

The risk of reclassification of a B2B contract as an employment contract: Existing practice and upcoming changes

For years, the business-to-business model for cooperation with personnel has been one of the most common alternatives to traditional employment in Poland. It is popular among businesses due to its flexibility, and is also used by persons practising the free professions, experts, and IT specialists. Previously, this form of cooperation was not the subject of particular interest on the part of regulators, but in 2026 this situation could change significantly.



PROF. MARCIN WUJCZYK

attorney-at-law, partner
Employment practice

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The Polish government plans to vest the State Labour Inspectorate (PIP) with the authority to determine the existence of an employment relationship through administrative channels. This means that labour inspectors could determine on their own—without filing suit in court—that a civil-law (non-employment) contract is in reality an employment contract. This would be a fundamental change, in practice increasing the risk of reclassification of contracts, and could force companies to make sweeping adjustments to their HR policies.

To properly grasp this risk, it is worth examining the existing rules for distinguishing an employment relationship from a civil-law relationship, alongside the case law from the courts.

Employment relationship: the intent of the parties, or statutory compulsion?

Under Art. 22 of the Labour Code, an employment relationship exists when an individual performs work for an employer, and the employer pays wages for the work. This construction means that neither the title given to the contract, nor the intention declared by the parties, excludes the application of labour law if the actual conditions under which the work is performed meet the definition of employment.

Two sections of this provision are of key importance in this context. The first expressly states that working under the conditions described in Labour Code Art. 22 §1 is working on the basis of an employment relationship, regardless of the name given to the contract. The second prohibits the use of a civil-law contract in place of an employment contract if the conditions for performance of the work are actually employment conditions.

This is why in disputes over the classification of a contract, the court will always examine whether the work is performed in a subordinated manner, continuously and for pay. This practice has become firmly established in the case law over the decades.

ELEMENT	EMPLOYMENT CONTRACT	B2B (CIVIL-LAW) CONTRACT
Subordination	Yes, the employee is subordinated to the employer	No employment subordination
Economic risk	Borne by the employer	Borne by the worker
Worker's liability	Limited (under the Labour Code)	Contractual, often unlimited
Annual leave, protection, benefits	Guaranteed by law	No statutory guarantees
Remuneration	Protected, paid monthly	Invoices, no protection
Working time	Governed by regulations	Discretionary, depending on the contract
Personal performance of work	Generally mandatory	Substitution possible

Actual relations between the parties —the core assessment

The Polish courts have repeatedly held that in the event of a dispute over the nature of a legal relationship, what is of chief relevance is the parties' real relationship, not how the documents are framed. Even the best-drafted B2B contract will not protect the parties if in practice the person performing the work functions like an employee: working fixed hours, carrying out instructions from superiors, organisationally subordinated, and without the discretion to decide on the manner of executing the assigned tasks.

Interestingly, the courts have also stressed many times that the same activities may be performed under an employment relationship and in civil-law cooperation. Thus it is not the type of tasks performed by the worker that is decisive, but rather **the manner of performance of the tasks**.

Criteria applied by the courts in assessing the nature of a contract

From the perspective of judicial practice, several groups of criteria may be identified that will determine whether an existing B2B contract is actually an employment contract.

In practice, often the courts will also examine such subtle issues as whether the worker has realistic freedom to refuse to perform a task; the manner of reporting the results of the work; whether the worker can substitute another person; whether the worker has other clients. Oftentimes a single element will not be dispositive, but the sum total of minor signals may determine the ultimate classification.

LEGAL CRITERIA

- **Existence of employment subordination**—performing work under the employer's direction
- **Duty to perform work personally**—no ability to freely designate a substitute
- **Duty to carry out superiors' orders**—the need to comply with instructions from management concerning current matters
- **Economic risk borne by the employer**—the worker must be paid regardless of the economic result

ORGANISATIONAL CRITERIA

- **Defined working time**—fixed working hours, work schedule, shift system
- **Designated place to perform work**—the obligation to perform work at the employer's headquarters or other designated location
- **Records of working time and attendance list**—duty to register the worker's presence and time worked
- **Application of company's internal policies**—the worker must comply with work rules and other internal procedures
- **System of leave and time off**—the right to annual leave and the duty to justify absences
- **Use of the employer's tools and equipment**—the worker does not use their own means of production

ECONOMIC CRITERIA

- **Remuneration for working time**—fixed hourly wage or monthly salary, rather than payment based on the results
- **Minimum pay guarantees**—the right to the legal minimum wage and statutory supplements
- **Additional benefits**—monetary equivalent for annual leave, extra pay for overtime, other employee benefits

FACTUAL CRITERIA

- **Actual manner of contract performance**—actual execution of elements characteristic of an employment relationship
- **Ongoing oversight of work performance**—supervision of the work process and not just the result

HIERARCHY OF CRITERIA IN RULINGS FROM THE POLISH COURTS (RISK FACTORS)

FACTOR	WEIGHT IN THE COURT'S ASSESSMENT	RISK OF RECLASSIFICATION
Employment subordination	100% (decisive)	Highest
Time and place designated by the company	90% (key)	High
Duty to perform work personally	90% (key)	High
Shifting to the company of the risk of the work performed, and the duty to comply with the company's internal policies	85% (very important)	High
Actual treatment like other employees	75% (important)	Medium
Intent of the parties and title of the contract	10% (secondary)	Low

How is an employment relationship determined now?

Currently, a determination that a specific person is an employee is primarily made through the courts. An application for determination of an employment relationship may be filed by the person performing the work, the labour inspector, or (in a lawsuit joining the insured and the employer) the Social Insurance Institution (ZUS).

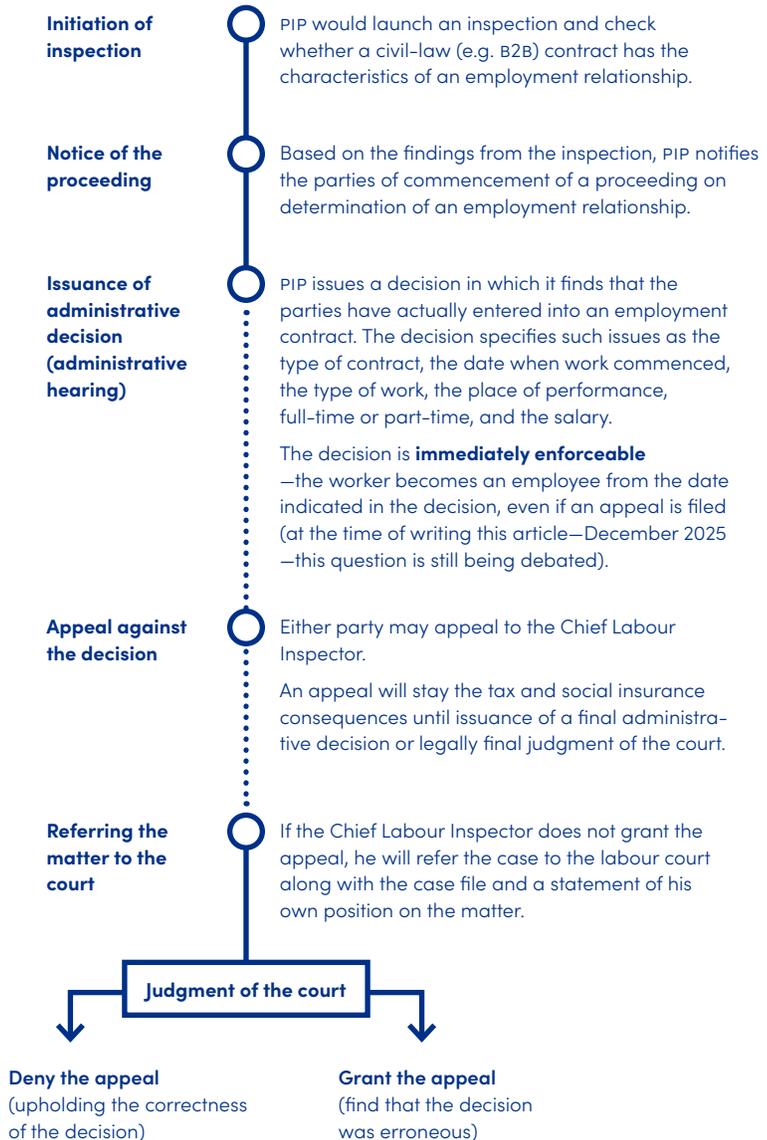
The court proceedings are based mainly on an analysis of the evidence: correspondence, witness testimony, HR documentation, procedures, policies, and the actual manner of performance of the work. Very often, the court will also examine the organisational context: the worker's role within the company, their involvement in decision-making processes, and whether the worker has true discretion in operating their own business.

This model is time-consuming, but has ensured a relative balance. The decision on recognising a disputed relationship as an employment relationship is taken by a court, not an administrative body.

Revolution in classification of contracts—proposed new authority of the State Labour Inspectorate

The proposed changes could greatly alter this balance. The bill calls for introduction of an administrative procedure in which the PIP inspector would be vested with the authority to establish an employment relationship via an administrative decision.

HOW WOULD THE PROPOSED PROCEDURE WORK?



Effects of a decision by the labour inspector

The consequences of an inspector's issuance of a decision recognising a B2B (or other civil-law) contract as an employment contract are extensive and multilayered. They include immediate impacts as well as effects that may stretch back many years.

From the time the PIP decision is delivered, the person cooperating with the company must be treated as an employee. The duty applies to the period both before and after issuance of the decision—although it ultimately may turn out that the decision exerts effects only for the future, and only from the time when the decision becomes legally final.

LABOUR LAW CONSEQUENCES

From the time the decision is delivered, the employer must:

- Confirm the terms of employment
- Maintain employment documentation and records of working time
- Calculate the worker's wages in accordance with the Labour Code
- Grant annual leave
- Apply the rules for protection of employees (e.g. parental protections).

TAX AND SOCIAL INSURANCE CONSEQUENCES

From the date of the decision:

- A duty arises to make social insurance and personal income tax payments under the rules for employees
- The employer must register the worker with the Social Insurance Institution
- Current ZUS contributions must be calculated and paid.

Until the decision becomes legally final, the tax and social insurance obligations will not be revised for the period prior to issuance of the decision.

RETROACTIVE CONSEQUENCES

Upon completion of the appellate proceedings:

- Retroactive tax obligations (**for up to 5 years**) will return
- The employer may be charged with paying in additional ZUS contributions going back several years
- The employer may be required to pay monetary equivalents (e.g. for annual leave).

FINANCIAL PENALTIES

- Administrative fines of up to PLN 5,000
- Judicial fines of up to PLN 30,000 (or PLN 60,000 following the proposed changes)

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Under the proposed new regulations, it would be vital to document the actual lack of employment-type subordination, and to develop systemic solutions mitigating the risk of reclassification of B2B relationships as employment.

What does this mean for businesses?

If the proposal were adopted, companies would need to review their models for cooperation with individuals operating their own businesses. Until now, many organisations have relied on the wording of contracts and the declarations by the parties. Under the proposed new regulations, it would be vital to document the actual lack of employment-type subordination, and to develop systemic solutions mitigating the risk of reclassification of B2B relationships as employment.

It may also prove necessary to conduct regular audits, verify the scope of duties carried out by independent contractors, and apply professional procedures for separating B2B work from work typical for employment.

In many industries—particularly where cooperation with contractors is closely integrated with the employer's own team—it may be necessary to reorganise processes or limit B2B cooperation strictly to persons who actually work independently.