DEI cannot be overestimated. It is impossible to ignore or belittle them by claiming that DEI is just a trendy corporate trend that will soon pass.



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TEMPORARY PROTECTION FOR THOSE WITH UKR STATUS EXTENDED UNTIL 30 JUNE 2024

The act amending the UKR Special Act provides for an extension, until 30 June 2024, of:

- the period of validity of all residence permits of holders of Ukrainian citizenship;
- the period during which it is possible for a person with UKR status to apply for a temporary residence permit to work, to obtain an EU Blue Card and to carry out economic activities;
- the period of suspension of the statutory deadlines obliging voivodeship governors to carry out the remaining residence proceedings.

A further extension of the temporary protection period to 4 March 2025 is envisaged.

For persons with Ukrainian citizenship, we recommend to submit residence applications in each case. This can secure their legal residence and free access to the labour market in Poland for 3 years, regardless of subsequent legislative changes.

FREE TRAINING CONSTITUTES INCOME FOR ENTREPRENEURS

Where the company funds the training needed to properly perform the duties for:

1. its employees,
2. employees employed by a temporary work agency who provide work for the company and
3. self-employed collaborators conducting business activity,

on the part of the company's employees and agency employees, no tax revenue arises.

Entrepreneurs, on the other hand, obtain taxable income from their business activity.

Such conclusions result from the judgment of the Voivodeship Administrative Court in Olsztyn of 19 April 2023 (ref. no. I SA/OI 110/23). This is because the court considered that expenses on employees for training needed to perform their work properly are incurred, in principle, in the interest of the company itself. There is also no doubt that a skilled workforce increases labour efficiency, thereby contributing to the efficiency of the company as a whole. In view of this, according to the judgment of the Constitutional Tribunal of 8 July 2014 (ref. no. K 7/13), no revenue from gratuitous benefits will arise on the part of the employees participating in the training. This is also the case for temporary agency workers who, directly performing the same work for and under the direction of the company, are entitled to the same training that the company provides to its employees.

In the case of entrepreneurs, on the other hand, the training does not only serve to improve their cooperation with the company (as the company itself emphasised), but develops their competences and increases their value on the labour market by making them more attractive in relation to other business partners. For these reasons, the value of the training is the entrepreneur's income derived from the business activity conducted. The company is not obliged to collect advance income tax or social security contributions on this income.



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END OF CHECKS AT THE BORDER WITH SLOVAKIA

As of 3 March 2024, checks at the Polish-Slovak border have been abolished. The decision is dictated by the stabilisation of the situation on the so-called 'Balkan route'.

In the event of an increase in risk, the checks may be resumed.

We monitor the situation at the borders on an ongoing basis.

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