SK&S – Employment Law Newsletter

Amendment to the law – new labour market instruments

The Act of 14 March 2014 amending the Act on the Promotion of Employment and Labour Market Institutions will soon be announced. A substantial part of the Act will enter into force after the lapse of 14 days following the date of the announcement.

The amendment provides for a range of new incentives aimed at encouraging employers to recruit employees from amongst the unemployed. They include the refund of social security contributions and the co-financing of an employee's remuneration. Particular incentives pertain to employment of the unemployed who are under 30 and above 50 years of age, as directed by the labour office. Moreover, employers hiring the unemployed who return to the labour market after parental leave may apply for grants for the creation of a job to be rendered as telework, or for employment support benefits.

Supreme Court Judgment – a broad interpretation of the non-compete clause

In the judgment of 8 January 2014 (I PK 146/13) and in the earlier judgment rendered in the same matter on 22 November 2012 (I PK 159/12), the Supreme Court has presented a broad interpretation of the non-compete clause after the termination of employment. The Supreme Court has held that the non-compete clause binding on an employee does not have to refer only to employment at an employer's direct competitors. In the Supreme Court's opinion, the possibility of applying managerial know-how gained during employment at the former employer at a new workplace will alone suffice to infringe a non-compete clause. In the case in dispute, the former and the new employers were trading partners and according to the Supreme Court, the employee had the opportunity to use in commercial negotiations between the two entities the sensitive information obtained whilst employed at his former employer.

Supreme Court Judgment – fixed-term agreements

In the judgment of 29 January 2014 (II PK 123/13), the Supreme Court analysed the provisions of the repealed Anti-Crisis Act of 2009 which limited the total duration of fixed-term employment agreements to 24 months. Under the provisions of that Act, it was unclear what the sanction for violation of the said time limit was. At present, the Supreme Court explained that as a result of such infringement, from the date of execution of a fixed-term employment agreement during which the 24 month limit was exceeded, the parties were bound by an open-ended agreement.

Although the 2009 Anti-Crisis Act is no longer in force, consequences of violating its provisions may be applicable today proving the importance of the aforementioned judgment.

Judgment of the Court of Justice of the European Union – non-discrimination of fixed-term workers

In the judgment of 13 March 2014 (C-38/13), the Court of Justice of the European Union stated that the provisions of the Polish Labour Code regarding periods of termination of fixed-term agreements infringe the prohibition of treating fixed-term workers less favourably than permanent workers (Council Directive 99/70/EC) if the situation of those workers is comparable. The Court held that an employee's situation is comparable if the employee renders work identical or similar in nature to the work of a permanent employee.

An open issue that remains is how the Court's judgment is going to affect Polish courts' practice in similar matters. Polish courts may assume that as long as the provisions of the Labour Code in this respect remain unchanged, the two-week period of termination of fixed-term agreements, as referred to in Art. 33 of the Labour Code, remains in force. One may not rule out, however, a refusal to allow the two-week termination notice due to the inadmissible differentiation in the situation of fixed-term workers. The judgment may be a guideline for courts in other matters concerning fixed-term workers, e.g. in disputes stemming from the lack of the obligation to justify the termination of fixed-term agreements.

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