



# Newsletter HR

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## The employer has the right to process data about the candidate after recruitment has been completed – a new judgment of the provincial administrative court in Warsaw

The Voivodship Administrative Court in Warsaw, in its judgment II SA/Wa 542/22, questioned the previous interpretation of the Personal Data Protection Office (PDPO), holding that **an employer has the right to process data after completing recruitment because of possible discrimination claims.**

In this case, the candidate applied for a job via an electronic system. The company kept the candidate's data after the recruitment had been completed, i.a. for reasons of protection against possible claims arising from the recruitment. The candidate complained to the PDPO about the refusal to delete personal data. The PDPO issued a decision admonishing the employer for breaching the GDPR by unlawfully processing personal data after recruitment.

The PDPO's current interpretation is that the candidate's data should be deleted immediately after recruitment. According to the PDPO, failing to delete the data constitutes processing of the data "just in case", and this is unacceptable. In the case at hand, the Voivodship Administrative Court found that such an approach is flawed and excludes the possibility of verifying whether there was a breach of the principles of equal treatment in employment during the recruitment process. The judgment could have a significant impact on companies' recruitment processes.

## Extension of the state of epidemic risk

According to the Council of Ministers' regulation dated 26 August 2022, the state of epidemic risk has been extended until 30 September 2022. If it will not be extended again, employers must be aware of the following consequences:

- Employers can instruct employees to carry out remote work under Article 3 section 1 of the Covid law of 2 March 2020 **during the state of epidemic risk and for 3 months after its lifting;**
- The validity of all preventive medical examinations of an employee that expired after 7 March 2020 continue to be subject to extension for a period of **up to 180 days from the date the state of epidemic risk ends;**
- The employer may grant up to 30 days of annual leave not used in previous years to an employee on a date designated by the employer and without regard to the plan for leave **only during the state of epidemic risk;**
- Foreigners residing in Poland, whose temporary residence permits, national visas, or short-term residence titles expired during the pandemic still have their legal residence extended **up to 30 days after the state of epidemic risk is lifted.**
- The validity period of work permits of foreigners whose residence permits expired during the pandemic is still extended **to 30 days after the end of state of epidemic risk.**

## Law on the liability of collective entities

A draft amendment to the Collective Entity Liability Act has been published on the website of the Government Legislation Centre. It is a new draft but largely contains the same assumptions that were proposed three years ago.

### The main assumptions of the draft:

- introducing a new definition of "collective entity". The draft provides for the application of the Act to an entity with at least 500 employees or with an annual net turnover exceeding the equivalent of €100 million;
- eliminating the dependence of the liability of collective entities on a prior final conviction of an individual (so-called *prejudicat*);
- introducing regulations allowing for an entity's liability in the event of a merger, division, or transformation of a collective entity.

## Another increase in allowances for business trips

With the entry into force of the new regulation in July, allowances for national business trips increased to PLN 38 - we wrote about this in our newsletter in August:

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In response to rising inflation, another increase has already been announced from January 2023. According to the published draft regulation, allowances will increase to PLN 45.

## The National Reconstruction Plan – a reform in labour law?

In line with the commitments of the National Reconstruction Plan, we will face another labour law reform. By the end of 2024, a single employment contract will be introduced. This means the elimination of fixed-term employment contracts, civil law contracts (the reform will not include a contract to perform a specified task), and temporary employment contracts, all being replaced by a single employment contract. The employee would be compulsorily subject to social and health insurance, as well as protection against termination. At this point, we do not know the details; however, we can only assume that if the government keeps its promises, the scope of the amendment to the Labour Code will be significant. By the end of this year, the government is expected to present a report on this solution.



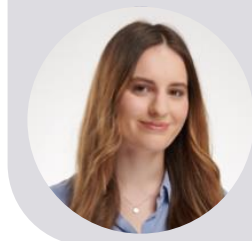
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