

Newsletter HR

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EQUAL PAY TO EMPLOYEES IN VARIOUS GEOGRAPHICAL AREAS

On 3 June 2021 the Court of Justice of the European Union gave a ruling in a dispute between Tesco Stores and approximately 6000 employees (case ref. C-624/19). The ruling relates to the British Tesco stores chain. In 2018 the employees brought proceedings against the company before the Watford Employment Tribunal for breach of the principle of equal pay for male and female employees who carry out equal work or work of equal value. In the view of the claimants such differentiation breached national regulations and Art. 157 of the Treaty on the Functioning of the European Union ("TFEU") providing for equal pay for male and female workers.

Significantly, employees working for one employer (Tesco Stores) performed work in various geographical areas in the country and one of the key assertions of female employees was that they were entitled to compare their pay to the pay of male employees employed in another geographical area.

The Court confirmed this standpoint and noted that in a situation in which the terms of pay to employees of **different sex** (who perform equal work or work of equal value) may be attributed to the so-called "**single source**" (that is, one employer), the work and pay of such workers may be compared pursuant to Art. 157 TFEU **even if such employees perform work in various establishments situated in various geographical areas**.

The matter of the so-called regionalization of pay is not new, however, the ruling of the Court is a new contribution to the discussion on this subject. It is worth watching how the ruling will affect case law in this regard. Although, admittedly, the ruling itself covers equal pay to men and women workers, whether claims in this respect may also be raised by employees of the same sex who are employed in various geographical areas remains an open question.

NEW DRAFT LAW REGARDING REMOTE WORK – DISPUTED ISSUES

In recent days it is being increasingly recognized that the announced draft Act amending the Labor Code, the Act on professional and social rehabilitation and employment of the disabled and the Act on promotion of employment and labor market institutions, regulating, inter alia, remote work, may fail to be enforced in the present form. A number of comments to the draft was presented by both the representatives of employers and the trade unions who

question the adequacy of the draft's numerous provisions and demand that they be changed or made more precise.

The trade unions suggest, inter alia, that the proposed provisions should not allow for a scenario of a "totally" remote work, that is entirely outside of the work establishment. NSZZ "Solidarność" argues that remote work entails most severe hazards for the employees' mental health and suggests that an employee should be allowed to give up on remote work at any time. The trade unions also suggest a time limitation for remote work which would be performed exclusively upon request of the employer – up to at most 3 months in a calendar year. According to the trade unions, it is also significant to clarify the regulations related to the settlement of costs of remote work, as the draft does not even specify a minimum rate for an equivalent that would be due to the employee for use of own equipment, which may lead to abuses. Additionally, it is unclear how to replace the foregoing lump sum allowance with a requisite equivalent. The representatives of employees also request a provision that the equivalent or lump sum allowance in respect of remote work do not represent revenue in the meaning of tax regulations.

On the other hand, the representatives of employers suggest that a written form be no longer required (and replaced by an electronic form) with respect to applications, statements (except for termination of employment contract) or information required under the labor code provisions. There are also suggestions for clarifying the regulations covering a request for remote work by employees who are carers of children of up to 4 years – the employer should be entitled to refuse such request not only for reasons pertaining to the organization of work or type of tasks performed, but also on the basis of the employee's skills and their attitude to work in the remote form. Employers' representatives also emphasize the need to modify and adjust the definition of an accident at work to the reality of remote work or the lack of explicit regulations governing performance of remote work outside of Poland. It is additionally noted that if remote work is to be performed upon request of the employer the requirement that the employee should previously submit a declaration of having adequate space and technical conditions to perform remote work should be waived.

There are also reservations as to the moment when the suggested changes are to become effective – it is planned that it would happen 3 months after the state of epidemic is terminated, however, it is argued that a specific date should be determined, irrespective of the date of termination of the state of epidemic.

FAMILY LEAVE TO BE A NEW TYPE OF HOLIDAY REGULATED IN THE LABOR CODE

The MPs representing Polish Peasant Party (PSL) have submitted a draft regarding a new type of leave, the so-called family leave which might be used to take care of a sick close family member (i.e. ascendant, stepfather, stepmother, father-in-law, mother-in-law, descendant, sibling, husband, wife or a cohabitant) – if because of their health problems such close relative requires personal care of the employee.

A family leave would be granted to employees with seniority of at least 6 months, including previous periods of employment.

According to the draft, a family leave would last a maximum of 12 months and could be used by more than one employee, however, the total length of the leave should not exceed the annual limit. The leave would be divisible into four parts at most.

Employees using a family leave would be entitled to an allowance equivalent to minimum pay for work.

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