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**JANUARY 2024**

# TOPICS

Managers are entitled to overtime pay

Even if the employee did not perform work in special conditions or of special nature before 1 January 1999, they will be entitled to bridging pension

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NEWS

## MANAGERS ARE ENTITLED TO OVERTIME PAY

An employee is entitled to additional pay or time off work for overtime work. The exceptions include managers of separate organisational units.



**Lukasz Kuczkowski,**  
Attorney-at-law,  
Managing Partner

This regulation does not apply, however, to every manager, but only one who (a manager test):

- a) has subordinates
- b) actually fulfills managerial duties with respect to them
- c) organises and supervises the work of his or her subordinates
- d) does not perform the same work as his or her subordinates (team leaders are therefore not managers as defined in this exception)
- e) manages a unit separated within the organisational structure of the employer with a degree of independence.

If an employee does not pass a manager test, then he or she is entitled to pay for overtime. An employee is also entitled to pay when overtime work is permanent as a result of imposed duties or imposed work organisation.



**Monika Politowska-Bar**  
Advocate, Lawyer

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## EVEN IF THE EMPLOYEE DID NOT PERFORM WORK IN SPECIAL CONDITIONS OR OF SPECIAL NATURE BEFORE 1 JANUARY 1999, THEY WILL BE ENTITLED TO BRIDGING PENSION

On 1 January 2024 a change in legislation came into effect allowing persons who started work in special conditions or of special nature after 1 January 1999 to draw a bridging pension.

Before the above change one of the conditions was performing work in special conditions or work of special nature for at least one day before 1 January 1999. This condition was repealed.

However, other conditions for granting a bridging pension remain unchanged, which means that it is still necessary to meet them all.

The above change should not result in significant changes in the labour market, however some employers may see specialised personnel leave in order to draw a bridging pension.

This change does not affect the employer's obligation to pay the premiums to the Bridging Pensions' Fund.

## **NEW EMPLOYER PROHIBITED FROM ASKING EMPLOYEES ABOUT CERTAIN BENEFITS THEY USED IN PREVIOUS WORKPLACE**



**Katarzyna Wilczyk,**  
Attorney-at-law,  
Senior Lawyer

The Ministry of Family, Labour and Social Policy and the State Labour Inspection confirmed in their statements in December 2023 that an employer is not entitled to ask an employee at the beginning of his or her employment about the employee's use of time off work due to force majeure, carer's leave or occasional remote work in the previous workplace. Moreover, the employer may not demand the employee to make a declaration concerning the employee's intention to use these entitlements during the employment relationship.

According to the regulations, the scope of personal data that the employer may request from a person applying for a job and from an employee is set out in article 22(1) of the Labour Code. The employer may require additional personal data, if it is necessary to use the entitlements or fulfill the legal obligations. The person whom the data concerns makes these data available by making a declaration. In practice, the employers usually use personal data forms.

Information about the number of days of remote work, carer's leave and time off work due to force majeure used in a calendar year in which the employment ended are in the certificate of employment. Therefore, according to the State Labour Inspection and the Ministry of Family, Labour and Social Policy, there is no reason to request these data in a personal data form. The same applies to the question concerning the employee's intention to use the above entitlements. The authorities decided that there is no reason to request a declaration of the intention to use them in a personal data form. Using these entitlements requires a request from an employee in each case.



**Michalina Kaczmarczyk,**  
Attorney-at-law,  
Senior Lawyer

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## **WE HAVE TO PROTECT COMPANY INFORMATION ON EMPLOYEE'S PRIVATE COMPUTER**

If we allow an employee to use private devices for work, we should take special care to protect confidential information, including personal data. Appropriate technical and organisational measures should be taken and a risk analysis should be performed.

Such measures include the introduction of appropriate procedures in case of a theft, loss, hacking attack, sending information to an unauthorised person by mistake, using sufficiently complicated passwords, regular forcing of password change, the obligation to connect via VPN, and disc encryption.

Failure to introduce such solutions may lead not only to a loss of valuable information, but also to a fine being imposed by the President of the Personal Data Protection Office.



Zuzanna Rosner-Laskorzyńska,  
Attorney-at-law,  
Senior Lawyer Account Manager

## POSITIVE DISCRIMINATION IN RECRUITMENT IS POSSIBLE

Companies embracing the DE&I idea (Diversity, Equity & Inclusion) have better results, are more competitive and innovative.

Aware of this, employers strive to build diverse teams employing persons with disabilities, 50+, LBGT+ etc. Can an employer carry out recruitment based on so called diversity sourcing, i.e. sourcing candidates with a specific characteristic, members of minority groups, exposed to exclusion or discrimination?

The regulations allow affirmative action, i.e. equalising opportunities. However, it may only be undertaken for a specific time and must be proportional to the intended purpose. Recruitment does not meet this condition, if it makes a given characteristic (e.g. sex or sexual orientation) the only criterion. It is crucial to introduce mechanisms which will allow persons from underrepresented groups competing with other candidates (or employees), taking into account the mechanisms of equalising opportunities. Thus, the employer may give preference to candidates from the above groups, but only after an objective assessment was carried out confirming that the professional qualifications, skills, and experience of other candidates are the same or very similar.



Monika Czekanowicz,  
Attorney-at-law, Lawyer

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## IMPORTANT DATES FOR OCCUPATIONAL HEALTH AND SAFETY IN THE NEXT FEW WEEKS

The start of the year is the time when employers must submit important occupational health and safety reports:

**By 31 January – the ZUS IWA form on working conditions**, if at least 10 insured persons were registered for accident insurance in the last year, on the basis of which the ZUS will calculate the premium for accident insurance. Failing to submit the form or providing untrue data will result in an increase in the interest rate of the premium for accident insurance for the whole year by 150%.

**By 15 February – the Z-10 report concerning working conditions** – only if this obligation has been imposed by the Main Statistical Office (GUS) – the employer must self-check the company's account on the GUS platform in order to verify whether the employer has this obligation. Failing to submit the report may result in a fine of up to PLN 5,000 and providing untrue data – a fine or imprisonment for up to 2 years.

# INSURANCE PREMIUM HOLIDAY FOR MICRO-ENTREPRENEURS FROM 1 OCTOBER 2024

Premium holiday will be available for one calendar month per calendar year. An entrepreneur will have to submit an application to the Social Insurance Institution (ZUS) in the form of electronic document filed in the ZUS information and communication system. The ZUS will have 40 days within submitting a complete application to process it.

An entrepreneur will be able to decide in which month to take the premium holiday and will indicate this month in the application. After the ZUS has approved the application, the entrepreneur will not be able to give up the premium holiday or change the time when it should be taken.

During the premium holiday the entrepreneur will not be obliged to suspend the business activity. This means in this period the entrepreneur will still be able to provide services, raise invoices, and gain income from this activity.

During the premium holiday the premiums for social insurance will be paid in whole by the state budget, through the ZUS. At this time the lowest basis of assessment for premiums will be applied for the entrepreneur. The entrepreneur will also be exempt from the premiums for the Labour Fund and Solidarity Fund. These premiums will also be covered in whole by the state budget.

Premium holidays will not be available, among others, to persons who in the previous or current calendar year carried out non-agricultural business activity for a former employer for whom in the calendar year of starting business activity or in the previous calendar year they performed activities included in the scope of their business activity as part of the employment relationship or co-operative employment relationship.

The premiums paid by the state budget will be exempt from the PIT.

The holiday will not cover the health insurance premium.

The changes are to come into effect on 1 October 2024.

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**Katarzyna Wilczyk,**  
Attorney-at-law,  
Senior Lawyer



**Anna Nowak**  
Lawyer

## NEWS

### XV EDITION OF 10 DECISIONS CONFERENCE

We invite you to the XV edition of our annual 10 Decisions Conference, during which we will discuss the most important Supreme Court rulings on People & Culture law issued in the previous year.

XV EDITION OF 10 DECISIONS CONFERENCE

8 February | Warsaw | Stationary event

Register [HERE](#)

Date: 8 February 2024

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