



## *SK&S – Employment Law Newsletter*

### **An amendment to law – mandatory social security insurance for supervisory board members**

On 23 October 2014, the Polish Parliament adopted an amendment to the Social Security System Act to be signed by the President. As from 1 January 2015, the amendment will introduce a provision stating that paid, acting supervisory board members will be also subject to mandatory old-age and disability social security insurance, regardless of whether they are already subject to the insurance on a different basis. Such supervisory board members will not however, be subject to sickness and accident insurance.

### **Supreme Court judgment – non-performance of an employee’s duties due to irregularities at the place of employment**

In a judgment of 19 March 2014 (I PK 187/13), the Supreme Court examined the termination of an employment agreement based on lost confidence. The case involved a conflict between an employee and her superior as well as clients that were served by the employee. The Supreme Court stated that even if the employee’s intention was to signal and cure some irregularities at the workplace, it did not provide grounds to allow the employee to trigger a conflict and fail to perform her obligations. An employee cannot evaluate the rationality of the employer’s actions and therefore, the employee should refrain from taking steps which impede the work of a team. The Court also stated that it is not for the labour court to judge whether or not the employer operates in a proper manner, but to rule on the conflict which arose.

### **Supreme Court judgment – consequences of an employee’s failure to challenge a termination notice**

In a judgment of 16 July 2014 (II PK 262/13), the Supreme Court ruled upon a situation where the employer terminated an employment agreement before the transfer of its undertaking to another employer within the TUPE framework. The notice period lapsed prior to the date of the transfer. The employee appealed against the termination; however, at a later stage he withdrew his statement of claim and waived his claims in that respect. Then he brought an action to court in order for the court to declare the existence of an employment relationship with the new employer. He argued that the reason for termination was inadmissible during the transfer of the employment undertaking. The Supreme Court held that there were no grounds to declare the

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.



existence of an employment relationship with a new employer, since the employment relationship ceased to exist as a result of a failure to effectively challenge the termination of employment.

### **Supreme Court judgment – forwarding business documents to a private email account**

In a judgment of 11 September 2014 (II PK 49/14), the Supreme Court examined whether an forwarding by an employee of business documents with the data of an employer's clients to the employee's private email account constituted grounds for dismissal without notice. In the Court's opinion, there are no grounds for an employee to act in such manner (it was not necessary for the employee to work at home). Consequently, the Court ruled as irrelevant the employee's argument that the employer accepted the practice of using private email accounts for business purposes. Moreover, the employee's conduct demonstrates that it was a gross, wilful violation of basic duties as it happened just after serving of a notice of termination by the employee who was about to join a competitor. The employee's gross misconduct alone being a threat to the employer's interests is enough to justify termination of the employment agreement without notice.



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