Dear Reader,

This issue of ProHR will provide you with a new set of guidelines concerning the implementation of Employee Capital Plans/ Employee Pension Plans (PPK/PPE) with a focus on actions employers should take still in 2019.

We also discuss the issue of interpretation doubts that arose after the last opinion issued by the Ministry of Finance on the moment of occurrence of PPK participant's income from a payment financed by the employer.

We present the decision of the Spanish Personal Data Protection Authority (La Agencia de Protección de Datos) regarding irregularities in the use of recordings made by an employee to punish a colleague.

Moreover, we give you information on an issue of practical significance, which is the admissibility of the exclusion of the value of food vouchers co-financed by the employer and employee from the basis of social security contributions.

I hope that you will find the text insightful,
Bartłomiej Raczkowski, Advocate

The second wave of employers to implement PPK – there's not much time left

The first group of employers is obliged to launch their Employee Capital Plans by October 25. At many large companies, last preparations for the change are underway. Another group of entrepreneurs - those employing at least 50 staff as of June 30 - will be covered by the obligation to establish PPK from January 1, 2020. Will the implementation of PPK at these employers' companies be less labour-intensive? In fact, far from it - after all, the obligations are identical. Therefore, it's wise to start preparing now instead of waiting until January 1.

Attorney-at-law
Łukasz
Kuczkowski

Below is a list of actions worth taking before the end of 2019:

1. Choice of representatives of people employed wherever trade unions don't operate - it's advisable to develop regulations and conduct elections of employees' representatives. The representatives together with the employer select the financial institution that will manage the funds accumulated under the PPK. It's important to remember that a financial institution cannot be selected before January 1, 2020. In addition, typical employee representatives or an employee council are not competent in the PPK field.

2. Communication to employees - as employees' interest in the subject of PPK will grow, it's advisable to develop communication activities oriented towards providing information about the main principles of PPK; knowledge in abundance doesn't (usually) give one a headache.
3. Selection of a broker - a comparison of financial institutions' offers requires professional expertise. Given that, it's recommended to ensure the support of a specialist in the form of a broker, who will help you make a decision with respect to the financial institution to manage the PPK participants' funds.
4. Support from lawyers - specialists in the field – as the inexactitude of the PPK Law is legendary. This is attested to by our experience with a number of projects we have carried out for the biggest employers - even financial institutions and the Polish Development Fund often disagree with each other. On top of that, there's a tendency to transfer additional administrative obligations to employers under the PPK system. Proper support makes it possible to identify all these issues and take care of the employer's interest over the whole process of PPK implementation.

PPK continues to surprise employers

This time, it concerns the moment the PPK participant's income arises from the payment financed by the employer. **In the view of the Ministry of Finance, an employee's income on account of payment of this kind occurs only in the month in which the employer transfers the payment to a financial institution.** Therefore, it will take place at least in the month after the deduction of the employee's payment, and in many cases even later. Consequently, the tax advance on this payment won't be deducted from the salary of the PPK participant when the amount of contributions to the PPK is calculated and the employee's contribution is deducted. For example, if the employer pays remuneration to an employee who is an PPK participant on February 8, the employer calculates the amount of its contribution and the employee's contribution on that date and deducts the employee's contribution from the employee's salary. By March 15, the employer is obliged to transfer the calculated amounts to the financial institution. Once the employer's payment is made to the financial institution, there will be an obligation to collect an advance tax payment from the employee. The advance payment can be physically deducted only from the employee's salary paid to them in April. Admittedly, the obligation to collect the advance payment occurs in March but after in the March payment of the employee's remuneration has been made. The first salary available for deduction will, therefore, be the one paid in April.

The above interpretation undoubtedly hinders settlements related to PPK and will raise questions on the part of employees looking at their payslips.

EVENTS

Polish National Forum HUMAN RESOURCES AND PAYROLL 2020

November 13 to 14 are the dates when this year's Polish National Forum HUMAN RESOURCES AND PAYROLL 2020 will be held. The event is organised by the Centre for Legal and Tax Knowledge in Warsaw.

The speakers include Iwona Jaroszewska-Ignatowska PhD, Attorney-at-law, Łukasz Kuczkowski, Attorney at Law, Damian Tokarczyk, PhD, Advocate and Marta Kosakowska-Tomczyk, Advocate.

Detailed program is available here.

HR morning in Poznań: Dismissals of employees for substantive and economic reasons

7 November 2019, Poznań

Conducted by: Łukasz Kuczkowski, Attorney-at-law, Partner

Detailed program is available here.

This is a free event.

Please send your questions to: prohrevents@raczkowski.eu

The GDPR non-compliant use of recordings made by an employee in order to punish a colleague

The Spanish data protection authority imposed a fine of 12,000 EUR (eventually reduced to 9,600 EUR) on an employer (restaurant) who applied disciplinary sanctions against one of its employees based on evidence from video recordings made by another employee with his private phone.

Attorney-at law
Edyta Jagiełło

The authority found that the penalised worker had not been informed that his professional activities could be monitored. There were cameras installed in the restaurant but they were out of order. The employer used recordings made by another employee without the person recorded on video being aware of this fact, thus violating the principle of data processing transparency (Art. 5 sec. 1 item a) of GDPR).

The Polish legislative body also attaches great importance to the obligation to inform the employee about the monitoring applied. Before introducing video surveillance, the employer must inform the employees about this fact, at the latest 2 weeks before it is activated. Additionally, as for new employees, the employer is obliged to inform them individually in writing about the use of video surveillance before the employee commences work. None the less, all the premises and the area under surveillance must be marked in an appropriate manner not later than one day before the start of the surveillance activity, and the fulfilment of this obligation doesn't exclude the need to comply with the obligation to provide information under Articles 12 and 13 of GDPR. In this context, however, it is worth bearing in mind the recent judgement of the ECHR of October 17, 2019, in the case of López Ribalda and others versus Spain, which found that the hidden surveillance device used to detect the perpetrator of repeated thefts was legal. In special cases, as it transpires, it may be that the use of hidden surveillance solutions is the only solution available. Having said that, the issue should be approached with great caution.

In the opinions of the Social Insurance Institution (ZUS), the contribution payer does not have the right to choose the legal basis of exemption from the obligation to pay contributions

If there is a provision that is strictly relevant to the case, the payer cannot choose to apply another provision, a more general one, even if it also corresponds to the factual situation. The September 2019 case concerned an employer who wanted to provide his employees with SODEXO food vouchers.

EVENTS

HR Fridays over Cracow bagel: The employer versus the criminal law

8 November 2019 r., Kraków

Conducted by: Damian Tokarczyk PhD, Advocate and Ewelina Rutkowska, Trainee Advocate

Detailed program is available here.

This is a free event.

PPK – first experiences with respect to implementing programmes - business breakfast

14 November 2019, Warsaw

Conducted by: Łukasz Kuczkowski, Attorney-at-law

Detailed program is available tutaj.

This is a free event.

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

Employees would bear part of the purchase costs in the shape of deductions from their remuneration. The provisions on the co-financing of vouchers by employees were to be included in the remuneration regulations of the company. However, the employer had doubts as to whether the value of a food voucher (understood as the difference between the purchase price paid by the employer and the amount deducted from the employee's remuneration) was the basis for insurance contributions. The employer's intention was to take advantage of the exemption specified in the regulation on contributions concerning so-called "one zloty benefits". The Social Insurance Institution disagreed with the employer's position and stated that the application of a specific exemption is determined by the type of benefit. The regulation already provides for separate, special exemptions with respect to meals, therefore, the application of another exemption to a benefit which also covers employee meals isn't allowed despite the fact that the conditions set out in the regulation have been met. Otherwise, in the opinion of ZUS, there would be liberty as to the scope of application of exemptions, which shouldn't be interpreted broadly.

Senior Lawyer
Tomasz Kret

Tax Advisor,
Adam Alkadi

So far, ZUS has usually taken a liberal stance on the issue of exemption concerning partially paid benefits - without limiting its application to benefits not listed in other points of the regulation on contributions. It seems that if the legislative body's intention was to limit the scope of application of this exemption, the provisions would indicate it directly, e.g. by including a clause stipulating the provision doesn't apply to a specific category or type of benefits. It should be observed whether this decision is an individual deviation from the hitherto practice, or whether it means the beginning of a permanent practice of interpretation, which may have unfavourable consequences for employers and employees using the exemption in question.