



Ius Laboris Poland Global HR Lawyers

Raczkowski

15
YEARS

PRO HR

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TOPICS

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INSIGHTS/WEBINARS

TOPIC 1

No more remote work based on the employer's instruction – you will need rules and regulations and agreement with the employee



Iwona Jaroszewska-Ignatowska, Ph.D.
Attorney-at-law / Partner



Most likely, remote work will be regulated by the Labour Code in November. Employers will have only 14 days to implement it. An agreement with the trade unions will be required. If there are no trade unions in the company, remote work rules and regulations must be promulgated. They should be consulted with employee representatives beforehand. So it is worthwhile to determine already today whether we have employee representatives authorized to this effect.

It is worthwhile to determine with managers which employee groups will work remotely and how – occasionally, full-time or in a hybrid format. This will have to be included in an agreement or rules and regulations.

It is worth having a go at determining the costs of remote work – equipping remote work stations and reimbursing the costs of electricity and telecommunications services. If we don't want to settle energy and Internet costs, we need to establish a lump sum that we will pay. Now is the time to calculate it. It is worth doing and budgeting the funds at least for next year.

TOPIC 2

Employment of foreigners – declarations of no criminal record under new rules



Anna Bloch-Kurzyńska
Lawyer



The entity entrusting the performance of work to a foreigner or the person who acts on its behalf is required to attach to the application for the work permit and for the renewal of this permit, a statement of no criminal record.

The province governor will not issue a work permit if the employer (or person acting on behalf of the entity entrusting the performance of work to a foreigner) has been validly penalized for acts related to the employment of foreigners or for crimes against the rights of persons performing gainful employment, crimes against the credibility of documents in connection with proceedings for the issuance of a work permit, as well as human trafficking.

The declaration must be current as at the date of the application. It has been clarified that the document should be signed no earlier than 30 days before the submission of the application.

The regulations do not provide for the possibility of submission of a copy of the document. The employer must attach the declaration in the original. However, if the employer has a trusted profile or qualified electronic signature, it is possible to sign the declaration electronically.

The possibility of submission of the declaration of no criminal record by an attorney-in-fact has been excluded. The declaration should be signed by the employer in accordance with the company's representation rules.

The changes follow from the new Regulation of the Minister of Family and Social Policy on work permits and declarations on entrusting the performance of work to a foreigner.

TOPIC 3

It is possible to store candidates' data after the recruitment process is completed – reads the ruling of the Voivodeship Administrative Court in Warsaw, accepting the complaint filed by the Raczkowski Law Firm against the decision of the President of the Personal Data Protection Office

The Voivodeship Administrative Court in Warsaw overturned the decision of the President of the Personal Data Protection Office, finding valid our arguments that the employer has not only the right, but also the obligation to store such data in order to prevent discrimination. In the oral recitals of the judgment, it was pointed out that the President of the Personal Data Protection Office interprets too narrowly the purpose derived from legitimate interests pursued by the controller or by a third party. It does not take into account at all the rights and interests of the candidates participating in the recruitment process, who may be deprived of the possibility of demonstrating the plausibility of discrimination when, after the recruitment process, all data – except the data of the selected person – are deleted.



Dominika Dörre-Kolasa, PhD.
Attorney-at-law / Partner



Jan Rabczuk
Attorney-at-law Trainee



It is possible to store candidates' data after the recruitment process is completed – reads the ruling of the Voivodeship Administrative Court in Warsaw, accepting the complaint filed by the Raczkowski Law Firm against the decision of the President of the Personal Data Protection Office

A person wishing to obtain information on why he or she was rejected does not have such a possibility and, consequently, it is impossible to determine the criteria on the basis of which some people moved on to the next stages of the recruitment and others did not.

In accordance with the Labour Code, a person with regard to whom the employer has breached the principle of equal opportunity in employment (and therefore also an unsuccessful candidate) has the right to damages. If the person demonstrates the plausibility of the claim, the employer must prove in court proceedings that there was no discrimination and that it followed only objective criteria in hiring. In order to do so, the employer must be able to compare the qualifications and qualities of the candidates that determined whether to proceed to the next stage of the recruitment process or to hire the person. It must therefore have the personal data of all candidates who participated in the process.

TOPIC 4

Per diem for business travel – PLN 38, and from the New Year – PLN 45

As of 28 July, the per diem rate for domestic business travel increased to PLN 38. Another change is coming already as of 2023. The per diem rate is to be PLN 45 per day of travel.

The per diem increase also means an increase of:

- the lump sum to cover the cost of travel by local transportation, representing 20% of the per diem – to PLN 9;
- the lump sum for overnight accommodation, representing 150% of the per diem – to PLN 67.50;
- the maximum amount to be reimbursed for one night's accommodation, which is 20 times the per diem – to PLN 900.

According to the bill of the regulation, also the per diems and limits for overnight stays on foreign business trips are to increase.



Katarzyna Wilczyk
Attorney-at-law



TOPIC 5

Remote work accident is determined in the same way as in the work establishment

Getting burned by boiling water when making tea, tripping over electronic equipment cords or slipping on a wet toilet floor. The occurrence of such events at the work establishment, as a rule, does not raise any doubt that they are work accidents. However, when these situations occur at the home of a remote worker, it will be problematic to classify them as accidents at work.

Qualifying an event as an accident at work requires the fulfilment of all of the following four prerequisites: it must be a sudden event, caused by an external cause, causing injury or death, and it must be work-related. Thus, performing remote work does not exclude the possibility of an event that can be classified as a work accident. The tripping over the cords of electronic equipment, used as an example, can occur when the employee is moving between the laptop and the printer while performing his or her work duties. However, the tripping can also occur when the employee, taking a break from work, starts doing housework or playing with the children. The severance of the relationship with work or no availability at the disposal of the employer will preclude the possibility of concluding that there was an accident at work.

Less supervision of the performance of the work, the peculiarities of the work environment and the difficulty of not having or having a surplus of witnesses to the incident, which in practice will most often be family members of the injured employee, will result in a far more problematic conduct of accident proceedings related to remote work than proceedings related to an incident that took place on the employer's premises.

Despite shifting some of the responsibilities for safe and healthy working conditions to the employee, the employer will be bound by the same procedures for conducting accident investigations as for employees performing stationary work. Gathering documentation, interviewing witnesses and listening to the injured party, as well as inspecting the scene and possibly securing it, are activities that the employer may not fail to do under penalty of a fine or restriction of freedom.



Monika Czekanowicz,
Attorney-at-law



TOPIC 6

The duration of the probationary period will depend on the term of the target employment contract; trial period to be extended by the time of absence

Work is currently underway on the implementation of the provisions of two directives of the European Parliament and the Council covering Work Life Balance issues into the Polish Labour Code.

The draft of the new legislation introduces significant changes regarding employment contracts for a probationary period. The maximum length of the probationary period (3 months) will generally remain unchanged. However, it will not be possible in every case to conclude a contract for a period of 3 months. According to the bill, the duration of the probationary period is to depend on the duration of the next employment contract. Thus, a probationary employment contract will be allowed for a period of up to:

- 1 month – if the intention is to conclude an employment contract for a fixed term of less than 6 months;
- 2 months – if the intention is to conclude a contract for at least 6 months and less than 12 months;
- 3 months – if the intention is to conclude a contract for at least 12 months.
- It will be possible to extend a contract concluded for the above-mentioned periods by a maximum of one month – if the type of work justifies it.

Another novelty will be the right of the parties to the contract to agree that the probationary contract may be extended by the period of the employee's absence, such as vacation.

The right to extend the contract by a month and by the employee's time of absence is worth indicating already in the content of the concluded contract.



Katarzyna Wilczyk
Attorney-at-law



INSIGHTS / EVENTS

SAVE THE DATE | COMPLIANCE DAY 2022

29 September | 10:00 am - 4:00 pm

We invite you to the 6th edition of Compliance Day which will take place on the eve of entry into force of the reform of the Commercial Company Code concerning corporate groups and the challenges related to the (non-) implementation of the Whistleblower Protection Directive. The conference will be, among others, devoted to:

- the realities of performing the compliance function in Polish organizations;
- the specifics of compliance management in corporate groups;
- internal proceedings after the entry into force of the holding law (amendments to the Commercial Company Code).

Free hybrid event.

[Don't wait - register](#)

PRO HR CAFE | Can an employee be tracked and how?

15 September | 10 am to 11 am

While many employers know what employee monitoring is, few are aware of the limits of what is allowed when they want to take a closer look at an employee's activity in the course of their work. In the digital world, there are a growing number of tools to investigate this activity.

These and other problems will be answered by special guest Jarosław Grzegorz, partner in EY's Forensic & Integrity Services department, who will be the guest of Janusz Tomczak head of the Business Criminal Law and Compliance practice at Raczkowski Sp.k. in the 13th episode of PRO HR Cafe.

Free online event.

[Details and registration](#)

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