SK&S – Employment Law Newsletter

Labour law program of the Law and Justice party (PiS)

By winning a parliamentary majority in the last general election, PiS may now exercise power independently. Below you can find some of PIS' proposals as regards changes in the scope of labour law:

- civil law contracts to be subject to the same social security contributions regime as employment agreements;
- State Labour Inspectors to be granted power to audit compliance with respect to civil law contracts and the power to independently reclassify such contracts into employment relationships;
- minimum pay to be guaranteed at the level of at least 50% of the average remuneration in the national economy;
- employees to be given the possibility to take parenthood-related leaves on a continuous basis up until a child is 6 years old;
- the possibility to use working time reference periods extended up to 12 months to be excluded; and
- the number of exceptions allowing employees to work on Sundays and bank holidays to be limited.

The Act of 25 November 2015 implementing PIS's proposals is now awaiting the President's signature. The Act introduces new taxation principles applicable to benefits (payable by state controlled companies) that have been deemed excessive.

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

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 resolution – social security contributions on management fees

In the resolution of 17 June 2015 (III UZP 2/15) adopted by the enlarged panel of 7 judges, the Supreme Court stated that if a management board member is a registered individual entrepreneur and within such capacity has concluded a management contract with the company, he/she is subject to social security based on the said agreement and not based on his entrepreneurial (self-employed) status. In practice this means that the company should remit the contributions on the management board member's remuneration, and that the contributions should be calculated based on the actual and not declared amount of income. This resolution confirmed the position taken in a previous Supreme Court judgment of 12 November 2014, and by giving it the power of the legal principle, in practice, the Supreme Court has made it impossible to take a different position in disputes with the Social Security Agency before courts of lower instances and the Supreme Court itself.

New regulations on mandate agreement – related social security contributions as from 1 January 2016

On 1 January 2016, an amendment to the Social Security System Act comes into force. It introduces material changes with regard to social security contributions on civil law contracts: agency, mandate or services agreements. Current regulations allow anyone who has entered into more than one such agreement to choose the earliest one, or another if indicated, as being subject to social insurance. Very often, the agreement with the lowest remuneration is being chosen to allow to remit the lowest contributions possible. As from 1 January 2016, if the calculation basis for contributions under such civil law contract is lower than the statutory minimum salary, one will also have to pay contributions on the other agreements so that the total contribution calculation basis is not lower than the minimum salary.

Supreme Court ruling – mobbing prevention

In its ruling of 21 April 2015 (II PK 149/14), the Supreme Court considered the claim of an employee who demanded damages for moral injury that she incurred as a result of mobbing. The employer demonstrated that following

employee's complaint it carried out conversations with other employees as well as an internal audit, whereby it fulfilled the obligation to counteract mobbing set forth in the Labour Code. The Supreme Court held however that the employer's obligation is not restricted to counteracting the already identified cases of mobbing and should consist also of taking preventative measures. The employer's *post factum* actions, which did not bring any measurable effects, cannot release the employer from the liability imposed in the Labour Code.