

We invite you to attend the Seventh Edition of Masters of Employment Law

Applications and queries should be sent to: prohrevents@raczkowski.eu



Dear Readers,

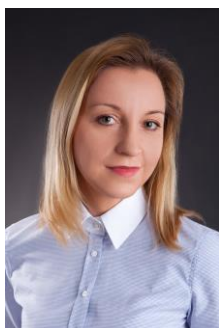
a new issue of PRO HR is available, bringing you information on the most recent changes to laws that may have a considerable impact on your business. Firstly, changes are being introduced to the regulations on the Employee Capital Plans (*Pracownicze Plany Kapitałowe*, PPK), in particular with respect to the option of not creating thereof. If you have created PPE (Employee Retirement Plan) as a replacement for the PPK, or you are planning to do so, please make sure to get acquainted with the changes. A new condition has been introduced which will

have to be met in order for the PPK waiver to apply – at least 50% of the staff must enroll in the PPE. Secondly, we have good news for companies from the financial sector - starting from 27th June you will be able to make inquiries about the criminal record of your employees and candidates, and to hold the employees responsible on the basis of the information received (e.g. by refusing to employ them or by terminating the employment contract). You will also find information below on the impact of the GDPR on the company social benefits fund. We will explain what data and when can be processed for the purposes of the fund. We will also take a look at the proposed changes to the labor code with respect to the working time of managers and employees on duty, and we will discuss the new regulations concerning the responsibility of collective entities (i.e., in particular, companies) for criminal offences.

I hope you will find the contents useful,
Sławomir Paruch

Changes to the PPK – additional conditions for the PPK waiver

At the end of May 2018, a new bill on the Employee Capital Plans (PPK) was published. It is not enough to operate the PPE (Employee Retirement Plan) and to pay the 3.5% premium in order to be able not to create the PPK. For the PPK waiver to apply, at least 50% of the staff will have to enroll in the PPE.



Legal advisor
Paulina
Zawadzka-
Filipczyk

The new regulations contain many changes compared to the previous version. The changes that are the most important for you concern the regulations of the use of the PPK waiver in case an Employee Retirement Plan (PPE) is in place. A new important condition on the use of such a waiver has been introduced. It will not be enough to operate the PPE and to pay the basic premium of no less than 3.5% of the remuneration in order to use the waiver. In addition, at least 50% of those employed will have to join the PPE (employees, outworkers, contractors). In practice, this might discourage companies from starting the PPE, given the significant risk of not reaching the 50% threshold and the consequent need to operate the PPE and the PPK in parallel. Needless to say, the parallel maintenance of two company-level retirement plans is not economically justified.

In addition, the bill includes provisions that unequivocally determine the status of the funds collected in the PPK as private, extend the validity of the withdrawal from the PPK from two years to four years and reduce the sanctions for employers who discourage employees from saving in the PPK. As far as the range of the entities that will be able to offer the PPK is concerned, it is worth noting that in addition to investment funds (TFI), these will include universal pension funds (PTE), employee pension funds and insurers. We recommend ongoing monitoring of the legislative process. The bill foresees the PPK coming into force on 1st January 2019. It is quite possible, however, that this timeline will be delayed by 6 months.

Financial industry employers can inquire about criminal record

On 27th June 2018, new regulations are coming into force that make it possible to make inquiries about the criminal record of job candidates and employees in the financial sector. Entities from this industry will have the right to verify whether their current or future employees have criminal convictions for certain types of crimes. Until now, there has been no legal basis for that.



Legal advisor
Katarzyna
Sarek-Sadurska

The financial sector, e.g. banks, stock brokerages or credit institutions, will be able to request information about the criminal record of job candidates or employees employed in the territory of the Republic of Poland. The inquiry may apply not just to employees on employment contracts, but also to people employed on the basis of civil law agreements.

It is crucial, that the person asked about their criminal record is being recruited for or is employed in a position involved in the management of the assets of the employer or its clients, access to legally protected information or decision-making that bears a high risk of property loss or another significant loss. The verification will not apply to all the offences. The act explicitly lists the offences that can be inquired about. These include document fraud, offences against property and information protection as well as offences against the trade in money or securities. Such a declaration may be requested from a job candidate once, and once every 12 months from those already employed, or when there is a justifiable suspicion that the employee has been convicted.

EVENTS

Labor Law Masters' Club 20th July 2018

A meeting comparing employment on the basis of the contract of employment with employment through civil law contracts. The meeting will be conducted by legal advisor Sandra Szybak-Bizacka.

The meeting is directed to the graduates of the Labor Law Masters' School.

Detailed information is available [here](#).

The meeting will be held on **20th July 2018 (Friday)**.

Compliance in practice: Creating internal regulations. 20th September 2018

A workshop on the creation of a company's compliance system.

A paid event.
The program is available [here](#).

The workshop will be held on **20th September 2018 (Thursday)**, at **10:00 – 15:30** at our offices at 17 Bonifratrska (21 floor) in Warsaw.

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

Failure to provide a declaration or information on criminal record, or providing information that confirms that the person has been convicted in a legally-binding way, can be a reason for refusing to hire a candidate, and, in the case of an employee, to terminate a contract of employment with notice or to terminate another contract regardless of its legal basis.

Time on call included in working time, paid overtime for managers – we know the proposed changes

Work on changes to the labor code with respect to time on call is continuing – it will be included in working time regardless of whether work is being performed or not. In addition, there will be compensation for time on call spent at home. Moreover, the proposed changes foresee overtime pay for managers that manage a workplace on behalf of the employer.



Legal advisor
Sandra
Szybak-
Bizacka

At present, managers who manage workplace on behalf of the employer do not have the right to an uninterrupted period of 11 hours of rest during a 24 hour period, nor the right to overtime pay. The bill foresees changes in this respect. If it comes into force, such employees will receive both the right to the rest period and the right to overtime pay.

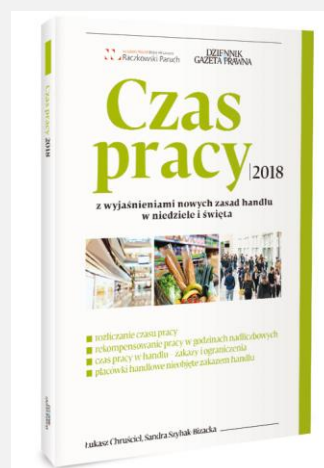
With respect to time on call, the legislator is proposing that time on call outside of the normal working hours be included in working time regardless of whether work is being performed or not. This is going to apply to time on call at workplace as well as at home. For the time spent on call, the employee will receive time off in the same duration as the time spent on call, and, if it is not possible to grant time off, a remuneration reflecting the employee's employment grade, defined with an hourly or monthly rate (and, if there is no such component of the remuneration, 60% of the remuneration paid to the employee). This is a significant change, because at present time on call is not included in working time if work is not performed. What is more, no compensation is due to the employee for readiness to work in the case of time on call at home.

PUBLICATIONS

2018 working time including clarification of the new rules on trading on Sundays and holidays

A practical introduction to the issues involved in the correct planning of and accounting for working time. The newest edition includes the changes stemming from the entered into force on 1st March 2018 act on restrictions on trade on Sundays, holidays and some other days. The law bans trade and trade-related activities (including entrusting these to employees and civil contractors) on Sundays and holidays at retail outlets. The newest issue was expanded to include questions and answers concerning the new rules on trade and trade-related activities.

Authors:
legal advisor Łukasz Chruściel,
legal advisor Sandra Szybak-
Bizacka



The social fund and the GDPR – data processing on the basis of a declaration

After the GDPR came into force, new questions are surfacing with respect to personal data processing for the purposes of the operation of the company social benefits fund, concerning the admissibility of data collection, the scope of the data, the processing time or the employee's consent to processing. Changes to the laws in this respect have not been made yet.

Personal data is to be made available to the employer for the purposes of the operation of the social fund on the basis of the employee's declaration. Importantly, on this basis it will be possible to process not just the employee's data, but also the data of other persons authorized to use the fund's benefits. The employer will have the right to request the documents confirming the data. This means that the collection and the processing of the data for the purposes of the fund will happen without the need to obtain the employee's consent. These are the key assumptions of the proposed regulations. It should be remembered, however, that data collection and processing can only happen for the purposes and in the scope that is necessary to grant service discounts and fund benefits. It is the employer's responsibility to ensure that the data collected are not excessive, i.e. that they are necessary for the fund to function correctly. This is particularly important in the situation when the data collected is of sensitive nature, e.g. concerning the health of the employee or their family members. This is why it is important to introduce an appropriate data processing procedure, to adjust the fund's regulations and the related documentation to the requirements of the GDPR, to develop processing methods, to prepare appropriate authorizations for the persons who have access to the data within the fund and to carry out an appropriate training for the members of the social committee.



Legal advisor
Paweł Sych

More serious penalties for offences for companies

The Ministry of Justice has prepared a new bill on the criminal liability of collective entities. The new law is meant to give new life to the 2002 act, which is very rarely used by law enforcement.



advocate Damian
Tokarczyk, Ph.D.

At present, for a collective entity (i.e., in particular, a company) to be criminally liable, a natural person must be convicted in a legally binding way. It must be a representative of the company (e.g. board member) or another person acting on its behalf (e.g. attorney, director, employee). What is more, it is necessary to prove that the company is guilty in its appointment of or supervision over such person. The new bill sets no such requirements. The prosecutor will be able to investigate the company even if no investigation has been launched against any natural person. The company will be the 'perpetrator' of the offence, and it may be the only 'person' convicted for it.