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newsletter
labour and employment law
WARDYŃSKI & PARTNERS
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I Changes in law

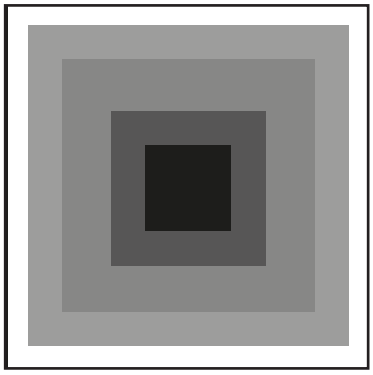
Easier pursuit of claims for discrimination and mobbing

Amendments to the Labour Code in force since 7 September 2019, which include, among others, an unrestricted list of all discriminatory criteria, are intended to make it easier for employees to invoke provisions on discrimination in disputes involving unequal treatment, for any reason. A clear basis has also been introduced for seeking compensation for mobbing from the employer, even when the employee's termination of employment had not cited mobbing.

In view of the above changes and as part of enforcing the statutory obligation on employers to prevent mobbing and discrimination, it is worth considering a review of internal procedures and planning training for employees on this issue.

Obligation to retain an employee until the end of court proceedings: changes to civil procedure

A wide-ranging amendment to the Civil Procedure Code will enter into force on 7 November 2019 affecting also proceedings involving employees. The most important change is that a first instance court will be able, at the request of the employee, to oblige the employer to retain the employee until a final and binding conclusion of the proceedings. The hitherto legal status allowed this only if the court found that the termination of the employment contract had been ineffective.



Minimum wage in 2020

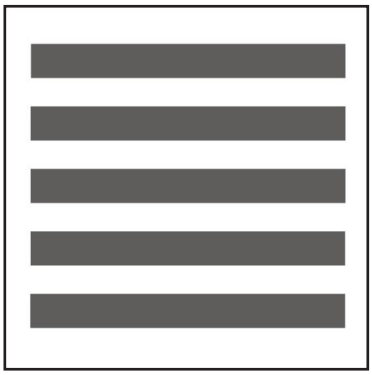
From 2020, the minimum remuneration for persons working under contracts of employment will be PLN 2,600 gross per month, and the minimum hourly rate for work under civil law contracts will be PLN 17 gross. This is an increase of 15.6% compared to the minimum wage in the current year. The government has announced that the minimum wage will rise to PLN 4,000 by the end of 2023.

At the same time, from 1 January 2020, any length of service pay will no longer count towards the minimum wage. All employers who pay wages based on length of service should check whether all employees will be receiving at least the minimum wage after this change.

"Zero-rate PIT for young people"

Since 1 August 2019, an Act is in force that amended the Personal Income Tax (PIT) Act. This amendment ensures that persons under 26 will receive, still in 2019, the personal income tax part on top of their remuneration. In order to take advantage of this, an appropriate declaration must be submitted to the employer. Declarations will be no longer be necessary from 2020, because employers will automatically have to stop deducting advances for income tax on contracts signed with persons under 26.

Employee Capital Plans (PPK)

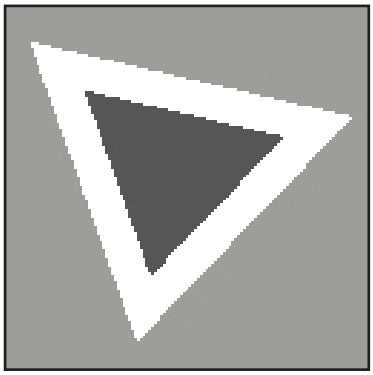


Entrepreneurs with at least 250 employees (on 31 December 2018) have time until 25 October 2019 to enter into a management contract with a selected financial institution. From 1 January 2020 the PPK Act will start to apply to entities with at least 50 employees on 30 June 2019.

Employee Pension Schemes

On 29 July 2019 the Polish President signed an Act amending the Act on the Organisation and Operation of Pension Funds and the Act on Employee Pension Schemes. The amendment adds, among others, new definitions, defines the rules for an employee pension fund's cross-border operations, places new obligations on employee pension companies and broadens the obligations that employers have in providing information to current and potential scheme participants.

Bankruptcy law and the effects of a transfer of the workplace

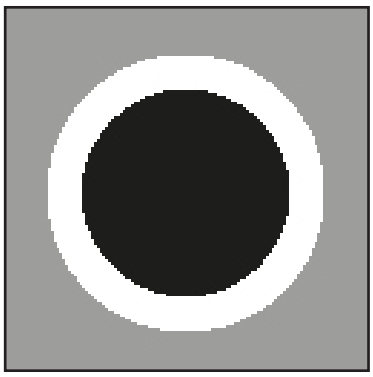


The amendment to bankruptcy law, which the Polish President signed into law on 6 September 2019, introduces a change that involves the proper application of Article 231 of the Labour Code. This now regulates the effects of a transfer of a workplace, following the acquisition of a bankrupt company's enterprise. This amendment may imply that the bankrupt enterprise's acquirer may become liable for employment-related obligations that arose before the acquisition, such as for delays in the payment of remuneration.

New certificates of employment

June as well as September saw changes to the template for certificates of employment. The template no longer includes the names of the employee's parents. The instruction regarding the employee's right to request a correction to a certificate of employment has also been updated: extending the associated time-limit from 7 to 14 days.

II Ongoing work on...



Company Social Benefits Fund

The Act relating to, among others, the Company Social Benefits Fund Act, that was passed on 11 September 2019, increases the base for calculating transfers to the fund, starting from 1 August 2019. (This base is being gradually unfrozen: following the change, reference is being made to the average remuneration in 2014). The base for accruing transfers to the fund will be:

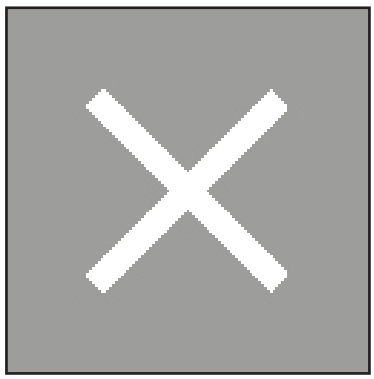
- in the period 1 January 2019 to 31 July 2019: the average monthly remuneration in the national economy in the second half of 2013, namely PLN 3,278.14;
- in the period 1 August 2019 to 31 December 2019: the average monthly remuneration in the national economy in the second half of 2014, namely PLN 3,389.90, therefore 3.41% greater.

Abolition of the upper limit on contributions to the Social Insurance Institution

The government has returned to the idea of abolishing the upper limit on contributions to the Social Insurance Institution (ZUS). The abolition of the limit of 30 times the base for pension and disability insurance contributions, which is contained in the draft budget act for next year, may increase the operating costs of enterprises by as much as a dozen or so percent a year.

III From the court room

Supreme Court: varying employees' remuneration in relation to length of service

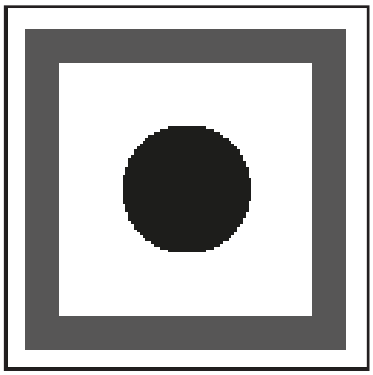


SC judgment of 7 February 2018, II PK 22/17

The claimant was seeking a payment from the employer in connection with an unjustified underpayment of his remuneration compared with other employees. Although the court of first instance found that the defendant employer had not demonstrated sufficiently objective reasons for the differences in employees' remuneration, the court that heard the defendant's appeal took a different stance. The reason for dismissing the lawsuit was that the claimant had failed to specify any reason for the discrimination. In the facts of the case, the court took the view that length of service, understood as professional experience, was a justified criterion for varying employees' remuneration.

However, on hearing the case as a result of the claimant's cassation [last resort] appeal, the Supreme Court disagreed with this

argumentation and, in line with the claimant's allegations, found that the court of second instance had violated the principle of the distribution of the burden of proof in assuming, without reflection, that length of service was a criterion for differentiating employees' remuneration. This was so even though the employer, who had the burden of evidence in this respect, had failed to explain the objective method it had used in establishing remuneration. The Supreme Court pointed out that, although experience associated with length of service may constitute a justified criterion for differentiating remuneration, it is inadmissible to differentiate remuneration twice using the same criterion. The employer had applied the criterion of length of service and had granted a length of service supplement, so it is therefore doubtful whether one could include the length of service criterion in the level of the basic salary. The Supreme Court also upheld the view presented in recent years that contractual provisions that set terms of remuneration in a way that contravenes the equal treatment principle apply to a situation of "ordinary" unequal treatment, therefore also when the unequal treatment does not follow from the employer having adopted some discriminatory criterion.



Judgment of the Court of Justice and the stance of the Ministry of the Family, Labour and Social Policy: issuance of A1 certificates

Judgment dated 24 January 2019 of the Court of Justice of the EU in the case of Raad van bestuur van de Sociale verzekeringsbank against D. Balandin and others, C-477/17 and the position of the Ministry of the Family, Labour and Social Policy, dated 2 July 2019.

The Court of Justice has found that citizens of third countries who are present and working temporarily in Member States for an employer established in the European Union may rely on the coordination rules laid down in EU Regulations No. 883/2004 and 987/2009, which serve to determine the applicable social security legislation.

The ruling was issued following a request from a Dutch court for a preliminary ruling. The case concerned citizens of third countries (Russia and Ukraine) who had been employed at a figure skating show by a Dutch company and had been refused A1 certificates attesting to them having held insurance in Holland for a whole season. All of the workers spent several weeks of the year in Holland preparing for their performances, and then some of them took part in shows in various Member States. The social insurance authorities in Holland had been issuing A1 certificates in this situation for many years, but they then withdrew this practice, pointing out that the issuance of A1 documents in previous years had been incorrect. In the view of the referring court, there was no doubt that the workers had not resided in Holland but had been present and had worked temporarily in the European Union within the meaning of Article 1(k) of Regulation No. 883/2004. Therefore, doubts arise as to whether this provision should apply to citizens of third countries and, in view of the differences between the

language versions of the regulation, whether the concept of "legal residence" corresponds only to a presence which has a certain degree of permanence, or also to one that is short-term.

The Polish Ministry of the Family, Labour and Social Policy (MRPiPS) relied on this interpretation of the CJEU in its recent reply to a question from the Polish Ombudsman for Small and Medium-Sized Enterprises (SME Ombudsman) concerning the issuance of A1 certificates. The Ministry's position is that the basic criterion under which citizens of third countries may obtain A1 certificates is legal presence and work in Poland and not legal residence in the country. The SME Ombudsman's Office has contacted the Chairman of ZUS (Social Insurance Institution) with a request that ZUS employees should be given instructions to ensure that ZUS's actions are in compliance with MRPiPS's position.

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