



## *SK&S – Employment Law Newsletter*

### **New law on foreigners**

On 30 December 2013 the Act of 12 December 2013 on Foreigners was promulgated to supersede as from 1 May 2014 the existing one of 2003. The introduction of the new law was deemed necessary in order to simplify procedures regarding foreigners' stay in Poland and to adjust the applicable law to the EU regulations. The changes also involve issues related to work rendered by foreigners in Poland, where among other things, a possibility was introduced for foreigners to apply for a joint temporary residence and work permit (in principle two separate proceedings were required to date). Nevertheless, an employer will still be able to separately apply for a work permit for a foreigner using the existing procedure, which, however, has also been modified by the new law.

### **New "anti-crisis act"**

On 21 November 2013 the Act of 11 October 2013 on Special Solutions for Job Protection came into force (plans of enactment thereof were mentioned by us already in the May issue of Employment Law Newsletter 2013). The Act provides for a possibility for employers who are facing a certain drop in sales of goods and/or services to introduce special solutions with regard to all or some employees. The solutions include: (i) work stoppage for economic reasons and (ii) reduction of the working time. Those possibilities may be introduced through relevant regulations in collective bargaining agreements or agreements with trade unions or employee representatives without need to formally alter work and pay conditions of each employee individually.

The Act provides for a possibility of applying for public financing of a part of remunerations of employees to whom the aforesaid solutions pertain, and also social security contributions due from employers on such parts of remunerations. The period of financing in reference to each of the employees may not be longer than 6 months.

This information was prepared to advise the Firm's Clients of selected important changes in Polish law and does not represent a legal advice on a specific situation of any Client and should not be treated by Clients as such. Should you have any questions concerning the legal matters outlined above as they may apply to your business in Poland, please contact Mr. Roch Pałubicki (roch.palubicki@skslegal.pl) or the partner in charge of your account.



## **Amendments to Labour Code have been adopted by the Polish Parliament –work on Sundays and holidays**

On 12 December 2013 the Polish Parliament adopted a new law allowing work on Sundays and holidays when performing some other types of work. The act has been presented to the Senate and might still be subject to modifications or rejection. According to the act, work on Sundays and holidays is to be allowed in case of work involving provision of services with the use of electronic means of communication or telecommunications equipment, received outside of Poland if a given Sunday or holiday is a business day for the service recipient, in accordance with the provisions of the law applicable to the recipient.

The new regulation is conducive to developing services centers in Poland. Unfortunately, it is quite imprecise, which may entail practical difficulties in application thereof. In particular, it is unclear exactly which types of work within the framework of provision of services to foreign entities are supposed to be subject to the new regulation.

## **Supreme Court judgment – “per diems” paid to an employee seconded abroad are subject to social security contributions**

In a judgment of 14 November 2013 (II UK 204/13) the Supreme Court was of the opinion that the employee of a Polish construction company, seconded a few times for longer periods to render work abroad was not on a business trip. Consequently, “per diems” paid to him are not subject to special provisions providing that employee’s business trip-related per diems are not subject to social security contributions. The Supreme Court also pointed at the differences between temporary secondment of an employee to render work abroad – which entails temporary change (agreed with the employee) of their place for rendering work provided for in their employment contract, and a business trip, on which an employee is incidentally sent, upon the employer’s request, without a need to change the place of rendering work indicated in the employment contract.

The Supreme Court, however, emphasized that if in a given case an administrative decision is issued by the Social Security Office that the employee is subject to the Polish social security system when working abroad (currently it is issued on A1 form) courts are bound by it and they may not deem the employee to have gone on a business trip.



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