

Why is compliance important in employment law?

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In employment law, the compliance function enables the employer to minimise the risk of sanctions but also shows that the company is an aware employer, acting transparently and lawfully, which has a positive impact on its image and how it is perceived by employees and business partners.

The compliance function consists of management of the risk of inconsistency between the actions of the business and the applicable legal requirements. In practice, this means a set of measures designed to assure that the relevant regulations, rules and stan-

dards are identified at the relevant time and carried out by the organisation, often on the basis of internal regulations implemented for this purpose. Compliance should reduce the risk of sanctions that a business may face due to failure to comply with the law.

As a separate corporate function, compliance is fairly new in Poland, but it is already codified with respect to financial institutions and soon will also be for insurance companies. In practice, particularly with respect to organisations from other sectors, it typically covers such areas as competition law, criminal law, environmental law and tax, as well as employment.

Not hard to violate employment law

Employment law in Poland is characterised by a high degree of legislative intervention in the relationship between employer and employee and great formalism in its institutions. Consequently, nearly every action



connected with employment requires fulfilment of specific requirements. Moreover, the sanctions for the employer's failure to comply with employment regulations can be harsh in financial terms but may also involve criminal or administrative liability. Non-compliance may also threaten the image and reputation of the employer on the employment market and in the eyes of customers and suppliers, who may regard the company as less reliable if it has trouble complying with employment regulations.

It is not difficult at all to run afoul of employment regulations in Poland. For example, in practice employers often fail to calculate overtime for staff employed on a task-based system of working time, and do not maintain records of their working time. They erroneously assume that staff employed on this basis are not entitled to overtime pay. If an employer follows this unlawful procedure in the case of a large number of staff, if even one of them asserts a claim for overtime pay it can, and in practice often does, result in an avalanche of similar claims by other workers. Depending on the scale of the irregularities, even bearing in mind the three-year limitations period for employment-related claims, a sizable organisation might have to pay out millions of zloty for such claims.

Legal compliance from recruitment...

In employment law, compliance begins before an employee is formally hired—at the stage of recruitment and selection of the hiring structure. The employer must comply with Labour Code regulations governing equal treatment of job candidates as well as the processing of personal data of candidates. Violation of non-discrimination regulations mainly exposes the employer to liability in damages, while failure to comply with data protection regulations may lead to administrative or even criminal liability of the person obtaining personal data of candidates in an unlawful manner.

An employer hiring a worker also faces the issue of selecting the proper basis for hiring—whether an employment contract or some other basis such as a freelance contract. This decision should be preceded by an analysis of the legal requirements and risks. If one worker or a group of workers hired, for example, as freelancers seek a determination by the court that they are actually employees, it may have far-reaching consequences for the company. If such a claim is upheld, the employer will be required to make up to the tax office and Social Insurance Institution the difference between the payments made on the basis of the freelance contracts and the amounts

payable on the basis of employment contracts, as well as employment benefits owed to the employees. The employer could also be guilty of a criminal violation in such circumstances.

...until after employment ends

Compliance with employment law is necessary throughout the course of employment, with respect to such matters as pay, working time, and occupational health and safety. But it is also important when employment ends. Violation of the requirements for termination of an employment contract (such as properly stating the grounds for termination, which is perhaps the most problematic issue in practice), or failure to settle accounts properly with a departing employee, may result in filing of a claim with the labour court. Regardless of its merits, merely defending against such a claim will require a commitment of time and money by the employer. If the employer violates these requirements in the case of group redundancies, the total amount of the claims or the amount awarded by the labour court may cause serious problems for the employer, particularly if the redundancies were carried out because the employer was in difficult financial condition or if they involved a large number of staff.

Liability for acts of employees

As in other fields of law, the compliance function in employment law should provide not only management of risks connected with unlawful acts by the employer in dealings with the public authorities and employees, but should also assure that the employees themselves comply with the law when performing their duties. The employer is liable to third parties for acts and omissions of employees in performance of their work, including losses they cause.

This is clearly evident in cases involving on-the-job accidents due to failure by a supervisor or other person directing the work of employees to comply, for example, with rules requiring employees to be outfitted with protective equipment when performing specific types of work. In such cases, the employer bears supplementary civil liability to the employee and is required to redress the loss, which may be significant, particularly when, for example, long-term disability payments are involved due to inability to work or increased needs on the part of the injured worker.

While unlawful acts by employees in performance of their duties will not always result in criminal or financial exposure of the employer, they will often have a direct or indirect impact on the employer's reputa-

tion. A classic example would be if employees give or receive kickbacks in dealings with customers, suppliers or public authorities in connection with performance of their duties. This may be a punishable offence for the employee rather than the employer, but if it is disclosed it will certainly not enhance the employer's image or reputation.

Education and monitoring

For these reasons, in employment law, the compliance function must also include an effective system for monitoring the acts and omissions of employees. It should provide, first, for the ability to monitor business email, internet and computer use, under rules that are clear to employees, as well as ongoing monitoring of agreements and payments, and in the case of manufacturing and similar operations, periodic occupational health and safety inspections.

But having internal rules and procedures in place, and even appointing compliance officers or separate compliance divisions within the organisation, is not sufficient to achieve effective compliance in the area of employment law. As practice shows, for example in the case of on-the-job accidents, the greatest bar-

rier to achievement of compliance targets is a lack of full awareness on the part of employees of the practical importance of requirements and prohibitions imposed on them, and the consequences.

Written procedures prohibiting employees from paying bribes are no substitute for training that shows employees specific examples of situations to avoid and the real consequences of violating such rules. Similarly, initial and periodic training in occupational health and safety does not obviate the need to make employees aware that above and beyond the formal requirements there is responsibility for the life and health of other people.

The compliance function in employment law thus plays an unusually important role. It not only minimises the risk of sanctions, but also demonstrates that the business is an aware employer, operating transparently and in accordance with the law, which has a positive effect on the employer's image and how it is perceived by staff and business partners, as an employer living up to the highest international standards.

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