SOŁTYSIŃSKI KAWECKI SZLĘZAK

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SK&S – Employment Law Newsletter

Supreme Court ruling – the non-competition clause does not transfer onto a new employer

In a judgment of 11 February 2015 (I PK 123/14), the Supreme Court ruled that in the event of a transfer of the undertaking under Art. 23^1 of the Labour Code, the new employer (transferee) is not bound by a post-employment non-competition clause agreed between a transferred employee and his/her previous employer (transferor). The obligations arising from the non-competition clause are not transferred to the new employer, irrespective of whether it was a part of an employment agreement or a separate non-competition agreement. The clause, as a principle, should be treated separately from an employment agreement. The Supreme Court overturned the rulings of the lower courts which were of the opinion that the non-competition agreement was a part of an employment relationship. The Supreme Court's ruling differs from the currently prevailing views of doctrine and case law and is thus a precedent-setting decision.

Judgment of the Court of Justice of the EU – Polish employees of Elektrobudowa represented by Finnish trade union

In a judgment of 12 February 2015 (C-396/13), the Court of Justice of the EU took a stand on questions of a Finnish court regarding Polish employees posted to Finland to work at the construction of a power plant. The employees transferred their receivables for payment of remuneration for work to a Finnish trade union (which under the provisions of Polish law is inadmissible). The union demanded on their behalf that the Polish employer pay the minimum rates of pay in the amount due and payable to Finnish employees. The CJEU confirmed the admissibility of the transfer of receivables to a trade union. Moreover, in the CJEU's opinion, not only are the statutory regulations of a host country in force regarding minimum pay, but also the provisions of collective bargaining agreements in a given industry. The CJEU also specified which elements of the remuneration should or should not be included in the minimum pay. The Court held that the minimum pay included a fixed allowance paid to the Polish posted employees.

Please do not hesitate to contact us for further information on this topic.

Roch Pałubicki
Partner, attorney-at-law
+48 61 856 04 14
roch.palubicki@skslegal.pl

Karolina Nowotna
Attorney-at-law
+48 61 856 04 20
karolina.nowotna@skslegal.pl

Amendment to Labour Code concerning pre-employment health screening

On 1 April 2015, an amendment to the Labour Code will come into force aimed at facilitating pre-employment health screening. In accordance with the new regulations, if within 30 days following the completion of the previous employment relationship the employee is admitted to work at the new employer, the employee will not be subject to pre-employment medical examinations as long as he/she presents a current medical certificate of fitness to work in the conditions described in a medical referral, and the new employer deems that the said conditions match the conditions at the new workplace. This principle will also pertain to employees who at the moment of admission to work are still employed by another employer. The foregoing will not apply to employees admitted to render works which are particularly dangerous.

Supreme Court judgment – request to be reinstated to work if a job position is eliminated

In a judgment of 29 October 2014 (I PK 65/14), the Supreme Court analysed a claim of the employee who did not agree to new terms and conditions of work set out in a notice of alteration of terms and conditions of employment and appealed to court demanding the reinstatement to work based on the previous conditions. The reason for serving the alteration notice was the reduction of the scope of the claimant's duties due to a transfer of a part of his obligations to another employee in the course of the employer's restructuring process, which triggered the necessity to eliminate the claimant's job position. The Supreme Court was of the opinion that in order to make a decision on reinstatement to work, the Court needs to determine whether the reconstruction of the claimant's job position is possible and appropriate from an organizational and financial perspective, and in particular – whether it would not thwart the effects of the restructuring process implemented by the employer. If so, the Court should adjudge damages to the claimant rather than his reinstatement to work. The Supreme Court at the same time confirmed the well-established case law approach pursuant to which courts may not assess reasons that made the employer reorganize the employment establishment, nor the rationale of such reorganization.

Parliamentary question – decisions of the Social Security Office as regards contributions on benefits from the Social Benefits Fund

The Minister of Labour and Social Policy was addressed with a parliamentary question regarding the summary of the Social Security Office's practices that involve

decisions on whether benefits from a Company Social Benefits Fund granted by employers inspected by the Social Security Office are subject to social security contributions. In reply the Minister stated that in the years 2010-2012, appeals against almost 23,000 out of almost 30,000 decisions of the Social Security Office concerning the declaration of benefits from the Fund subject to contributions had been filed. Moreover, according to the Social Security Office, the court judgments rendered in the foregoing period confirmed the correctness of 88% of Social Security Office decisions. Meanwhile, in 2014 alone, the percentage was 62%, and the number of the Office's decisions in this respect amounted to 24,000.

During inspections the Social Security Office in particular verifies in detail whether disposal of funds from the Company Social Benefits Fund was based on the social criterion (especially according to the test: the worse the eligible person's standing the higher the benefit). The Social Security Office puts particular emphasis on benefits granted to employees on the occasion of holidays (inter alia: Easter, Christmas or Children's Day) in the form of gifts for children, vouchers or in other forms.

Draft amendment – facilitating inspections of the State Labour Inspectorate

The Parliament has received a parliamentary draft amendment to the Act on Freedom of Business Activity. The draft provides inter alia for the abolition of the State Labour Inspectorate's obligation to let employers know in advance about a planned inspection, as well as the abolition of the obligation of an inspector to present authorization to perform an inspection.