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TOPICS

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DISCRIMINATION "BY ASSUMPTION" – DUE TO A CHARACTERISTIC ATTRIBUTED TO AN EMPLOYEE, REGARDLESS OF WHETHER OR NOT THEY ACTUALLY HAVE IT. DISCRIMINATION "BY ASSOCIATION" – DUE TO A CONNECTION WITH A PERSON WHO HAS A PROTECTED CHARACTERISTIC

Dominika Dörre-Kolasa, PhD
Partner

An amendment to the Labour Code adopted on 19 June 2026 introduces two new concepts: discrimination "by assumption" and discrimination "by association". Once signed by the President, the amendment will enter into force three months after it is published.

What is discrimination "by assumption"?

A new Article 18^{3}a § 4 of the Labour Code provides that discrimination also occurs when an employee is treated less favourably because of a characteristic attributed to them.

Example: A manager assumes that an employee is homosexual and, for this reason, does not assign them to work with a key client. It is irrelevant whether or not the assumption is true – what matters is that it influenced the employer's decision.

What is discrimination "by association"?

The new provisions also cover situations where an employee is treated less favourably because of their connection with a person who has a protected characteristic.

Example: An employee does not practise Islam, but her husband does and runs a blog devoted to the rights of religious minorities. After this information becomes known, the employer decides not to assign her to a position requiring contact with key clients, believing that this could negatively affect the company's image.

What does this mean for employers?

The new provisions increase the importance of making objective personnel decisions. There may now be disputes over simply proving that stereotypes, assumptions or associations relating to an employee did not influence a particular decision. In practice, employers should pay particular attention to several areas.

- **Risk of the "halo" effect**

One piece of information about an employee (for example, relating to their family, social activities or personal connections) may unconsciously influence the assessment of their abilities, availability or "fit" for a client or a team.

- **Importance of managerial communication**

In the event of such disputes, the outcome will often not be determined by documents, but by previous statements made by managers, such as "They will not be available anyway," "The client may have a problem with this," "It is better not to take the risk." Such comments may be raised as evidence of the actual motives behind the employer's decision.

- **New evidentiary challenges**

The subject of proceedings will no longer be about whether the employee actually has a specific characteristic, but whether the employer acted based on such a belief, or linked a decision to a third party. The focus of the dispute will shift from facts concerning the employee to the employer's motives.

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EMPLOYEE REFERRAL BONUSES MAY BE RECOGNISED A „PRIZE IN COMPETITION" AND SO SUBJECT TO A FLAT-RATE 10% TAX

Katarzyna Serwińska
Partner

This follows from the judgment of the Supreme Administrative Court of 15 January 2026 (case No II FSK 541/23). The court confirmed that an initiative organised by a company in order to acquire new employees may qualify as a competition within the meaning of tax regulations. Since the law does not define the term "competition", it cannot be narrowed down solely to an element of rivalry. The classification of an initiative depends also on such elements as the public announcement of the competition, the rules of the competition, clearly defined criteria for selecting winners and awarding prizes, and the incidental nature of the prizes awarded.

The Supreme Administrative Court held that one-off awards paid to participants of an employee referral programme do not constitute remuneration for recruitment services, but rather constitute prizes in a competition. This means that they may be subject to a flat-rate 10% tax instead of coming under general taxation rules.

The judgment indicates that an employee referral programme may qualify as a competition, even where its purpose is to attract job candidates. However, it must genuinely meet the characteristics of a competition, as identified by the Supreme Administrative Court.

Damian Tokarczyk, PhD
Of Counsel

MOBBING IS ALMOST ALWAYS A CRIMINAL OFFENCE. FAILING TO PREVENT MOBBING MAY ALSO CONSTITUTE AN OFFENCE

The amendments adopted by the Sejm changing the definition of mobbing may indirectly affect criminal liability. Although no new criminal offence is being introduced, the definition of mobbing clearly refers to stalking (Article 190a of the Criminal Code). It is worth remembering who can be held criminally liable and for what actions in connection with mobbing.

Can a workplace bully be prosecuted for a criminal offence?

There is no single, specific provision that establishes criminal liability for mobbing. This will remain the case even if the currently proposed amendment to the Labour Code enters into force. On the other hand, mobbing usually consists of a series of behaviours and acts that may constitute criminal offences, even when assessed separately. Bullies may therefore be held liable for defamation, harassment, common assault, threats, or false imprisonment.

The criminal offence of stalking may also bear the characteristics of mobbing, but this requires more than merely persistent harassment of an employee. A stalker must also cause their victim to develop a justified sense of threat, humiliation or distress, or must significantly violate the victim's privacy. If these conditions are met, a workplace bully commits a single criminal offence punishable by imprisonment for six months to eight years.

Whether the perpetrator is prosecuted is entirely up to the victim. Stalking is prosecuted at the victim's request, following a formal complaint submitted to the investigative authorities, i.e. the police or the prosecutor's office.

Will an employer be held criminally liable for failing to prevent mobbing?

Actively preventing and counteracting mobbing is one of the employer's basic obligations. This means that an employer (or members of the company's governing bodies) may potentially incur criminal liability for failing to fulfil this obligation.

If a company fails to take appropriate preventive measures, thereby creating an environment conducive to mobbing, then liability for aiding and abetting mobbing could potentially be considered. The absence of protective or verification mechanisms may make it easier for the bully to operate.

Theoretically, if a member of the management board is aware that an individual is engaging in workplace bullying and takes no action, then they could even be held liable as a principal offender. This would mean that the management board member would be held liable as if they had committed the offence of mobbing themselves. This possibility is set out in Article 2 of the Criminal Code, which states that criminal liability for a result-based offence committed through omission may only be imposed on a person under a specific legal duty to prevent that result.

Rafał Jaroszyński
Senior Lawyer

MANDATORY TRADE UNION INFORMATION ON MEMBERSHIP NUMBERS – BY 10 JULY

Certain rights of trade unions depend on the number of members they have. For example, the number of people covered by special protection against dismissal, and the number of hours of time off work available for trade union activities. This number also indicates the level of popularity of the trade union among employees and, in certain cases, may result in a trade union organisation losing certain rights.

Twice a year, i.e. **by 10 January and 10 July**, every trade union is required to provide the employer with information on the number of members who are employees, and people performing work under civil law contracts (e.g. mandate contracts or B2B agreements).

The information on the number of members should reflect the level of union membership as of **31 December and 30 June**, respectively.

If the trade union fails to provide the employer with information on the number of members, it loses the rights of a workplace trade union organisation. The trade union itself continues to exist, but the employer is no longer required to cooperate with it. That means trade union representatives do not benefit from trade union protection and that the employer may introduce or amend internal regulations applicable in the company without involving that trade union.

If an employer has doubts regarding the accuracy of the data provided, it may raise an objection to the trade union to have the court verify its membership numbers. If such an objection is submitted, the trade union has 30 days in which to apply to the court for verification of its membership. If it fails to do so, it loses the rights of a workplace trade union organisation.

A request by the employer to verify membership numbers does not constitute hostile action against the trade union. It is a standard procedure whereby all the parties involved have more certainty when entering into social dialogue regarding the scope of rights held by the organisation operating at the employer's premises. There are situations where trade union membership documentation is not properly maintained, and court verification of these documents is the only way to establish the actual number of trade union members.

AN EMPLOYER CHECKLIST BEFORE THE NEW ANTI-MOBBING REGULATIONS ENTER INTO FORCE – WHAT NEEDS TO BE VERIFIED AND IMPLEMENTED?

Katarzyna Wilczyk
Senior Lawyer

New regulations on the prevention of mobbing have been adopted by the Senate and will soon be submitted for the President’s signature. Therefore, employers should already be analysing whether their existing organisational procedures and practices need to be adjusted to the proposed changes.

1. Anti-mobbing procedures

✓ Check whether the company has an anti-mobbing procedure in place.

✓ If so, check the procedure is up to date and complies with the new requirements.

✓ Introduce amendments to the procedure if appropriate.

2. Reporting channels for irregularities

✓ Verify that employees know where and how they can report a problem.

✓ Ensure that employees have safe and confidential channels for reporting mobbing.

✓ Consider introducing anonymous reporting channels, if such an option is not currently available.

3. Management staff

✓ Train managers on how to recognise and respond to mobbing behaviours.

✓ Remind managers that a failure to respond to a reported problem may expose the employer to liability.

✓ Pay attention to communication standards and team management practices.

4. Preventive measures

✓ Monitor the working environment and the level of conflicts within teams.

✓ Analyse risk indicators, such as increased employee turnover or absenteeism.

✓ Conduct regular information and training activities.

5. Support for anyone affected by mobbing

✓ Provide protection against retaliatory actions.

✓ Consider providing psychological or organisational support.

✓ Monitor the situation after the proceedings are completed.

ON-CALL TIME MUST BE PRECISELY DEFINED

Katarzyna Soboń
Senior Lawyer

An employer may require an employee to remain available outside normal working hours and ready to perform work if required (on-call duty). However, on-call duty time cannot be unlimited. In particular, an employer may not require an employee to be "available by phone" at all times outside their normal working hours.

On-call duty time must not violate the employee's right to daily or weekly rest (Article 151^5 §2 of the Labour Code). Therefore, if an employee's daily working time standard is **8 hours**, taking into account the minimum daily rest period **(11 hours – Article 132 §1 of the Labour Code),** the on-call duty period may not exceed **5 hours**. The hours during which an employee is required to be on call should be clearly specified by the employer.

A breach of these above provisions may be classified as a violation of working time regulations. Such a violation constitutes an offence against employee rights (Article 281 §1 point 5 of the Labour Code), and in extreme cases may also constitute a criminal offence (Article 218 §1a of the Criminal Code). An employee may also claim compensation for an infringement of their personal rights.

BENEFITS PROVIDED TO SELF-EMPLOYED CONTRACTORS MAY CONSTITUTE A COMPANY'S DEDUCTIBLE COSTS

Tomasz Kret
Senior Lawyer

Expenses related to benefits provided to anyone rendering services under B2B agreements may be recognised as tax-deductible costs of a company, as long as they constitute part of the remuneration resulting from such agreements. If this condition is not met, expenses related to such benefits are considered representation expenses and are not tax-deductible costs.

These conclusions arise from an individual tax ruling issued on 11 May 2026 by the Director of the National Tax Information Office (KIS) (reference No 0111-KDIB1 3.4010.40.2026.2.DW).

It should therefore be assumed that benefits made available to self-employed contractors as an additional incentive to establish or continue cooperation under a B2B model, or provided to self-employed contractors on a voluntary basis, will not be considered part of their remuneration. Consequently, the tax authorities may challenge the right to recognise such expenses as tax-deductible costs.

If your organisation treats benefits provided to self-employed contractors as tax-deductible costs, even partially, we recommend reviewing the relevant provisions of the B2B agreements.

REGULATIONS SIGNIFICANTLY CHANGING THE OPERATION OF THE NATIONAL LABOUR INSPECTORATE AND THE WAY INSPECTIONS ARE CONDUCTED ENTERED INTO FORCE ON 8 JULY

Joanna Stolarek
Senior Lawyer

The most important changes include:

1. Decisions confirming the existence of an employment relationship

The National Labour Inspectorate (PIP) now has the authority to issue administrative decisions confirming that cooperation carried out under a civil law contract in fact constitutes an employment relationship. In practice, this means the obligation to treat the contractor as an employee, together with all the consequences arising from labour law regulations, tax regulations and social security regulations. Before issuing such a decision, however, the company should receive a request to remedy the identified irregularities.

2. Broader scope of remote inspections

The new regulations expand the scope of inspection activities that can be carried out using electronic means of communication.

3. Interpretations concerning civil law contracts

Companies will be able to apply to the Chief Labour Inspector for interpretations concerning the cooperation models they use. This is intended to increase legal certainty and reduce the risk that such models will be challenged during inspections.

4. Exchange of data between PIP, ZUS and KAS

The regulations provide for improved exchange of information between the National Labour Inspectorate (PIP), the Social Insurance Institution (ZUS), the National Revenue Administration (KAS), as well as the use of analytical tools to identify entities with an increased risk of violations.

What do these changes mean for companies?

The actual organisation of cooperation will be of key importance, rather than merely the wording of contracts. Therefore, it is advisable to review the cooperation models currently used, prepare documentation and procedures for inspections, including remote inspections, and ensure the people responsible for cooperation with contractors are appropriately prepared. The increasing powers of the National Labour Inspectorate mean that preventive measures and regular assessment of whether cooperation models comply with regulations are becoming an important element of reducing legal risk.

Monika Czekanowicz
Lawyer

WORK IN HIGH TEMPERATURES WILL SOON BE PROHIBITED

On **10 July 2026**, the occupational health and safety regulations were amended.

According to the new provisions:

1. Workplaces must ensure a temperature of no more than **35°C**, unless technological requirements make this impossible.
2. For work performed outdoors involving physical effort resulting in an effective energy expenditure during the working shift exceeding: **1,500 kcal for men**, and **1,000 kcal for women**, the temperature may not exceed **32°C**, unless technological requirements make this impossible.
3. Work performed indoors or outdoors may not be carried out during periods when, due to weather conditions, the temperature exceeds the relevant thresholds specified above.

Where the temperature in the workplace, due to weather conditions, exceeds **28°C**, or **25°C** in the case of work involving physical effort resulting in an effective energy expenditure during the working shift exceeding 1,500 kcal for men and 1,000 kcal for women, the employer will be required to:

1. Provide appropriate technical solutions reducing or limiting the increase in temperature, unless technological requirements make this impossible, or
2. Apply appropriate organisational measures minimising the impact of temperature on employees' health, taking into account the conditions and nature of the work.

Examples of technical solutions include installation of external blinds or special films blocking direct sunlight from entering rooms, installation of air-conditioning systems to cool the air. Organisational measures may include introducing additional paid breaks included in working time, relaxing rules regarding required work clothing.

For outdoor work, where the temperature exceeds **25°C** due to weather conditions, the employer is required to apply appropriate organisational measures minimising the impact of temperature on employees' health, depending on the working conditions and the specific nature of the work.

Organisational measures for this type of work may include changing working time schedules by moving start times in order to avoid work during the hottest part of the day, more frequent rotation of tasks between employees, so that they spend less time directly exposed to sunlight.

Employers must first and foremost take steps to verify the energy expenditure associated with physically demanding work. The result of this assessment will determine whether additional measures must be taken when temperatures specified in the amended regulations occur.

The new regulations will enter into force on **11 January 2027.**

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