



VADEMECUM PPK



Dear Readers,

On 1 January 2019 the new Act on Employee Savings Plans (PPK, *Pracownicze Plany Kapitałowe*) is set to come into force.

The PPK are a new form of additional pension saving. The system will be mandatory for employing entities and voluntary, but in practice quasi-mandatory, for the employed persons.

The launch of the programs will be spread over two years, depending on the level of employment. This will allow the different entities to prepare for their new obligations, of which quite a number are foreseen by the legislator.

In this issue of PRO HR, we will discuss the most important issues that launching and running the PPK at your company involves.

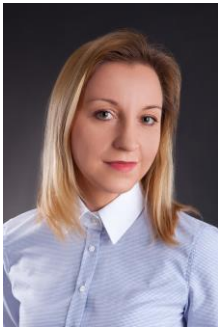
The work on the bill continues (it has passed in the Sejm and in the Senate). The information presented in this issue of PRO HR is up to date as of 26 October 2018.

legal advisor Łukasz Kuczkowski

Determining the date when the obligation to establish PPK begins

All companies will be obligated to create and administer the PPK, including companies that employ workers on contracts of employment and those that use civil law agreements:

- starting from 1 July 2019, the obligation to establish the PPK will apply to entities employing at least 250 persons as of 31 December 2018;
- starting from 1 January 2020, the obligation to establish the PPK will apply to entities employing at least 50 persons as of 30 July 2019;
- starting from 1 July 2020, the obligation to establish the PPK will apply to entities employing at least 20 persons as of 31 December 2019;
- starting from 1 January 2021, the obligation to establish the PPK will apply to other entities, including publicly financed ones.



legal advisor
Paulina
Zawadzka-
Filipczyk

When determining the number of persons employed, you should take into account not just employees within the meaning of the Labor Code, but also persons employed on the basis of civil law agreements (contracts of mandate, contracts for services, agency contracts), outworkers, members of farmer's cooperatives or farmer association cooperatives, as well as members of supervisory boards who are remunerated on account of performing this function. In order for the abovementioned individuals to be counted among the employed persons for PPK purposes, they must be subject to compulsory pension and disability insurance in Poland

Structure of PPK contributions

In the PPK, both the employing entity and the enrolled individual finance the contributions. Each of them will be obligated to finance, from their own funds, the basic contribution, as well as the additional contribution if they declare that they will make the latter. The contributions are defined as a percentage of the PPK enrollee's remuneration, understood as the basis for the calculation of pension and disability contribution.

The mandatory basic contribution of the employing entity will be 1.5% of the remuneration. In the PPK management contract, the employing entity will be able to declare an additional contribution of up to 2.5% of the remuneration. In turn, PPK enrollees will finance a basic contribution of 2% of the remuneration. However, if his or her remuneration (from various sources) does not exceed the minimum wage, the contribution can be lower (but not lower than 0.5% of the remuneration). In addition, PPK enrollees will be able to declare financing for additional contributions amounting to 2% of the remuneration. We recommend taking the necessary steps to adjust your payroll system to the making of PPK contributions.

EVENTS

Company Social Benefits Fund after changes in 2018 6 November 2018, Warsaw

Conducted by: advocate Marta Kosakowska and legal advisor Rafał Jaroszyński.

The program is available [here](#).

The workshop will be held on **6 November (Tuesday) 10:00-16:00** at our offices at 17 Bonifraterska (21 floor) in Warsaw.

A paid event.

New State Labor Inspection competencies with respect to the PPK

Compliance with the new regulations will be monitored by the State Labor Inspection (PIP, *Panstwowa Inspekcja Pracy*). In particular, the PIP will be able to monitor the way in which you, as the employing entity, comply with the obligations to conclude a PPK management agreement and PPK administering agreement, as well as the obligation to make contributions to the PPK. The PIP will also have the right to prosecute misdemeanors foreseen in PPK regulations as well as to participate in the proceedings concerning these as a public prosecutor.

PPE remains in play?

The bill foresees an option whereby employers who run an employee pension program (PPE, *Pracowniczy Program Emerytalny*) do not have to establish the PPK, provided that:

- 1) the employer's basic contribution is at least 3.5% of the remuneration;
- 2) the participation level in the PPE is at least 25% of all the persons employed (not just employees, but all the persons who can participate in the PPK);
- 3) the PPE will have been launched prior to the date when the PPK Act applies to the given employer. Thus, for entities employing at least 250 persons such a program should be launched before 1 July 2019.



legal advisor
Łukasz
Kuczkowski

When making the decision on the establishment of the PPE, you should take into consideration the time it takes for the Financial Supervision Authority to register such programs, which is about 2-3 months at present. Moreover, the registration of the program is not everything – it is also necessary to reach the required participation threshold and to pay the initial contributions. All this has to happen before the deadline in question.

Thus, in the case of entities employing at least 250 persons, the decision to establish a PPE should, for all practical purposes, be taken now. Until the plant-level PPE agreement has been concluded, the employer has the option to unilaterally withdraw from the project, if for some reason it decides that the PPE is not the best option for it.

EVENTS

Employee Savings Plans – the employer's new duties 30 November 2018, Warsaw

Conducted by: legal advisor
Łukasz Kuczkowski

The program is available [here](#).

The meeting will take place on **30 November 2018 (Friday), 11:30 – 13:30**, at our offices at 17 Bonifraterska (21 floor) in Warsaw.

This is a free event.

HR Fridays over Cracow Bagel: Employee documentation after 1 January 2019. Time for major clean-up of employee records. 9 November 2018, Cracow

Conducted by: legal advisor
Dominika Dörre-Kolasa, Ph.D.

The program is available [here](#).

The meeting will take place on **9 November 2018 (Friday), 09:30 – 13:00**.

This is a free event.

Voluntary nature of the PPK

Saving in the PPK is voluntary for the employed persons. An employed person is, however, automatically enrolled in the program. Therefore, an individual who does not want to participate should file an appropriate written declaration with its employing entity. The declaration takes effect in the month of its filing. This means that from the moment of filing the declaration, PPK contributions will no longer be charged of the enrollee, and all the contributions made in the same month will be returned.

The declaration can be filed at any point in time, also before the person in question is automatically enrolled in the PPK. The declaration is valid for 48 months. It can be renewed before this period ends. In consequence, the employed person will continue not saving in the PPK.

If an individual fails to renew the declaration, they will be automatically enrolled in the PPK starting on 1 April following the end of the abovementioned 48-month period.

The employed person who decided to withdraw from the program can rejoin it at any moment by filing an appropriate application. In such a case, the prior declaration ceases to be binding and the employing entity will start making PPK contributions starting in the month following the month when the application to join the PPK was filed.

Trade unions to participate only in the selection of financial institution

The employing entity that is obligated to establish the PPK must agree the selection of the financial institution that will manage the PPK with its union organization, or, if there is no such organization, with a body representing the employed persons, selected under the rules accepted at the given establishment.

The competences of the trade union in the PPK establishment procedure are limited to participation in the decision on the choice of the financial institution. This should be done through an agreement concluded by the employing entity and the trade union. However, should such an agreement fail to be reached, the PPK establishment procedure continues. If there is no agreement one month before the conclusion of PPK management agreement, you can choose the financial institution on your own.

If there is no union organization at your company, the agreement should be reached with a representative body, elected under the rules accepted at the given establishment. Importantly, this body must be elected specifically for this purpose. If there is an employee representative body elected to represent the employees in other issues, its competences should be broadened to include PPK issues (which the employees should confirm in a way that is analogous to the election of the body, i.e. in a way that is accepted at the establishment), or a separate body should be elected.

You are not required to agree other PPK issues with the trade union or the employee representatives, including the management agreement or the potential amount of the target contribution.



legal advisor
Robert Stępień

The employers' new duties related to the PPK

With the introduction of the PPK, additional duties will be imposed on employing entities. In particular, the employing entity's duties include:

1. Selecting a financial institution with which it will conclude an agreement for PPK management, in agreement with the company trade union organization, and, if there is no such organization at the company, with a representative body of employees elected through a procedure accepted at the company;
2. Concluding the PPK management agreement and individual agreements for administering the PPK with the selected financial institution;
3. Calculating and paying PPK contributions financed by the entity;
4. Calculating, collecting from the enrollee and paying contributions financed by the enrollee to the selected financial institution;
5. Providing adequate information to PPK enrollees (including about the obligation to file on behalf of the enrollee an application for transfer payout, about the possibility to join the PPK for enrollees between 55 and 70 years of age, about the possibility to declare additional contributions to the PPK);
6. Providing adequate information to the financial institution (including about the filing by an enrollee of a declaration of withdrawal from the PPK, about the resumption of the paying of contributions for an employed person after the expiration of the withdrawal declaration);
7. Providing administrative service, in particular maintaining and managing documentation;
8. Ensuring that the deadlines for the individual obligations imposed on the employing entity are met, including the obligation to resume paying PPK contributions for an enrollee who files a declaration to withdraw from the plan - once every for years from 1 April.



Is PPK enrollment attractive from the tax point of view?



Tax advisor
Katarzyna Serwińska

The welcoming contribution and subsequent annual subsidies, financed from the Labor Fund, do not constitute taxable income for the PPK enrollee, nor are they counted towards the social security contribution basis. This means that the amount financed by the state is transferred to the enrollee's individual account in full.

The contributions of an employed person (both basic and additional) are financed from the enrollee's net income. This means that the contribution amount is transferred to the PPK after the employee/collaborator has paid due social security contribution and tax advances.

The contributions paid by you as the employing entity are not subject to social security charges, but are taxed according to the same rules as other income that the worker receives from the employer. If you decide to also finance the enrollee's mandatory and/or voluntary contributions, their value would be taxed and subject to social security charges in full, with the net amount paid into the PPK. If you would like to contribute the agreed amounts to the PPK without imposing social security and tax charges on the enrollees, it would be necessary to gross these amounts up, and then provide additional financing for the tax and social security charges from your own funds.

Personal data and the PPK



legal advisor Dominika
Dörre-Kolasa, Ph.D.

Just as with the PPE, in the case of the PPK you are the controller of the personal data of the employees who decide to join the PPK. This means that in the course of the negotiation of the management agreement, as well as when running the PPK, the basic data processing rules must be observed. This means, in particular, that you must prepare precise regulations concerning the way in which the data are safeguarded when being made available to the financial institution, and to remain cautious about accepting contractual administrative duties which are not imposed by regulation. You should also remember to fulfill the obligation to provide information to the enrollees.

Serious penalties for violating the PPK Act

The PPK bill foresees criminal, misdemeanor and financial liability for violating its provisions. In the case where the employing entity or a person bound to act on its behalf fails to fulfill the obligation to conclude a PPK management agreement during the timeframe foreseen by the law, it are subject to a fine amounting to 1.5% of the entity's payroll in the financial year preceding the illegal act. The same fine is carried by attempts to convince an employed person or a PPK enrollee not to save in the PPK. The fine may amount to as much as 1,000,000 zloty.

In addition, the bill foresees liability for:

- failure to conclude a PPK administering agreement on behalf and for the employed person within the timeframe provided for by the law,
- failure to make PPK contributions by the deadlines,
- failure to provide data required by the law, or providing false data, providing false clarifications on these issues or refusing to provide them,
- failure to maintain documentation in connection with the calculation of PPK contributions.



advocate Dominika
Stępińska-Duch

Such liability is borne by the individual responsible for the given violation. In this context, the key issue is to correctly allocate PPK-related responsibilities within the company. By appropriately regulating the allocation of tasks and responsibilities with respect to administering the PPK, and by implementing integrated compliance regulations, it will be possible to transfer or limit the management's liability in this respect.

For the convenience of ProHR reader we have prepared a PPK guide in the form of an ebook. It includes the key information on the PPK.

If you are interested, please contact Paulina Zawadzka-Filipczyk:

Paulina.Zawadzka-Filipczyk@raczkowski.eu

**VADEMECUM
PPK**

