



Ius Laboris Poland Global HR Lawyers

Raczkowski

15
YEARS

PRO HR

MARCH 2022

TOPICS

Key HR law rulings in 2021

18 months of legal residence and right to work for Ukrainian citizens fleeing war

Enlisting in the "International Legion" in Ukraine with the Minister's permission

Necessary reasonable accommodation for a disabled employee

Social distancing lifted, plexiglass, gloves and face masks remain

ZUS may reduce maternity benefit

INSIGHTS/WEBINARS

TOPIC 1

Key HR law rulings in 2021

There were many interesting rulings in HR law handed down in 2021.

The Supreme Court has held, among other things, that:

- Trade union consultations must be carried out in writing - that is, on a sheet of paper with a handwritten signature or on an electronic document signed with a qualified electronic signature. An e-mail does not meet this requirement (Supreme Court judgment of 21 January 2021, ref. no. III PSKP 2/21).
- In determining whether we are dealing with a collective dismissal, we must look both 30 days back and 30 days forward - that is, there can be no 30-day period in which employees are laid off in excess of the thresholds specified in the Act. The number of dismissals includes mutual agreements of the parties, if there are at least 5 of them during this period (Supreme Court judgment of 27 January 2021, ref. no. II PUNPP 1/21).
- Intentional wrongful dismissal generates a risk of additional compensation - that is, a reinstated employee may seek supplementary compensation over and above his or her unemployment remuneration. He or she must prove the employer's bad intentions in dismissing him or her, the damage, and that he or she suffered it as a result of the dismissal (Supreme Court judgment of 27 January 2021, ref. no. II PSKP 1/21).
- The employer is responsible for protecting the whistleblower's data - that is, the employer may entrust the internal investigation procedure (e.g. in a mobbing case) to a third party, but must enter into an agreement on entrusting the processing of personal data. Besides, in such investigation, we explain whether the mobbing took place, and we cannot assess the condition of the injured party's health (Supreme Court judgment of 4 February 2021, ref. no. II PSKP 7/21).



Natalia Basista
Advocate



Key HR law rulings in 2021

- It is the practice that decides what is included in the basis for calculating the benefit, not the wording of the regulations - that is, in order to exclude a given component from the basis for calculating the benefit, it is not enough to state that it is due for the period of illness, but it is important whether we actually pay it in practice. It may happen that we pay contributions on a given component, and yet it will not be included in the benefit (Supreme Court judgment of 4 March 2021, ref. no. II USKP 25/21).
- If the employment relationship is established, the employer will not be reimbursed for the funded contributions for the employee's portion - that is, if the court changes the classification of a civil-law contract to an employment contract and we pay social security contributions for the employee's portion, we cannot demand reimbursement from the employee. It is an exception when it was the employee who wanted the civil-law contract (judgment of 24 June 2021, ref. no. III PSKP 26/21).
- ZUS loop - i.e. when our employee under a civil-law contract is employed by another entity providing us with services with which the employee works, we pay the ZUS contribution on the compensation which the employee receives from the third party - this applies regardless of whether the employer simply pays the third party for the services or otherwise refinances the remuneration of its employees (resolution of 26 August 2021, ref. no. III UZP 6/21).
- We can make deductions from the compensation for the time of remaining unemployed - that is, only the benefits regulated in the remuneration section of the Labour Code (base salary, stand-by fee, sick pay, bonuses, amounts due for business trips, death benefit, and disability and pension benefit) are subject to the protection against deductions and the prohibition of waiver. Remuneration for the time of remaining unemployed is not a "salary", but a kind of compensation (Supreme Court judgment of 28 January 2021, ref. no. I PSKP 2/21).

Key HR law rulings in 2021

Other equally important decisions:

- Whether or not stand-by time is working time is determined by the ability to freely manage time, the time limit set for responses and their average frequency - in other words, if the restrictions imposed on the employee objectively and very significantly affect his or her ability to freely manage his or her time, during that period, then all stand-by time will be working time. Even if the employee does not work at all during stand-by time (CJEU judgment of 9 March 2021, ref. no. C-344/19).
- Dismissal for social media activity not always justified - that is, a comprehensive assessment of such activity should be made each time: its harmfulness, reach, social impact, recognisability of the employee on social media, tone of the message and professional context. Moreover, liking does not carry the same weight as publishing or sharing (ECHR judgment of 15 June 2021, ref. no. 35786/19).

TOPIC 2

18 months of legal residence and right to work for Ukrainian citizens fleeing war

The President of the Republic of Poland has signed a special law regarding assistance for Ukrainian citizens. On its basis, Ukrainian citizens who entered Poland directly and legally from the territory of this country due to the war, starting from the 24th of February this year, will obtain the right to legal residence for 18 months counted from this date.

The regulations also cover the citizens of Ukraine who entered Poland from the territory of another country, if they have the Card of the Pole and citizens of other countries, if they are married to a citizen of Ukraine.

Ukrainian citizens who stay in Poland legally on the basis of the provisions of the special act or the previous regulations will be able to take up employment without additional requirements, such as registration of the declaration on the intention to commission work or obtaining a work permit.

In order to recognise such persons as legally working it is sufficient that the employer who employs them notifies the competent labour office within 14 days. The notification will be made via the teleinformatics system (ICT) praca.gov.pl. Performing work on this basis will be possible for a period of up to 24 months.



Michał Kacprzyk, PhD.
Attorney-at-law



Jan Pietruczuk
Immigration Consultant



TOPIC 3

Enlisting in the "International Legion" in Ukraine with the Minister's permission

The President of Ukraine announced the establishment of the so-called international legion for foreign volunteers which will be part of Ukraine's territorial defence forces. Volunteers can apply to the military attachés of the Ukrainian embassies in the relevant countries.

However, before enlisting in a foreign army or a foreign military organization, a Polish citizen should remember to obtain a prior consent of the Minister of Interior and Administration, who gives such consent after consulting the Minister of National Defence and the Minister of Foreign Affairs. If a Polish citizen undertakes military duties in a foreign army or military organization without obtaining the above-mentioned consent, he or she is exposed to criminal liability.

Given the above procedure, Polish citizens have time to settle their situation with their employer before reporting to the "international legion". They can therefore terminate their contract or agree with their employer on unpaid leave. If they fail to do so their absence from work may be considered an unpaid unexcused absence. As a consequence, consideration may be given as to whether such an employee may be terminated on disciplinary grounds, although given the current dynamic situation each such case should be approached individually.



Rafał Jaroszyński
Attorney-at-law



Agnieszka Anusewicz
Advocate



TOPIC 4

Necessary reasonable accommodation for a disabled employee

An employer has a duty to make reasonable and necessary accommodations for a person with a disability to perform the job. As a rule, this involves the purchase of new equipment, orthopaedic items, provision of technical assistance, changes in the organization of working time or division of tasks. This obligation is not absolute - it will be excluded if it is necessary to incur disproportionate costs without compensation from public funds.

Termination of an employment contract with a disabled person is therefore only possible when the employer cannot make any reasonable accommodation. Dismissal without making such changes puts the employer at risk of discrimination claims.



Anna Boguska
Attorney-at-law



TOPIC 5

Social distancing lifted, plexiglass, gloves and face masks remain

Employers no longer need to place employees at every other desk and use plexiglass. The government has lifted the requirement to maintain a 1.5 m distance between workstations. Employers can also host events without a limit of participants and do not have to maintain distances between chairs in meeting rooms. It is also no longer mandatory to provide disposable gloves or disinfectants.

The obligation to wear masks if there is more than 1 person in the room remains - although the employer may lift this obligation. The rule is effective for the time being until 31 March 2022.



Natalia Basista
Advocate



TOPIC 6

ZUS may reduce maternity benefit

The Social Security Institution (ZUS) has the right to challenge and reduce the social security assessment base. This results in reduction of the maternity benefit. However, one can challenge ZUS's decision.

In case II USKP 24/21, the Supreme Court examined a case in which the insured woman challenged the decision of the Social Insurance Institution (reducing her contribution assessment basis from PLN 14,000 to PLN 1,680). The Regional Court subscribed to her stance. However, the Appellate Court had a different view - it set the basis at PLN 3,740. According to the Court, the basis was overstated because the earlier increase was not economically justified and other employees, including the company's CEO, earned less.

The Supreme Court disagreed with the Appellate Court and reversed its judgment. In justifying its decision, it formulated a number of important conclusions - according to the Supreme Court, there are no grounds for challenging the basis for assessment of the contributions when the remuneration:

- is market-based (taking into account, in particular, the specifics of the region and the industry concerned);
- corresponds to the employee's experience and qualifications;
- corresponds to the importance of the employee to the employer's business, as well as the responsibilities, quantity and quality of the work performed;
- is economically justified (economic situation, profitability in the industry);
- falls within the employer's pay scale (although that does not matter as much and cannot be applied to the exclusion of other criteria).



Piotr Graczyk
Advocate



INSIGHTS / EVENTS

RACZKOWSKI | 15 YEARS

WHO WE ARE, WHAT WE DO | Interdisciplinary, international projects.

In a series of films about our specializations Katarzyna Serwińska talks about our practice in the field of employee taxes.

Taxation and taxation of services provided to employees, people working on the basis of contracts of mandate and individual business activity is our specialty.

 [Watch](#)

PRO HR Cafe | Copyright in the employer's activity

24 March | 10 am to 11 am

The proper acquisition of copyrights to works created by employees and co-workers ensures the security of the employer's business in many areas. This issue still raises a number of questions and doubts.

Bartłomiej Raczkowski and Justyna Rasiewicz will talk about how to ensure security and acquire copyrights.

Free online event.

→ [Program and registration](#)

WEBINAR | Risk assessment: an obligation, a necessity, or a natural activity?

29 March | 10 am to 11 am

Join us for a continuation of the webinar on risk assessment. Part one sparked a lively discussion and in part two we will continue to answer your questions.

During the webinar, we will talk about how to assess occupational risk so that the assessment is beneficial to the company, and how to avoid the most common traps.

Free online event.

→ [Program and registration](#)

REPORT IUS LABORIS | What's just happened and how Covid has impacted workplaces worldwide and how businesses might react to the new normal?

In this Ius Laboris publication we look at flexible working, protecting employees' mental resilience, cybersecurity policies and practices, and discuss how to protect the reputation of your business in this interconnected world.

→ [Download](#)

follow us



contact us



www.rackowski.eu

The PRO HR Newsletter does not contain any legal opinions and cannot be treated as their source. To obtain legal advice about a relevant subject, please contact us at the following address: office@rackowski.eu.

Copyright © 2022: Rackowski sp.k.