Ius Laboris Poland Global HR Lawyers
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PRO HR

TOPICS

Employment agreements do not have to be in writing – they can be electronic

Employers should review their evaluation of occupational risk

Employers still have an obligation to ensure 1.5 meters distance between workstations

Employers are obligated to re-hire an employee dismissed without observing the term of notice period

Blanket consents to deduct amounts due from an employee’s salary are invalid

IP Box allows you to apply a 5% tax rate – take a test to check if this solution is for your co-workers

Insights

TOPIC 1

Employment contracts do not have to be in writing – they can be electronic

Magdalena Skwara
Attorney-at-law

Employment agreements can be concluded by exchanging e-mails for the Labour Code does not specify invalidity in the event of failing to execute them in writing.

An e-mail containing an enclosed employment agreement may be sent to an employee with a proposal of its conclusion. If the employee also responds by e-mail agreeing to enter into the employment agreement sent to him or her, then it is concluded in a documentary form.

However, if an employment agreement is not in writing, then before allowing the employee to start work the employer must confirm in writing the arrangements pertaining to the parties to the agreement, its type and terms and conditions.

The requirement of conveying information in writing is also fulfilled if the employment agreement sent by the employer in electronic form is signed with a qualified electronic signature as such a signature imparts the importance of written form to an electronic document.

An employee does not have to sign the agreement with a qualified electronic signature. If an employer is not able to sign an employment agreement with this type of signature, the matters discussed above must be confirmed in a traditional written letter.

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TOPIC 2

Employers should review their evaluation of occupational risk

Wojciech Kwiatkowski
Attorney-at-law

As it has been announced the Labour Inspectorate (PIP) is conducting inspections into adherence to the rules of occupational safety and health, including an evaluation of the occupational risk linked to the possibility of becoming infected with the SARS-CoV-2 virus.

Employers should conduct an appropriate review and make any possible adjustments to these rules with ample lead time. This will make it possible to avoid any difficulties in the event of a possible PIP inspection while enhancing safety in work establishments.

Employers are obligated to make regular checks and document the occupational risk associated with the work done and apply the requisite means of prevention to mitigate the risk in question. This evaluation should be conducted separately for a given workstation and take into account its distinct features (direct contacts with clients for instance).

In connection with the appearance of the risk of coronavirus infection it may be necessary to add this risk to the list of occupational risks facing a given position and designate the appropriate means of prevention (for instance, using face shields, disinfecting hands, limiting the number of people in rooms, etc.).

The risk evaluation must be subject to consultation with the health and safety department or the persons responsible for performing this department's tasks. Best practice calls for involving the employees who work at the position undergoing evaluation to participate in the evaluation, too.

Any possible modification to the evaluation of the occupational risk must be shared with the interested employees. For evidentiary purposes employers should require employees to confirm receipt of this information (in electronic form, for instance).

TOPIC 3

Employers still have an obligation to ensure 1.5 meters distance between workstations

Agnieszka Anusewicz
Advocate

This obligation was upheld in the regulation of 7 August 2020 on the establishment of certain limitations, orders and bans in connection with the occurrence of the state of an epidemic.

This distance should be calculated as the real distance between employees performing work. To maintain the proper distance it may be necessary, for instance, to re-arrange desks in an office.

Employers do not have to maintain this distance between workstations only if doing so is impossible on account of the nature of the business conducted in a given work establishment, for example, when working on a production line or at a construction site.

However, in such an instance, an employer has an absolute obligation to provide personal protection means to combat the epidemic. In practice, personal protection means are masks or plexiglass if it is possible to install it at a given workstation.

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TOPIC 4

Employers are obligated to re-hire an employee dismissed without observing the term of notice period

Piotr Lewandowski
Attorney-at-law

Employers are obligated to re-hire an employee dismissed without observing the term of notice period on account of an extended illness (art. 53 of the Labour Code) if the employee regains the capacity to work within 6 months of the termination of the employment agreement.

The employee must report his or her desire to be re-hired for the employer's obligation to be reinstated. Notice should be given within six months from the termination of the employment agreement, promptly after the cause of his or her absence from work ceases to be applicable. After the elapse of this term, the employee's claim expires. Notice may be given in any form.

The employment obligation is re-instated if the employer is able to entrust work to the employee giving consideration to his or her qualifications and vocational predispositions.

Re-hiring does not have to take place according to the previous conditions, in particular, it does not have to be for the same position and for no lesser pay.

If an employee is not re-hired despite such a possibility, the employee will be able to sue for the establishment of an employment relationship and for damages for the time of being out of work.

TOPIC 5

Blanket consents to deduct amounts due from an employee's salary are invalid

Maciej Mioduszewski
Attorney-at-law trainee

Employees should have precise knowledge about the amount to be deducted from their remuneration and give written consent to a deduction.

Blanket consents to deduct "all amounts due" are invalid. In a case recently adjudicated by the Supreme Administrative Court (NSA) (judgment of 16 July 2020, I OSK 3015/19), a consent given to make deductions was also deemed to be invalid since it pertained to future amounts due to be calculated in accordance with an algorithm agreed upon by the employee and the employer in the employment agreement.

The employee could use a company car for personal use; however, he was supposed to bear the costs. The employment agreement contained a consent to make deductions and the method of calculating these costs based on a rate per kilometre.

The employer terminated the employee's employment agreement and deducted the amount calculated according to the agreement from his remuneration. An inspection was conducted by the State Labour Inspectorate (PIP).

The labour inspector ordered the employer to return that amount of the employee's remuneration because the consent to the deduction was invalid as it failed to state a specific amount. The employer lodged a complaint against this order but both the Regional Administrative Court (WAS) and the NSA concurred with the labour inspector and refused to alter this decision.

TOPIC 6

IP Box allows you to apply a 5% tax rate – take a test to check if this solution is for your co-workers

IP Box facilitates preferential taxation of income generated on the sale of products or services entailing eligible intellectual property rights.

This solution primarily pertains to individual entrepreneurs operating in the IT industry as the income generated from the sale of a copyright to a computer program may be subject to a 5% tax rate under certain conditions.

However, to take advantage of IP Box the principles of cooperation should be defined in the appropriate way, for example in terms of remuneration for transferring the copyright to a computer program.

Check to see whether individual entrepreneurs providing services in your organisation can take advantage of IP Box.

Companies not operating in the IT industry that collaborate with programmers are also invited to take this test.

Take the test here*: LINK

*The test does not constitute legal advice. All information is confidential.

Tomasz Kret
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Adam Alkadi
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INSIGHTS

PAPERLESS IN HR
Combining law and technology

We have joined forces with Maruta Wachta in the Paperless in HR project which will revolutionise HR – we will eliminate partially or totally paper from HR processes.

The benefits are obvious: more efficient processes, lower costs, saving space.

How will we implement it in your company? Check on hrbezpapieru.pl.

INTERNATIONAL SURVEY
The World 2021 – Forces For Change

How are legal developments and social issues connected with the Coronavirus pandemic affecting HR?

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Take the survey.

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