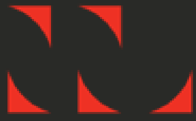

Ius Laboris Poland Global HR Lawyers

Raczkowski

PRO HR

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TOPICS

Employers with a headcount of 50 or more have until 25 September to implement internal reporting procedures following consultation with the unions or workers' representatives

The new law protects more than just whistleblowers

Employers must increase worker protection against reprotoxic substances

A stock plan may qualify as an incentive plan with deferred taxation and 19% tax rate even without underlying shareholders' resolution

Seven days to notify the giving of a job to a Ukrainian national

Legislative proposal: as of 1 January 2026, B2B hiring and contracts for services to be included in employment history

EVENTS

EMPLOYERS WITH A HEADCOUNT OF 50 OR MORE HAVE UNTIL 25 SEPTEMBER TO IMPLEMENT INTERNAL REPORTING PROCEDURES FOLLOWING CONSULTATION WITH THE UNIONS OR WORKERS' REPRESENTATIVES

Ewelina Rutkowska, PhD
Advocate

Any worker who becomes aware of a breach of law in their company will have the right to report it. Employers will have to defend such whistleblowers against retaliation, protect their identities, and follow up on their reports. That is why the law requires employers to consult the related procedures with the unions or workers' representatives. The idea is to make sure employees have an opportunity to speak up since it is them that the law is designed to benefit.

The consultation is to be with company trade unions or with elected representatives of the workers. In the case of the unions, standard rules will apply. If a company has no trade unions, workers' representatives have to be appointed.

It is not clear if this role may be filled by works councils, which only represent employees, not all the workers. However, we believe the law does not require the appointment of a completely new body solely for consultation of internal reporting procedures. The works council may be used for the purpose, with the addition of representatives of workers employed under other contracts.

Trade unions can help whistleblowers to make their reports. As facilitators, they can ensure compliance with internal reporting procedures, report retaliation, or provide legal assistance to whistleblowers affected by retaliation. Not inconceivably, the unions can also engage in external reporting by notifying violations to public authorities.

THE NEW LAW PROTECTS MORE THAN JUST WHISTLEBLOWERS

Damian Tokarczyk, PhD
Advocate

Contrary to its title, the Whistleblower Protection Act protects not only persons who make good faith reports of legal violations. The protection extends also to facilitators and persons connected with the reporting person. They, too, shall not be exposed to any retaliation, such as by being sued or accused in connection with their reports.

Facilitators

Trade union headquarters submitted during the legislative process that they want to intermediate between whistleblowers and employers. This is now possible as union representatives may facilitate the reporting process. For example, they may provide advice on the reporting procedure or whistleblower's rights, or support the whistleblower in writing their report. Facilitation may also come from others, such as a work colleague or line manager. This latter help is particularly worthy of note. A line manager who learns of a violation from their subordinate may help the whistleblower (guide them to the right reporting channel) or make the report themselves.

Persons connected with whistleblower

Making a report leaves the whistleblower vulnerable to retaliation. But retaliation directed against the reporting person may also indirectly hurt others. Or the other way round – retaliation primarily targeted against a third party (e.g. whistleblower's work colleague or family member) may indirectly affect the reporting person themselves. For such reasons retaliation is prohibited also against persons exposed due to their close relationship with the whistleblower.

This may involve whistleblower's work colleagues where the reprisal could be designed to damage their relationships with him. The law also mentions whistleblower's close ones (including those living together with her), who could, for example, be sued or put under charges in an effort to dissuade the whistleblower from escalating the report.

Scope of protection

Persons of all those categories (whistleblowers, facilitators, connected persons) enjoy the same protection. It is prohibited to retaliate, or attempt or threaten to retaliate, against them and to raise accusations or claims against them alleging breach of confidentiality (e.g. business secrets) or copyrights during the reporting process.

Retaliation will be a crime punishable by a fine, a community sentence or imprisonment of up to 2 years. If the criminal conduct was persistent (continued over a longer time or after the perpetrator has been warned), the punishment will be up to 3 years' imprisonment.

EMPLOYERS MUST INCREASE WORKER PROTECTION AGAINST REPROTOXIC SUBSTANCES

Monika Czekanowicz
Attorney-at-Law

Article 222 of the Labour Code has expanded worker protection to include reprotoxic substances, i.e. substances capable of causing infertility, miscarriage or fetal developmental defects. Work is underway to issue secondary legislation imposing new duties on employers.

In accordance with the new law, employers should strive to replace reprotoxins with substances that are less harmful to health. If this is impossible, the given substance must be produced and used in a closed system. Only where substitution and closed circulation is technically unfeasible may the employer resort to prevention measures to limit exposure.

The employers will have to:

1. make sure reprotoxic substances are included in the investigation and measurement of workplace factors that are harmful to health;
2. analyse the nature, degree and duration of worker exposure to health risks;
3. make a health and safety risk assessment and establish measures to be taken to eliminate or reduce the risks;
4. register jobs involving exposure to reprotoxic substances and register workers employed to do those jobs, and keep these records for 40 years after the end of exposure;
5. make sure State Labour Inspection has access to information about business operations or industrial processes that use reprotoxic substances and about the number of workers exposed, the preventative measures taken, and the protective equipment used;
6. make sure those working under exposure are notified about:
    a. any containers, packages and installations containing reprotoxic substances and about the related labelling and warning requirements;
    b. the hygiene requirements to be satisfied to limit exposure to reprotoxic substances;
    c. the need to use personal protection equipment and to keep everyday and protective clothing at different places;
    d. the need to duly clean and store protective equipment, and to replace or repair it if damaged;
    e. the steps taken to prevent incidents and those to be taken by workers during rescue actions or incidents;
7. ensure exposed workers receive training about health risks resulting from the safety and health assessment, including the additional risks due to smoking tobacco, and about precautions to be taken to limit exposure;
8. consult with workers' representatives about the design and implementation of any measures to prevent exposure to reprotoxic substances.

A STOCK PLAN MAY QUALIFY AS AN INCENTIVE PLAN WITH DEFERRED TAXATION AND 19% TAX RATE EVEN WITHOUT UNDERLYING SHAREHOLDERS' RESOLUTION

Joanna Stolarek
Tax Advisor

Generally, income from employee stock plans arises on receipt of the shares fully or partially free of charge and qualifies as income from employment or personal services. As such, it is subject to progressive taxation (up to 32%) and national insurance contributions.

However, on certain conditions the tax point may be deferred until sale of the shares, with the applicable tax being 19% and national insurance contributions excluded.

One of the conditions is that the scheme must be authorised by a resolution of the company's general meeting. The Provincial Administrative Court in Cracow has recently held that this condition should be interpreted liberally because other jurisdictions can well allow employee incentive plans to be set up by other corporate organs (e.g. management board or board of directors). Thus, the court says, sale of shares should be permitted to be the first tax point also in such schemes in order to ensure that the purpose of the law is achieved.

This judgment sits well with a broad line of more liberal authority from the Supreme Administrative Court. With this in mind, it may be advisable to reassess the approach to incentive scheme taxation in your company.

Anna Bloch-Kurzyńska
Advocate trainee

SEVEN DAYS TO NOTIFY THE GIVING OF A JOB TO A UKRAINIAN NATIONAL

An employer wishing to give a job to a Ukrainian national can legalise the hire by notifying it. As of 1 July 2024, the notification deadline is 7 days, down from the 14 days applicable previously. The notification continues to be free of charge. During employment, the employer should file a new notice within 7 days in the event of a reduction in pay, the number of working hours or the working time basis, or a change of the contract type, position or job. A new notice is not required when a subsequent contract is made with the same conditions of employment. This is treated as continuation of employment rather than giving a job again. But if the subsequent contract follows after a pause, a new notification must be filed.

LEGISLATIVE PROPOSAL: AS OF 1 JANUARY 2026, B2B HIRING AND CONTRACTS FOR SERVICES TO BE INCLUDED IN EMPLOYMENT HISTORY

Jan Rabczuk
Attorney-at-Law

Where a worker has a history of working otherwise than in an employment relationship, their total length of service will include any periods of self-employment, work under contracts for services or commercial agency contracts, but also any periods when they were engaged in, inter alia:

- creative or artistic activities,
- professional services,
- babysitting services (under an "activation contract"),
- as shareholder in a single-member LLC or partner in a registered partnership, limited partnership or limited liability partnership.

The periods counted include those when the person's national insurance contributions were paid and those when they were exempt from the contributions under other laws (students, start-up relief). The current proposal does not allow for employment history to include periods of work under a contract of enterprise.

According to the proposal, any employment-related rights the workers may have due to the new periods of work being included in their length of service will vest as of the effective date of the new law, which is scheduled to be 1 January 2026. Such a long delay is needed for employees to provide national insurance certificates and for employers to make length-of-service computations according to the new rules and perhaps also to amend their company policies.

EVENTS

MASTERCLASS 2024

MASTERCLASS 2024

9-10 September 2024
16-17 September 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: September 9-10, September 16-17, 2024
WHERE: Online

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

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