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NEWS / EVENTS

INABILITY TO PROHIBIT PARALLEL EMPLOYMENT WITH ANOTHER EMPLOYER IS NOT ABSOLUTE

Łukasz Kuczkowski
Attorney-at-law

An employee may work for more than one employer simultaneously. As a general rule, employers cannot prohibit this.

However, this does not mean that employers cannot react to parallel employment.

They can always evaluate whether an employee's additional work affects their ability to perform their primary job effectively. The employee should turn up for work ready to perform their job, which implies an appropriate psychological and physical (rest) level. If working a second job is leaving the employee tired, prone to making mistakes, coming to work late, etc., then the employer may terminate the employment contract with the employee, citing the improper performance of the employee's duties. The second employment will, in that case, only be the background of the employee's attitude.

Furthermore, the employer can react if employment with a second employer creates a conflict of interest that cannot be avoided. The employer may then call upon the employee to remove the conflict of interest by terminating the employment contract with the second employer. If the employee does not comply, then the employer may even terminate the employee's contract.

Employers concerned about potential conflicts of interest should consider implementing non-compete agreements during the employment relationship. These agreements prohibit employees from working with all competitors and provide an additional layer of protection for the employer's business interests. Importantly, such agreements do not incur extra costs and can be a valuable tool in managing concurrent employment risks. However, certain professions may have specific regulations governing concurrent employment, for example, drivers.

Piotr Graczyk
Advocate

INJUNCTION AGAINST EMPLOYER'S DECISION DOES NOT APPLY TO NOTICE OF ALTERATION OF TERMS

A recent legal dispute has shed light on the boundaries of court-ordered protections for employees facing dismissal, particularly those in sensitive roles such as union leaders. While Polish courts can grant injunctive relief to temporarily reinstate vulnerable workers during legal proceedings, a key question emerged Does this protection extend to terminations following alternation notifications changing the terms of employment?

Those in favour argued that the Labour Code's provisions on termination should apply equally to such terminations, given their similar nature. Critics countered that the rules governing injunctive relief are rooted in civil procedure, not employment law, and therefore cannot override termination-specific protections.

We fought over the above issue in one of our cases. Our team successfully argued that injunctive relief does not apply to alteration notifications. The court sided with our position, dismissing the application for security measures. While the ruling is not yet final, we remain optimistic about prevailing in the second instance. We will keep you informed in PRO HR.

PRO HR

UNDER CERTAIN CONDITIONS, A THIRD-PARTY DATA PROCESSOR CAN CARRY OUT THE INFORMATION OBLIGATION FOR THE DATA CONTROLLER (EMPLOYER)

Dominika Dörre-Kolasa, PhD
Attorney-at-law

Employers often use third-party processors to perform various services (for example, to carry out recruitment, to receive whistleblower reports or to provide training).

However, a data-processing entrustment agreement is not necessary in every case.

Agreements entrusting the processing of personal data are only necessary when the data is processed by an external entity in the name of the data controller, who also specifies the purposes and gives instructions. Such an external entity is commonly referred to as a data processor.

Under Articles 13 and 14 of the DPA, compliance with the information obligation towards data subjects is the data controller's responsibility. This takes the form of a document commonly referred to as an ‘information clause’.

However, there are times when the processor is the primary contact with the data subjects and, for organisational reasons, it would be better for the processor to actually implement the information obligation.

In DPA Bulletin No 02/02/25, it was confirmed that “the processor may support the controller in the implementation of the information obligation”.

In order for this to legally take place, the controller should:

- give express instructions to the processor (this may be in the wording of the entrustment agreement);
- provide instructions on the performance of this obligation (in what form – a link to the content of the clause on the controller's website, an attached pdf, etc.);
- maintain full control over the content and scope of the information obligation.

In practice:

- the controller will provide the processor with the content of the information clause (e.g. in an annex to the processing outsourcing agreement) or,
- the processor will develop a template information clause and submit it to the controller for approval.

The liability for a faulty implementation of the information obligation will always lie with the controller. This cannot be evaded in any way. The processor is not administratively liable, as the information clause is not its duty.

Contractual penalty - it can be written into the contract, but when entering into the contract it will be very difficult to estimate the amount.

Therefore, if the data controller has entrusted the performance of an administrative duty to a data processor, it must perform elementary acts of diligence to verify whether and how that duty is being performed, e.g. by checking the visibility and content of the clause in the system for receiving applications or candidate applications.

ROYALTIES PAID TO A CONTRACTOR UNDER THE AGE OF 26 DO NOT QUALIFY FOR ‘YOUTH TAX RELIEF’

Katarzyna Serwińska
Tax Advisor

Income from an employment contract, a contract of mandate, a graduate traineeship, a student internship and maternity allowances are all covered by ‘youth relief’ – a tax exemption for individuals under 26 years old, designed to support young workers entering the labour market. However, remuneration for the transfer of copyrights is classified as income from property rights, which is not covered by this relief.

If royalties are not separated from the ‘basic’ remuneration in the assignment contract, the entire payment is considered income from property rights rather than from the assignment contract. This means that the remuneration would not qualify for ‘youth relief’ and would be taxed under the general rules. The principal is required to withhold an advance on income tax for the remuneration, applying a 50% deduction of the author's costs. In the PIT-11 form, the contractor’s total remuneration should be declared as revenue from property rights.

This comes from a Supreme Administrative Court ruling dated 26 February 2025 (ref. II FSK 740/22). The court confirmed that, in order to safely benefit from both the youth relief and the 50% of copyright-related costs, the remuneration must be clearly divided into separate amounts for the transfer of copyright and the execution of the order. This distinction should be explicitly stated in the contract. This practice should also be applied to employment contracts.

BROADER PRE-EMPLOYMENT MEDICAL CHECK-UPS

Monika Czekanowicz
Attorney-at-law

Work is underway to expand the package of compulsory occupational medicine examinations. The current diagnostic examination, which usually includes only basic morphology, is to be accompanied by:

1. a lipidogram to assess the risk of atherosclerosis and cardiovascular disease,
2. determining the body mass index (BMI), which will verify possible overweight or obesity,
3. a blood glucose test to verify whether the employee is at risk of diabetes.

In addition, employees will be able to voluntarily opt for additional tests, i.e. a mammograph, cytology, a PSA antigen determination or a chest X-ray, etc.

The costs of these new examinations are intended to be borne by the Treasury. Neither the employee nor the employer will incur any expenses in this respect, provided that the occupational medicine clinic with which the employer has a contract to perform occupational medicine examinations is a participant in the programme to combat civilisation diseases.

BOARD MEMBERS ARE LIABLE FOR COMPANY DEBTS IN THE EVENT OF ITS INSOLVENCY

Damian Tokarczyk, PhD
Advocate

In principle, the members of management boards of joint stock and limited liability companies are not liable for the debts of the company. They manage the company's assets, while the company itself is a distinct entity with separate legal personality. However, there are several important exceptions to this principle. The most acute may be the board members' liability for the company's debts in the event of the company's bankruptcy.

Insolvency of the company and liability of management board members

Within 30 days of the company becoming insolvent, the members of the management board are obliged to file a declaration of bankruptcy against the company. This deadline results from Article 21(1) of the Bankruptcy Law of 28 February 2003. A failure to file this declaration within the deadline allows the company's debtors to pursue their claims directly against the members of the management board.

Individual members of the management board may free themselves from this liability by showing that the failure to file a bankruptcy declaration was not their fault. This may be the case if the board member in question was unable to file it himself due to representation rules and a lack of cooperation with other board members. A special case may arise if the company has become dysfunctional – its articles of association or statute provide for a multi-member board and representation, but a decision-making paralysis results in only one board member acting.

In many cases, members of the management board can also absolve themselves of liability by pointing to the internal division of responsibilities. For this defence to apply, the internal division should be formalised (e.g. a board resolution establishing rules of procedure or appropriate job descriptions of the board members).

Failure to file for bankruptcy is a criminal offence

The company's creditors do not have to pursue their claims in civil proceedings, which entails considerable costs and the need to prove a number of prerequisites. A failure to meet the deadline for filing a bankruptcy declaration against the company is an offence under Article 586 of the Commercial Companies Code. It is punishable by a fine, the restriction of liberty or imprisonment for up to one year. However, other consequences of a possible conviction for this offence are much more severe. A criminal conviction establishing an offence is binding on all courts, including in civil litigation. In addition to the penalty, the criminal court may impose on the offender, among other things, an obligation to remedy the damage. Furthermore, anyone convicted of an offence under Article 586 CCC is prohibited from performing functions on the bodies of capital companies, or being a liquidator or proxy.

A conviction for the offence of failing to timely file a bankruptcy declaration opens the way for further criminal cases. The conclusion of binding agreements by a member of the management board after the occurrence of insolvency may be treated as fraud (an offence under Article 286 of the Criminal Code, punishable by up to 25 years' imprisonment).

EMPLOYEES WILL BE ABLE TO CHECK SALARY INFORMATION

Katarzyna Wilczyk
Attorney-at-law

At the end of last year, draft legislation partially implementing the Pay Transparency Directive emerged. Under it, any employee will be able to request information from their employer on their pay and average pay levels – broken down by gender – for a group of employees doing the same work or work of equal value.

Employers will have to remind employees once a year of their right and the steps to be taken to do so.

Implications for the employer:

1. employees will find out how their earnings compare to those of the same and the opposite sex (doing the same work or work of equal value), and therefore whether, compared to others, they are earning a little, the average or a lot;

2. they will be able to make enquiries in person or through trade unions/employee representatives, so the social side will also know the data.

Actions that the employer will need to take:

1. prepare the entire process related to requesting and providing information on wages;

2. determine the channel through which the company will inform employees of their right and how requesters are to make their request;

3. select the responsible individuals and data sources for the salary analysis.

NEWS / EVENTS

Raczkowski consistently in Band 1 Employment in Chambers and Partners Europe!

From this year, Chambers also ranks firms in **White-Collar Crime. We are starting in Band 2!**

And individually:

★ **Bartłomiej Raczkowski** - Band 1 (Employment)

★ **Janusz Tomczak** - Band 1 (White-Collar Crime)

★ **Katarzyna Dobkowska** - Band 4 (Employment)

Chambers TOP RANKED Europe 2025

Raczkowski

Raczkowski also remains in Tier 1 in Legal 500!

★ **Bartłomiej Raczkowski honoured in the Hall Of Fame (Employment)**

★ **Janusz Tomczak recognised as a Leading Partner (White-Collar Crime)**

Thank you for your trust and positive feedback. Recognition from our Clients is the greatest achievement.

LEADING FIRM Legal500 EMEA 2025

TOP TIER FIRM Legal500 EMEA 2025

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NEWS / EVENTS

WEBINAR | New Regulations on Employing Foreign Nationals in Poland – How Employers Can Prepare?

We kindly invite you to join our webinar!

Topics Discussed:

- Events Shaping Immigration Policies in Poland – Why is the Landscape Changing?
- Key Changes in Employing Foreign Nationals – What Employers Need to Know? - What New Requirements and Responsibilities will Employers Face?
- Future Outlook – What other Changes are Expected?
- Q&A Session

Webinar will be held in **English.**

Register HERE
Date: 7 April

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