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15
YEARS

PRO HR

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TOPIC 1

Burnout cannot be a reason for sick leave

Contrary to media reports, as of 1 January 2022, workplace burnout cannot be considered an illness excusing absence from work. Although as of 2022 burnout will be included by the WHO in the Eleventh Revision of the International Statistical Classification of Diseases and Related Health Problem (ICD-11), but it is not classified as an illness. Moreover, in Poland, the Tenth Revision of the Classification, the so-called ICD-10, is still in force and this will not change for the next few years.

However, according to Polish regulations, as a rule, an employee's inability to work should result from his/her illness (and illness includes also e.g. an injury). Therefore, the physician should first directly examine the employee and then determine the illness that so affects the employee that it prevents him/her from performing work.

Such an illness, by referring to a code specified in the ICD-10, must be indicated in the sick leave. Only a medical certificate drawn up in this manner can be evidence justifying absence from work.

However, the employer does not see the illness code in the sick leave. In practical terms, therefore, the physicians' practice in determining the reasons justifying absence from work and ZUS control will be key.

Regardless of the changes in classification, employers should ensure safe and healthy working conditions, which includes preventing undesirable phenomena such as workplace burnout.



Łukasz Kuczkowski
Attorney-at-law / Partner



TOPIC 2

Major changes in the rules of employing foreigners

The validity of declarations on entrusting work to a foreigner is extended to 24 months. The currently required period of the break in employment on the basis of the declaration is also to be eliminated if the period of performing work by the foreigner on the basis of this declaration or several different declarations exceeded in total 6 months over the past 12 months.

The work permit procedure will be faster in selected cases. Priority is to be given to cases of foreigners performing work for entrepreneurs conducting activities of strategic importance to the national economy. The entity competent to determine the activities of strategic importance will be the minister responsible for economy.

Foreigners will be able to change the combined temporary residence and work permit in more cases. The permit can be updated, for example, if the foreigner decides to switch employers during the term of validity of a residence permit extended for the purpose of working for another employer. Currently this is not possible and in such a situation the foreigner must apply for a new permit.

The rules for applying for temporary residence and work permits will also change. Foreigners will not have to demonstrate that they have a source of stable and regular income and place of residence in the territory of Poland. In exchange for that, the amount of remuneration proposed by the employer cannot be lower than the minimum working wage regardless of the working time and type of legal relationship forming the basis for doing work.

In addition, foreigners whose proceedings to issue a temporary residence and work permit were launched prior to 1 January 2021 and have not ended as of the date of enacting the foregoing act will receive a temporary residence permit provided these foreigners meet the requirements prescribed by the act.



Michał Kacprzyk, PhD.
Attorney-at-law



Jan Pietruczuk
Immigration Consultant



TOPIC 3

Employers will be authorized to verify COVID test results

A bill on testing employees and collecting information on vaccination or past infection is moving through the Polish Parliament (Sejm).

It stipulates that employees and collaborators engaged under civil-law contracts will be eligible for free, publicly funded Sars-CoV-2 testing.

The employer will be able to require the employee (collaborator) to provide information about having a negative test result taken no more than 48 hours before the test is presented. Importantly, the so-called convalescents and vaccinated persons will be exempt from the requirement to have a negative result, as long as they provide the employer with this information. The employer will be able to request that the information be documented.

Employers will thus finally have a clear legal basis for processing employee health data to counter the spread of COVID-19.

If an employee (collaborator) fails to provide information about a negative test result, convalescent status or vaccination, the employer will be able to, among other things, make changes in the way the employee performs his/her job, change the employee's work system or schedule, or recommend remote work or other work, but without a reduction in pay.



Jan Rabczuk
Attorney-at-law trainee



TOPIC 4

Brokerage houses: gender-balanced compensation committees and exclusion of certain compensation restrictions



Natalia Łokińska
Advocate



On Christmas Eve, a new regulation came into force regarding, among other things, compensation policies at brokerage houses. In addition, in December 2021, the Act on Trading in Financial Instruments was amended.

Among other things, the Act on Trading in Financial Instruments introduces an obligation to establish a gender-balanced compensation committee in brokerage houses in which the average value of balance sheet assets and off-balance sheet items in the four-year period immediately preceding a given financial year is higher than the PLN equivalent of EUR 100,000,000. In addition the Act stipulates that compensation policies must be gender neutral.

The regulation, in turn, regulates, among other things, the cases when brokerage houses or individual risk-takers are not subject to its provisions pertaining to:

- deferring a portion of variable compensation components;
- determining a portion of variable compensation components in financial instruments; and
- discretionary pension benefits.

The provisions of the regulation apply to variable compensation components due from 2022.

Brokerage houses must review their compensation policies and bring them into compliance with the new law.

TOPIC 5

An employee who leaves after a takeover is not entitled to severance pay

Within 2 months following a transfer of a work establishment or part thereof to another employer, an employee may terminate his/her employment without notice with 7 days' notice. In such a case, the termination of employment results in the consequences that the labour law regulations associate with the termination of the employment relationship by the employer with notice.

It happens that in such a situation employees – pointing to deterioration of their working conditions as the reason for termination of employment with 7 days' notice – request payment of a severance pay under the Act on Special Rules for Termination of Employment with Employees for Reasons not Attributable to Employees.

However, as a rule, employees are not entitled to such severance pay. The right to severance pay may be considered as an exception, only in the case of a serious change in working conditions to the employee's disadvantage. And these working conditions should be understood as, for example, reduction of the pay or withdrawal of bonuses, and not as circumstances associated with deterioration of working comfort, such as less modern IT system or worse work tools.



Paulina Szymczak-Kamińska
Attorney-at-law



TOPIC 6

An employee didn't report the accident? Conduct an accident investigation anyway

We come across a belief among clients that if an employee has not requested an accident investigation, the employer has no obligation to conduct it, especially when the employee has not suffered any major injuries. This is a mistaken view.

The employer must appoint an accident team whenever it becomes aware of an event that may be considered as an accident at work. It does not matter how it became aware of it or whether the injured party wishes such an investigation to be conducted.

The method of burying your head in the sand won't do you any good, and later on it may hurt the employer.

Sometimes an employee "remembers" an accident only later on, at a time of conflict with the employer. If the employer has not previously conducted an accident investigation, it exposes itself to an allegation of failure to conduct such an investigation promptly.

Furthermore, as time passes, it will become increasingly difficult for it to ascertain the real course of events. Conducting the investigation right away allows you to inspect the scene, gather "fresh" testimony from witnesses, and reduce the possibility of manipulating facts and evidence.



Agnieszka Piasecka
Advocate



TOPIC 7

Employers must adapt workstations to the needs of employees with disabilities

If an employee requests a special desk and chair and presents the employer with a disability certificate, the employer is obligated to purchase such equipment.

Under Polish law, the employer is required to make reasonable accommodation for a person with a disability who is in an employment relationship with the employer, if the making of such accommodation does not cause a disproportionate burden for the employer. Necessary reasonable accommodation consists of making changes or adjustments necessary in a particular situation to meet the specific needs of the individual's disability as reported to the employer.

The legislator did not define what specific amount would constitute a disproportionate burden. This amount must therefore be determined by the employer with respect to the specific situation. As a general rule, the purchase of a desk and chair will not constitute a disproportionate burden for the employer unless the equipment is very expensive, given the employer's size and financial resources.

Failure to make necessary reasonable accommodation for an individual with a disability is considered a violation of the principle of equal opportunity in employment.

If the employee has only a medical certificate that special equipment is needed, e.g. because of back problems, the employer is not obliged to buy such equipment. In such a situation, the employer must provide the employee with equipment having the parameters specified in the regulation on occupational safety and health on workstations equipped with display units.



Agnieszka Anusewicz
Advocate



INSIGHTS / WEBINARS

RACZKOWSKI | 15 YEARS

15 years ago we started as Bartłomiej Raczkowski Kancelaria Prawa Pracy, a three-person firm

Today we are the largest HR firm in Poland. The largest in the whole of Central and Eastern Europe

This year we are celebrating our 15th anniversary. There will be some surprises, celebrations and events. Stay tuned!

→ [Watch the preview.](#)

PRO HR Cafe | Remuneration policies in the financial sector under new rules

27 January | 10 am to 11 am

During the 9th episode, Bartłomiej Raczkowski and Natalia Łokińska will discuss, among other things, definition of a risk-taker, what is the application of the remuneration policy in a limited scope, how the period of deferring the payment of variable components will change.

Free online event.

→ [Program and registration](#)

WEBINAR | Safety audit – benefit from OHS

20 January | 10 am to 11 am

In the event of an inspection or an accident investigation, most of the incriminating evidence is provided by the employers themselves. Why is this the case?

During the webinar we will talk about the most common pitfalls, but most importantly, how to avoid them.

Free online event.

→ [Program and registration](#)

CONFERENCE | Occupational burnout on target

25 January | 9:30 am to 2:30 pm

We would like to invite you to the closing event of the social campaign "OJob burnout on target", of which we are a substantive partner.

We will tell you whether and why professional burnout can be a reason for sick leave.

Free online event.

→ [Registration](#) | → [Details](#)

PRO HR YEAR BOOK 2021

An annual compilation of current and practical issues in HR law. The main theme of most of the texts in the second edition of our publication is the pandemic and its impact on the labour market, including the way we work, the health of employees, their expectations and the challenges it poses to employers.

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