Employment & Benefits - Poland

Maximum duration of temporary work: existing practice and proposed changes

Contributed by **Sołtysiński Kawecki & Szlęzak**

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Introduction

The rules on temporary work in Poland are set forth in the Act on Employment of Temporary Agency Workers, adopted prior to EU Temporary Agency Work Directive (2008/104/EC). Under the Polish act, 'temporary work' is the performance of the following tasks for a 'user-undertaking' (ie, a specified client of a temporary work agency), for a term not longer than that specified in the act:

- seasonal, periodic or casual work;
- work that employees of the user-undertaking would otherwise be unable to perform on time; or
- work that falls within the scope of duties of an employee of the user-undertaking who is absent.

Further, a work agency in Poland may employ temporary workers only on the basis of fixed-term contracts.

Controversial regulation

The adopted wording of the act constitutes a compromise between the standpoints of different social partners, and since its adoption the act has been subject to criticism from both employers and trade unions. One of the most controversial provisions is a limit on the period for which a temporary employee may be assigned to work for a user-undertaking by a work agency.

At present a work agency may assign a temporary employee to work for a specific user-undertaking for up to 18 months within a period of 36 consecutive months. The only exception to this limitation is the replacement of an absent employee with a temporary employee. In this context, the temporary employee can work for the user-undertaking for a maximum period of 36 consecutive months. However, the temporary employee may not be assigned to perform temporary work at the same user-undertaking in the subsequent 36 months.

Interpretation of rule and existing practice

The above time limitation may appear severe and restrictive in comparison to the EU directive's liberal wording. However, no specific penalty for breach of the time limit is provided for either work agencies or user-undertakings. Further, most controversies are linked to a more subtle circumvention of the law, rather than a direct breach of the act. In its literal wording, the general limitation is understood to address the work agency (ie, forbidding it from assigning a temporary employee to a single user-undertaking for more than 18 months); and no limitation or obligation in this respect is imposed. Consequently, if the same temporary employee is assigned to work for a single user-undertaking for a consecutive period longer than the permitted 18 months, the legal limitation of the time period is formally observed, provided that the temporary worker is assigned by at least two different work agencies. This interpretation was confirmed by representatives of the Ministry of Labour and Social Policy shortly after the act was adopted. The interpretation had no official binding force, but it did create a basis for existing market practice.

Work agencies commonly operate in (at least) pairs of affiliated entities. The two (or sometimes more) work agencies assign temporary employees to the same user-undertaking. Once the permitted period of assignment of a given temporary employee ends, the same employee is employed by another work agency within the group and assigned again to the same user-undertaking. Consequently, temporary employees can work for a single user-undertaking for many years.

This practice is considered a circumvention of the law and has been criticised by the State Labour

Inspectorate, trade unions and legal writers. They claim that the concept of temporary work is being misused and the original intention of the legislature is being misinterpreted. Temporary employees should be considered the permanent employees of a user-undertaking after 18 months of service. Nevertheless, there is no case law that deals with the issue directly and this market practice is still very popular.

Planned changes

The Ministry of Labour and Social Policy has recently acknowledged this practice and the need to amend the act accordingly. A meeting with representatives of trade unions, the State Labour Inspectorate, user-undertakings and work agencies was held. As a result, the Ministry of Labour and Social Policy plans to appoint a team of experts to prepare a draft amendment of the act, which will satisfy all interested parties. The main amendments proposed by the State Labour Inspectorate and trade unions involve:

- the clear and effective limitation of the period of assignment of one temporary employee to a single user-undertaking; and
- penalties for breach of the permitted period of assignment, including the establishment of an open-ended employment relationship by operation of law between a temporary employee and a user-undertaking following the end of the permitted period of assignment.

Comment

If the envisaged amendments are adopted, they will significantly influence the temporary work agency market. Agencies will be unable to assign the same temporary employee to one user-undertaking over many years by juggling the employee between themselves. The structure of operation of work agencies in pairs (or larger groups) will no longer be beneficial. Further, the user-undertakings that benefit from temporary employees will need to verify carefully whether the temporary employees have previously been assigned to them, as an omission in this respect could result in the establishment of a direct employment relationship between them and the temporary worker. Trade unions and the State Labour Inspectorate expect that ending this practice will result in increased regular employment. It remains to be seen how the proposals will be introduced in the draft amendment prepared by Ministry of Labour and Social Policy experts and whether the expected effects will be achieved.

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