

On 1 June 2017, the Act amending the act on the employment of temporary workers and certain other acts (the “**Amendment**”) enters into force introducing important changes and limitations concerning temporary work. Its aim is to ensure the better operation of the temporary work market and to counteract abusive practices. The Amendment concerns all employers using temporary workers. Below are the most important changes.

#### ONLY 18 MONTHS OF TEMPORARY WORK FOR ONE CLIENT

An employer user will be allowed to benefit from the work of the same temporary worker for a period not exceeding in aggregate 18 months over a period of 36 subsequent months.

Employment of temporary worker in force on the effective date of the Amendment, is counted from that date towards the aggregate period of duration of the temporary work employment contract and the aggregate period of benefiting from work by the employer user. The periods covering the subsequent 36 months start to run on the date the Amendment enters into force.

**SK&S’ COMMENTS:** The employer user will not be allowed to benefit from the work of the same temporary worker in excess of limits set above, regardless of the temporary worker being directed to the employer by one or multiple work agencies. This rule aims to counteract current market practices of directing the same worker to the same client for subsequent 18-month periods by using multiple agencies. Circumvention of the limits imposed by the Amendment by means of entering into a personnel outsourcing agreement, will now entail material risks. Exceeding the limits may in particular result in the establishment of an employment relationship directly between the employer user and the temporary worker. The interim provisions of the Amendment concerning the rules of counting the limits of the temporary work are unclear and raise doubts.

#### TEMPORARY WORKERS RECORD

Each employer user will be required to keep a record of individuals performing temporary work either in writing or in the electronic form (separately for each individual) including the date of the start and termination of work throughout the period of 36 months. The record should be stored also for the subsequent 36 months.

**SK&S’ COMMENTS:** The record should enable enforcement of the time limits for use of temporary workers as well as facilitate any audits carried out by Labor Inspectors. In practice, maintaining the records will require coordination between the employer user and the agency. It will not be sufficient that, for example, the agency keeps the aforementioned data instead of the employer user.

## REMUNERATION AND BONUS REGULATIONS AVAILABLE FOR AGENCY'S REVIEW

The employer user will be under the obligation to make available to the work agency not only the information on remuneration for work assigned to the temporary workers, but also information on the internal remuneration regulations in force. The employer will also have the duty to inform the agency of any changes to the said regulations. In addition, upon request, it will need to provide the text of the regulations together with all amendments to the agency for review.

**SK&S' COMMENTS:** The goal of extending the scope of the information made available to the agency by the employer user is to limit the instances of unequal treatment of temporary workers. At present, the unequal treatment may occur unintentionally, as a result of the agency having incomplete information concerning internal remuneration policies of the employer user. This amendment may also potentially increase the risk of claims of temporary workers for payment of past benefits not previously known to the agency (which will now be easier to track).

## EMPLOYMENT OF PREGNANT WOMEN

The Amendment introduces the guarantee of employment until delivery date for temporary workers who have been directed by a given temporary work agency to perform temporary work for at least a 2-month aggregate period. In such a case, an employment contract which would have been terminated after the lapse of the third month of pregnancy is to be prolonged until the delivery date.

**SK&S' COMMENTS:** The amendment makes the situation of pregnant temporary workers and regular employees employed based on definite-term employment contracts equal.

## PENALTIES

The Amendment provides for the misdemeanor liability of the employer user or the person acting on the employer user's behalf. A fine may be imposed ranging from PLN 1000 up to PLN 30,000 *inter alia* for:

- entrusting to the temporary worker particularly dangerous work;
- entrusting to the temporary worker work of the same type as the work previously performed by a regular employee of the employer user with whom an employment contract was terminated for reasons not concerning the employee over a period of 3 months preceding the predicted date of commencing temporary work;
- benefiting from the work of the same temporary worker for a period exceeding in aggregate 18 months over a period of 36 subsequent months; or
- not keeping the working time record for temporary workers in the scope and on the terms applicable towards the regular employees.

**SK&S' COMMENTS:** The misdemeanor liability of the employer user's representatives has been broadened to cover the infringement of the requirements introduced by the Amendment. The amount of the fine is now at the same level as in the case of misdemeanors against employees' rights pursuant to the Labour Code.

## RECOMENDED ACTIONS

In light of the changes introduced by the Amendment, the following actions are particularly recommended for employers benefiting from the work of temporary workers: (i) audit contracts with temporary work agencies to check if any amendments are required given the new provisions; (ii) review the terms of remuneration of temporary workers and regular employees to provide full information to the agency as well as assess risk of potential claims of temporary workers; and (iii) introduce and keep a record of temporary workers.

**Should you have any doubts or questions regarding the above, please do not hesitate to contact us.**

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