Raczkowski Paruch has won the 2018 legal ranking conducted by Rzeczpospolita in category: employment law.
Raczkowski Paruch has been recommended in the white-collar crime.

3 individual recommendations:

RZECZPOSPOLITA

Bartłomiej Raczkowski
Leader in the employment law in Poland.

Sławomir Paruch
Recommended lawyer in the scope of the employment law in Poland.

Dominika Stępińska-Duch
Leader in the white-collar crime.

Dear Readers,

this issue of PRO HR we take a closer look at the bill on Employee Capital Plans (*Pracownicze Plany Kapitałowe, PPK*). In particular, we discuss the new obligations employers will be facing. There have been consistent announcements that PPK will come into force in early 2019.

We also discuss the first experiences and doubts related to the implementation of the new law that limits trade on Sundays and on holidays.

These problems originate from the impreciseness of the terms used in the Act, as well as from interpretations issued by the Ministry of Labor and the State Labor Inspectorate, in particular with reference to work in distribution centers as well as to which facilities are exempt from the ban. The literal text of the new law and its interpretations presented by the Ministry and the Inspectorate are frequently inconsistent. The need for unequivocal understanding of the regulations is particularly pressing in the context of the possible criminal or misdemeanor liability for violating it.

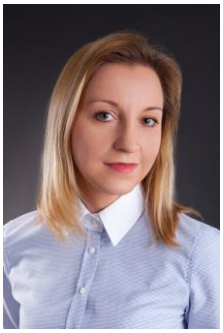
Our latest issue will also tell you how the Director of National Fiscal Information approaches 'travel by non-employees' in the context of the taxation of benefits granted on this basis. It should be noticed that this approach, which is unfavorable for the taxpayers, conflicts with the earlier rulings of the Supreme Administrative Court.

I hope you will find the contents useful,
Sławomir Paruch

Employee Capital Plans to enter into force on 1 January 2019

The bill on Employee Capital Plans (PPK) introduces a universal, supplementary pension saving scheme operated within workplaces. Eventually, PPK will be mandatory for entities that employ workers based on the contract of employment, as well as those that use civil law agreements (contracts of mandate, contracts for the provision of services, agency contracts). The only exempt entities will be:

1) Employers that operate Employee Pension Plans (PPE) and pay PPE premiums totaling at least 3.5% of remuneration;
2) Micro-entrepreneurs, subject to certain conditions;
3) Natural persons not registered as sole traders.



Paulina Zawadzka-Filipczyk, Legal Advisor

The law is expected to come into force on 1st January 2019. This particular date will apply to entities that employ at least 250 people. In subsequent years, it will be broadened (starting 1st July 2019 to employers employing at least 50 people, starting on 1st January 2010 to those employing at least 20 people, and starting on 1st July 2020 - others, including publicly financed entities). The introduction of PPK imposes new duties on employers.

In particular, the employer will have to enter into an agreement for the management of the PPK with a financial institution, as well as into individual agreements for PPK management on behalf of each employee, pay mandatory premiums towards the employee's pension and provide information and administrative service. These obligations, as well as the structure of PPK premiums, will constitute a significant cost for the employer. In addition, failure to comply with the provisions of the law leads to criminal liability. Thus, the PPK will be an administrative, organizational and financial challenge. In particular, the mechanism of "voluntary" saving on PPK that is foreseen by the law is especially doubtful. The new law's understanding of the word "voluntary" is such that employees will be automatically enrolled, with the right to withdraw at any time.

Still many doubts on the details of the Sunday trade ban

We have already seen several trade-free Sundays. There are still, however, many questions concerning the legal exemptions from the ban on trade, or the definition of some of the basic terms used in the Act. In many cases, the explanations provided so far by the Ministry and the State Labor Inspectorate (PIP) have hardly helped. They are often based on a teleological interpretation of the Act which is not reflected literally in the text. The need for unequivocal understanding of the regulations is particularly pressing in the context of the possible criminal or misdemeanor liability for violating it.

EVENTS

Webinar: COPYRIGHT OF EMPLOYEES-CREATORS
10 May 2018

We invite you to a webinar on COPYRIGHT OF EMPLOYEES_CREATORS. Who can safely use this solution, and how?

The program is available here.
The webinar will be held on **10th May 2018 (Thursday), at 10:00 – 11:00.**

For registration click here.

Global Mobility Day
16th May 2018

Global Mobility Day is a forum for the exchange of experiences on posting employees, employing foreigners, taxation and social security charges as well as remuneration and benefits systems.

The program is available here.

The conference will be held on **16th May 2018 (Wednesday), 9:00 – 15:30**, at our offices at Bonifraterska 17 (21 floor) in Warsaw.

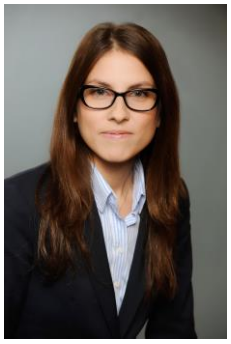
Please send questions and applications to: prohrevents@raczkowski.eu

Łukasz Chruściel, legal advisor

Predominant business activity

To give an example of a clarification provided by the Ministry and the PIP which is doubtful given the text of the regulations, we can consider the rules for identifying 'predominant business activity'. According to these organs, if it is determined during an audit that a given type of business activity, which is entered into the court registry, is actually not performed at the given establishment, the entity in question cannot use the exemption.

However, the Act itself makes a clear reference to the business activity entered in the application to the national registry of entrepreneurs. Of course, such a solution leaves room for abuse; the data entered in the registry should correspond to reality. Importantly, the PIP does not have the competencies to question registry entries and to determine factual predominant business activity. Thus, these representations greatly exceed the literal text of the law and would require amendments to the Act.



Sandra Szybak-Bizacka, legal advisor

The notion of trading establishment – what about warehouses and distribution centers?

There are similar problems with the definition of a 'trading establishment'. According to the definition provided in the Act, it refers to any facility where trading happens and where activity connected to trade is performed. The use of the conjunction 'and' (*oraz*) is equivalent to the legislator requiring that both premises included in the definition be met jointly. However, the Ministry of Labor and the PIP insist on a definition that is less favorable to entrepreneurs.

According to them, it is sufficient that trade or trade-related activities are performed in a given establishment for it to be considered a trading establishment. While this may not be relevant in the case of smaller stores (where typically both actual trading as well as trade-related activities such as product stocking, happen), in the case of many larger entrepreneurs this leads to a real definitional issue.

EVENTS

PHARMA HR FORUM
7th June 2018

It is an event where pharmaceutical employers can exchange their views.

A paid event.

The full program is available here.

The conference will be held on **7th June 2018 (Thursday), at 9:30 – 16:30**, at our offices at Bonifraterska 17 (21 floor) in Warsaw.

GDPR DAY
14th June 2018

GDPR Day is intended for managers, HR employees and representatives of data processing entities.
A paid event.

The program is available here.

The conference will be held on **14th June 2018 (Tuesday), at. 10:00 – 16:30**, at our office at Bonifraterska 17 (21 floor) in Warsaw.

Please send questions and applications to:

Large entrepreneurs frequently operate separate stores, where retail activities happen, and separate warehouses and distribution centers, where it does not. Given the literal text of the Act, the ban should not be applicable to establishments where actual retail activities do not happen. The Ministry and the PIP seem to have noticed that their interpretation of the term 'trading establishment' is too far-reaching, and it has been moderated somehow recently. This is confirmed, for example, by the recent pronouncements of the deputy minister of family, labor and social policy concerning distribution and warehousing centers. Having said that, due to the potential consequences of a violation of prohibitions imposed by the Act, including severe criminal sanctions, the question of warehousing and distribution centers deserves a definite explanation.

More than just a fine for trade on Sundays

The Act limiting retail trade on Sundays introduces parallel sanctions for misdemeanor and for felony. Asking an employee to perform trade work or other trade-related activities (e.g. product stocking) is a misdemeanor. It carries a penalty between 1,000 zloty and 100,000 zloty. The State Labor Inspectorate can fine the perpetrator up to 2,000 zloty or send the case to court.

Advocate Damian Tokarczyk, Ph.D.

Regardless of this, many individuals can be subject to criminal penalties for the same deed. The new Act introduces a new provision into the Penal Code, Article 218a. It has nearly the same wording as the provision that describes the misdemeanor, but it carries a much more severe penalty. The fine for this felony can reach as much as 1,080,000 zloty. In addition, the court may impose the penalty of limitation of personal liberty (e.g. community service) between 1 month and 2 years. The information about the felony conviction is entered into the National Penal Register, and if the convicted individual is a board member or commercial proxy, the company is banned for 5 years from public tenders. Criminal liability under Art. 218a of the Penal Code may apply to many individuals. In addition to those who actually entrusts work to an employee in violation of the law, it includes those who order this (e.g. a board member who makes a decision about work on a Sunday) or who incite this (e.g. a board member who commissions from a security or logistics company the performance of duties related to product stocking in a retail establishments).

RANKINGS

The Legal 500 EMEA 2018

Best law firm in the Legal 500 EMEA 2018 (Top Tier) ranking in the Employment category.

Advocate Bartłomiej Raczkowski – Leading Individual

legal advisor Sławomir Paruch,
legal advisor Katarzyna Dobkowska,
legal advisor Łukasz Chruściel,
legal advisor Dominika Dörre-Kolasa – Recommended Lawyers.

Who's Who Legal 2018

Advocate Bartłomiej Raczkowski and Advocate Karolina Schiffter in Who's Who Legal Corporate Immigration 2018.

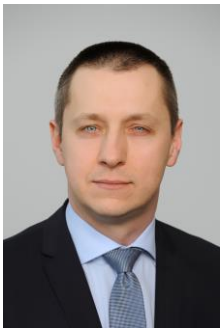
Please send your questions to:
prohrevents@raczkowski.eu

Travel by non-employees: quasi-business travel

Katarzyna Serwińska, tax advisor

In the past few months, the Director of National Fiscal Information has been issuing individual tax law interpretations which include a taxpayer-unfriendly interpretation of ‘travel by non- employees’ in the context of the taxation of benefits granted on this basis (Art. 21.1.16.b of the Personal Income Tax Act). According to these interpretations, this term includes travel with the features of an employee’s business travel, i.e. made incidentally to perform a specific task outside of the locality where the employer is established or outside of the location where tasks are regularly performed. This, in turn, leads to the conclusion that 'travel by non-employees' cannot include travel for the purposes of performing a task that is clearly specified in the contract. As a consequence, tax breaks should not be available to persons who are not employees and who perform more or less regular travel in connection with the performance of contractual services for an entity who covers the costs of such travel. According to the new interpretations, per diem allowances and other sums paid to such individuals on account of the travel constitute taxable income.

Two years ago the term of “travel by non- employees” was explained by the Supreme Administrative Court. The Court pointed out that in the case of non-employee travel, the term used is just 'travel' (*podróż*), and not 'business travel' (*podróż służbowa)*. This means that the scope of the exemption has not been limited to business travel within the meaning of Article 77(5).1 of the Labor Code, but it applies to all travel by non-employees. The Court also ruled that the meaning of 'travel’ under the provision in question cannot be extended beyond the actual physical movement of the delegated individual to encompass the performance of the objective of the travel. In consequence, the tax exemption can be used (naturally, within the limits imposed by specific laws) towards expenses on travel, hotel rooms and per diem allowances of non-employees. There is a similar decision in a ruling of December 2017, where it is clearly stated that the notion of 'travel' should not be identified with 'business travel’, which is defined in the Labor Code. Thus, it is difficult to agree with the restrictive view of the Director of National Fiscal Information according to which the tax exemption is available only to those non-employees whose travel has characteristics of an employee’s business travel.



Tomasz Kret, Senior Lawyer