



Labour Law Alert

Edition: November 2019



Agnieszka Fedor

Partner

Tel. +48 22 608 71 50

Fax +48 22 608 70 70

E-mail: agnieszka.fedor@skslegal.pl



Dr. Agata Miętek

Senior Associate

Tel. +48 22 608 73 98

Fax +48 22 608 70 70

E-mail: agata.mietek@skslegal.pl

Amendment to the Code of Civil Procedure

Recently, the most discussed amendment is that introduced in the Act of 4 July 2019 on amending the Act – Code of Civil Procedure and selected other acts. The amendments introduced via this Act will also affect the labor and social security law. The Act will take effect on 7 November 2019, however, some of the modifications already became effective on 21 August 2019 while the remaining ones will take effect, respectively, as of 7 February 2020 and as of 7 August 2020. What are the highlights of this extensive amendment? Below we present the selected modifications which will take effect as of 7 November 2019..

Pre-trial proceedings

The legislator has decided to introduce pre-trial proceedings in the civil procedure. Subsequently, initial examination of a case and investigation activities were removed. The purpose of pre-trial proceedings is to resolve a dispute without holding further sessions, and specifically without the hearing. If it turns impossible to resolve a dispute at this stage, a plan of the hearing is to be prepared.

With regard to labor and social security law matters, the legislator demonstrated a more lenient approach to formal shortcomings and provided that a party which files the plea opening the proceedings is only summoned to remedy the shortcomings when such shortcomings prevent the conduct of pre-trial proceedings, while the remaining shortcomings may be remedied during the pre-trial session. The pre-trial proceedings are also designated to allow the court to establish the list of evidence to be examined ex officio and to clarify other circumstances significant for the correct and efficient examination of the case.

The amendment is aimed to facilitate conciliatory resolution of a dispute at an early stage (it is to be borne in mind that in social security matters conciliation or submission of a dispute to arbitration are not allowed), and if this is not reached - to organize further course of proceedings.

Obligation to employ a worker until valid completion of proceedings

The court may decide that the employer is obliged to continue employment of a worker until the time of valid conclusion of proceedings not only if termination of employment is considered ineffective but also when a worker has been reinstated in his/her job.

After the amendment has taken effect, it will be possible to reinstate a worker in a job, and impose an obligation on the employer to continue employment of that worker until valid conclusion of the proceedings (irrespective of the applicable termination notice). It is possible that the employer who appeals the decision of a court of first instance will have to employ such worker until the time the final judgment is issued.

The purpose of the amendment is to actually exercise the option of reinstating an employee in a job – such option is currently hardly applied in practical situations.

Advice of the probable outcome of the case

Advice of the probable outcome of the case is a novelty solution. After the amendment has taken effect, the presiding judge will be able to advise the parties during a session of the probable outcome of the case in the light of the statements and evidence submitted until the date of advice.

The rationale behind this regulation reads that the amendment is aimed to “enhance the communication between the court and the parties, and specifically to bring down the barriers which were traditionally justified by the court’s status of a public authority”.

More news...

Another novelty is that it will be an obligation to submit a statement of defense.

Currently, it is the right of a party to submit a statement of defense. Following the modifications, failure to comply with this obligation will entail, in particular, the possible issuance of a default judgment by the court.

Under the amendment, a witness may give testimony in writing, it will also be possible to

refrain from reading the judgment when no one appeared to hear it (including the audience).

There are modifications to the principles of recording the activities of the court. The present legislation allows a party to fix the conduct of a hearing by means of an audio recording equipment. The amended regulations are more specific by making it possible to also fix other court activities. The requirement of the court's approval for the recording has been abolished and the obligation to notify the court of the intention to make an audio recording has been introduced instead.

Simplified proceedings

The amendment specifies the cases which will not be examined in pre-trial proceedings and also enumerates the labor law cases examined with the participation of jurors. These will be the cases for:

- a) establishing the existence, commencement or termination of an employment relationship, declaration of ineffectiveness of employment relationship termination and reinstatement of the previous terms of work or payment and the jointly pursued claims, and for compensation in the event the notice and termination of an employment relationship were unjustified or in breach of regulations,
- b) violations of the principle of equal treatment in employment and the related claims,
- c) compensation or redress for mobbing;

Cases in the field of social security except for selected ones (e.g. for a sickness benefit, compensatory benefit, care allowance, maternity allowance, death allowance, rehabilitation benefit; accident at work or occupational disease benefits) have also been excluded from examination in pre-trial proceedings. The amended Art. 5051 §3 of the Code of Civil Procedure empowers the court to examine a case to the exclusion of the provisions on pre-trial proceedings if this may contribute to a more efficient resolution of the case.

Amendment to the Act on Public Offer

On 23 October the amendment to the Act on Public Offer was forwarded to the President of the RP for signature. The amendment implements directive SRD II (Shareholders Directive Rights).

The amendment introduces additional duties for public companies with regard to the remuneration of management board and supervisory board members, and in particular:

- to implement a policy for remunerating management board and supervisory board members, and
- to prepare annual reports of remuneration earned by members of these bodies.

The remuneration policy will be approved by the general meeting of the shareholders. The obligatory provisions of the remuneration policy include:

- splitting up the remuneration into fixed and variable components,
- the proportions of the components and the principles for granting bonuses and benefits in cash or in kind,
- the term of the employment agreements, commissioned work agreements, specific task agreements, or other similar agreements, with management board and supervisory board members,
- description of key features of additional pension schemes and early retirement schemes, etc.

Furthermore, the remuneration policy needs to establish the criteria for granting the variable remuneration components and the principles for granting remuneration in the form of financial instruments (if any).

Remuneration payable to the management board and supervisory board members shall be in conformity with the remuneration policy. Companies will be obliged to publish the remuneration policy, the resolution regarding the remuneration policy and the remuneration reports, on its web page.