SK&S – Employment Law Newsletter

Planned amendments to the Temporary Employment Act

The Solidarity Trade Union (NSZZ "Solidarność") has proposed changes in the Temporary Employment Act. The Union proposes the introduction of a ban on making use of work of the same temporary employee for a period longer than 18 months within a consecutive 36-month period (the current regulation provides that a single agency may not delegate an employee to a given place for the period longer than mentioned above). This change is aimed at eliminating the current practice of posting the same temporary employee at one workplace for many years via different agencies. Violation of the ban would result in the temporary work agreement being considered as an open-ended employment contract between the user-undertaking (*i.e.* the client of the temporary work agency) and the temporary employee. The employment of a temporary employee would also be seen as being an open-ended employment contract in the situation when temporary work were entrusted where it is not admissible. The Cabinet is preparing a draft amendment which will also take into account the comments of other social partners, including the employers.

Supreme Court ruling – social security contributions on management fees

In a verdict of 12 November 2014 (I UK 126/14), the Supreme Court ruled on whether the remuneration of a management board member registered as an individual entrepreneur should be treated for social security purposes as income under a consultancy agreement, or be subject to more attractive social security regime enjoyed by entrepreneurs. In the case, the business activity involved only managing the pertinent company. The Supreme Court held that the manager's membership on the management board made it impossible for him to be treated as an independent entity in a contractual relationship with the company. From the perspective of social security contributions, he should therefore be treated not as an entrepreneur but as a consultant (zleceniobiorca). This means, among other things, that: (i) the company is a remitter (withholding agent) of social security contributions on his remuneration; and (ii) the social security contributions are considerably higher. The ruling acknowledges the long-term and highly-controversial practice of the Social Security Agency which had so far been criticized by the Supreme Court.

New rulings – damages for entrusting inappropriate duties to employees

In a ruling of 18 September 2014 (III PK 138/13), the Supreme Court as to the principle allowed an employee to claim damages for moral injury reasoning that such claim for damages is permitted if the employer entrusts an employee with work other than that defined in the employment contract and which does not match the employee's qualifications. In turn, the Appellate Court in Białystok in its judgment of 30 September 2014 (III APa 11/14) confirmed such damages as being justly awarded. The latter court was of the opinion that requiring a Deputy Head of Department to work as a Junior Assistant, below her qualifications, was inadmissible and inflicted moral injury.

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