



SK&S – Employment Law Newsletter

Further types of work allowed on Sundays and holidays

On 4 March 2014, an amendment to the Labour Code came into force broadening the scope of the classifications of work allowed on Sundays and holidays (related legislative works were already mentioned in the Employment Law Newsletter for January 2014). The extended scope covers: (1) the 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; and (2) any works subsidiary the works referred to above.

The contents of the new regulations however cast some doubts. In particular, it is difficult to claim with any degree of certainty whether the use of electronic means of communication or telecommunications equipment has to be the core of an employee's obligations to allow work on Sundays or holidays (as e.g. in the case of call centre employees) or if it is enough that it is only a part of an employee's obligations (as e.g. in the case of entities that provide financial or advisory services).

Supreme Court judgment – termination not until revocation from the Management Board

Two interesting issues were discussed in a Supreme Court judgment of 12 December 2013 (I PK 88/13), where the relationship between the defendant company and its Management Board member under a management agreement were deemed to be of an employment nature, and the termination of that agreement by the company was found groundless. When determining the existence of the employment relationship between the parties, the Supreme Court highlighted as important the claimant's subordination stemming from the fact of the claimant being bound by the orders and/or instructions of shareholders. The Supreme Court emphasized that it is of no significance whether such power of the shareholders has been in fact exercised, since the very fact that the employer enjoys such power is enough to confirm the subordinate relationship.

In addition, the Supreme Court stated that the termination as a result of revocation from the Management Board of a limited liability company is not admissible until the shareholders (the authorized body) have actually adopted a resolution on revocation.

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.



Supreme Court judgment – non-compete in a civil law contract

In a judgment of 5 December 2013 (V CSK 30/13), the Supreme Court held that the freedom of contract is not violated by providing for a gratuitous non-compete obligation for the period following termination of the services contract (between entrepreneurs). This runs contrary to an earlier ruling dated 11 September 2003 (III CKN 579/01) where the Supreme Court found that a gratuitous non-compete obligation for the period of 3 years was contrary to the rules of so-called ‘social cohabitation’. A similar position was taken in a recent ruling of the Court of Appeal in Gdańsk (I ACa 174/13).

The Supreme Court in the ruling of December 2013 has liberalized its approach to the issues concerning compensation relating to the party refraining from competitive activity in civil law relationships (in labour relationships, this must be paid for). One should be careful in its implementation in practice as when it comes to a dispute, the courts will assess each case individually. The background related to the conclusion of the contract, nature and length of the parties’ cooperation, market on which they are operating as well as other factors could be taken into consideration.

Supreme Court judgment – employer’s freedom to decide on reorganization

In a judgment of 4 December 2013 (II PK 67/13), the Supreme Court analysed the situation where a manager was served a notice of alteration of terms and conditions of employment by a company due to the liquidation of his position as a result of reallocating the tasks to other employees. The Supreme Court shares the prevailing view in legal literature and case law pursuant to which the employer has the right to make a decision that a given employee’s duties are to be performed by other employees or even outsourced. It is not for the court to assess the purposefulness of such a choice as it is a manifestation of the freedom of business activity.

Plan of Operations of the State Labour Inspectorate for 2014

The State Labour Inspectorate has published its Plan of Operations for 2014 (*Program działania PIP na 2014 r.*) on its website. Annual tasks include but are not limited to: enforcement of adherence to regulations regarding temporary employees, drivers’ working time and limitation of hazards related to the use of forklifts. Overall, the planned number of inspections is to be the same as the number of inspections scheduled for 2013.



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