newsletter
labour and employment law
30yrs WARDYŃSKI PARTNERS
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# I Changes in law

## Labour Code: new rendition of provisions on mobbing, discrimination and work certificates

The President signed into law the Act of 16 May 2019 Amending the Labour Code and Certain Other Acts, which was passed as a legislative initiative of the President (the draft bill was submitted to the Sejm in mid-2017). The act aims to make it easier for employees to exercise their rights.

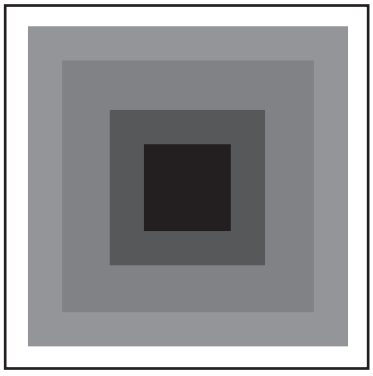
The pursuit of compensation from an employer for mobbing will no longer be dependent on the employee first terminating the employment. The amending Act changes Article $94^3$ § 4 by including the statement that an employee who has been a target of mobbing (and therefore not just one who has terminated his employment due to mobbing) may claim compensation from the employer at a level not lower than the minimum wage.



The justification for the draft bill makes it clear that its proponent's intention was also to ensure a broad and unlimited range of discrimination criteria, so that any objectively unjustified unequal treatment of employees could be regarded as discrimination.

Further changes relate to disputes over work certificates. These include an extension from seven to 14 days of the deadline for applying for a correction to a work certificate. The bill also provides an option for an employee to file a claim to compel the employer to issue a work certificate.

With minor exceptions, the amendments will come into force on 7 September 2019.



## Personal data under labour law

On 4 May 2019, an act came into force amending certain acts in connection with the application of the GDPR - the so-called Sectoral Act. It amends, among others, the Labour Code, and the Enterprise Social Benefits Fund Act.

The Act reduces the specified range of personal data provided for in Article $22^1$ § 1 of LC that an employer may collect as necessary for performing work, by eliminating the names of the employee's parents. However, employers have gained the right to process

personal data outside the specified range, if they have the employee's consent. Lack of consent to the processing of data, other than those specified in Article $22^1$ § 1 of LC, or the withdrawal of such consent, cannot be a basis for unfavourable treatment of an employee or a job candidate.

The Act prohibits the surveillance of sanitary and changing rooms, and canteens, except for situations in which such monitoring is essential for the employer's requirements and does not infringe the dignity of employees. Before installing such surveillance, consent must be obtained from the appropriate trade union, and if there is no such organisation, this should be secured from the employees' representatives. The surveillance of premises provided to a trade union has been completely banned.

With regard to enterprise social benefits funds, the Act stipulates that an employer may request documentary evidence for the personal data that an employee has provided in a statement given to secure benefits from the fund, for the purpose of confirming them. Such confirmation may relate in particular to declarations and certificates about the living (including health), family and material situation of the person entitled to benefit from the social benefits fund. These data should be processed for the duration required to grant the benefit, as well as for the period necessary for pursuing any claims or rights and should be deleted afterwards.

Following the amendments introduced by the Sectoral Act, executive regulations will have to change, including work certificate and accident report templates. Work is in progress on the related regulations.



## Status of British citizens in Poland after Brexit

On 28 March 2019, the President signed an act regulating the residency status in the territory of the Republic of Poland of citizens of the United Kingdom of Great Britain and Northern Ireland and members of their families. The act will come into force on the date of the United Kingdom's exit from the European Union without a withdrawal agreement, and will have the status of an awaiting act till then. Statistical forecasts show that if the above-mentioned scenario were to come about, the act would regulate the status of over 6,000 residents of the United Kingdom residing in Poland, including issues regarding the stay in Poland of those persons and their families, access to social security benefits, UK entrepreneurs' conduct of business in Poland, and the posting of employees from UK to Poland.

## Highest earners' contributions to Employee Capital Plans

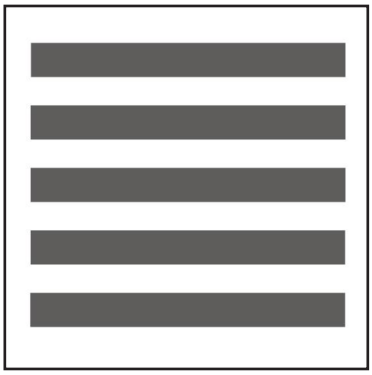
On 6 July 2019, the President signed into law the Act of 16 May 2019, amending, among others, the Employee Capital Plans Act. The Act envisages that the 30-times basic wage limit, which is

the cap for paying state pension contributions, will not apply to ECP contributions. The Ministry for Enterprise and Technology is arguing that the abolition of the above limit is justified by concern for the efficient and proper implementation of the settlements accounting system at PFR S.A. and will significantly simplify employer's administrative duties, and will also allow employees to accumulate larger savings in the system.

The amendments will come into force fourteen days after the date of the Act's publication in the journal of laws of the Republic of Poland.

## II Ongoing work on…

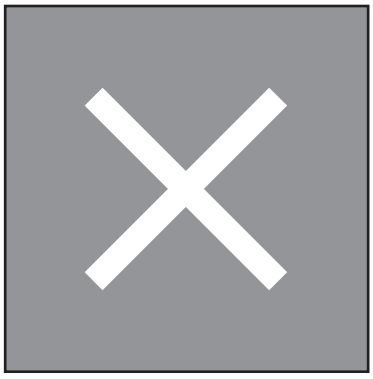
### Minimum wage in 2020



The Ministry of Family, Labour and Social Policy has submitted a proposal to the Council of Ministers for the minimum wage in 2020. The gross amount of PLN 2,450 that the ministry has proposed is more than PLN 100 greater than the minimum increase in remuneration provided for in law. The adoption of this proposal would mean an increase of the gross hourly rate from PLN 14.70 in 2019 to PLN 16. The next step is that the Council of Ministers will give its view on the rates to the Social Dialogue Council, which should take place by 15 June of this year. The final decision on the rates for 2020 should be announced by September 15 of this year.



## III From the court room



### Supreme Court: age and personal connections as discrimination criteria

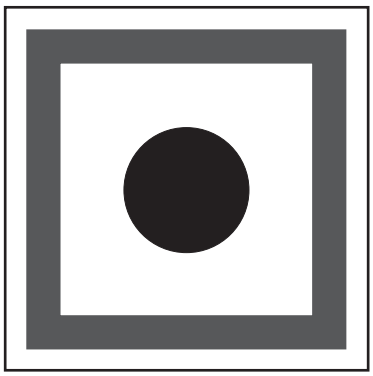
In a judgment of 13 February 2018 (II PK 345/16), the Supreme Court confirmed that there is no limit on the range of discriminatory criteria that are associated with the person of an employee. Such criteria may be non-job-related personal characteristics of the employee that are specific and verifiable, and any worse treatment experienced due to these reasons is socially unacceptable.

Based on the facts of the case, the Supreme Court pointed out that premises for discrimination in employment include, in addition to age, also social or family connections as discrimination criteria.

The claimant was seeking compensation for herself in connection with discrimination in access to employment. This was because, after the termination of her definite-term employment contract, she failed to secure an indefinite-term contract, and recruitment was then opened for the position that she had hitherto occupied. This

led to the employment of a person who was much younger than the claimant and, as the claimant indicated, was an acquaintance of the person deciding about the employment.

The Supreme Court ruled that because the claimant had established plausibility of her less favourable treatment (lack of employment) and the criterion of discrimination, the burden of demonstrating objective grounds for the employment of a younger person rested on the employer, which had failed to fulfil them. Ultimately, the Supreme Court pointed out that the cause of the claimant's discrimination had been age. At the same time, though, it noted that the employer's preference for some employees and worse treatment of others that was not inspired by professional qualifications or by how employee duties were being discharged, but only (or mainly) by the employees' relations with the group of persons taking personnel decisions or having a significant impact on them, with whom they had family or social connections, constituted particularly negative and socially harmful practices and could be considered a criterion of discrimination, if real and having a certain permanency.



## Court of Justice of the EU: obligation to register time at work for all employees

*Judgment of 14 May 2019, Federación de Servicios de Comisiones Obreras (CCOO) v. Deutsche Bank SAE, C-55/18.*



The Court of Justice has stated that Member States must ensure that provisions are introduced into national legal order requiring employers to keep a record of the working hours of all employees. In the Court's opinion, the obligation to record the daily working time of employees is justified by the need to guarantee that workers may fully exercise their employee rights under the Charter of Fundamental Rights, Directive 2003/88/EC and Directive 89/391/EEC.

The decision was issued as a result of a pre-trial question, referred by a Spanish court, that challenged the right and practice of courts permitting the relinquishment of the duty to register certain employees' daily working time. According to the Court, this practice conflicts with the requirements of Community law. Although Directive 2003/88/EC does not explicitly provide an obligation to keep records of working time, it is the employers that are obliged to record the daily working time of each employee - as is apparent from a final-purpose based interpretation and the Charter of Fundamental Rights. This is a requirement for ensuring an effective implementation of employees' rights to minimum daily and weekly rest times, as well as of working time norms. The keeping of such records also facilitates claims for overtime work. In the Court's opinion, the absence of an objective and reliable system for recording working time could result in workers being deprived of a significant means of evidence, enabling demonstration that maximum working time has been exceeded. Thus, the pursuit of claims related to overtime work would become much more diffi-

cult and, in extreme cases, even impossible.

In the Court's view, reliance on other forms of evidencing that working time limits have been exceeded, for example through witnesses' testimonies, may not be a fact supporting the relinquishment of the obligation to record daily working time.

This judgment may have a bearing on Polish law. Polish regulations oblige employers, as a rule, to register the number of working hours and the time of starting and ending work on particular days, however, they also provide some exceptions in this respect. The obligation to register working hours does not apply, among others, to employees who work under task-based time. Full compliance with the Court's position would, therefore, require the full registration of those employees' working time.





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