List of Topics



newsletter

labour and employment law

30 yrs WARDYŃSKI PARTNERS

10/2018-1/2019

# I Changes in law

## Non-cash Payment of Wages and Minimum Wage for 2019

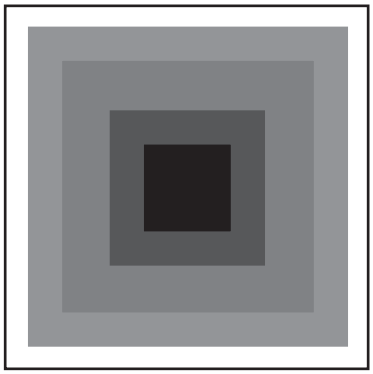
From 1 January 2019, the minimum monthly wage for employees is PLN 2,250 gross, and the minimum hourly rate for work under civil law contracts is PLN 14.70 gross.

In addition, from 2019, unlike hitherto, employers should pay remuneration to the bank accounts specified by their employees. Remuneration may now be paid in cash to an employee, only if that person has made such are quest.

## Trade Unions Amendment Act

On 1 January 2019, the Trade Unions Amendment Act came into force with the following effects:





- Extension of the right to establish and to join a trade union to all "persons who perform paid work" and, therefore, also to persons who work under civil law contracts, provided that they do not employ other people for this work and have rights and interests that may be represented and defended by the trade union
- Higher thresholds for representation
- Change of the hitherto obligation requiring trade unions to submit details of their level of membership from a quarterly to a six monthly basis and employers have been given the right to verify such information
- More efficient negotiation and conclusion of agreements with trade unions, even if the objecting union represents less than 5% of employees.

## Shorter Storage Duration for Employee Documentation and Digitisation of Personnel Files

The New Year saw significant changes regarding keeping employee documentation. These are specified in the regulation of 10 December 2018 of the Minister for Families, Labour and Social Policy which has extended, among others, the range of documentation that should be kept separately for each employ-

ee and changed how personnel files should be organised (into sections A to D instead of the hitherto A to C). The regulation applies to employees hired after 1 January 2019. For those hired earlier, it will only apply to documents filed after this date (except for working time records that remain governed by hitherto provisions).

Moreover, there has been a reduction in the period for which employees' personnel files should be stored. It is now 10 years for employees hired after 1 January 2019. An employer may shorten (from the current 50 to 10 years), the storage period of documentation of employees who were hired between 1 January 1999 and 31 December 2018, by submitting suitable reports to the Social Security Institution. In such case, the period of 10 years counts from the end of the calendar year in which the employer submitted the reports. The 50 year period of storage of documentation still applies to employees who were hired before 1 January 1999.

An employer may also choose whether to keep employee documentation in electronic, or in traditional paper form.

## Employee Capital Plans (PPK)

The Employee Capital Plans Act came into force on 1 January 2019. It aims to encourage systematic saving, mainly for future withdrawals of funds, once the employee has reach 60. In principle, every enterprise or institution employing at least one person, for whom it is paying social security and pension contributions to ZUS, will have to set up such PPKs for those employees. However, there are exemptions under the act. For example a microenterprise may be exempted, if all of its employees submit a declaration waiving their right to participate in a PPK. The PPK Act applies not just to employers (as defined in the Labour Code), but also to outworkers, agricultural production cooperatives, farmers' club cooperatives, contracts of service principals etc.

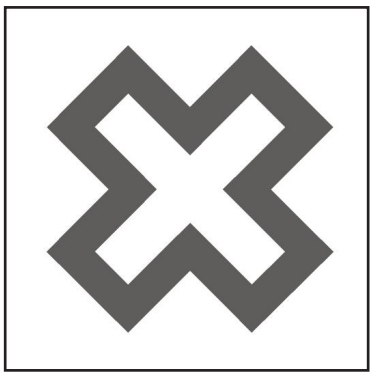
Employers will have to conclude agreements with designated financial institutions on managing and operating the PKKs and for paying contributions to them.

Contributions to PPKs will be funded by employers (from 1.5% to 4% of gross remuneration) and by their employees (in principle 2% to 4% of gross remuneration). Public funding may also be possible, but will require additional conditions.

Employees will be able to withdraw their participation in a PKK at any time. But this will require confirmation every four years, otherwise the employer will re-commence its payments to the PKK.

The first firms that will be bound by the PPK Act from 1 June 2019 will be those with at least 250 employees (on 31 December 2018). They will be obliged to sign a PKK management agreement by 25 October 2019 and a PKK operating agreement by 12 November 2018. The new obligations will gradually start applying to entities that have less employees: on 1 January 2021 the PKK Act will apply to all employers. Employers will face criminal penalties and fines if they fail to meet the obligations by the prescribed deadlines.

## Lower Social Security Contributions for Small Businesses



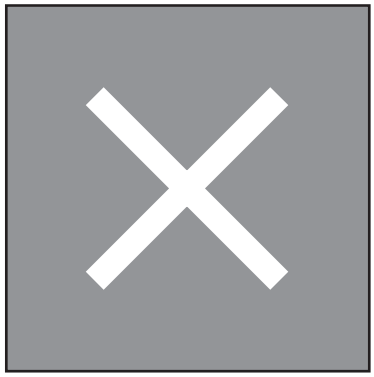
From 1 January 2019, sole traders whose annual income in the previous year from non-agricultural business did not exceed 30 times the minimum wage (namely, an average of PLN 5,250 per month in 2018) are entitled to lower social security contributions.

The basis for calculating contributions will depend on revenues achieved in the previous calendar year. The lowest basis will be the equivalent of not less than 30% of the minimum wage (PLN 675 in 2019). However, it will not be able to exceed 60% of the forecast average remuneration in the given calendar year (PLN 2,859 in 2019).

Nonetheless, the new provisions envisage quite a few exceptions. Among others, the following persons will be excluded, who:



- Benefit from preferential contributions for persons starting a business
- Operated their business for less than 60 days in the previous year
- Benefitted from the lowest basis for pensions contributions in accordance with the new provisions during 36 months of the last 60 months of operating their business
- Carry on business for a former employer.



## Abolition of the Obligation to Provide Regular Health and Safety Training for Administrative and Office Staff

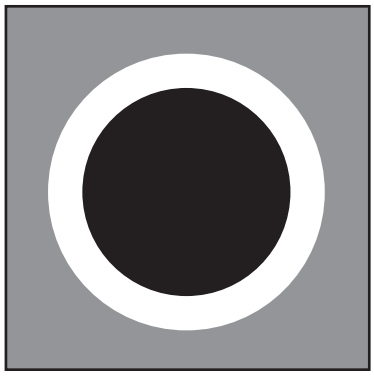
The New Year saw the abolition of the obligation to hold regular training for employees in office and administration positions whose risk category is not higher than group three (pursuant to the regulation of 29 November 2002 of the Minister of Labour and Social Policy on different rates of social security contributions for accidents at work and occupational diseases in relation to such hazards and their consequences).

Nevertheless, regular training will be required, if it proves necessary as a result of the employer's assessment of occupational risk. The obligation to organise training will also be reinstated, if a higher than three risk category is established for the employer

Moreover, the option of requiring employers to fulfil requirements of health and safety provisions has been extended to employers that do not exceed category three risk group and that have up to 50 (not 20, as hitherto) employees.

## II Ongoing work on...

### Changes to the Labour Code to Ensure the Application of GDPR

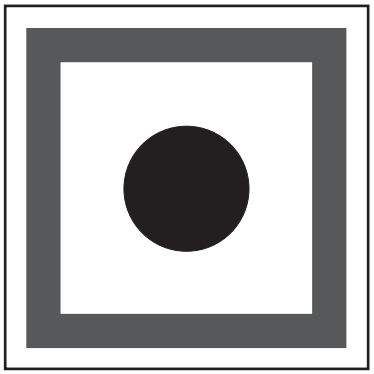


The *Sejm* is working on a draft government bill to amend certain acts to ensure the application of Regulation 2016/679. The bill includes changes to the range of information that employers may request from work candidates and employees (Article $22^1$ of the Labour Code). It will be generally acceptable to process data other than mentioned in this provision, after obtaining the given employee's consent. However, it would be possible to process special categories of data (sensitive data) only if provided on the candidate's or the employee's initiative.

Moreover, the draft envisages a complete ban on the monitoring of premises provided to a company's trade union (this is currently admissible under certain conditions).



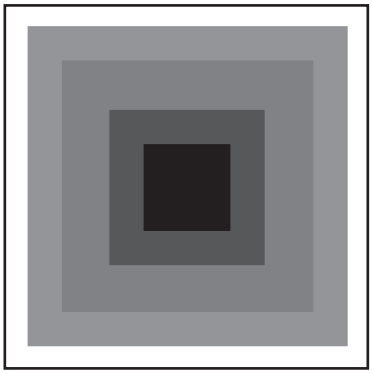
### Securing a Claim by Ordering a Worker's Re-Employment



The government is working on a draft bill on the liability of collective entities for acts prohibited by penalties and amending certain other acts. It includes changes to code of civil procedure provisions relating to labour law matters. One potential change concerns employees, who enjoy special protection against dismissal, seeking a court ruling finding the termination of their employment ineffective, or reinstating them to work. Upon a request of such employee, the court will be able to secure the claim at any stage of the proceedings by ordering the employee's further employment until the final termination of the proceedings.

# III From the courtroom

## Right of an Employee Enjoying Pre-Retirement Protection to Claim Reinstatement to Work – Constitutional Court Ruling of 11 December 2018



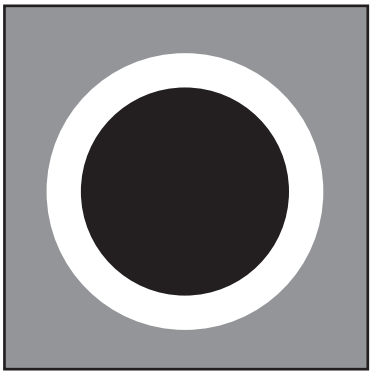
After examining the legal question, the Constitutional Court ruled that Article 50 § 3 of the Labour Code is unconstitutional in the extent in which it prevents employees, who enjoy pre-retirement protection, seeking reinstatement to work, if their definite term employment contract has been terminated in breach of provisions. The provision which the court examined envisaged that if a definite term contract is terminated in violation of the law, the employee may only be entitled to compensation, regardless of any protection guaranteed by other provisions. Employees who are protected because they have reached pre-retirement age will now also be able to claim reinstatement to work, even if they worked under a definite term contract.

## The Constitutional Court ruling of 14 November 2018

After examining the constitutionality of the Amendment of the Social Security System Act and Certain Other Acts adopted by the Sejm on 15 December 2017, the Constitutional Court ruled that it is inconsistent with Article 7 of the Constitution. Therefore, the upper limit used for social security contributions, which is 30 times the forecast average national wage in a given year, will not be abolished. Thus far, this has not seen any further legislative work.



## A Potential Disclosure of Business Secrets Constitutes a Threat to the Employer's Interests Justifying Disciplinary Dismissal – Supreme Court Ruling of 10 May 2018, II PK 76/17



A claimant challenged the termination of her employment contract without notice. This had resulted from her breaching her basic duties as an employee (Article 52 § 1 (1) of the Labour Code). She had sent emails containing personal data of brokerage house clients from her work to her private email account. The court found that her intention was not to disclose information contained in the emails, but to retain it for future claims against the employer, associated with the violation of her rights as an employee. The district court allowed the claimant's appeal against the termination of her contract and awarded her damages. However, the regional court changed this judgment and dismissed the claim. The court found that the employee's creation of a collection of confidential information on a private

data carrier, showing the employer's commercial contacts, for which no justification could be found in the duties of the employee, had deliberately violated the employee's basic duty of care for the employer's best interests and the protection of its property (Article 100 § 2 (4) of the Labour Code). It also involved taking advantage of information owned by a third party, which constituted a business secret (Article 11 (1) of the Combating Unfair Competition Act of 16 April 1993).

On examining the case, following the claimant's appeal of last resort, the Supreme Court found that an employee's culpable act that endangers the employer's interests, such as one that gives rise to a situation allowing potential access of third parties to personal data that is subject to protection, constitutes justified grounds for terminating the employment contract, pursuant to Article 52 § 1 (1) of the Labour Code. It also found that information about an identified or an identifiable person (brokerage house client) that discloses details of that person's financial standing is certainly subject to professional confidentiality that arises from Article 147 of the Trading in Financial Instruments Act. However, the court recollected that the facts in the examined case had been insufficiently established, which justified it to annul the judgment and to remand the case for re-examination.



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