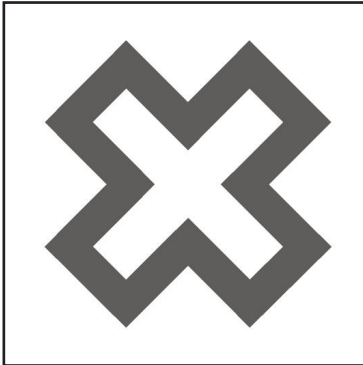


List of Topics

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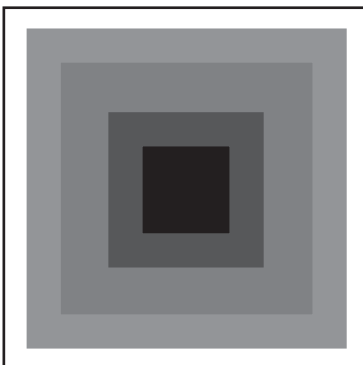
I Changes in law



Protection of business secrets. Desirability of concluding post-employment binding confidentiality agreements.

On 4 September 2018 an amendment to the Combating Unfair Competition Act entered into force. Although the intention of the changes was the implementation of Directive 2016/943 and strengthening the protection of business secrets also with regard to former employees, the amendment made to Article 11 par. 2 of the Act means that there is currently no clear statutory basis for requiring confidentiality from former employees.

Therefore, to ensure that employees remain obliged to maintain confidentiality, even after the termination of their employment, appropriate agreements will need to be concluded with them.



Labour Code: Teleworking. Flexible forms of work time organisation for certain employee-parents. Special rules regarding employment in the event of management succession being established for an enterprise run by an individual.

In June 2018, changes came into effect regarding carrying out telework. They allow teleworking following an employee's request submitted in paper or electronic form, even if the employer has not specified any terms and conditions for teleworking in its agreements with trade unions or in workplace regulations.

In addition, certain groups of employees were given the right to request an employer to allow them to work in an intermittent working time system, in changeable working time schedules or in an individual working time system. This entitlement applies to parents with a child at the prenatal stage in a complicated pregnancy, to parents of children that are handicapped, ill, disabled, or with special education needs that are specified (Article 141² § 1 of the Labour Code). The employer may refuse the employee's request only if it cannot be granted and the employer must provide the employee with a justification for the decision in writing, or electronically.

On 25 November 2018, an amendment to Article 63² of the La-

bour Code will also take effect establishing special rules regarding employment in the event of the death of an employer who is an individual and establishing in this case succession management for the enterprise of the individual (pursuant to the Act on Succession Management for the Enterprise of an Individual of 5 July 2018).

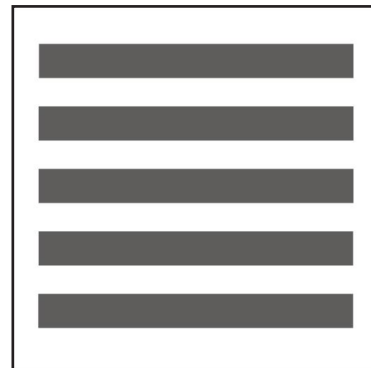
Minimum wage rates in 2019

From 1 January 2019, the minimum working wage of persons employed under a contract of employment will be PLN 2,250 per month, and the minimum hourly rate for work performed under civil law contracts will be PLN 14.70.

Trade unions

On 5 July 2018, the Sejm (Polish Parliament) passed an act amending the Trade Unions Act (Journal of Laws 2018, item 1608), which means that from 2019:

- persons employed under civil law contracts, including the self-employed, unless they employ other people, and have such rights and interests that may be represented and defended by a trade union, will be able to form trade unions and join such unions; this therefore expands the subjective scope of trade union rights: after the change, it will include “persons who perform paid work”
- persons performing paid work will have the necessary entitlements for carrying out trade union activities, including, for example, the option of taking leave from work for the time necessary for ad-hoc union activities; trade union officials will also enjoy special protection against termination, or unfavourable contract change,
- representation thresholds will increase:
 - from 10% of employees to 15% of persons performing paid work, for multi-establishment trade unions,
 - from 7% to 8% for establishment-based trade unions, if the organisation is an organisational unit or a member organisation of a multi-establishment trade union recognised as representative within the meaning of the Social Dialogue Council Act,
 - from 10% of employees to 15% of persons performing paid work in relation to remaining organisations,
- the Act also improves the process of negotiating and concluding agreements with trade unions, even if there is opposition from organisations that represent less than 5% of employees at a given employer,



- there is clarification of the range of information on an employer's activities that may be demanded by a trade union and a 30-day deadline introduced for providing the requested information,
- the current quarterly information on the number of members of an enterprise trade union will be replaced by half-yearly information, and the employer will be able to raise concerns on the reliability of the reported data and verify them in court.

The amendments to the Trades Unions Act enter into force on 1 January 2019, with the exception of Article 253 par. 6 of this Act, which will take effect on 23 August 2019 (relates to the requirement of six months' membership of a trade union for such person's membership to count towards its representativeness).

II Ongoing work on...

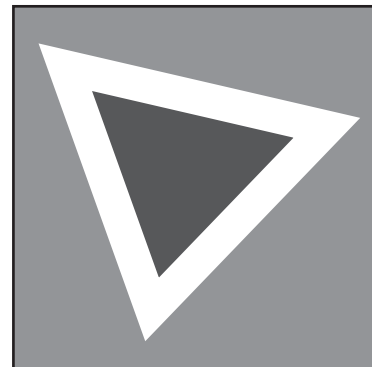
Storing employee documentation in connection with the digitisation of personnel files and shortening the duration for keeping employee documentation

On 14 September 2018, a draft regulation was published of the Minister of Family, Labour and Social Policy regarding employee documentation. It describes the rules on how to comply with the law that comes into force on 1 January 2019 on shortening the duration of storage of employee files and their digitisation. The new regulation will replace the hitherto of 28 May 1996, of the Minister of Labour and Social Policy, on the range of employment-related documentation to be held by employers and on how employees' personal files should be kept.

The draft regulation changes, among others, the organisation of personnel files (in place of the existing parts A-C, an A-D division will be introduced) and expands the scope of documentation that should be included in personal files.

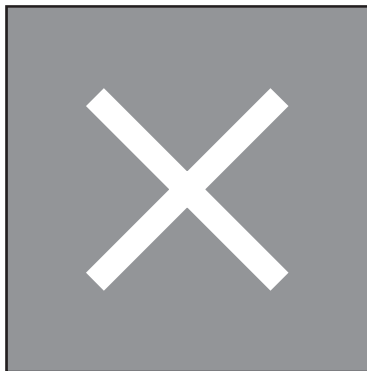
In addition, the draft provides that the employer is to keep separate documentation for each employee on matters related to the employment, including:

- working time records,
- the employee's requests for specific working time arrangements to be adopted, as well as requests for leave from work to deal with personal matters,
- documents related to adoption of a task-oriented time system, as well as related to overtime work,



- consent of employees caring for a child under 4 and pregnant employees for working time solutions to be adopted for them, if the regulations require their consent,
- chart (list) of remuneration paid and other work-related benefits,
- registration card showing allocation of work clothing and footwear and personal protection equipment, as well as payment of cash equivalent in the event of using own clothing and footwear,
- documentation on the granting of other employee rights or obligations, if its storage is necessary for pursuing employment-related claims.

According to the draft, the changes will take effect from 1 January 2019. Employers will have 6 months to adjust how they run and keep existing documentation. However, this obligation will apply only to the documentation of employees that remain employed on 1 January 2019.



Act on Employee Capital Plans passed by the Sejm

On 4 October 2018, the Sejm passed the Employee Capital Plans Act (PPK). Their goal is to encourage systematic saving, mainly for the objective of providing funds for withdrawal after employees reach 60. The Act that was passed is not very different from the draft that was put to the Sejm.

Pursuant to the passed Act, employing entities will be obliged to conclude agreements with designated financial institutions for managing the PPKs and for paying contributions to those institutions. Funds accumulated in the PPKs (for a fee specified in the Act) will be invested in investment funds.

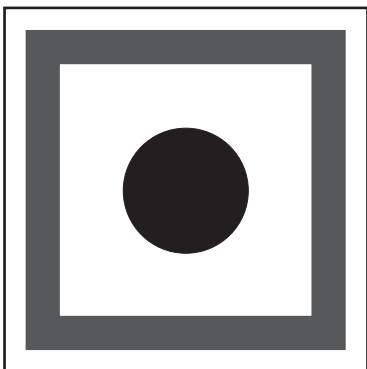
Payments towards PPKs will be financed by the employing entity (at least 1.5% of remuneration) and the employee (2% - 4% of remuneration; a reduction to 0.5% of remuneration will be possible for people on lowest incomes). If additional conditions are met, one may expect a welcome bonus as well as annual premiums from public funds.

An employee will have the option of discontinuing payments to a PPK. The notice of discontinuation should be renewed every four years, otherwise the employing entity should make the payments to the PPK.

Funds that accumulate in a PPK are to be inheritable.

In its current wording, the Act provides that from 1 January 2019, the new obligations will apply to entities with at least 250 employees. Subsequently, new obligations will gradually extend to entities with 50 people (from January 2020), to those with 20 people (from July 2020) and to all employers from the beginning of 2021.

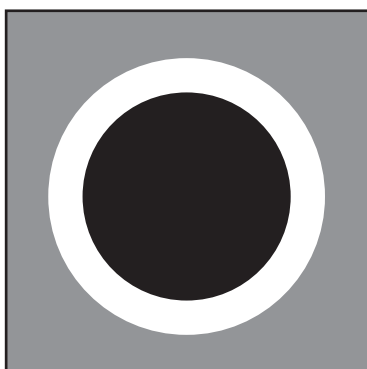
III From the court room



The Constitutional Court's ruling of 2 October 2018

After hearing the request of the President of the Polish Confederation of Lewiatan regarding compliance with the Constitution of Article 77² § 4 second sentence of the Labour Code and Article 30 par. 5 of the Trade Unions Act to the extent that it makes it impossible for employers to independently decide the remuneration and awards and bonuses rules, if trade unions or representative organisations, within the meaning of Article 241^{25a} of the Labour Code, present a jointly agreed position by a specified deadline, the Constitutional Court ruled that the questioned provisions do not violate the Constitution's provisions stated in the application.

Therefore, employers will still have difficulty in introducing changes to payroll regulations, if unions present a jointly agreed disavowal of the changes proposed by the employer.



The Constitutional Court will consider the abolition of the limit of the base on which social security contributions are calculated

A further hearing of the Constitutional Court has been appointed for 30 October 2018 (after the cancellation of that in July) for considering the President's application for an examination of the constitutionality of the amendment to the Social Insurance System Act and Certain Other Acts (Sejm publication No. 1974) adopted by the Sejm on 15 December 2017, providing for the abolition of the limit above which the best earners do not have to pay any contributions towards pension and disability insurance.

If the Constitutional Court finds that the act is consistent with the Constitution, the President will be obliged to sign it, and the new regulations will come into force as soon as 1 January 2019. This will cause all employees who earn over 30 times the forecast average national wage in a given year (PLN 133,290 in 2018) to be charged, next year, with pension insurance contributions on their total income, which will reduce their net earnings.

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