

SK&S – Employment Law Newsletter

New regulations on posting of employees entered into force on 18 June 2016

On 18 June 2016, new regulations on posting of employees to and from the territory of the Republic of Poland entered into force, implementing Directive 2014/67/EU into the Polish legal system. The Act comprehensively regulates the key issues related to posting of employees in the framework of the provision of services, inter alia: terms and conditions of their employment, duties of the posting employers well as principles of cooperation between competent bodies of other Member States. The Act also defines the tasks and powers of the State Labour Inspectorate concerning auditing the compliance of posting of employees to and from the territory of the Republic of Poland.

Amendments to the Labour Code – confirmation of terms of employment

On 9 June 2016, the Polish Senate adopted an amendment to the Labour Code which introduces the employer's obligation to confirm the basic arrangements related to the conclusion of the employment contract to the employee in writing (the parties to the contract, and the type and terms of contract) still prior to his/her being allowed to work. The new regulations aim to make it easier for labour inspectors to establish cases of illegal employment. An employer who has failed to provide a written confirmation of the terms and conditions of the employment contract before allowing the employee to work is liable to a fine. The new Act shall enter into force on 1 September 2016 after it has been signed by the President.

Program of facilitations for entrepreneurs

Over 100 proposals for companies – mostly micro, small and medium-size – are included in the first entrepreneurship package presented at a press conference held on 9 June 2016 by Mateusz Morawiecki, Deputy Prime Minister and Minister for Development. One of the most important proposals in the area of labour law is to reduce small firms burdens concerning implementing of formal internal regulations.

Namely it has been proposed to increase the thresholds in which an employer is obligated to establish a Company Social Benefits Fund (Zakładowy Fundusz Świadczeń Socjalnych) from 20 to 50 employees, and to introduce internal remuneration regulations (regulamin wynagradzania) and employment regulations (regulamin pracy). Such duties would still be binding on the employers of between 20 to 50 employees, if requested by a trade union.

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.



Another proposal is to shorten the employee documentation retention period to only 7-10 years, and to allow the employers to keep such documentation in an electronic form. It is also planned to make the inspections carried out by public administration bodies less onerous for entrepreneurs.

In the weeks to come, the Ministry for Development is to submit specific draft amendments to the provisions of law implementing the above-mentioned proposals for consultation.

Ruling of the European Court of Human Rights – email review

In its ruling of 12 January (61496/08), the European Court of Human Rights stated that a superior could review private correspondence that an employee sends during office hours through the Internet terminals installed for business purposes. The case concerned a Romanian citizen who, during office hours, conducted private correspondence using his official account established for him to contact clients, where the employer's regulations expressly prohibited employees from using the employer's terminals for private purposes. After investigating the employee's account, the employee was terminated for having violated company regulations. The employee claimed that the employer had infringed his privacy and secret of correspondence. The Court held, however, that Art. 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms was not breached, because the employee's privacy be subject to some limitations insofar as it is justified by the employer's legitimate interest.

Resolution of the Supreme Court – definition of the payer of social security contributions

In its resolution of 16 June 2016 (III UZP 6/16), the Supreme Court confirmed that the employer – remitter of social security contributions is a specific company forming part of a capital group rather than the entire capital group. The resolution provides employers with grounds for defence against the possible imposition by the Social Security Institution of the obligation to pay contributions on the remuneration of employees employed in several affiliated companies concurrently.

