SK&S – Employment Law Newsletter

Projected changes in fixed-term agreements

In Q4 2014 the cabinet is to adopt a draft amendment to the Labour Code. The changes are to pertain to but not be limited to the principles of the fixed-term employment . It is intended to introduce the maximum duration of fixed-term agreement. The new regulations are also to provide for the employer's right to unilaterally (without the employee's consent) release an employee from the obligation to render work during a termination period (garden leave). Currently such a right of the employer is debatable.

Supreme Court judgment – long-duration fixed-term agreements

In its ruling of 5 June 2014 (I PK 308/13) the Supreme Court discusses the admissibility of conclusion of a 7-year fixed-term agreement. In the opinion of the Supreme Court, the fixed-term agreement, in particular concluded for several years, should be applied exceptionally and only to the reasonable interest of both parties to the employment relationship. The employer may not overuse it to circumvent regulations on the protection of stability and permanence of the permanent employment relationship. The unfounded conclusion of a fixed-term agreement for a long term, which was the case in the matter under dispute, is the circumvention of the law and consequently, the employee should be deemed to be employed under an open ended contract.

Supreme Court judgment – non-compete

In its ruling of 6 February 2014 (I PK 179/13) the Supreme Court has examined a case where the employee (an ambulance driver) allegedly violated a non-compete agreement concluded with the employer rendering emergency medical services. During the employment the employee was also employed under a services agreement with another entity providing services similar to those of the employer however operating elsewhere. The employer's representative knew about the employee's additional job and also confirmed that employees were not prohibited from working for other sanitary transportation providers as long as they did not operate within the employer's area of operations. The Supreme Court states that having considered the aforementioned conduct of the parties, the notion of the "competitor" used in the non-compete agreement

should have been deemed not to have encompassed entities operating outside the employer's area of operations. Consequently, the employee did not violate the non-compete agreement.

Judgment of the Constitutional Tribunal – taxation of gratuitous performances

In its ruling of 8 July 2014 (K 7/13) the Constitutional Tribunal (CT) included some guidelines as to how the notion of "other gratuitous performances" that represent an employee's taxable income under employment relationship in accordance with the provisions of the PIT Law should be comprehended. In CT's opinion, the "other gratuitous performances" may represent an employee's taxable income as long as they were rendered upon consent of the employee and to their interest (and not to the employer's interest), and as long as the employee reaped any profits from it. In addition, such profits should be measurable and attributed to a particular employee (the issue here is not the advantage available generally to all workers).

Supreme Court judgment – a choice of court in a labour law dispute

In its ruling of 13 February 2014 (II PZP 1/13) the Supreme Court states that it is inadmissible for the employer and the employee to make any contractual arrangement as to the choice of a dispute-resolving court other than the courts specified in the Code of Civil Procedure with competence ratione loci for labour law claims.

Supreme Court judgment – specifying dismissal criteria in a termination notice

In its ruling of 10 September 2013 (I PK 61/13) the Supreme Court states that in case of a reduction in workforce affecting only a one of a number of identical job positions the employer should include the criteria used to select the employee for dismissal (unless such criteria are obvious or known to the employee) in a termination notice. The employer may not wait with referring to those criteria till court proceedings in the course of which it is only admissible to specify in greater detail the reason for termination already notified to the employee in the termination notice. The decision is compliant with the prevailing view of the Supreme Court.

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