SOŁTYSIŃSKI KAWECKI SZLĘZAK

September 2015

SK&S – Employment Law Newsletter

Incoming changes in the Labour Code – new rules regarding fixed-term employment contracts

On 22 February 2016 a very important amendment to the Labour Code will enter into force. Its primary purpose is to limit abuses of fixed-term employment contracts. Pursuant to the new regulation, an employer is allowed to conclude no more than three fixed-term contracts with a given employee. The aggregate duration of such contracts between the same parties cannot exceed 33 months. The above limits do not pertain to certain specific instances provided for in the new regulations. Both parties will be allowed to terminate fixed-term contracts with the use of same notice periods as those applying to open-ended contracts. Interim provisions regarding contracts concluded before the amendment comes into force are quite complex. Moreover, the new regulation clearly allows the employer to send an employee on a garden leave during a notice period (which has so far been disputable).

Judgment of Constitutional Tribunal – trade unions not only for employees

In its ruling of 2 June 2015 (K 1/13) the Constitutional Tribunal declared the provisions of the Trade Unions Act, which as a rule grant the right to set up and join trade unions to employees only, to be incompliant with the Constitution. In the Tribunal's opinion, the right to unionize is granted by the Constitution to employees understood as any persons who have paid employment, such as contractors or the self-employed, and not only individuals employed under employment contract. An expanded list of categories of persons authorized to join trade unions and principles on which they may unionize are to be determined in new regulations.

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.

Judgment of Supreme Court – consent for dismissal of a trade union activist may not cast any doubt

The Supreme Court in its judgment of 18 December 2014 (II PK 38/14) deemed the termination of an employment contract with a protected union activist to be illegal. Before the termination notice was served, the employer asked the union for the consent to terminate an employment relationship. In an unsigned reply sent by a union member via email it was stated that that the union did not object to the termination of the employment contract and "refrained from defence". The Supreme Court is of the opinion that the required consent of the trade union had not been validly obtained. Consent for the termination of an employment contract with a protected union member needs to be clear and needs to have a form of a resolution. Should the union's reply cast any doubt, the employer ought to make an attempt to double-check the fact that the consent was given. The very content of the union's resolution does not have to be submitted to the employer, the latter however should have a chance to take measures aimed to determine whether the resolution was adopted properly.

Amendments to Labour Code regarding powers of employees-parents

On 2 January 2016 an amendment to the Labour Code is coming into force which is primarily intended to facilitate combining work and childcare. An additional maternity leave (currently 6 weeks in case of giving birth to one child) will be included in the parental leave (currently 26 weeks), hence the parental leave will take 32 weeks in case of giving birth to one child. An eligible employee will be allowed to use 16 weeks of parental leave by the end of the calendar year in which a child turns 6 (currently the entire parental leave must be used directly after the additional maternity leave only). Fathers will be able to use their paternity leave up until their child turns 2, in one or two parts (for the time being, the leave can be used up until the child turns 1 in one part only).