Dear Readers,

we are pleased to deliver yet another issue of PRO HR to you.

Inside, we will take a closer look at the upcoming changes to the civil procedure. Some of the proposed changes include mandatory responses to lawsuits, the requirement to prepare an outline of the court hearing and the option to provide testimony in writing. Our litigation specialists will advise you how to prepare for the changes and what to watch out for. They will also discuss the changes to court fees in employment-related cases.

You will also learn what new rules governing the safekeeping of personal documentation are coming on 1 January 2019, as well as what the current approach of administrative courts is to the taxation of the value of meals during business trips in excess of the statutory per diem allowance and of the costs of employee accommodation provided outside of business trips.

I hope you will find the content useful,
Sławomir Paruch

Changes to the civil procedure focusing on timely and reliable trial preparation

Work is ongoing on changes to the civil procedure. It is aimed at shortening the time it takes to obtain a ruling. The main cost of the changes is increased formalism and severe consequences of non-compliance. The draft regulations are already raising many doubts.

Deadlines to watch. Mandatory court hearing outline

Grzegorz Ruszczyk, legal advisor

It will be even more important than it is now to prepare responses to pleadings on time. The consequences of a failure to meet a deadline will be very severe. In most cases, the employer will have 14 days to prepare a response. If it is not filed on time, the court will return it and may issue a ruling during an in-camera hearing. Therefore, it is very important to precisely record the dates of receipt of court documents you receive. This will make it possible to correctly determine the deadline for filing a response. What matters is the date of receipt at your company's reception – the very first date when any representative of your company received the document. It is also important to bear in mind during day-to-day work that there is certain likelihood of a legal dispute with an employee and that the company must be ready to defend its position and to prove its claims.

In particular, it is important for the key work instructions to be documented (e.g. by email), and for employee appraisals, which frequently constitute the basis of termination or the criteria of qualification for redundancy, to be reliable and exhaustive, and not to be issued as an 'incentive' (which frequently harms employers in the course of litigation). This will make it easier to collect evidence and prepare responses to claims on time. One new aspect is the preparation of a court hearing outline to be signed by the parties before litigation begins. All the evidence will have to be presented already at this stage (emails, documents, witnesses, motions for expert witness opinions etc.) Therefore, there will not be a lot of time to prepare for court proceedings. This will be a major complication in complex unprecedented cases. In turn, in mass cases the court hearing outline may put planned actions in order.
There will be new requirements for employees who file claims as well. If the employee's claim is 'obviously groundless', the court will be able to dismiss such a claim and conclude the proceedings without notifying the employer that was sued.

Fees payable regardless of claim amount. No more 'free' changes and expansions of claims

There will also be changes to rules concerning court fees. One of them is the elimination of the 50,000 zloty claim amount limit below which the employee's court fees are currently waived. The fee will be payable regardless of the value of the claim. By way of example, it will be necessary to pay court fees in cases concerning redundancy pay or compensation payments, regardless of the amount claimed. On the other hand, there will be some categories of cases where the employees will not be required to pay court fees regardless of the value of the claim (e.g. when appealing from a termination notice). Finally, it will be necessary to pay court fees when amending a claim (e.g. when expanding it). This will limit constant modification of claims.

Andrzej Orzechowski, advocate

EVENTS

How to introduce Employee Capital Plans – duties, rights, challenges – a business breakfast

15 March 2018

Moderator: legal advisor Łukasz Kuczkowski

The meeting will be held on **15 March 2018 (Thursday), at 10:00 – 12:00**, in our offices at Bonifraterska 17 (21 floor) in Warsaw.

Compliance Day 2018 - conference

21 March 2018

We invite you to participate in the second edition of *Compliance Day.* The entire event will be devoted to compliance issues. It is directed to lawyers, HR managers, compliance officers and all those interested in compliance issues.

The speakers at the conference will be our lawyers and invited guests.

Where: Hotel Bristol, Warsaw ul. Krakowskie Przedmieście 42/44

The event is free of charge.

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

Currently, when appealing from termination, employees frequently file a claim for damages, in order to avoid paying a court fee, and then change their claim to demand reinstatement to their job. Since this does not require an additional payment, it is “cheaper”. If the changes come into life, this will no longer be possible.

Court to issue guidelines before the ruling

Piotr Graczyk, advocate

There will also be changes to the way the proceedings are conducted. Currently, the court does not disclose its outlook on the case until the ruling. The changes that are being proposed will allow the court to indicate to the parties what the likely outcome is based on claims and evidence presented thus far. In theory, upon receiving such guidelines, it will be possible to amend one’s argumentation in order to respond to issues that the court considers important. In practice, it may be too late for that and the court may reject any additional claims or motions.

Written testimony from witnesses

Another important modification is the option for the witnesses to provide testimony in writing. This will certainly facilitate mass litigation – e.g. the cases where, for example, 200 employees make an identical claim or the Social Security Institution makes several hundred analogous decisions that have to be appealed. Until now, courts have been combining such cases (several of them and up to ten or more), but witnesses had to confirm the same circumstances dozens of times. Written testimony means this will not be necessary, and court proceedings will accelerate.

Shorter period for safeguarding employee personal records, though not in all cases

Starting on 1 January 2019, the period during which the employees' personal documentation must be safeguarded will be shortened to 10 years. However, this change will not apply to all employees. Moreover, this period may be extended.

PUBLICATIONS

Employing foreigners. Changes in 2018 – Karolina Schiffter

A practical guide to the revolutionary changes in employing foreigners. The publication contains a description and a discussion of the new regulations that came into force on 1 January 2018, which concern in particular formalities connected with the employment of foreigners, situations where a work permit is not necessary, seasonal work permits and the combined residence and work permit.

Client Choice Award 2018 - Employment & Benefits

Łukasz Kuczkowski has received the 2018 International Law Office Client Choice Award in the category Employment & Benefits.

Please direct your questions to: prohrevents@raczkowski.eu

Sandra Szybak-Bizacka, legal advisor

The length of the said period will depend on the date when the employment relationship started. Thus,

- for employees who entered into the employment relationship before 31 December 1998, the current period will be in force (50 years);
- for employees who entered into the employment relationship after 31 December 1998 and before 1 January 2019, the current period of 50 years will be in force as well, with the possibility of shortening it to 10 years if the employer, on behalf of the employees, files with the Social Security Institution the so-called informational reports, comprising, inter alia, data on income paid;
- for employees who entered into the employment relationship after 1 January 2019, the documentation storage period will be 10 years, but it will be possible to extend it (e.g. when the documentation constitutes evidence in proceedings).

It is also worth pointing out that the shortening of the period of storage of personal records will not apply to employees engaged in mining work or equivalent work. For this group of employees, personal records will still have to be safeguarded for 50 years.

Cost of business trip meals exceeding statutory per diems taxable after all

On 12 January, the Supreme Administrative Court issued another ruling (II FSK 3582/15) confirming that an employer that, in lieu of statutory per diem allowances, provides its employees with full board, must calculate the cost, deduct the statutory per diem allowance from the result and add the remainder to the employee's income prior to tax and social security withholding.

This position, which is disadvantageous to employers and employees alike, must be seen as established (in spite of occasional rulings by different provincial administrative courts which do not count said excess over the statutory per diem allowance as the employee's income) and compliance is necessary. The odds of prevailing in court in case the tax authority questions the practice of not including the excess of meal costs over the statutory allowance in the employee's income, and thus not taxing it, are diminishing. If you employ many employees who frequently travel in business, in cases where making the required calculations is a major logistic challenge (one frequently requiring that an additional person or persons be hired), it may be worth to change the rules governing business-travel related payments and benefits.

Katarzyna Dobkowska, legal advisor

No PIT on accommodation for delegated employees

In the ruling of 20 December 2017 (I SA/Op 449/17), the Provincial Administrative Court in Opole held that the situation where the employee's full accommodation costs are covered when he or she is performing job duties does not entail a taxable income on the part of the employee. This is yet another favorable ruling on the taxation of accommodation expenses borne by employers in connection with the performance of job duties by employees away from their domiciles outside of the business trip formula.

Katarzyna Serwińska, tax advisor

The case in question involved construction workers who, while abroad, performed tasks given to them by their employer based on an agreed, short-term change of job location, the so-called job transfer.
The court rightly held that the benefit in the form of accommodation is provided in the employer's interest and not in the employee's interest, because it serves to create appropriate working conditions that make it possible to perform job duties, and not to provide additional gratification. Thus, it is in no way a benefit for the employee, which is why this cannot be treated as taxable income.
There can be no doubt that both this ruling and other rulings establishing that no taxable income arises when similar benefits are provided to, for example, 'mobile' employees, will be welcomed by both the employees and the employers. Employees will not have to bear in mind the need to pay tax on such benefits, a tax that would reduce their net income. As for the employers, they will not have to incur additional tax costs should they decide to provide such benefits to the employee without additional costs. It should be noted, however, that the tax authorities frequently interpret this differently, deciding that taxable income has arisen for the employee. However, should the practice of not withholding tax in such cases be questioned, a court appeal is recommended, because there is a likelihood of a positive decision.