Ius Laboris Poland Global HR Lawyers
Raczkowski

August 2020

PRO HR

TOPICS

TOPIC 1

Authorities have announced inspections in connection with remuneration co-financing

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The Labour Inspectorate, tax offices and voivodship labour offices have announced thorough inspections of employers who have applied for financial support to cover employee remuneration on account of a decline in their business due to COVID-19.

Government officials will check whether the decline in business has been determined correctly, whether the occurrence of COVID-19 was in fact the cause therefor and whether the amount of financial support was calculated correctly. In practice, the method of its computation generates the largest number of questions, especially during the preparation of Excel spreadsheet to make that calculation.

Doubts pertain, among other things, to the computation of the salaries that are to be subject to financial support, giving consideration to the salary components a given employer pays and the calculation of the salary for the month prior to the submission of the application when employees drew allowances for several days, including COVID-related allowances.

In respect to applications filed prior to Anti-Crisis Shield 4.0, what will be checked is whether the employers in fact reduced the working time of employees or applied down time. The working time schedules and the records of employees' working time as well as the payroll are to be checked.

For it may turn out that the reduction of working time was fictitious as employees were paid additional amounts as well as their salaries and overtime throughout the term of financial support. Working time records may also be checked with respect to applications for financial support under Anti-Crisis Shield 4.0. Government officials may wish to ascertain whether or not down time was in fact applied to this group.

Government officials have stated that how the funds received were used will also be checked.

The consequences of any possible violations discovered during inspections may be far-reaching: an obligation to reimburse all the financial support received plus interest and criminal liability of the person who submitted the application for making a false statement or concealing the truth.

It would be worthwhile to check all the documents and calculations that will be subject to inspection to be well prepared for an inspection.

TOPIC 2

Draft changes to the Labour Code on the mobbing definition

In early July a draft amendment to the Labour Code was submitted to *Sejm* which extends the definition of mobbing to differentiate the amount of pay on account of sex.

Paulina Zawadzka-Filipczyk
Attorney-at-law

According to this bill, the following is deemed to be mobbing:

- actions or behaviours relating to an employee or directed against an employee,
- persistent and long-lasting harassment or intimidation, or
- differentiation of pay based on an employee's sex,

resulting in lowering his/her professional adequacy evaluation, causing or intending to cause humiliation or derision of the employee or his/her isolation or elimination from a team of co-workers.

At present, the differentiation of pay is examined from the vantage point of discrimination on account of sex. After this amendment is enacted, employees will be able to exercise more rights in interactions with their employers.

This will therefore entail not just damages for the violation of the principle of equal opportunity but also distinct claims for mobbing in the form of damages or general damages in cash if mobbing leads to an employee suffering a loss of health.

The foregoing changes should enhance the respect for women's equality when it comes to pay for the same work or work of the same value. According to the drafter of this bill, the instruments currently in place are ineffective.

According to the bill's underlying assumptions, the amendment of the Labour Code should come into force 30 days after the date of its announcement. We will monitor on an ongoing basis the progress of the legislative work and advise you of the solutions that are enacted.

TOPIC 3

New bill | The powers of the State Labour Inspectorate (PIP) will be extended

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At present, the parliament is working on amending the regulations pertaining to posting employees, and to extend the powers of the State Labour Inspectorate (PIP).

The new regulations are to implement Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC on posting employees in the framework of the provision of services. The deadline for its implementation elapsed on 30 July 2020.

PIP's broader powers will pertain to posting employees, both when sending employees to and from Poland.

The new regulations greatly emphasize efforts to squash fraud or abuse related to posting employees. For this reason, PIP's powers will be extended. PIP's collaboration with foreign institutions will be extended to include counteracting such practices and responding to instances of illegal posting activity.

In addition, PIP will have the right to request information about an employee being posted from Poland to some other European Union member state not just in response to a motion submitted by foreign institutions, but also at its own initiative.

PIP will be able to undertake such measures if there is a suspicion of a violation of the laws of the member state to which an employee from Poland is posted.

The consequence of PIP ascertaining irregularities in the posting of an employee in Poland will be the obligation of applying the governing law unless this would lead to the employee being subject to conditions of employment less favourable than the ones that are applicable to employees posted to Poland.

Łukasz Kuczkowski
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TOPIC 4

Remote work according to the rules in place to date

Sejm has extended the remote work option for at least another 3 months.

The regulations introducing remote work were temporary and constituted the government's response to the ongoing COVID-19 epidemic. Having regard for the persisting state of threat, Sejm has resolved to extend the term of validity of this solution without changing the principles of remote work.

The law amending the rules for posting employees providing services indicates that remote work in its current form may be performed for the term of the epidemic, the duration of the epidemiological threat and for three months after they are called off. The prerequisite for working in this manner is the effort to counteract COVID-19 involving the employer issuing instructions on remote work.

At present, many companies, especially office-based companies, continue to utilize remote work to curtail employee presence in work establishments.

This solution means that remote work can be performed for a longer period having regard for the real level of the threat posed by COVID-19 in Poland. For that reason, it is also worthwhile to consider the enactment of remote work regulations and the incorporation therein of rules concerning the mixed used of remote work and on-site work in a work establishment.

TOPIC 5

The Schrems II judgment and data transfers to the US

The impact of the Schrems II judgment (C-311/18) handed down by the Court of Justice of the European Union regarding data transfers to the US

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Privacy Shield

As of 16 July 2020, the Commission implementing decision (EU) 2016/1250 of 12 July 2016, referred to as the Privacy Shield is invalid, which means that as of that date the Privacy Shield cannot be treated as the basis for the transfer of personal data to the US.

The Court has stated that the requirements of the domestic law of the United States, in particular, the powers held by American authorities to obtain access to personal data for the purposes of national security, do not confer rights to these entities that could be enforced in the American courts.

Even though this decision apparently pertains solely to the Privacy Shield, the case of Schrems II regarded the two bases for the transfer of personal data to third countries in the context of transfers to the US:

- the Privacy Shield agreement,
- standard contractual clauses.

What should a data controller do?

Whether an organisation transfers data to the US under the Privacy Shield is something that needs to be checked. If that transpires, there are two options:

- some other basis for the transfer should be found,
- the transfer should be suspended.

If the transfer of data is based on standard contractual clauses, then to ensure that its continuation is safe, having regard for the powers of American special services being challenged, it is necessary to check, in collaboration with the entity receiving the data or the assessment, whether additional safeguards should be put into place on top of the ones contemplated by the clauses.

TOPIC 6

Remote work from abroad: Take a test to check whether your organization is well-prepared for this solution

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In recent years remote work has gained in popularity, while during the pandemic it has truly become the new reality. In most industries in which work can be done from outside the office, employees can actually work from any venue, also from abroad.

However, not every employer who agrees for work to be done abroad is aware of the consequences and the risks concerning, among others, employee taxes and social insurance, which this type of work entails for employers and employees alike in Poland and abroad.

If you would like to check whether your organisation is well-prepared to roll out this solution, or whether it is in jeopardy of employment law risks, we would invite you to fill out the test below.

The result of this test is a preliminary assessment of the situation in your organisation including some hints* on subsequent steps.

Take the test here: LINK

*These hints do not constitute legal advice. All information is confidential.

INSIGHTS

Rzeczpospolita Ranking | we are the biggest HR law firm

According to the XVIII Rzeczpospolita Law Firms Ranking 2020, Raczkowski is the biggest HR and employment law firm in Poland per number of advocates and attorneys-in-law, and also per general number of lawyers.

We are in the top 50 biggest law firms on the Polish market.

Read more: LINK

We are taking part in legislative works

New bill of holding law was published on 5 August 2020.

The drafted changes are revolutionary and will significantly change the functioning of capital groups, supervisory boards and management boards of companies.

We were invited to comment on the project. Katarzyna Sarek-Sadurska and Iza Gawryjołek are preparing comments on behalf of our law firm.

Read more: LINK

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