



New list of works prohibited to women – amending work regulations necessary

A new list of works prohibited to women, in force as from 1 May 2017 introduces, among others, an amendment beneficial to the employers concerning pregnant women working with computer screens. The maximum allowed time of such work has been extended to 8 hours a day. Yet, pregnant women are not allowed to work in front of a computer screen for longer than 50 minutes at once, following which time they should take at least a 10-minute paid break. The new regulation calls for employers to promptly revise and update the work regulations in place.

Amendments to the act on the employment of temporary workers

On 1 June 2017, important amendments to the Act on the employment of temporary workers came into force. According to the new regulation, an employer user is allowed to benefit from the work of the same temporary worker for a period not exceeding 18 months in aggregate over a period of 36 subsequent months (regardless of the number of work agencies directing the temporary worker to perform work). Further, the employer user is required to keep a record of individuals performing temporary work. Moreover, the employer user is required 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 new regulations also introduced the guarantee of employment until delivery date for pregnant temporary workers who have been directed by a given temporary work agency to perform temporary work for at least a 2-month aggregate period.

New powers of the Social Security Agency

As of 13 June 2017, amendments to the Act on the Social Security System entered into force. The Social Security Agency (ZUS) has been equipped with broader powers concerning unilateral indication of a social security contributions' remitter as well as reallocation of contributions paid by an entity that has formally been registered as a remitter, but is not one in the opinion of ZUS. The rationale of the new regulation is to enhance protection of social security beneficiaries (such as employees) in cases of social security abuses. The new law, however, is likely to cause interpretational doubts and disputes.

Supreme Court judgment – apparent outsourcing

In its judgment of 8 February 2017 (I PK 72/16), the Supreme Court stated that the transfer of employees themselves,

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without taking over the assets used by them to perform work, cannot be qualified as a transfer of an employing undertaking as understood by Art. 231 of the Polish Labor Code. As a consequence, the former employer is required to continue paying social security contributions from the remuneration of these employees. The case concerned a clothing firm which sewed clothing using machines that remained in the ownership of the former employer. In such case, assets (machines, equipment, premises, etc.) are decisive when determining the identity of the economic entity, not the transfer of employees themselves (the tasks i.e. sewing clothing were not transferred). It was determined in this case that the entity which acquired employees did not take over any assets necessary to perform the work. The Supreme Court stressed that transferring employees themselves, without taking over the tasks and assets, should be assessed as “apparent outsourcing”.

Supreme Court judgment – failure to achieve results due to external circumstances

In its ruling of 4 April 2017 (III PK 93/16), the Supreme Court ruled that if an employer states in the termination notice (of an open-ended employment contract) reasons pertaining to an employee’s failure to achieve the expected results, they must be evaluated in the context of the manner in which the employee performed his/her tasks. The case concerned a regional sales manager. The reasons justifying the notice were his failure to achieve the expected results in selling products and his lack of commitment to attract new customers. The Supreme Court indicated that employees cannot be punished if an employer's economic activity fails to achieve certain results, as long as they performed their duties properly.



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