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TOPICS

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FROM 25 DECEMBER WHISTLEBLOWERS WILL BE ABLE TO MAKE EXTERNAL REPORTS

From that day employees and other persons will be able to make external reports to public authorities. The authorities will carry out appropriate procedures (e.g. inspections). Employers will have to provide protection to “external” whistleblowers.

A whistleblower is not obliged to make an internal report first – he or she will be able to report a violation of law directly to the public authorities.

If the whistleblower is unable to decide which authority should receive a report, it can be forwarded to the Ombudsman. The Ombudsman will handle the case, review it, and hand it over to the competent authority.

Persons who make an external report in good faith will be whistleblowers. “Good faith” should be understood only as justified belief that the report is true and concerns a breach of law. The motivation of the whistleblower is irrelevant. At his/her request he/she will receive a certificate of protection from the Ombudsman or a public authority.

Employers who find out about an external report are obliged to protect the whistleblower. No retaliation caused by the report can be used against the whistleblower. It is also forbidden to “penalise” the whistleblower for making an external rather than an internal report.

The way to limit the number of external reports is the implementation of internal reporting system. If employees (and other persons) know that they can report their suspicions inside the organisation, they may decide against reporting such information “externally”. The reporting system must be comprehensive, provide protection, and be based on trust between the management and personnel.



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EMPLOYERS DO NOT HAVE TO CREATE A SOCIAL FUND AND PAY HOLIDAY ALLOWANCE

An employer who employs fewer than 50 full-time equivalent employees on 1 January may decide not to create a social fund and will not pay holiday allowance. This decision may be taken independently by the employer. The employer should only inform the employees about the decision by 31 January in a manner adopted in the organisation. Failing this, the employer will be obliged to pay holiday allowance to the employees.

In case of employers employing a larger number of employees not creating a social fund requires a consent of the employee representation, i.e. trade unions or other employee representation, and an appropriate change in the regulations of remuneration (or a collective labour agreement). Minutes of the arrangement with the employee representation should be made in order to demonstrate the correctness of the decision making process relating to not creating the social fund.

JOB ADVERTISEMENTS WILL HAVE TO SPECIFY THE PAY

On 5 December 2024 the Sejm received a draft bill amending the Labour Code, described as the “transparent pay” bill. Its aim is to increase the transparency on the job market by imposing on the employer an obligation to present offered remuneration in job advertisements.

The proposed regulations are a partial implementation of an EU directive on pay transparency.

The draft bill provides for an employers’ obligation to specify pay brackets in job advertisements. This approach differs from the regulations contained in the directive, which require that information on pay be made available before a job interview, without imposing any specific form of communication. Thus the draft bill introduces more restrictive regulations than the directive.

Employees are to obtain the right to information concerning their individual pay level and average levels of pay, broken down by sex in reference to a category of employees performing the same work or the work of the same value.

Employers will also be obliged to provide access to the criteria used to determine the levels of pay for employees and the progression of pay.

A breach of the above obligations by employers is to be an offence punishable with a fine of up to PLN 30,000.

The draft bill is in the process of public consultations.

The draft bill does not implement all regulations of the directive, in particular those referring to the pay gap or the reporting obligation of the employers. This means that we have to wait for more draft bills in this respect.



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FORKLIFT TRUCKS USED FOR WORK MUST HAVE A CIVIL LIABILITY INSURANCE

Forklift trucks have been considered as “introduced into the traffic”. Therefore, employers must take out civil liability insurance policies for such trucks.

Introduction into the traffic is defined as any use of a forklift truck which during the incident is in accordance with the purpose of the vehicle as a means of transport, irrespective of its features and the area in which it is used and irrespective of whether it is stationary or moving.

For example, using a forklift truck inside a warehouse located in a private plot of an employer results in an obligation of the employer to purchase a civil liability policy.

Failing to provide civil liability insurance may result in:

1. fines;
2. liability to cover damage to a person (for example as a result of an accident at work) or property from the employer’s own funds.

The new regulations result from the implementation of a Directive (EU) 2021/118 of the European Parliament and of the Council of 24 November 2021 amending the act of 22 May 2003 on compulsory insurance, the Insurance Guarantee Fund and the Polish Motor Insurers’ Bureau.

THE SCHEDULE OF LEAVE FOR THE NEXT YEAR SHOULD BE MADE BEFORE THE END OF THE CURRENT YEAR

The schedule of leave for the next year should be made before the end of the current year.

Planning annual leave in an organisation is regulated by the Labour Code. The obligation to prepare a schedule of leave depends on whether or not there is a company trade union in an organisation. If there is no trade union or if the consent of the trade union has been obtained, the employer does not have the obligation to prepare a schedule of leave. In this case, dates of annual leave must be agreed individually with each employee.

When creating a schedule of leave the employer should take into consideration the dates of leave suggested by the employees. Their requests are the basis for preparing the schedule, however they are not granted automatically. Although the employees can inform about their preferences, the employer has the right to refuse to grant them, if they are in conflict with the organisational needs.

At least one part of annual leave should not be shorter than 14 consecutive calendar days. Also 4 days of the annual leave allowance are excluded from the schedule – they are so called days of leave at an employee's request which can be used by an employee at any time, as requested by the employee. The employee can of course schedule these days, but if they are used earlier, he or she will be unable to use the benefit of leave at the request in an emergency.

The regulations do not specify precisely when the schedule of leave should be made. It is accepted however that the schedule of leave for the following year should be made before the end of the current calendar year. This is due to the fact that on 1 January employees acquire the right to new annual leave allowance and have the right to use it from the start of the year. It is recommended to establish the schedule of leave in advance, so that employees can take advantage of their leave allowance from the first days of the new year.

The employer may prepare a schedule of leave for the whole year, for six months or three months, depending on the employer's needs.

A well prepared schedule of leave makes it possible to efficiently manage working time and avoid organisational chaos.



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DIVERSITY IN THE HOLIDAY SEASON

Recent years have brought changes in the ethnic structure in Poland and an opportunity to rebuild multiculturalism (in the 1920s ethnic minorities accounted for as much as 30% of the population).

This is mainly thanks to large Ukrainian immigration, an increased awareness of minority groups who started to openly admit their origins, and global mobility of employees.

Therefore, companies should take into consideration that not all employees celebrate holidays at the same time and according to the same tradition.

It is worth taking it into consideration when organising Christmas company events in order to avoid, if possible, mixing traditions with religious practices.

What actions can be taken?

- Allow employees to celebrate important holidays, in particular when they do not fall on public holidays. You can grant additional days off (so called “floating holidays”) which employees can use at their own discretion on various dates (e.g. to celebrate holidays).
- Allow for flexibility. For example, during the Ramadan many Muslims prefer to start and finish work as early as possible due to all-day fasting. On the other hand, persons celebrating Sabbath on Fridays need to leave work early.
- Obtain basic information on other traditions and holidays, ask questions.
- Encourage employees (do not force them) to share information about their traditions and holidays celebrated by them (e.g. Diwali, Yom Kippur, Ramadan).
- Do not make all employees attend company Christmas event or decorate the Christmas tree. If someone does not want to take part, they do not have to explain why.
- Prepare neutral greeting cards or different versions of cards.
- React and eliminate all signs of discrimination.



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Dziękujemy za zaufanie i życzymy Państwu radosnych Świąt
oraz sukcesów w nadchodzącym roku!

Thank you for your trust. We wish you a joyful holiday season
and much success in the coming year!



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