

JULY 2023

# LEGAL ALERT

## EMPLOYMENT LAW



**BKB**

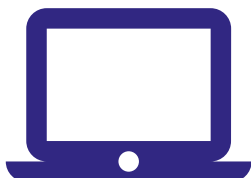
**BARAN  
KSIĄŻEK  
BIGAJ**

**Truple  
Konarski  
Podrecki  
& Wspólnicy**

**TKP**

## Social security legislation for cross-border telework

With effect from 1 July, 2023, the Social Insurance Institution (ZUS) has acceded to the Framework Agreement on the application of Article 16(1) of Regulation (EC) No 883/2004 in cases of habitual cross-border telework. Under this agreement, a person who works in their country of residence other than the country of the employer's registered office can be **subject to the legislation in the country of the employer's registered office, provided that cross-border telework is at least 25% but less than 50% of the total working time**. Thus, when the relevant conditions are met, the agreement allows an exemption from the applicable legislation of the employee's country of residence.

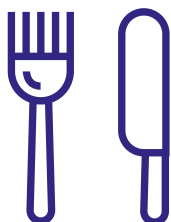


The person concerned is covered by the agreement if his or her place of residence and, at the same time, the registered office of the employer, are located in signatory countries (as not all EU countries have signed it). A person who wishes to be covered by the agreement should apply on a US-36 form and request the document A1.

[Link](#)



## Increase in the value of employer-financed meals not included in the calculation base for pension and disability insurance contributions



On 4 July, 2023, the Minister of Family and Social Policy presented a proposal for a regulation increasing the amount excluded from the calculation base for pension and disability insurance contributions of the value of employer-financed meals provided for employees with no right to an equivalent in lieu. **This value will be limited to PLN 450 per month, and the provision will be extended to cover the value of vouchers, coupons and prepaid cards received by employees, which entitle them to purchase only meals or processed food products suitable for direct consumption in catering establishments.**

Under the proposal, the change would come into effect on 1 September, 2023.

[Link](#)



## Poisoning during a break at work is an accident at work



In a case in which a worker died due to severe food poisoning after eating a sandwich during a break at work, the Supreme Court ruled that in order for an accident at work to be deemed to have occurred if the incident occurred **during normal working activities - such as eating** - it is not necessary to demonstrate a functional link between the work and the accident. A functional link needs to be demonstrated when the incident occurs outside the employee's working hours, but a short break from work for a meal does not in any way break this link. A death due to food poisoning occurring during a break taken at work is therefore an accident at work.

Judgment of the Supreme Court of 28 June 2023 (Ref. No.: I PSKP 28/22).

[Link](#)



## PIT exemption for benefits due to occupational disease



The Director of the KIS has adopted a standpoint in an individual ruling on the issue of whether a **pecuniary amount paid on the basis of a settlement for harm suffered as a result of an occupational disease is subject to PIT exemption**. The Director emphasized that for tax purposes, it is the actual nature of the benefit and not the name given to it that is important. In the case at hand in which the rulings were issued, the benefit concerned only **the actual harm** caused by the occupational disease. For this reason, it met the premise of Article 21(1)(3b) of the Personal Income Tax Act - it did not relate to lost benefits, hence it was not subject to personal income tax.

[Link](#)



## Extension of the period of legal residence for Ukrainian citizens

Ukrainian citizens who have entered Poland since 24 February, 2022, and who do not lose their legal residence in Poland as a result of leaving the country, will be able to **work legally in Poland until 4 March, 2024**. Meanwhile, parents whose children make use of facilities such as pre-school education or attend compulsory schooling or compulsory education as at 4 March, 2024, will be able to stay legally until 31 August, 2024.

[Link](#)



## CJEU ruling - failure to notify the relevant district employment office of collective redundancies is not grounds for challenging those redundancies



On 13 July, 2023, the European Court of Justice handed down a judgment in a case in which a German employer conducted collective redundancies, but the state employment agency - the German equivalent of the Polish labor office - was not notified during the process. As a result, one of the employees applied for reinstatement considering this failure to submit notification to invalidate the termination of employment. The CJEU ruled that the notification to employment offices is for information purposes only and serves to prepare these institutions for the activation of a new group of unemployed persons, so **the failure to provide this information does not mean that employees therefore gain individual protection against dismissal**. This judgment is based on an interpretation of Directive 98/59, on the basis of which Polish regulations were also issued, and therefore may also apply to national legislation.

[Link](#)



## Change in the level of allowance for the Company Social Benefit Fund (ZFŚŚ)

The Sejm has passed a law amending the calculation base for contributions to the Company Social Benefits Fund, which is currently awaiting the President's signature. The basis for calculating **the contribution from 1 July, 2023, to 31 December, 2023, will be the average monthly salary in the national economy in the second half of 2021, which is PLN 5104.90.**

[Link](#)



## Disciplinary dismissal of employee and refusal to wear a mask during a pandemic



The District Court in Szczecin found that **persistent refusal to wear a mask on the premises during a pandemic, being a threat to the health of other employees and the employer's customers, was a justifiable reason to terminate an employment contract without notice**. According to the court, the legal basis for disciplinary dismissal was the employer's obligation under the Labor Code to ensure safe and hygienic working conditions for its employees on the one hand, and the correlated obligation of the employee to comply with health and safety regulations and the employer's internal regulations on the other.

In doing so, the court found that the basis for the introduction of precautionary measures in the establishment was not the Covid regulation, but the employer's internal regulations laying down a specific system of work organization. However, the ruling is not yet final and the court of second instance may express a different view.

Judgment of the SR Szczecin-Centrum in Szczecin (ref. act: IX P 199/2)

[Link](#)



## Longer deadline for periodic training once the epidemic emergency is declared at an end

The Supporting Benefit Act of 7 July, 2023, which will extend the deadline for **periodic health and safety training to 180 days from the date the epidemic emergency is declared at an end**, has been submitted for the President's signature. The Act will enter into force on the day after the date of publication in the Official Gazette.

[Link](#)



## Changes regarding employment of young workers



In July, 2023, two regulations regulating the employment of juveniles were promulgated. As of 1 September, 2023, the wages of juvenile workers will change - their wages (calculated in relation to the average wage) will be increased by 3%. At the same time, from 30 September, 2023, the existing list of types of work prohibited for juveniles will change, and a new list will be introduced of certain types of work prohibited for juveniles for which the it will be possible to employ juveniles over the age of 16 .

[Link](#)



[Link](#)



## Authors

- ◆ Magdalena Gołacka
- ◆ Łukasz Łaguna
- ◆ Anna Socha

**This legal alert does not constitute any form of legal advice.**

If you have any questions, please do not hesitate to contact us by e-mail at: [office@ksiazeklegal.pl](mailto:office@ksiazeklegal.pl)  
or  
by phone: + 48 12 426 42 31