

JULY 2021

LEGAL ALERT

EMPLOYMENT LAW



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

Rzeczpospolita Ranking – BKB among the top labour law firms in Poland

We are happy to announce that BKB has been recommended in the Ranking of Law Firms of Rzeczpospolita 2021, and Dr. Daniel Książek has been named for an individual award.



- BKB Baran Książek Bigaj Law Firm has been recommended in the category “Labour law and social insurance law”.

Thank you for this honour and congratulations to all those named!

Government proposal for minimum wage in 2022

The Council of Ministers has adopted a proposal for the minimum wage in 2022 of PLN 3 000 and a minimum hourly rate of PLN 19.60. Next, the proposal will be negotiated with the Social Dialogue Council.

- In 2021, the minimum wage is PLN 2 800 and the minimum hourly rate is PLN 18.30. The minimum wage is to increase by PLN 200 on 2021 in 2022 and the minimum hourly rate by PLN 0.70.

More on this topic can be found here:

<https://www.gov.pl/web/rozwoj-praca-technologie/rzad-przyjal-propozycje-placy-minimalnej-i-stawki-godzinowej-w-2022-r>

Demographic Strategy 2040 – possible amendments to the Labour Code

In June 2021, the Council of Ministers presented the premises for the “Demographic Strategy 2040”.

Main premises of the strategy regarding employment law, including:

- reduction of the number of employment contracts for a definite period that can be concluded with persons up to 40 years old over a period of up to 15 months to two,



- flexible work arrangements for pregnant women and parents of children up to four years (remote work, hybrid work or flexitime) – the choice will depend on the nature of the work in question and will be made on the basis of an agreement between an employer and an employee,
- protection against termination of employment for both parents: protection for mothers for up to a year after returning to work from maternity or parental leave, introducing protection for fathers until the child reaches the age of one year - in the case of married couples, this protection would apply from the moment the wife becomes pregnant,
- guaranteed reduced working hours for pregnant women and parents of children up to four years old, with the proviso that the employer may not discriminate against an employee due to working reduced working hours by excluding the employee from employment benefits.

We will keep you informed of developments.

More on this topic can be found here:

<https://www.gov.pl/web/premier/premier-o-strategii-demograficznej-2040-to-program-ktory-ma-wzmacniac-polske>

The Polish Deal – possible amendments in employment law

In May 2021, the document presenting the programme for the Polish Deal was presented, which also includes general proposals regarding employment.

The proposals:

- remote work to be regulated in the Labour Code
- aim to eliminate the gender pay gap. "Large companies" will have to justify within 30 days - at the employee's request - the reason for paying a certain amount of remuneration for work; employees will be entitled to information on average earnings of people of the opposite gender performing the same/similar activities.
- there will be limitations on applicability of civil law contracts – social security contributions will be payable in full on contracts of mandate - freelance service contracts (*umowa zlecenia*); on the other hand, responding to question 24332 put by a member of the lower house of parliament, secretary of state at the Ministry of Family and Social Policy Stanisław Szwed explained that the ministry '***did not envisage making contracts of mandate subject to social security contributions for pupils at secondary school and above and students aged up to 26, or making agreements for a specified work (umowa o dzieło) subject to social security contributions***'

- parental protection – certain ways of supporting working parents who do not have access to care services: the employer will be required to agree to use at least one of three instruments (i) telework or remote work (ii) reduced working hours, or (iii) varying work starting times.

We will keep you informed of developments.

More on this topic can be found here:

<http://polskilad.pis.org.pl/>

<https://www.sejm.gov.pl/Sejm9.nsf/InterpelacjaTresc.xsp?key=C49HVV>

Bill on employee alcohol testing

According to a proposal made by the Polish government on May 17, 2021, **the Labour Code will provide an option for an employer to conduct alcohol testing of employees.**

- The power to conduct employee alcohol testing would be stipulated through collective bargaining, in the employment by-laws (workplace regulations), or in a declaration made by the employer, also stating the group or groups of employees covered by testing and the method and procedure for testing. An employer would be required to inform employees that alcohol testing will commence a minimum of two weeks in advance.
- Testing would be subject to certain conditions, which are the need for protection of life and health of employees and other people, or protection of the employer's property. The bill states explicitly that an employer may not admit to work a person found to have consumed alcohol or other substances of similar effect, or who is reasonably believed to have consumed alcohol or such substances.
- In the case of substances that have a similar effect to alcohol, as a rule alcohol testing policies would apply accordingly.

More on this topic can be found here:

<https://legislacja.rcl.gov.pl/projekt/12347305/katalog/12791123#12791123>

Additional information to be included on a social security form

On May 16, 2021, an amendment to article 36 of the Act on the Social Security System came into force, according to which **a social security application form has to state the occupation of the person being registered.**

- According to the statement of reasons for the bill, the requirement to state the profession of the person being registered is being introduced for statistical purposes.
- Lawmakers have said that information on occupation can be useful in analysing grounds for sick leave - depending on the occupation, or in monitoring imbalance and surplus occupations, and analyses or forecasts on the labour market and changes in the social structure in Poland.

More on this topic can be found here:

<https://dziennikustaw.gov.pl/DU/rok/2020/pozycja/875>

<http://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=344>

Changes in civil procedure due to COVID-19

On July 3, 2021, according to the Act of May 28, 2021 amending the Civil Procedure Code and other acts, important changes regarding civil procedure came into force, i.e.:

- the possibility for a court to effect service of court papers to professional representatives (e.g. advocates, attorneys-at-law) by posting them on the court's information portal – during a state of epidemic threat or state of epidemic announced due to COVID-19 and one year after it is declared ended. This is not intended to apply to pleadings that are served with copies of the parties' pleadings or other documents not originating from the court; the Act provides for the “effective delivery” rule -if a recipient does not review correspondence posted on the court's information portal, the correspondence is deemed to be delivered 14 days from the day on which it is posted on the portal.
- a requirement for a professional representative to specify an e-mail address and a telephone number to be used for contacting the court in the first pleading in civil proceedings (failure to do so will constitute a formal defect) - this obligation applies to pleadings filed with a court after July 3, 2021
- during a state of epidemic threat or state of epidemic announced due to COVID-19 and one year after it is declared ended - remote court hearings (using technical devices) will be the rule - it will be possible to refer cases for closed session when remote hearings cannot be conducted.

More on this topic can be found here:

<https://dziennikustaw.gov.pl/DU/rok/2021/pozycja/1090>

Consultation with trade unions on an employer's intention to terminate an employment contract by notice with an employee must be in writing - the Supreme Court has found

Pursuant to Article 38 § 1 of the Labour Code:

An employer shall inform in writing the establishment's trade union organization representing the employee of any intention to terminate by notice a contract of employment concluded for an indefinite period and shall give the reason for termination of the contract.

- In a judgment of January 21, 2021, ref. III PSKP 2/21, the Polish Supreme Court confirmed that the only proper form of informing the trade union about the employer's intention to terminate the employment contract with a particular employee is the written form. Therefore, in light of the Labour Code, sending the above information to the trade union via e-mail means that the employer did not observe the written form required by the Labour Code (an e-mail message can be treated as a document, which, of course, is not a written form).
- However, unlike in the case of "ordinary" termination of an employment contract by notice by the employer, in light of Article 52 § 3 of the Labour Code, notification of the company trade union organization of the reason justifying the termination of an employment contract with immediate effect does not necessarily have to be in writing (see judgment of the Supreme Court of February 9, 2016, ref. II PK 330/14).

More on this topic can be found here:

<https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/iii-pskp-2-21-forma-przeprowadzenia-konsultacji-zamiaru-523202294>

<http://www.sn.pl/sites/orzecznictwo/OrzeczeniaHTML/ii%20pk%20330-14-1.docx.html>

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The above legal alert does not constitute any form of legal advice.

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