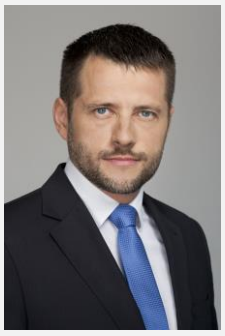

Dear Readers,

in this issue, we comment on the employer-friendly ruling on the rights of trade unionists to receive paid leave to participate in ad-hoc activities. Trade unions tend to understand this notion very broadly, and use it to demand paid leave for participation in trainings or conferences. This practice is not warranted. We will show how the notion of ad-hoc activity is understood by the Supreme Court, and what your rights are when you receive such a request.

We will also discuss changes to labor law. Employees who are parents gained new rights as of the beginning of June. The definition of adolescent worker is changing as of September. They will now be employable once they turn 15.

You can also find out whether, and if so in what cases, Ukrainian contractors can avoid paying Polish taxes.

Łukasz Chruściel

Employer can deny trade unionists paid leave to participate in training

Participation in an event that has been scheduled in advance by trade union authorities (e.g. a training session) is not an ad-hoc activity, which is why the employer has the right to deny paid leave requested under art. 31.3 of the Act on Trade Unions. Doing so does not violate the unionist's rights and it cannot be considered obstruction to trade union activity. This view has been confirmed by the Supreme Court in its ruling of 14.12.2017 (II PK 322/16).

One of the rights that trade union members have is the right to paid leave to perform ad-hoc activities stemming from their function in the union, if this activity cannot be performed outside of working time. In practice, the biggest controversies are involved in deciding when an action is 'ad-hoc'. Company-level union organizations request paid leave from employers to participate in previously planned training sessions or in events scheduled by superior units (e.g. reporting and electoral assemblies), arguing that these are ad-hoc activities and the employer should grant paid leave for them. This interpretation is erroneous. Not every union activity is 'ad-hoc'. This definition only applies to those activities that cannot be foreseen and which must be performed immediately, without any delay. Activities that are planned, often a considerable amount of time in advance, cannot be considered 'ad-hoc'. This is particularly true when the time of their performance is at the discretion of trade union authorities, including those above company level.

As indicated by the Supreme Court, if you receive a request to grant a trade unionist paid leave to participate in an ad-hoc activity, you can judge whether the given activity is of ad-hoc nature, and whether it truly cannot be performed outside the working time. If either of these conditions is not met, you have the right to deny paid leave.

The Supreme Court has also stressed that the performance of trade union activities is a pro bono activity which, as rule, should be performed outside of working time. Trade union activities cannot disturb the organization of work. Trade unions should take this into consideration when they plan their activities.

New entitlements for employees - parents

On 6 June 2018, an amendment to the labor code came into force, aimed at supporting employees who are parents of disabled children. The amendment introduces new solutions that make the working time of the parents and the manner of working more flexible, which imposes new obligations on the employers.

The new solutions foreseen in the labor code are addressed to:

- The parents of a child in the prenatal stage if the pregnancy is at risk;
- Parents who have certification of severe and irreversible impairment or life-threatening illness of their child, which developed during pregnancy or birth;
- Parents of a child for whom a decision has been issued finding a severe or moderate degree of disability;
- Parents of a child who requires special support in education, i.e. developmental support, specialized education, remedial classes.

advocate Marta Kosakowska

An employee who belongs to this group can demand that the employer modify the organization of the working time, in particular by requesting an individualized or flexible work schedule, and, in the case of the parents of a disabled child or one who requires special support in education, also by requesting the option to work remotely. Each parent can separately request that one of these solutions be implemented by their respective employers. It is only in the case of a pregnancy at risk that just one of the parents can take advantage of these entitlements.

EVENTS

WEBINAR: Removal of the cap on social security premiums – how to prepare for that?
6 September 2018

A detailed program is available here.
Registration: here
This is a free event.

Compliance in practice: Creating internal regulations.
20 September 2018

The program is available here.
A paid event.

To be held on **20 September 2018 (Thursday), at 10:00 – 15:30** at our offices at 17 Bonifraterska (21 floor) in Warsaw.

GDPR DAY II
27-28 September 2018

The program is available here.
A paid event.

The conference will be held on **27-28 September 2018** at our offices at 17 Bonifraterska (21 floor) in Warsaw.

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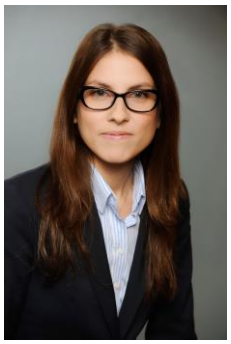
These solutions are not conditional on the child's age, so they also apply to the parents of children who have turned 18. This wording of these provisions is already raising multiple doubts as to, e.g., categories of entitled employees, the way in which the entitlement should be proved and the necessary documents.

The request by an employee-parent can be refused only in exceptional circumstances, e.g. in the situation where the type of work performed by the employee does not allow for flexible working time (in the case of employees who supervise machinery), discontinuous working hours (an employee of a stand at a shopping mall) or telework. The employer should explain the reason for the refusal in writing or electronically.

Health and safety changes – new list of acceptable concentrations and intensities of harmful agents; forklift permits require verification

As o 10 August 2018, personalized permits for the operation of power-driven forklifts issued by the employer will be replaced by certificates of qualification. In turn, on 21 August the new ordinance on acceptable concentrations and intensities of harmful agents came into force.



legal advisor Sandra Szybak-Bizacka

The new health and safety ordinance on forklifts means that employers are no longer entitled to issue personalized permits for the operation of power-driven forklifts. In order to operate such a vehicle, it will be necessary to have a certificate of qualification obtained on the basis of regulations on the manner of verification of qualifications required to operate and maintain technical devices, or a certificate of completion of an appropriate training conducted on the basis of a syllabus developed or approved by the Technical Inspection Office.

Employees who have obtained their permits from the employer by 10 August will have time to upgrade their qualifications. Permits issued by 31 December 2004 will remain valid until 31 December 2019; permits issued by 31 December 2014 will remain valid until 31 December 2020, and permits issued after 1 January 2015 will remain valid until 31 December 2021.

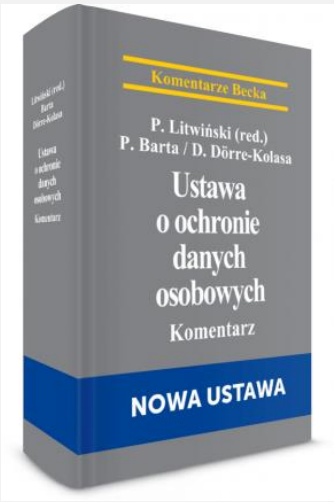
Personal Data Protection Act. A commentary

The commentary discusses he provisions of the new Personal Data Protection Act. The new Polish regulation is a consequence of the need to ensure compliance with the Regulation of the European Parliament and of the Council 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, which has been applied in the Polish legal system since 26 May 2018.

The publication is available here.

Edited by: advocate Paweł Litwiński, Ph.D.

Author: legal advisor Dominika Dörre-Kolasa, Ph.D. and legal advisor Paweł Barta



We recommend that you verify the permits you have issued and ensure that your employees upgrade their qualifications sufficiently in advance.

As for the new list of acceptable concentrations of harmful agents in the working environment, TLV levels have been changed for some substances and new substances have been added. This is important, because the jobs where these levels are exceeded are subject to working time limitations (it cannot exceed 8 hours and overtime is not allowed with the exception of rescue operations). It may be the case that the change will result in additional jobs being subject to these restrictions.

Employment of adolescent workers – starting on 1 September, 15-years old can be hired

Starting in September, the lower age limit for adolescent workers changes. An adolescent worker will now be a person who has turned 15, but is not yet 18 years old (until now, turning 16 has been required). We would like to use this opportunity to remind you of the basic rules for the employment of adolescent workers.

trainee legal advisor Kinga Polewka

As a rule, it is allowed to employ adolescent workers who have completed at least the junior high school (*gimnazjum*) or the eight-class elementary school (*szkoła podstawowa*). They can be employed to perform light work, and, if they do not have any professional qualifications, solely as part of job training. If you decide to employ adolescent workers, you should update your working regulations. They should include the list of the types of work from which adolescent workers are banned, a list of the types of light work which is allowed for them and a list of job positions into which adolescent workers can be placed in order to undergo professional training.

When employing adolescent workers, it is also necessary to remember the special terms of such employment. The employer's duties include, inter alia, the provision of care and support necessary to adjust to the proper way of working, training opportunities and the observance of specific working time norms and rules for granting leave. The adolescent worker's weekly working hours cannot exceed 12 hours, and on days of school instruction, they cannot work for more than 2 hours. Only during vacation time does the working time limit increase to 7 hours per day, and no more than 35 hours per week. Moreover, adolescent workers cannot work at night or during overtime. During a 24-hour period, they must have a rest period of at least 14 hours, and one of at least 48 hours during a week. Failure to observe these rules carries a penalty of 30,000 zloty.

Can Ukrainian contractors avoid paying Polish taxes?

Tax residents of Ukraine, who perform work in Poland on the basis of a contract of mandate (*umowa zlecenia*) and who do not have the so-called permanent location in Poland (*stała placówka*) are not subject to Polish taxes on income from this source, regardless of the length of their stay in Poland during the tax year. The Director of National Tax Information ('DKIS') has recently issued a number of individual interpretations that confirm this approach.

Tomasz Kret,
Senior Lawyer

This interpretation should be approached with caution. The DKIS approach could encourage Polish employers, who are recruiting Ukrainian citizens more and more often, to select a contract of mandate instead of a contract of employment. This makes it possible to reduce costs. It should be remembered, however, that this applies to income obtained from the so-called independent professions (*wolne zawody).* This notion applies to work activities performed independently. The mere fact of conclusion of a civil law agreement (contract of mandate) does not make the work 'independent' if it is performed within the ordering party's undertaking and for their account. Meanwhile, according to DKIS, this is what happens with work on production or assembly lines or with simple physical labor based on a contract of mandate.

Many new tax treaties do not include any separate provisions for independent professions. Instead, these are covered by provisions on the taxation of the profits of companies. Thus, independent activities should have a certain organized, separated form (although it does not necessarily require registration as sole proprietorship). Therefore, the DKIS interpretations should be approached with caution and a possible further change its view should be taken into account.