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LEGAL ALERT

EMPLOYMENT LAW



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I. Whistleblowing



According to the Directive on protection of whistleblowers, Poland has until 17 December 2021 to introduce relevant statutory regulations. Although the legislative proposal has already been published, we can expect it to enter into force next year. Therefore, most probably the beginning of 2022 will be the time for many employers to implement obligations provided for in the Directive and the Act on protection of whistleblowers. One such obligation is the introduction of internal whistleblowing procedures. Under the proposal, failure to establish an internal whistleblowing and follow-up procedure is punishable by imprisonment of up to three years and other sanctions.

II. Can the function of DPO be combined with tasks related to Whistleblower reports?

The Office for Personal Data Protection (UODO) has published a position paper setting out the rationale for the possibility of combining the function of a Data Protection Officer (DPO) with tasks related to handling requests from whistleblowers.

In the UODO opinion, the question of whether there may be a conflict of interest in the case of a specific person and the tasks performed by that person should be assessed on a case-by-case basis. This means that the possibility of a conflict should be constantly monitored, as the reasons for the existence of such conflict may also arise at a later time, after the DPO has started performing his/her function.

In doing so, the controller should take into account criteria such as:

- organizational criteria (the DPO should report directly to the top management of the organizational unit),
- substantive criteria (other duties should not impair the independent performance of the DPO's tasks),
- time (the DPO should have sufficient time to perform his/her tasks, taking into account the volume of duties, their complexity, and other issues).



More information:

[https://uodo.gov.pl/pl/223/2201?](https://uodo.gov.pl/pl/223/2201?fbclid=IwAR3bnJrtTmT6Zj09Ylgqgz5Eq_mwHaO9MhiGaM_0woyKRgZZy1Rkg4nGoXw)

[fbclid=IwAR3bnJrtTmT6Zj09Ylgqgz5Eq_mwHaO9MhiGaM_0woyKRgZZy1Rkg4nGoXw](https://uodo.gov.pl/pl/223/2201?fbclid=IwAR3bnJrtTmT6Zj09Ylgqgz5Eq_mwHaO9MhiGaM_0woyKRgZZy1Rkg4nGoXw)

III. Geographical wage differentiation - GIP position

Dziennik Gazeta Prawna has posted on its website position of the Chief Labor Inspectorate (GIP) on whether remuneration of employees of the same employer (e.g. a retail chain with units in various locations) occupying the same position may vary depending on the location.

The GIP concluded that:

- **by differentiating between the level of remuneration of persons occupying the same position (e.g. cashiers) solely on the basis of the place where the duties are performed (the location of the shop), an employer could be in breach of the principle of equal treatment in employment, because "the differentiation of employees' rights in this case is not based on differences related to the duties incumbent upon the persons concerned, the manner in which they are performed or their qualifications". (Supreme Court judgment of 5 October 2007, II PK 14/07).**



In a judgment of 6 March 2003, I PK 171/02, the Supreme Court stated that differences in the amount of remuneration due to the supply of a given type of services in the local labor market are permitted.

More information:

<http://www.sn.pl/sites/orzecznictwo/orzeczenia/i%20pk%20171-02-1.pdf>

[http://orzeczenia.ms.gov.pl/details/\\$N/154000000001521_III_AUa_000840_2015_Uz_2015-11-25_001](http://orzeczenia.ms.gov.pl/details/$N/154000000001521_III_AUa_000840_2015_Uz_2015-11-25_001)

IV. Polish Deal

One of the key changes proposed under the Polish Deal is the increase of the tax-free threshold for income tax to PLN 30 000 for all taxpayers who calculate their tax according to the tax scale. In addition, under the Polish Deal, the second tax threshold will be raised to PLN 120 000, beyond which a 32% tax rate will apply.

Employees will also pay a 9% healthcare contribution calculated on income. Moreover, it will no longer be possible to deduct 7.75% of the healthcare contribution calculation base from tax. In the case of some employees, this effect will be compensated by the increase of the tax scale threshold (from PLN 85,528 to PLN 120,000) and the introduction of the middle-class relief, available to persons with income from an employment relationship up to PLN 133,692 per year. Employees whose income level makes it impossible to take advantage of the middle-class relief will be in a different situation. These are persons earning more than PLN 11,141 gross per month. In their case, the proposed changes will reduce the level of their net salaries. This may cause an increase in labor costs, as these employees may demand pay increases to compensate for the net amount paid to date.



V. Remote work



Work on amendments to the Labor Code with respect to remote working is still in progress. In recent weeks, information has emerged according to which the new regulations would be passed as soon as possible, so that they could enter into force as of 1 January 2022. In our opinion, this seems unlikely. This does not change the fact that the legislation on remote work will most likely be enacted in 2022. The specific form still remains unclear due to disputes within the public consultation process.

VI. Minimum wage



According to the new regulations, the minimum wage in Poland from 1 January 2022 will be PLN 3010 gross. The hourly rate will also increase and will be PLN 19.70, which is PLN 210 more than the currently binding minimum wage (PLN 2800), which means an increase of 7.5 percent compared to last year.

VII. Remuneration is due for compulsory training time

According to the position of the Court of Justice of the European Union, a period during which an employee undergoes further training required by the employer should be counted as working time, even if the learning takes place on the premises of the training company and the subordinate does not perform his/her usual duties during that time (CJEU judgment of 28.10.2021, C-909/19).

VIII. Changes in allowances

From the new year, a delay in the payment of contributions by a business will no longer be an obstacle to obtaining sickness benefit. Among other things, the amount of benefit for the period of hospitalization will also change.

Also from the new year, this insurance will not cease due to late payment of contributions. This means that businesses will be able to receive sickness insurance benefits even if they pay their contributions after the deadline.

At present, sickness benefit for a period of hospitalization is, as a rule, 70% of the benefit base. From the new year, the monthly sickness benefit will be 80%.

Another change concerns the determination of the benefit calculation base. It will not have to be determined anew if there was no break between the periods of drawing benefits (regardless of their type) or the break was shorter than a calendar month. Currently, the calculation base is determined anew if the break in drawing benefits is three or more calendar months.

In addition, currently, if there are breaks in incapacity to perform work, the previous period of incapacity to perform work is included in the benefit period if it is caused by the same disease and the break does not exceed 60 days. As of the new year, the reason for incapacity to perform work before and after the break will not matter. However, periods of incapacity to perform work prior to a break of up to 60 days will not be included in the benefit period if, after the break, incapacity to perform work occurs during pregnancy.

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

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