



# Employment Law Newsletter

Q4 2016

## Significant changes in labour law

The Act of 16 December 2016 amending certain acts to improve the legal environment for entrepreneurs (awaiting President's signature) provides, inter alia, for an alleviation of the current labour law requirements for small and medium size enterprises. In particular, it increases to 50 the headcount threshold obligating the employers to introduce remuneration regulations (*regulamin wynagradzania*), employment regulations (*regulamin pracy*) and establish a Social Fund (*Zakładowy Fundusz Świadczeń Socjalnych*). These obligations may still apply to employers who employ at least 20 employees if a request is made by a trade union. Another notable amendment is that the Act extends the time limit for employees to lodge an appeal against a notice of termination of employment or termination of employment without notice to 21 days. The Act shall enter into force on 1 January 2017.

## Resolution of the Supreme Court – discrimination claims

In the resolution made by a panel of 7 judges of the Supreme Court on 28 September 2016 (III PZP 3/16), the Supreme Court concluded that bringing a claim against an employer for the unlawful termination of an employment contract is not a prerequisite to obtaining an award of damages on the grounds of discriminatory reasons for dismissal or discriminatory reasons for selecting an employee to be dismissed. This decision changes the risk for employers associated with serving a notice of employment termination and terminating employment contracts as it paves the way for the employees to make claims long after their employment has been terminated. The case law of the Supreme Court was not uniform on this matter. In practice, the recent resolution means that an employee will have as long as three years to initiate a damages action based on the discrimination.

## Supreme Court judgment - obligation to obey employer instructions

In its judgment of 20 January 2016 (II PK 311/14), the Supreme Court ruled that an employee's refusal to obey an employer's instructions constitutes a violation of the discipline at work. As such, it threatens the employer's intangible interests and may justify the immediate termination of an employment contract. In this case, the employee (employed in a task-based working time system) refused to participate in a business meeting to which she had been summoned several times by her supervisor. Consequently, the employer terminated the employee's employment contract without notice on the basis of a serious breach of her basic employment duties. The Supreme Court stressed that an employer's interests cannot be reduced to financial loss and material interest. Rather, they must also include intangible elements, such as discipline at work. Discipline at work refers particularly to an employee's obligation to obey an employer's instructions. This obligation applies to each employee, irrespective of whether they are employed using a standard or alternative working time system (eg, a task-based working time system) in which the employee has more autonomy to determine the time and place for performing his or her duties. An employee's obligation to obey an employer's instructions constitutes the essence of the employment

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relationship. Failure to follow instructions, in itself, infringes an employer's interests as it violates the employer's basic rights to organize and supervise the working process.

### New regulations on minimum wage

Provisions of the Act of 22 July 2016 amending the law on the minimum wage and some other acts, will enter into force on 1 January 2017. The Act introduces minimum hourly rates for persons rendering work/services to entrepreneurs under mandate or services agreements (in 2017 in the amount of PLN 13). Currently companies may renegotiate mandate or services agreements. Such a possibility exists, if the minimum hourly rate will affect the costs of work/services under mandate or services agreements concluded before 1 September 2016. Until 31 December 2016, each party may submit a written request for negotiations concerning the wage adjustment. Failure to reach an agreement within 30 days entitles each party to terminate the contract with the notice period specified in the contract or with a 2-month period of notice. As of 1 January 2017, the powers of the State Labour Inspectorate will be extended accordingly. The Act also introduces new obligations related to recording and documenting the number of hours of rendering work/services under mandate or services agreements.



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