

JANUARY 2023

LEGAL ALERT

EMPLOYMENT LAW



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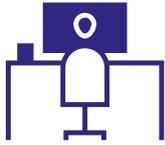
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The act regarding remote work and sobriety checks

Remote work – some rules under the act:



- rules regarding working remotely are to be specified in an agreement concluded between the employer and the company trade union; if there is no company trade union at a given employer or an agreement has not been reached, the employer lays down policies on working remotely in the regulations; rules regarding working remotely can be specified in issued instructions to work remotely, or an individual agreement with the employee;
- the agreement or regulations should address issues including the groups of employees to whom remote work may apply, the rules for covering the costs connected with remote work; control issues;
- some groups of employees will be able to request remote work, which the employer will be obliged to consider, such as employees raising a child up to the age of four;
- an employer is required to provide the employee with the installation, service, and maintenance of work tools, including technical devices, necessary to work remotely, or to cover the necessary associated costs, as well as to cover the costs of electricity and telecommunications services necessary for the performance of remote work;
- the need to revise information on the working conditions stipulated in Article 29 § 3 of the Labor Code, to account for performance of remote work, if remote work is agreed upon at the moment of the conclusion of the employment contract.

Sobriety checks - some rules under the act:

- introduction of provisions on checks regarding sobriety (alcohol) and drugs in an employee's organism: the possibility of checks conducted by the employer or the police;
- the group or groups of employees subject to sobriety checks and the procedure for conducting sobriety checks, including the type of device used and the time and frequency of checks shall be established: (i) in a collective bargaining agreement, (ii) in work regulations, or (iii) in a notice if a collective bargaining agreement is not in effect at the employer or the employer is not required to establish work regulations. When an employee subject to a sobriety check is employed, the employer shall provide the employee with the information indicated in the preceding sentence, either in paper or electronic form; the employer shall inform employees of the introduction of checks in the manner adopted by the employer no later than two weeks before checks begin;
- the scope of prerequisites for a fine under Article 108 § 2 of the Labor Code has been extended to include cases of appearing for work after using alcohol or a drug of a similar effect to alcohol, or taking a drug of a similar effect to alcohol during work.

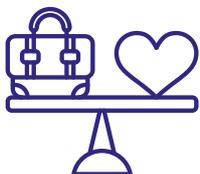
- Also, an entrepreneur who is not an employer who organizes work performed by individuals on a basis other than an employment relationship (for example on the basis of service contracts) or sole entrepreneurs will be able to conduct sobriety checks on these individuals and check for the presence in their organisms of agents of a similar effect to alcohol.
- **Finally, the Sejm rejected amendments to the act introduced by the Senate providing for rules such as a longer *vacatio legis* and a higher number of days of occasional remote work per calendar year. The act awaits the President's signature. The provisions on remote work are expected to come into force two months after the date of promulgation, while the provisions on sobriety checks are expected to come into force fourteen days after the date of promulgation.**

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Act related to the implementation of two EU directives, the work-life balance directive, and the directive on transparent and predictable working conditions in the EU

The following changes in law are probable (selected examples):



- termination of employment contracts for a definite period by notice by the employer will require a reason and consultation with trade unions;
- it will only be possible to prohibit an employee from undertaking additional employment under a non-compete agreement;
- employee training on the basis of a superior's instructions -> at the employer's expense and, if possible, during the employee's working hours. Time spent on training outside the employee's regular working hours shall be included in working time;
- an employee who is employed for six months or more will have the right to request, once a year, an indefinite contract or more predictable working conditions. An employer -> obligation to respond and state reasons if this request is not granted;
- change in the amount of childcare leave - extension from 32 to 41 weeks + each parent -> guarantee of nine weeks of leave, which will not be transferable to the other parent;
- the granting of paternity leave will be possible only until the child is 12 months old (currently - until the child is 24 months old);
- five days per calendar year to care for a person in the family or residing in the same household who requires care or support for serious medical reasons (unpaid time);
- two days / sixteen hours of release per calendar year for urgent family matters (paid time: 50%);

- the possibility for parents raising a child under eight years of age to request flexible work arrangements, such as flexible working hours or reduced working hours. The employer must state reasons if they deny the request;
- an increase in the age of a child for whom an employee cares from four to eight years entitling the employee to (i) refuse a posting outside the permanent workplace; (ii) refuse overtime work; (iii) refuse nighttime work; (iv) refuse to work in a non-consecutive working-time system.
- a requirement to revise information on working conditions stipulated in Article 29 § 3 of the Labor Code (broadening the scope of information provided to employees, for example the employer will be required to inform an employee about time limit within which they can appeal to the labor court); it will also be possible to provide this information in “electronic form” (currently – “in writing”); the introduction of a new offence of failing to inform an employee on time about their conditions of employment;
- the need to update the information provided to employees posted abroad.
- **The act is currently being considered by the Sejm.**

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Latest proposal for bill on protection of whistleblowers

A new version of the bill on the protection of whistleblowers, described as "Final Text 2" has been posted on the Government Legislation Centre website. The most important changes compared to the last proposal are as follows:



- Whistleblowers will be protected provided that the information they submit or disclose relates to the public interest. Other prerequisites for protection, such as reasonable grounds for believing that the information is true and that it concerns unlawful activity, remain unchanged (art. 6).
- External whistleblowing regarding a possible crime shall be performed by reporting it to the Police. The previous wording stipulated that the information must be submitted to the competent voivodship police chief (art. 31(1)).
- The procedure for issuing a certificate confirming whistleblower status has also been changed. Under the latest version, the certificate shall be issued by the public authority competent to take follow-up action, once there is credible indication that a crime has been committed (art. 36(2)).

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Increase in the mileage allowance

As of **January 17, 2023**, the rates of the mileage allowance per kilometer covered by a vehicle have increased. For example, for passenger cars with an engine displacement of up to 90 cc this will now be PLN 0.89 (previously – PLN 0.5124), above this capacity – PLN 1.15 (previously – PLN 0.8358).

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Maximum amount of severance pay paid under the Act on Collective Redundancies

Currently, the limit on severance pay under the Act on Collective Redundancies is PLN 52,350 – pursuant to Article 8(4) of this act, this is fifteen times the minimum wage, which is PLN 3490.

The value of the coefficient for determining the cash equivalent for unused holiday leave

Currently, the coefficient for determining the cash equivalent for unused holiday leave is 20.83. It is calculated according to § 19 of the Regulation of the Minister of Labor and Social Policy on detailed rules for granting holiday leave, and determining and paying holiday leave pay and cash equivalent for unused holiday leave.

ZUS releases information reminding of the obligation to submit ZUS IWA for 2022 by January 31

The obligation to submit data to determine the contribution for accident insurance (ZUS IWA) applies to remitters who:



- From January 1 to December 31 2022, were continuously registered with ZUS as remitters of accident insurance contributions and were registered as remitters of these contributions for at least one day in January 2023;
- registered at least ten insured persons for insurance in 2022;
- were listed in the REGON register as at December 31, 2022.

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Implications of providing employees with a flat for social security contributions

In a ruling of January 13, 2023, WPI/200000/43/16/2023, the Social Insurance Institution (ZUS) **deemed incorrect the statement of an entrepreneur with regard to not including in the calculation base for social security contributions for employees the value of a benefit where an employee was provided with a flat below the market price.** According to the Social Insurance Institution, the value of this benefit should be included in the calculation base for social insurance contributions under § 3 of the Regulation of the Minister of Labor and Social Policy on detailed rules for determining the calculation base for pension and disability insurance.

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Month in which the cost of social security contributions is incurred

In a ruling of January 11, 2023, 0111-KDIB1-2.4010.765.2022.1.EJ, the Director of the National Revenue Information Service found the position of an entrepreneur (subject to corporate income tax - CIT) to be correct, that **social security contributions on salaries due to employees from January 1, 2023 are tax-deductible in the month for which the salaries are due,** provided that the contributions are paid within the time limit specified in separate regulations. From 2023 onward, for the purpose of determining when the portion of social security contributions financed by the remitter is deductible, the moment when the salary is paid is irrelevant.

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Deductibility of business trip allowances of a sole entrepreneur

In a ruling of January 12, 2023, 0113-KDIPT2-1.4011.900.2022.2.ID, the Director of the National Revenue Information Service found the position of an entrepreneur to be correct, that they are entitled to include in tax-deductible costs the value of daily allowances for business trips related to their business activity, up to the amount specified in separate regulations.

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Repeal of provisions extending the period of legal stay of foreigners in Poland

According to an amendment to the Act on Assistance to Citizens of Ukraine in Connection with Armed Conflict on the Territory of that State, provisions concerning the “Anti-Crisis Shield” passed during the state of epidemic, extending the validity for instance of national visas, temporary residence permits in Poland, and residence cards, are to be repealed.

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A four-day work week in Poland?

In response to MP question No. 37191 on the possibility of introduction of a four-day work week in Poland, the Minister of Family and Social Policy has stated that:

- **there are no plans for legislative work on this issue;** the possible introduction of provisions establishing a four-day work week/reduction of the average weekly working time norm from 40 to, for example, 35 hours would require extensive debate and consultation with social partners in cooperation with the Social Dialogue Council;
- the Labor Code already provides for the possibility of using working time systems that allow work for less than five days per week, such as a shortened work week system or a balanced working-time system; there is also the possibility of including an employee in a task-based working-time system, under which the employee decides on what days and at what time they will perform the tasks assigned to them;
- in addition, labor law allows for flexible adaptation of the working time schedule to the individual needs of the employee, for example, under an individual working time schedule established at the written request of the employee, or under a flexitime system (*ruchomy czas pracy*);
- when determining the working time, the employer and the employee may, for example, stipulate in the employment contract that the employee will work four days a week, part-time, while retaining the salary of a full-time employee.

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