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Summary of amended Labor Law in 2019

The past year was abundant in labor law novelties. The amendments to the Code of Civil Procedure, the Act on Trade Unions and the Labor Code have already come into force. To welcome the New Year, we would like to present a short summary of the most important changes that employers and employees had to face in 2019.

1. New rules of maintaining personnel records

The year 2019 brought many changes in the rules of keeping personnel records. Personal files have been divided into four sections. Following the amendment section D was added to the personnel files to include documents related to employee liability for breach of order and discipline or liability specified in separate provisions. In addition, the option of keeping personnel records in electronic form was introduced and the period of the employer's obligation to keep personnel files after employment termination has been reduced from 50 to 10 years.

2. Amendments entailed by the GDPR

The scope of information that the employer may process at the recruitment stage and during the employment relationship has changed. Amendment prevents the employer from requesting a job candidate to provide data such as the parents' first names and residence address. The new restrictions also included provisions regulating video surveillance of sanitary rooms. Following the changes, introducing video surveillance requires a prior consent of the company trade union organization, and if there is none - a prior consent of the representatives.

A provision explicitly excluding the possibility of video surveillance of premises made available to the company trade union organization was also added to the Labor Code.

3. Mobbing and discrimination

The employee's rights to claim damages on account of mobbing have been modified. Following the amendment early termination of the employment contract is not a prerequisite for seeking damages and employees continuing in employment relationship are also entitled to claim damages. The provisions on discrimination and unequal treatment were also amended - in the new legal framework any unequal treatment of employees will be qualified as manifest discrimination.

4. Amendments to issuance of work certificates

Following the amendment introduced to the Labor Code in September, the deadline for issuing a work certificate by employer was changed. Currently, the employer is obliged to issue a work certificate on the day of termination or expiration of the employment relationship. Failure to comply with the deadline is subject to a fine. Furthermore, the period when the employee may apply to the employer for rectification of the employment certificate has been extended from 7 to 14 days, and if the employer fails to consider the application, the employee may directly request the labor court to rectify it.



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5. Employee testing with breathalyzer

Polish Personal Data Protection Office (UODO) in a communique of 27 June 2019 indicated that the employer is not entitled to perform random sobriety tests of his employees. According to UODO, information on one's intoxication constitutes data concerning health, so sobriety testing could only be performed on the employees' initiative and with their consent. An employee may be denied access to workplace without a test, only if reasonably suspected of being intoxicated. In such cases, the employer should call the appropriate public services to perform test and confirm the employee's intoxication.

6. Expansion of the right to unionize

As of 1 January 2019, the right to join and establish trade unions was granted to persons employed under a mandate contract, managerial contracts, and even self-employed. As a consequence of the amendments, persons employed on a basis other than employment relationship may enjoy additional employment protection and be the so-called particularly protected trade union activists.

7. Obligation to continue employment until the final termination of the proceedings

This year's amendments to the CCP have also affected the principles of conducting labor disputes. Following the amendment, the court of first instance may require the employer to continue employment of the dismissed employee until the final termination of the proceedings (irrespective of the period of notice). In practice, this means that an employee who appeals against a notice of termination and demands reinstatement to work will be able to return to the company on the basis of a non-final judgment of the court of first instance.

8. Protection of persons exercising parental rights

The group of persons entitled to maternity and parental leave has expanded. As of 2019, immediate family members, in special situations, such as the death of a mother, abandonment of a child or a decision on the mother's inability to live independently, will have a right to take such leaves. As a consequence, the above-mentioned persons during the period of maternity and parental leave will be subject to additional employment protection on the same terms as female employees taking care of newborn children.

9. Direct debit of remuneration

As of 1 January 2019, new rules apply to salary payment. The amendments envisage that remuneration should be basically paid to the employee's bank account. Employees wishing to receive their salary in cash must submit a pertinent request.

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