

FEBRUARY 2021

LEGAL ALERT

EMPLOYMENT LAW



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Below please find information on labor law and social security-related issues that are important for both employers and employees.

The National Labor Inspectorate controls employers remotely or in part remotely

Since 25 of January 2021, the National Labour Inspectorate (PIP) has had the power to conduct inspections of employers, and this includes remotely or in part remotely. Remote inspections are performed only via either postal correspondence or means of distance communication. During partly remote inspections, some activities are undertaken remotely, while others are conducted directly at the undertaking's headquarters, in the National Labour Inspectorate office, or in some other place relating to the inspection (for example where documents are archived).

The specific rules of remote inspections/partly remote inspections can be found on the National Labour Inspectorate's website. Below we select the most important information:

- a remote inspection can be performed only with the undertaking's consent;
- a remote inspection can be performed only if in the particular case PIP officers are not required to be present at the site of the inspection;
- a copy of the remote inspection protocol must be sent to the undertaking via the e-PUAP platform or by post;
- the remote inspection protocol can be discussed by means of distance communication.



More on this topic can be found here:

<https://www.pip.gov.pl/pl/o-urzedzie/wyjasnienia-i-wsparcie-pip/Kontrola-pip-covid/121496,zasady-prowadzenia-kontroli-zdalnych-przez-organy-panstwowej-inspekcji-pracy.html>

British posted workers staying in Poland after Brexit



- According to the Act of 10 December 2020 amending the Act on the entry into, residence in and exit from the territory of the Republic of Poland of nationals of the Member States of the European Union and their family members, and certain other acts, which entered into force on January 1, 2021, **UK citizens who were posted workers of a foreign employer performing work in Poland as at 31 December 2020 will have right of residence in Poland between January 1, 2021 and December 31, 2021.**

- The intention of the legislator is that this will enable British workers posted before the end of the transitional period in Poland, who are not covered by the Withdrawal Agreement, to continue to reside in Poland, including change of the purpose of stay, after the end of the transitional period provided for in the Withdrawal Agreement and to apply for a temporary residence permit, on the principles set out in the Act on Foreigners.

More on this topic can be found here:

<https://dziennikustaw.gov.pl/DU/rok/2020/pozycja/2369>

Duty of public companies to publish remuneration reports

- From 2021, public companies based in Poland are required to publish an annual remuneration report on their website, giving an overview of remuneration of each board member and supervisory board member.



- The remuneration report is drawn up by the supervisory board.
- A company faces a fine for persistent failure to publish the remuneration report on the company website.
- Until August 31, 2020, general meetings of companies were required to pass resolutions on the remuneration policy for board members and supervisory board members. In particular, the remuneration policy must include a description of fixed and variable components of the remuneration package, as well as bonuses and other pecuniary and non-pecuniary benefits that may be granted to members of the management board and the supervisory board.

More on this topic can be found here:

<https://dziennikustaw.gov.pl/DU/rok/2019/pozycja/2217>

<https://dziennikustaw.gov.pl/DU/rok/2020/pozycja/934>

Additional day off for blood donors

- When an epidemic threat or state of epidemic is announced, **an honorary blood donor who donates blood or its components, including plasma after recovering from COVID-19, is entitled to an additional day off.** The leave is granted on the day on which blood is donated and on the day following the day of donation.

- These rights can be exercised during a state of epidemic threat or state of epidemic.
- The new rules are effective from January 26, 2021.

More on this topic can be found here:

<https://dziennikustaw.gov.pl/DU/rok/2021/pozycja/159>

Bill amending certain acts on social security

A bill dated January 22, 2021, prepared by the Ministry of Family and Social Policy, containing many amendments to the Act on Cash Benefits from Social Security in cases of Illness and Maternity, and other acts has been posted on the government website.

More details.

- Amendment of the current version of the Act on Cash Benefits..., *according to which the benefit period includes periods of previous incapacity for work, **caused by the same disease**, if the interval between termination of the previous incapacity for work and occurrence of further, different incapacity for work does not exceed 60 days*. The bill provides for new rules for counting periods of incapacity for work towards one benefit period. Both periods of continuous incapacity for work will be included, as well as periods of incapacity for work which occurred before/after a break, if the break is no longer than 60 days and if the incapacity for work does not occur during pregnancy. **Thus, all periods of previous incapacity for work will be counted towards the benefit period if the break between the end of the previous incapacity for work and the occurrence of a further, different incapacity for work does not exceed 60 days - regardless of whether the incapacity for work was caused by the same or a different disease.**
- **Limitation of the duration of the period for which an employee will retain the right to sickness benefit, once sickness insurance entitlement comes to an end, to 91 days from the date when the insurance entitlement ends.** Currently, an employee may be entitled to sickness benefit for as long as 182 days after the date when the insurance entitlement comes to an end.
- **Clarification that the right to maternity benefit is granted in the event of childbirth when sickness insurance comes to an end if the insurance comes to an end during pregnancy due to the death of the employer.** To date, the Act on Cash Benefits... only mentioned situations when an employer is declared bankrupt or is liquidated (this refers to organizational units), disregarding the fact that, in accordance with the Labor Code, an employer may also be a natural person (who obviously cannot be subject to the liquidation procedure).



In addition, the proposal includes numerous amendments to the Act on the Social Security System. Among other things, **applications for issuance of an A1 certificate by ZUS and issuance of an A1 certificate will be handled electronically.**

Stage: before submitted to Sejm.

More on this topic can be found here:

<https://archiwum.bip.kprm.gov.pl/kpr/form/r50416,Projekt-ustawy-o-zmianie-ustawy-o-systemie-ubezpieczen-spolecznych-oraz-niektory.html>

PIT consequences of reimbursing the cost of equipment necessary for remote work



- If instructions are issued to work remotely, under the Anti-crisis shield an employer is required to provide the employee with the tools and materials needed for remote work, while this does not constitute income for the employee under the Personal Income Tax Act. Importantly, it is irrelevant how the tools and materials are provided, i.e. whether it is done in kind or by means of payment for using the employee's own materials and tools.
- This means that **in the case of employees who work remotely due to epidemic risk, reimbursement of the costs of purchase of the equipment necessary for work does not constitute income under the Personal Income Tax Act. Also, the employer, as a PIT remitter, does not have a remitter's obligations in this regard.**

More on this topic can be found here:

<https://sip.mf.gov.pl/faces/views/szczegoly/szczegoly-interpretacji-indywidualnej.xhtml?dokumentId=599326&poziomDostepu=PUB&indexAccordionPanel=-1#tresc>

PIT tax treatment of amounts paid to construction workers performing work on foreign construction sites

*Pursuant to art. 21.1 point 16 of the Personal Income Tax Act, **per diems and other dues for the duration of an employee's business trip are exempt from personal income tax up to the amount stipulated in separate acts or in regulations issued by the minister competent for labor issues regarding the amount of and conditions for determining dues to which an employee working in a state or local government unit is entitled on account of business trips in Poland and abroad.***



- In a case reviewed by the Voivodship Administrative Court (WSA) in Gdansk it was established that employees of the applicant (employer) performed work exclusively abroad. They went to the place of work periodically once or twice a month for a few or more days in order to perform construction work. **They did not perform work incidentally at the construction sites**, but performed their normal employment duties on the site, which they had undertaken to perform for the employer. The employer **paid to its employees amounts on which personal income tax (PIT) was not paid**. According to the employer, **the benefits paid were per diems for business trips, and thus not subject to PIT**. This practice was questioned in the course of an audit conducted by the tax authority, which found that **the trips of the employees could not be considered as business trips, and that the payments made to them were subject to PIT**.
- The WSA confirmed that the tax authority correctly held that the permanent place of work of the employees was, in each case, the location of the investment on which the employee performed work continuously and systematically for an extended period of time. Consequently, the authority correctly held that **the amounts paid to the employees were not exempt under the Personal Income Tax Act and that they constituted a component of remuneration under the employment relationship, constituting a source of revenue subject to personal income tax (PIT)**.

Judgment of the Voivodship Administrative Court in Gdańsk of 5 January 2021, ref. I SA/Gd 728/20

More on this topic can be found here:

<http://orzeczenia.nsa.gov.pl/doc/D3AA2042D3>

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