

# LABOUR LAW ALERT

## Employee Capital Plans - summary

We have just ended a cycle of "Chats about Law" meetings devoted to employee capital plans (*Pracownicze Plany Kapitałowe* – "PPK's"), during which we had the pleasure to discuss with representatives of several dozen companies the assumptions and practical problems related to the implementation of the new system. We discussed individual implementation steps and the appropriate planning of these. We also talked about the numerous doubtful issues in the new regulations.

Below please find an additional summary of the assumptions of the new system that, hopefully, you will find useful. Of course, we invite you to contact us should you have any questions or wish to discuss our possible support in the implementation of new solutions.

The Act on Employee Capital Plans of 4 October 2018, which came into force on 1 January 2019, introduces a new, general savings system for people performing work. The Employee Capital Plans involve new obligations for employers (from which obligations employers may only be exempted in exceptional situations) as well as additional costs that should be taken into consideration when planning the budget for a given year.

According to the statutory assumptions, PPK's are to be created for the purpose of systematic savings by PPK participants, which savings will be paid out after the PPK participant reaches 60 years of age. The system is to be universal – the employing entity will have to enroll in the PPK its employees, as well as natural persons who perform work under civil law agreements (mandate agreements, agreements on the provision of services, agency agreements), persons who perform work under tolling agreements, supervisory board members who perform their function for a consideration, and members of agricultural production cooperatives and farmers' association cooperatives, provided that these persons are over 18 years of age and are subject to mandatory retirement and disability insurance in the Republic of Poland in the above-mentioned respects.

Only the following employing entities shall be exempted from the obligation to create the PPK:

- a) micro-entrepreneurs, provided that all persons employed submit declarations that they resign from making contributions to the PPK,
- b) natural persons who employ – in the scope unrelated to their business activity – natural persons in the scope unrelated to business activity of these persons, and
- c) employing entities that on the day the obligation to create the PPK comes into force operate employee retirement plans (*pracownicze programy emerytalne*, hereinafter the "PPE's") and charge and pay basic contributions to the PPE in an amount equal to at least 3.5% of the remuneration within the meaning of the PPE Act, provided that at least 25% of those employed by the given employing entity joined the PPE. If the PPE is created after the introduction of PPK, the Act envisages some possibilities to cease paying PPK contributions for PPE participants (upon fulfilment of additional requirements).

In order to implement and operate the PPK, the employing entity is obligated, above all:

- a) to conclude a PPK management agreement with a financial institution (in consultation with employee representatives) no later than within 10 business days prior to the time limit specified in letter b);
- b) to conclude, in the name and on behalf of each PPK participant, a PPK operation agreement with a financial institution no later than within 10 days following the expiry of 3 months from the day of entering into a legal relationship with a given person or from the day the obligation to create the PPK arose (applicable to persons who as at the day the said obligation arose were already employed by the employing entity);
- c) to charge and pay contributions.

The basic contribution financed by the employing entity amounts to 1.5% of the assessment base of retirement and disability contributions of the participant (with an option to declare an additional contribution of up to 2.5%). The basic contribution financed by the participant amounts to 2% of the assessment base of retirement and disability contributions of the participant (with an option to declare an additional contribution of up to 2%). In particular circumstances, the basic contribution financed by the participant may be reduced to 0.5% of the assessment base. In addition to the above, the state will pay the so-called "welcoming contribution" in the amount of PLN 250 and an annual additional payment in the amount of PLN 240 (upon fulfilment of additional requirements).

Participants aged between 18 and 55 years (completed) will be automatically enrolled in the PPK, with an option, however, to resign from making contributions.

The contributions paid to the PPK will be directed to the selected financial institution (investment fund, retirement fund or insurance institution) with which the employer concluded the pertinent agreement. Individual financial institutions will operate separate "funds of a defined date" – i.e. funds for employees in a given age bracket, with a different risk level. The participant will be able to decide to transfer all or some of the funds ascribed to him/her to another "fund of a defined date".

The PPK funds will be paid out, as a rule, after the participant reaches 60 years of age, according to the model specified in the Act (25% of the funds payable as a lump sum and the remaining 75% in 120 instalments). In exceptional situations and upon fulfilment of additional requirements it will be possible to withdraw or pay out the accumulated funds earlier.

The obligation to create the PPK will be introduced gradually, in four stages, depending on the number of eligible persons in a given unit:

- a) from 1 July 2019 for entities employing at least 250 eligible persons (as at 31 December 2018);
- b) from 1 January 2020 for entities employing from 50 to 249 eligible persons (as at 30 June 2019);
- c) from 1 July 2020 for entities employing from 20 to 49 eligible persons (as at 31 December 2019);
- d) from 1 January 2021 for the other employing entities.

Irrespective of the number of eligible persons, in the case of entities which form part of the public finance sector the obligation to create the PPK will only arise in 2021.

Pursuant to the Act, the employing entity's failure to fulfill its statutory obligations (including a failure to create the PPK or inducing employees to submit a declaration of resignation from savings in the PPK) constitutes a misdemeanor subject to a fine of up to PLN 1,000,000 (or, in the cases specified in the Act, in the amount up to 1.5% of the given employing entity's remuneration fund in the financial year preceding the commission of the misdemeanor).

Sołtysiński Kawecki & Szlęzak – Kancelaria Radców Prawnych i Adwokatów Spółka Komandytowa  
Warszawa | Poznań | Katowice | Wrocław  
[www.skslegal.pl](http://www.skslegal.pl)



**Karolina Kanclerz**

Senior Counsel  
Tel. +48 71 346 77 00  
Fax +48 71 346 77 09  
E-mail: [karolina.kanclerz@skslegal.pl](mailto:karolina.kanclerz@skslegal.pl)



**dr Wojciech Iwański**

Senior Counsel  
Tel. +48 32 731 50 23  
Fax +48 32 731 59 90  
E-mail: [wojciech.iwanski@skslegal.pl](mailto:wojciech.iwanski@skslegal.pl)



**dr Agata Miętek**

Senior Associate  
Tel. +48 22 608 73 98  
Fax +48 22 608 70 70  
E-mail: [agata.mietek@skslegal.pl](mailto:agata.mietek@skslegal.pl)