



Ius Laboris Poland Global HR Lawyers

Raczkowski

PRO HR

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TOPICS

"I came back from maternity leave and was fired on my first day back"

"False" informants are not whistleblowers – and are not subject to protection

Pay Transparency Directive introduces new obligations not only in payroll

From 2025 minimum wage will be PLN 4,666 gross and minimum hourly rate PLN 30.50 gross

From 1 January 2026 base pay must be equal to at least minimum wage

Workplace at the time of flooding

Work is underway on changes to the employment of foreign nationals

CJEU has reiterated its position that persons working part-time should receive overtime pay after exceeding the agreed work time, not after exceeding full time

EVENTS

“I CAME BACK FROM MATERNITY LEAVE AND WAS FIRED ON MY FIRST DAY BACK”



Lukasz Kuczkowski
Attorney-at-Law

Increasingly often employees share such information on social media.

Can they do it? Yes, they can.

Is it online hate speech against the employer? Objectively provided information is not hate speech, but combining the fact of being fired with a personal message will probably cause hate on the part of the recipients of this information.

What can an employer do?

Not much. The employer is restricted by the GDPR and the regulations concerning the protection of personal rights of employees.

The employer cannot:

- a) make public the termination notice or notice of termination on disciplinary grounds
- b) inform about the reasons for termination of employment, if they concerned the employee (e.g. improper performance of duties)
- c) inform about the reasons not concerning the employee, but related to the person (e.g. termination due to a long-term illness, being held in custody or loss of professional qualifications, e.g. a driving licence)
- d) inform about benefits granted to this specific employee in relation to the termination of employment that could show the employee in bad light.

The employer can:

- a) present the background of the termination of employment, if it concerns the employer, e.g. reorganisation, reduction of positions etc. without indicating specific criteria for making decisions in terms of terminations. However, extreme caution needs to be exercised in terms of the scope of this information and its wording.
- b) present their actions related to limitation of layoffs, granting additional benefits, building organisation culture etc.

Is there any point reacting to such communication from employees?

In a public domain – it depends. Sometimes we may not have anything to say because of legal restrictions and the risk of claims. Sometimes the process of layoffs may have gone wrong and it is better to put a veil of silence over it, but draw conclusions for the future. At other times, it may be better to give a helping hand to the terminated employee. There is no one way of doing it.

In relation to the employee – it is always worth reacting.

“FALSE” INFORMANTS ARE NOT WHISTLEBLOWERS – AND ARE NOT SUBJECT TO PROTECTION

Since 25 September the Act on the Protection of Whistleblowers has been in force. Since then the persons who report law infringements in a work-related context and in good faith, will be protected. The protection does not extend to informants acting in bad faith.



Damian Tokarczyk, PhD
Advocate

Good faith vs. bad faith

“Good faith” is however wrongly interpreted in the public space. According to the Act on the Protection of Whistleblowers, the necessary requirement to protect a whistleblower is justified supposition that his/her report was true at the time of making it. It is irrelevant why the person made the report (whether in order to protect the public interest, present oneself in good light, or get someone into trouble). It is also irrelevant whether it will eventually turn out if the infringement of law has actually occurred or not. What matters is the whistleblower’s justified belief, assessed at the time the report was made.

How to recognise a false report?

It is very difficult to prove that the informant knew the report was false already at the time of making it. Whistleblowers report events which have taken place often wrongly judging them to be infringements of law. However, within the meaning of the law, such reports are not made in bad faith.

All circumstances must indicate a deliberate false report. The informant’s education, knowledge, and experience, his/her relations with the suspected person, and evidence revealed during the investigation all have to be assessed.

False report - consequences

A person who makes a false report is not awarded whistleblower status and is not protected. A deliberate false report may be the grounds for disciplinary consequences – including termination of employment. A person who was harmed by the false “whistleblower” (e.g. a person who was reported as one committing an infringement) may demand compensation from him/her.

Making a deliberate, false report is a crime punishable by fine, restriction of liberty or imprisonment for up to 2 years.

PAY TRANSPARENCY DIRECTIVE INTRODUCES NEW OBLIGATIONS NOT ONLY IN PAYROLL

Pay Transparency Directive introduces changes already at the stage of recruitment. Employers will be obliged to provide job applicants with information on initial pay or pay range. The information should be provided before the first interview. This aims to enable applicants to prepare for the interview and should contribute to informed and transparent negotiations. The obligation to provide this information may be fulfilled in a number of ways. It does not necessarily have to be included in the job advertisement. It may be provided e.g. in email correspondence before the interview.



Natalia Krzyżankiewicz
Advocate

Another change relates to job titles. Gender neutral job titles will have to be used in job advertisements. This means that an advertisement should indicate that the job can be done by a person of either sex. The most popular form of neutralisation of names of job positions which is already used is the use of masculines and feminines (we are looking for a steward/stewardess). Employers will be able to use other form of neutralisation (e.g. we are looking for a person to work in accounting).

Employers will not be allowed to ask applicants about their current or previous pay.

There is little time for action. We should start with a review of the job offer template and remember about gender neutral job titles. It is worth considering how and at which stage of recruitment the applicants will be given information about the initial pay offered in a specific job.



Anna Bloch-Kurzyńska
Advocate trainee

FROM 2025 MINIMUM WAGE WILL BE PLN 4,666 GROSS AND MINIMUM HOURLY RATE PLN 30.50 GROSS

The increase has been introduced by the Regulation of the Council of Ministers of 12 September 2024.

The minimum wage will increase by PLN 366. This is an increase of 8.51%. For comparison, the increase in minimum wage in 2024 compared to 2023 was much higher, i.e. 21.5%.

FROM 1 JANUARY 2026 BASE PAY MUST BE EQUAL TO AT LEAST MINIMUM WAGE

Minimum wage will no longer include e.g. bonuses, awards, and allowances. At the moment base remuneration may be set on a significantly lower level than minimum wage. Apart from base remuneration it may include other benefits from employment (except those excluded like service anniversary awards or service period allowance). From 1 January 2026 the base pay of an employee working full time may not be lower than minimum wage.

This means an increase of costs for employers who completed pay for work with other components (e.g. awards, functional allowance) up to the amount of minimum wage. Employment contracts and remuneration regulations will have to be revised.



Anna Boguska, PhD
Attorney-at-Law

WORKPLACE AT THE TIME OF FLOODING



Monika Czekanowicz
Attorney-at-Law

Flood and its consequences, for example related to the damage to the structure of the workplace building, may generate danger for employees. In this case the employer is obliged to:

1. immediately inform the employees about the danger and take action to ensure adequate protection;
2. immediately instruct the employees to enable them to stop work and leave the dangerous place to safety, if there is direct danger.

If there is direct danger to health and life the employer is obliged to stop work and order the employees to move away to a safe place, and refrain from ordering them to resume work until the danger has been removed.

The employer may order the employees to perform other type of work than work specified in their employment contracts, if it is necessary in relation to the removal of effects of flooding in the workplace, however the safety of employees is the priority. If there are other working conditions, other risks in the new working position than previously, an employee should undergo preventative medical examinations and health and safety training.

The employer's order to perform work in a new position in relation to flood clean-up activities is binding for an employee, however if the working conditions do not comply with the health and safety regulations and create a direct risk for his/her health or life, the employee has the right to refrain from performing this work, reporting this to his/her superior. If refraining from work does not remove the danger, the employee has the right to leave the danger area, also reporting this to his/her superior.

WORK IS UNDERWAY ON CHANGES TO THE EMPLOYMENT OF FOREIGN NATIONALS

One of the draft laws being prepared is the Act on Conditions for Admissibility of Employment of Foreigners in the Territory of the Republic of Poland (known earlier as the draft Act on the Access of Foreigners to the Labour Market).



Agnieszka Szymańska
Immigration Consultant

The proposed regulations state that in order to receive a work permit, a declaration on entrusting work to a foreigner, and a permission for a temporary stay in order to perform work, it will be necessary to sign an employment contract with an applicant. The legislator wants to limit the possibility of entering into civil law agreements.

These changes will not be applicable to persons with a free access to the labour market, including Ukrainian nationals and persons applying for a temporary work permit to perform work in a profession requiring higher qualifications (EU Blue Card).

The legislator also plans to:

- oblige the entities entrusting work to provide the employment contract entered into with a foreign national to the relevant authorities;
- extend the grounds for refusing a work permit;
- increase the minimum amount of fines for illegal entrusting of work to a foreign national and for illegal performance of work by a foreign national.

The authorities will be obliged to refuse to issue documents legalising work in Poland if the circumstances indicate that the applications to obtain them were made for the sake of appearances, only in order to get a visa.

It is planned that the Act on Admissibility of Employment of Foreigners in the Territory of the Republic of Poland should come into effect on 1 January 2025.

CJEU HAS REITERATED ITS POSITION THAT PERSONS WORKING PART-TIME SHOULD RECEIVE OVERTIME PAY AFTER EXCEEDING THE AGREED WORK TIME, NOT AFTER EXCEEDING FULL TIME



Anna Nowak
Junior Lawyer

Two female employees working part-time applied for overtime pay for each hour of work above the number of hours specified in their employment contracts. They also demanded compensation claiming that no overtime pay was also a form of discrimination on grounds of sex, because mainly men were employed full-time.

In its judgment of 29 July 2024 the Court of Justice of the European Union agreed with them. It found that part-time workers are treated less favourably, if in order to receive overtime pay they need to work the same number of hours as an employee working full-time. As a result a part-time employee is treated less favourably than a full-time employee. Overtime pay should be due on exceeding the working hours specified in the contract.

The CJEU considered that there was an indirect discrimination of women because the number of women employed on a part-time basis was significantly larger than the number of men.

The CJEU took this viewpoint in its judgement of 19 October 2023 (case C-660/20).

The judgements of the CJEU concerning overtime pay of part-time employees may result in the amendment of the Polish law. There may also be court disputes concerning overtime remuneration for part-time employees. This does not mean however, that right now employers should change the way they operate in terms of the payment of overtime remuneration for part-time employees. According to the Polish law in case of a part-time employee, the parties agree in the employment contract a permitted number of working hours in excess of the number of hours specified in the employment contract, the exceeding of which entitles an employee to overtime pay. So far the regulations of the Labour Code and the judicial practice of the Supreme Court remain unchanged in this respect.

EVENTS

MASTERCLASS 2024

EMPLOYMENT MASTERCLASS IN ENGLISH 2024

18-19 November 2024

25-26 November 2024

We invite you to the Employment Masterclass in English - a training course for non-Polish speakers dealing with Polish HR laws in practice.

WHEN: 18-19 & 25-26 November

WHERE: Online

Want to join us? Please contact Anna Kaszyńska: anna.kaszynska@raczkowski.eu.

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