

The amended provisions regarding an employer's duty to confirm in writing the arrangements concerning terms of employment and to familiarise the employees with work regulations will be applicable from 1 September 2016, introduced by the Act of 13 May 2016 which amends the Labour Code. Their purpose is to enhance the overall protection of workers' rights and to prevent illegal employment.

The amendment is important for all employers. They should ensure that employment agreements have been concluded at the latest before allowing an employee to start work on the date of commencing employment.

EMPLOYMENT AGREEMENT PRIOR TO ALLOWING AN EMPLOYEE TO WORK

The amended provisions require employers to conclude employment agreements in writing, or at least to confirm the arrangements concerning employment (the parties to the agreement, the type of the agreement, and terms of employment) in writing before allowing the employee to start work (Art. 29§2 of the Labour Code); and not as the case was previously – at the latest on the start day. Breach of such obligation may be penalized with a fine from PLN 1,000 to PLN 30,000 (Art. 281 Sec. 2 of the Labour Code).

SK&S COMMENTS: Currently the Labour Code requires that the employer concludes an employment agreement or confirms its terms in writing at least on the day the employee commences work - which may occur even after the end of the employee's first work-day. This often results in employment agreements being concluded after commencement of employment without any severe consequences. From 1 September 2016, based on the aforementioned amended provisions, the employer should not allow the employee to work (nor request it) if an employment agreement has not been executed or if the employment terms have not been confirmed in writing with this employee. The employee may be entitled to refrain from commencing work in such situation.

Breach of that requirement will constitute a misdemeanor of non-confirmation in writing of the concluded employment agreement before allowing employee to work, subject to a fine from PLN 1,000 to PLN 30,000. It can be an effective tool for labour inspectors carrying out compliance audits.

The intended aim of the amendment is to eliminate malpractice on the labour market. However, in reality, it will result in the necessity to adjust procedures also by employers who do not abuse their position.

EMPLOYEE FAMILIARIZATION WITH WORK REGULATIONS PRIOR TO ALLOWING TO WORK

The amended provisions also introduce the requirement to familiarise an employee with work regulations ("regulamin pracy"), and also a juvenile employee with the list of the types of light work juvenile employees can do before allowing him/her to work; and not as the case was previously – before an employee starts his/her work (Art. 104(3)§2 of the Labour Code and Art. 200(1)§5 of the Labour Code).

SK&S COMMENTS: The abovementioned amendment is in principle of linguistic character. It consolidates the legal terminology used in the Labor Code and harmonises the respective provisions on the employer's obligations related to employment (Art. 29 29§2 of the Labor Code, Art. 104(3) Sec. 2 of the Labor Code and Art. 200(1) Sec. 5 of the Labour Code, Art. 229§1 of the Labour Code, Art. 237(3) §2 of the Labour Code), the employer cannot allow an employee to work if these obligations have not been fulfilled.

Should you have any doubts or questions regarding the above, please do not hesitate to contact us.

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