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EMPLOYEES ARE RESPONSIBLE FOR TRADE SECRETS THEY DISCLOSE TO AI TOOLS



Damian Tokarczyk, PhD
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Trade Secrets – The Scope of Protection

Each business determines for itself what constitutes a trade secret. Trade secrets include any information that is not generally known, has commercial value and is subject to reasonable steps taken by the business to keep it confidential. This does not require detailed security measures, including IT safeguards. It is sufficient to specify the types of information that are covered by trade secret protection.

A breach of trade secret confidentiality may have various consequences for the person responsible. The affected business may claim damages from the individual who committed the breach, as well as from a competing business that benefited from the disclosure. The person responsible for the disclosure may also incur criminal liability under Article 23(1) of the Act on Combating Unfair Competition or Article 266(1) of the Polish Criminal Code. These offences are punishable by a fine, restriction of liberty or imprisonment for up to two years.

AI Cannot Be Held Responsible, but Employees Can

Employees frequently use artificial intelligence for analytical purposes or to solve problems. By entering prompts, they provide tools such as ChatGPT with information and even scans or photographs of documents. Depending on the software version or subscription terms applicable to chatbots and other tools, such information or documents may be made available to other subscribers. AI systems may also retain such information in their memory and databases. Consequently, these tools may create opportunities for unauthorised access to trade secrets.

Responsibility for such disclosures rests with the employee who provides the data to the AI tools. For obvious reasons, artificial intelligence itself cannot be held liable. Nor does liability rest with the administrators or developers of the software in question. What is more, in such cases, it may be more difficult to recover damages from those who benefit from information disclosed in this way. They may argue that making the information available to other subscribers demonstrates a failure to exercise due care in protecting its confidentiality.

Procedures for Using AI

This is not the only reason why the rules governing the use of AI tools should be set out in appropriate internal documents. Employers are entitled to require employees to perform their duties independently. While the use of modern technology should not necessarily be prohibited, it is both possible and advisable to establish clear limits on its use.

INTERPRETATIONS FROM THE CHIEF LABOUR INSPECTORATE – WHAT DETERMINES WHETHER A CONTRACT QUALIFIES AS AN EMPLOYMENT CONTRACT



Joanna Stolarek
Senior Lawyer

To date, the Chief Labour Inspectorate (Główny Inspektorat Pracy, GIP) has issued 19 interpretations. The ratio of positive to negative interpretations is virtually 50/50. Most concern contracts of mandate (umowa zlecenia) and are generally negative, including an interpretation relating to students under the age of 26. Several concern B2B relationships, including three in the IT sector, and only one of these is negative.

Nineteen interpretations are still too few to establish a settled line of interpretation, but certain trends are already becoming apparent.

Factors indicating that a contract may qualify as an employment contract include:

- the contractor's organisational subordination, including the employer's ability to issue day-to-day instructions;
- the determination of the time and place at which tasks are to be performed;
- the inability to engage subcontractors;
- the contractor's lack of independence; and
- the absence of responsibility for the outcome and of business risk.

B2B Arrangements Receiving a Positive Assessment

Among other things, the GIP has accepted models involving the use of a company's technical infrastructure or office space. It has also recognised various methods of remunerating services, including flat fees and hourly rates. Furthermore, it has acknowledged that project managers in the IT sector may perform their duties under B2B contracts.

On the other hand, the GIP concluded that an individual providing administrative and office support to a language school should not be classified as an independent contractor, but rather as an employee, where the individual performs “repetitive tasks not as part of their own organisation” but instead “using the company's IT systems and tools”.

Audit First, Application Second

An interpretation does not provide complete immunity from inspection. The protection it offers depends on whether the actual working relationship corresponds to the description provided in the application. Before applying to the GIP, it is therefore advisable to conduct an audit covering not only contracts, but also correspondence, task-allocation systems, schedules, reporting arrangements and day-to-day communications with contractors.

An application for an interpretation should describe the actual working arrangement accurately and comprehensively. The recommended approach is to analyse existing interpretations, verify current practices and adjust them where necessary before asking the GIP to assess the arrangement.



Rafał Jaroszyński
Senior Lawyer

IN EXCEPTIONAL CASES, EVEN A PROTECTED TRADE UNION REPRESENTATIVE CAN BE DISMISSED

In dealings with an employer, members of trade union governing bodies and individuals authorised to represent a trade union enjoy special protection against the termination of their employment. The individuals covered must be expressly identified in a resolution of the trade union's governing body, subject to statutory limits based either on the number of union members or on the number of managerial employees employed by the employer.

This protection means that an employer may neither serve notice to terminate the employment contracts of such individuals nor terminate those contracts. The employer is also prohibited from unilaterally changing their terms and conditions of employment to their disadvantage.

An employer may terminate the employment contract of a protected employee only after obtaining the consent of the governing body of the trade union to which the employee belongs. The employer should submit a written request for consent, stating the reasons justifying the proposed action.

The trade union should respond within 14 working days where termination by notice is proposed, or within seven working days where termination is without notice.

If the trade union fails to communicate its position within the applicable time limit, its silence is deemed to constitute consent to the termination or amendment of the employment contract. In such circumstances, the employer may proceed without receiving an express response from the union.

In practice, trade unions generally respond within the prescribed time limits, but tend to refuse to consent to the dismissal of their members. A literal reading of the relevant provisions would suggest that, where the union withholds its consent to the dismissal of a protected member, the employer is prevented from terminating the employment contract.

However, case law recognises that an employment contract may, in certain circumstances, be terminated even where the employee is a protected trade union representative and the union has withheld its consent. Courts have repeatedly emphasised that trade union protection is not a licence to act with impunity.

Where the circumstances show that the allegations against an employee are unrelated to their trade union activities and that the employee's conduct is particularly reprehensible, the union should consent to the termination of the employment contract.

If an employee relies on the absence of trade union consent in court proceedings, the court may consider this an abuse of rights and refuse to reinstate the employee or award compensation. Courts have found an abuse of rights not only where a union refused to consent to the dismissal of a representative who reported to work intoxicated or bullied other employees, but also where the employee has been declared medically unfit to work in the position concerned.

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FURTHER SIMPLIFICATIONS IN COMMUNICATIONS WITH TRADE UNIONS

As of 30 October 2026, under the amended Trade Unions Act, trade unions will be able to request information about the number of managerial staff from an employer electronically or in documentary form, for example by email. Upon receiving this information, a representative trade union may grant special protection to an equivalent number of individuals. Until now, trade unions have had to request this information from employers in writing.

By default, employers must still respond within seven days in hard-copy written form. However, employers may respond electronically if such communication methods have been formally agreed upon in a collective bargaining agreement or a separate written agreement.

Another change this year facilitating communication between employers and trade unions is that, since 21 January 2026, employers are no longer required to submit hard-copy written requests when consulting unions on intended employment contract terminations. Both the request and the union's response can now be handled electronically.

In addition, even where the applicable legislation requires written form, employers may send trade unions documents electronically if they bear a qualified electronic signature and where the trade union has specified the email address to which such documents may be sent.

CAN EMPLOYEES RELY ON THE PAY TRANSPARENCY DIRECTIVE?



Katarzyna Wilczyk
Senior Lawyer

The deadline for transposing the EU Pay Transparency Directive to Polish law passed on 7 June 2026. After that date, employees may seek to rely on its provisions in court, though whether they can actually do so depends on the type of employer and the specific provision in question.

The position differs for employees in the public sector and those employed by private companies. In disputes with public-sector employers, employees may rely directly on the provisions of the directive where those provisions are sufficiently precise and unconditional. By contrast, in disputes with private employers, the directive cannot serve as a general basis for imposing obligations on them.

This does not mean that employees of private companies are left without protection. They may pursue their rights under Polish law, which should be interpreted in accordance with EU law, including the Pay Transparency Directive.



Tomasz Kret
Senior Lawyer

REMOTE WORK FROM POLAND DOES NOT NECESSARILY CREATE A PERMANENT ESTABLISHMENT FOR TAX PURPOSES

A foreign employer does not create a permanent establishment in Poland simply because its employees work remotely from a location that the employer does not use or control. This conclusion follows from the judgment delivered by the Supreme Administrative Court (NSA) on 22 January 2026 in case No. II FSK 556/23.

The Supreme Administrative Court overturned a judgment of the Voivodeship Administrative Court in Gliwice. The lower court had stated that permitting employees on permanent employment contracts to perform their assigned duties from home placed that space at the employer's disposal, meaning that the space could be regarded as the employer's permanent establishment in Poland.

It should be emphasised, however, that the activities performed by the employees in Poland in the case considered by the Supreme Administrative Court were auxiliary in nature. This was an additional factor supporting the conclusion that, in the specific circumstances of the case, no permanent establishment had been created.



Monika Czekanowicz
Lawyer

WORKPLACE BULLYING SHOULD BE INCLUDED IN OCCUPATIONAL RISK ASSESSMENTS

On 5 November 2026, amendments to the Polish Labour Code will enter into force that significantly change the provisions governing workplace bullying (mobbing).

One of the most important changes is the introduction of a new Article 94³a of the Labour Code, which sets out rules for preventing workplace bullying, discrimination, breaches of the principle of equal treatment and violations of employees' dignity and personal rights. These rules apply to employers with at least 10 employees.

The rules, procedures and frequency of measures aimed at preventing each of these forms of undesirable conduct must be specified in the relevant workplace regulations, unless they are already addressed in a collective labour agreement or the work regulations.

Although the amendments do not expressly impose an obligation on employers to include workplace bullying and other forms of undesirable conduct in occupational risk assessments, this obligation already arises from the employer's existing duty to provide employees with safe and hygienic working conditions.

Workplace bullying is one of the most destructive risks to employees' psychological well-being. Measures to prevent bullying, which have until now been addressed almost exclusively through compliance frameworks, should now also be incorporated into occupational health and safety (OHS) practices.

Following these amendments, an employer's model approach should therefore involve the following steps:

1. **Identifying psychosocial hazards** and preparing a draft occupational risk assessment that takes these hazards into account.
2. **Consulting on the draft risk assessment** with the workplace trade union organisation or employee representatives.
3. **Implementing comprehensive rules and procedures** to prevent such risks, together with targeted training to equip managers with the necessary skills to intervene and manage potential risks.
4. **Introducing preventive measures** to eliminate risks wherever reasonably possible, or otherwise minimise them.
5. **Monitoring and reviewing the effectiveness of preventive measures** and revising the process whenever necessary.

UNPAID INTERNSHIPS SET TO DISAPPEAR – EMPLOYERS WILL ALSO HAVE TO PAY THOSE JUST STARTING TO GAIN EXPERIENCE



Karolina Koprowska
Junior Lawyer

Unpaid internships are set to become a thing of the past. A new draft law on internships provides that the monthly remuneration for an internship must be at least 65% of the minimum wage, excluding additional payments such as those for night work or overtime.

The draft law also introduces a time limit on employment under an internship agreement. An intern will be allowed to work for the same employer for up to six months, even if several agreements are concluded.

Employers will also be subject to limits on the number of interns they may host at any one time, depending on the number of employees they employ. Employers with 2 to 9 employees will be allowed to host interns equivalent to 50% of their workforce; those with 10 to 49 employees, 25%; those with 50 to 249 employees, 15%; and those with more than 249 employees, 10%.

Where an intern is a minor, the minimum monthly remuneration will be at least PLN 500 until the intern turns 18. Employers will also be eligible for a subsidy of up to PLN 750 towards the cost of an intern who is a minor.

Employers will be required to issue interns with a written certificate confirming the completion of the internship within seven days of its end.

Employers who breach these limits or who fail to comply with the obligations relating to internships may face fines ranging from PLN 2,000 to PLN 60,000.

Employers organising internships will not have much time to prepare for these changes, as the new provisions are scheduled to enter into force on 1 January 2027.

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