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Chapter 37

Poland

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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

In Poland, the main sources of employment law are international law (e.g., ILO conventions), EU law and national law. Domestically, the main source is the Polish Labour Code and a number of other statutory acts and secondary regulations to the Code which regulate in more detail, various aspects of employment such as collective labour agreements and other collective arrangements and regulations setting out the rights and obligations of the parties of an employment relationship.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

The Labour Code protects workers employed under employment contracts. The Code distinguishes a few types of workers who are specially protected, e.g., an employee who is pregnant cannot be laid off and cannot work overtime, at night, outside of the permanent workplace or in the shift-time system, without her prior consent.

Another group protected against termination are employees who will reach retirement age within four years or trade union activists while performing their functions (consent for termination of the board of the trade union organisation is required). Moreover, the employer cannot terminate an agreement with an employee who is absent for justified reasons because of leave or illness. The Labour Code also protects employees on maternity leave and young employees (aged 16 to 18).

It should be noted that some professions (e.g., teachers, mine-workers and others) are subject to specific rules and privileges based on branch-related legislation.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Yes, Polish law requires an employment contract to be concluded in writing. If a contract is not concluded in such form, an employer must confirm the basic employment terms (such as remuneration, work position, place of work, working time and work commencement date) in writing prior to starting employment, otherwise the employer might be held liable and be forced to pay a fine. The employer must also provide the employee with additional written information about certain general conditions of work such as the length of the working day and week, the frequency and method of remuneration payments, the length of annual leave, any collective agreements governing the employee's conditions of night-time work, methods of confirming arrival at work and justification of absences from work. Irrespective of the above requirements imposed by law, it is recommended to formalise the principles of employment for evidencing purposes.

1.4 Are any terms implied into contracts of employment?

Provisions of employment contracts may not be less advantageous to the employee than provisions of binding laws (such as the Polish Labour Code) and the employer's internal labour regulations, in particular work regulations, wage regulations and collective labour agreements.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Working time may not exceed eight hours per day and an average of 40 hours per average working week, with certain exceptions such as a balanced working time system. Employees are entitled to a minimum uninterrupted rest period of 11 hours in every 24-hour period, and 35 hours per week. Work performed over the working time limits constitutes overtime work and must be paid additionally or extra time-off must be granted. The maximum number of overtime hours per year amounts to 150 hours (unless collective labour agreements, internal regulations or individual contracts provide otherwise).

Employees are entitled to paid leave of 26 working days per year (or 20 working days if the total employment period is shorter than 10 years). The employment period covers education.

The remuneration specified in the employment contract may not be lower than the statutory minimum salary (PLN 2,250 in 2019, i.e. approx. EUR 520).

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Terms and conditions set forth in collective bargaining agreements (CBAs) apply to individual employment contracts. CBAs can be concluded by the trade unions on a company and inter-company level, as well as on an industry level.

The level of unionisation in Poland amounts to about 12%. Most trade unions (62%) comprise public sector workers (teachers, nurses, doctors, etc.) including industry workers (miners, railways, energy sector, etc.).

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Under the Trade Unions Act, the trade union may be established by at least 10 eligible employees in the company. The employees have to enact a statute and then apply for a registration to the National Court Register. Once the trade union is registered, it becomes a legal person. Trade unions have the right to establish national federations and confederations.

2.2 What rights do trade unions have?

Generally, an employer cannot terminate or alter a trade unionist's employment contract with notice without the consent of the trade union. The other rights include:

- the right to negotiate and execute collective bargaining agreements and other agreements;
- the power to agree on internal rules, especially work and pay rules;
- the right to express opinions on legislative proposals, statutes or other normative acts;
- the right to give an opinion on individual employment matters, especially termination of an employment contract; and
- the right to be informed and consulted during group layoffs.

2.3 Are there any rules governing a trade union's right to take industrial action?

Industrial action is regulated by the Act on Collective Labour Dispute Resolution. The right to strike is guaranteed by the Polish Constitution, but the right to organise strikes is reserved for trade unions. A strike is the ultimate stage of collective dispute resolution, and must be preceded by mandatory negotiations and mediation, and optionally by arbitration.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

The Act on Informing and Consulting Employees (implementing 2002/14/EC Directive) stipulates that employers with 50 or more workers must inform them of their right to set up a works council. The council is elected by all employees and its composition depends on the size of the company (three, five or seven members unless the number is set in an arrangement with the employees).

The employer is obliged to inform the works council about the activities and economic situation of the company, as well as any significant changes in work organisation or employment (for instance planned layoffs). The council is also entitled to present its non-binding opinions on a number of matters. In February 2017, there were approximately 3,520 work councils in Polish companies.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

The employer is obliged to provide the works council with information about the activities and economic situation of the company and expected changes in this respect, as well as any actions that could lead to significant changes in work organisation or employment (planned layoffs, changes in work organisation, employment policy, etc.).

Other matters that must be subject to consultation or consent of the council may be agreed with trade unions or other employee representatives.

2.6 How do the rights of trade unions and works councils interact?

The rights of works councils overlap with the rights of trade unions, but even then an employer who employs at least 50 workers is obliged to establish a works council. In companies in which there is both a works council and a trade union, the role of the works council is often marginal.

2.7 Are employees entitled to representation at board level?

There is no such obligation. The owners of the employing company may discretionarily decide that a person appointed by employees will be a member of the company's management board or supervisory board. Such situations are not common in the private sector.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Polish law clearly prohibits any discrimination in employment. Poland has implemented two anti-discrimination directives: 2000/43/EC Racial Equality Directive; and 2000/78/EC Employment Equality. General anti-discriminatory provisions are set forth in several provisions of the Labour Code and in the Anti-discrimination Act, which protects against discrimination other than that resulting from employment relations, e.g., discrimination at work performed under civil law contracts.

3.2 What types of discrimination are unlawful and in what circumstances?

It is prohibited to discriminate on the grounds of sex, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, denomination or sexual orientation, as well as employment for definite or indefinite terms, or on a full-time or part-time basis.

Employees must be treated equally in the establishment and termination of employment relationships, terms and conditions of employment, promotion and access to training to develop their professional qualifications.

The Labour Code stipulates that the principle of equal treatment is violated when the employer differentiates the employee's situation on the basis of one or more reasons resulting, among other things, in the refusal to enter into or dissolve a work contract, or disadvantageous remuneration for work or other employment conditions, or deprivation of promotion or other benefits.

3.3 Are there any defences to a discrimination claim?

Defence in discrimination cases may not be easy as, in such cases, the employer must prove that he uses objective criteria for all employees. This means that an employer must demonstrate that any action connected with employment had justified and legitimate grounds, e.g., an increase of salary was in line with the company's general promotion policy.

Introduction of and compliance with internal rules against discrimination (e.g., a code of conduct) may significantly strengthen an employer's position in such defence.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Victims of discrimination may enforce their rights during and after employment termination, and may lodge a claim for compensation.

Employees who exercise the right to compensation for a breach of equal treatment rules must not be treated unfavourably and, in particular, it may not cause termination of their employment. Employees are also entitled to notify the National Labour Inspectorate. The Inspectorate may conduct an inspection and impose a fine on the employer who is responsible for discrimination.

When an employee files a claim, settlement ending the dispute is possible both before and after the claim is brought before the labour court until the final judgment is passed.

The employee who accuses the employer of discrimination does not have an obligation to prove this accusation in front of the court. However, he/she still has to substantiate the complaint of unequal treatment and determine which of the criteria for discrimination the employer has applied.

3.5 What remedies are available to employees in successful discrimination claims?

A person whose rights regarding anti-discrimination have been violated has a right to compensation equal to at least the amount of the statutory minimum wage (i.e., PLN 2,250 in 2019, approximately EUR 520).

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

"Atypical" workers do not have any additional protection, but they cannot be treated worse than other "typical" employees. Disabled employees have additional rights such as:

- an appropriate workplace with special facilities;
- working hours limited to eight hours per day and 40 hours per week;
- night-work and overtime work is forbidden;
- an additional 15-minute break at work;
- additional annual leave (10 days per year); and
- additional rehabilitative leave (up to 21 days per year).

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

The length of maternity leave depends on the number of children born:

- 20 weeks – one child at birth;
- 31 weeks – two children at birth;
- 33 weeks – three children at birth;
- 35 weeks – four children at birth; and
- 37 weeks – five or more children at birth.

Leave of up to six weeks can be used prior to the expected date of childbirth.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

A female employee receives an allowance paid by the Social Insurance Institution (ZUS). The amount of the maternity benefit differs depending on the case; in principle, it is equal to 100% of the ground of benefit assessment basis for the first six or eight weeks (depending on the number of children born) and 60% for the period of parental leave after the above-mentioned periods. However, in certain cases, it may be equal to 80% of the ground of benefit assessment basis. The employee is protected from dismissal during the maternity leave (with some exceptions).

4.3 What rights does a woman have upon her return to work from maternity leave?

After the leave, the employee must resume work in the previous position or, if this is impossible, in a position equivalent to the previous position or a position corresponding to her professional qualifications and with remuneration not lower than before the maternity leave.

A female employee is entitled to take unpaid childcare leave or ask for reduced working hours during which she is protected from dismissal. Moreover, a female employee who is breastfeeding is entitled to two additional breaks from work included in her working time, the length of which depends on her working time and the number of children born.

4.4 Do fathers have the right to take paternity leave?

An employee who is the father taking care of a child is entitled to paternity leave of two weeks until the child is 24 months old. The leave can be split into two parts, neither of which can be shorter than one week. Paternity leave is granted upon a written request submitted no later than seven days before the commencement of that leave and the employer is obliged to accept that request.

Additionally, the father may use a part of the mother's maternity leave – the mother employee must use at least 14 weeks of her maternity leave and can waive the right to the remaining portion and grant it to the father employee, at his written request.

4.5 Are there any other parental leave rights that employers have to observe?

Immediately after using maternity leave, both parents are entitled to parental leave of up to 32 or 34 weeks (depending on the number of

children born) in aggregate. This leave can be split into no more than four parts, cannot be shorter than eight weeks and can also be taken by both parents at the same time. Parents are able to take 16 of the 32 weeks of parental leave later (by the end of the calendar year in which the child becomes six years old). It is granted upon written request submitted 21 days before the leave starts and the employer is obliged to grant the leave.

Also, an employee employed for at least six months (including prior periods of employment) has the right to unpaid extended upbringing leave to provide personal care to the child. The length of that leave lasts up to 36 months and it can be granted by the end of the calendar year in which the child becomes six years old. Both parental and upbringing leave can be combined with work for one year.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

Every employee is entitled to take unpaid childcare leave or ask for reduced working hours. If the parental leave is combined with work, the leave is extended in proportion to the time worked – the parent is able to combine work with parental leave for a maximum of 64 or 68 weeks (depending on the number of children born). Additionally, a woman who is breastfeeding is entitled to additional breaks from work included in her working time, the length of which depends on her working time and the number of children born. An employee raising at least one child aged up to 14 is entitled to receive two paid days or 16 hours off per calendar year.

The employee is entitled to an allowance while taking care of a child aged up to eight years (paid for up to 60 days) and while taking care of other family members (paid for up to 14 days).

An employee taking care of a child of up to four years of age may not perform any overtime or night work, or work under the system of work split up over the day, and may not be posted to work outside of his or her permanent workplace, without the employee's prior consent.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

The sale of shares in the company does not affect the employees and they remain employed by the same company.

In the case of transfer of assets (transfer of an organised part or entire enterprise) in the form of a sale or contribution to another company, the new employer (company) becomes party to the existing employment relationships by law. This means that employees are transferred to a new employer automatically.

The criteria for estimating whether the transfer of enterprise (organised part thereof) has been effected, have been developed in the jurisdiction of the Tribunal of Justice of the European Union, and are adopted by Polish courts. In the *Spijkers* case, the Tribunal set-out several tests that have to be taken into consideration in this respect. The crucial question is whether the buyer continues the activity of the target company or starts a new activity of a similar type. If so, the transfer of the employee took place. Other important factors to be taken into account in such tests include: the type of enterprise; determination whether material tangible components of the enterprise have been transferred (such as buildings and real property); the value of intangible components at the time of the transfer; whether the majority of employees have been taken over by the new employer; if the handling of clients has been transferred upon the transfer; and others. Each case and its circumstances should be reviewed individually.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

Within two months from the transfer date, the employee is entitled to terminate his/her employment contract upon a seven-day notice (such termination has the same legal effect as termination with notice by the employer).

A collective agreement of the previous employer continues to apply to the transferred employees for one year from the transfer, unless otherwise stated in the separate regulations. However, the new employer may introduce more favourable conditions for this group of employees.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

The information about a planned transfer must be provided to the employees at least 30 days before the planned transfer date and must contain: the date and reasons of the transfer; legal, economic and social implications for the employees; and any measures to be taken regarding the conditions of employment, remuneration and retraining. There is no sanction for a breach of this obligation. However, failure to inform the employees in proper time can result in an employer's liability for any damages caused to an employee and can result in an extension of the term for an employee's decision as to termination of the employment contract (please see question 5.2). The length of the procedure depends on the company size and the conditions of a particular transaction.

5.4 Can employees be dismissed in connection with a business sale?

No, employees cannot be dismissed in connection with a business sale. The transfer itself cannot constitute grounds for termination of an employment relationship by an employer.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

Generally, employers are not entitled to change, independently, the terms of employment in connection with a business sale, but the employer and trade union can conclude a relevant agreement in this respect.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Employees must be given a notice of termination unless the parties conclude a mutual agreement in this respect. An employment contract for an indefinite or definite term may be terminated with

notice or may be terminated without notice due to a gross violation by the employee of his/her duties. In cases of an indefinite-term contract or termination without notice, reason must be offered in writing by the employer that would justify the termination.

The notice period under indefinite and definite contracts depends on an employee's length of service in a company:

- two weeks – if the length of service is shorter than six months;
- one month – if the length of service is at least six months; and
- three months – if the length of service is at least three years.

In the case of employment for a trial period, the terms of notice are as follows:

- three working days – if the trial period does not exceed two weeks;
- one week – if the trial period exceeds two weeks; and
- two weeks – if the trial period is three months.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

In accordance with Polish law, due to the termination of a contract of employment, the employer may release the employee from the obligation to perform work until the end of the notice period. During the period of such release, the employee retains the right to remuneration.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

Employees may appeal against termination with notice to a labour court within 21 days of the date of the notice, and may claim that the notice be void, reinstatement to work or compensation. In the case of termination without notice, an employee has 21 days to lodge a claim for reinstatement to work or compensation. The employee may challenge the reasons for termination or other breaches of law (for instance, lack of *obligatory* consultation with trade unions).

The employee is treated as dismissed at the end of the notice period. In the case of termination without notice, in particular in the case of disciplinary dismissal, the termination is effective as of the day when the employee received the termination notice *or had opportunity to become familiar with its content*.

If there is a trade union representing the employee, it must be notified by the employer in writing about the intention to terminate the employee's indefinite-term employment contract with notice. The trade union may present its objections with reasons to the employer in writing. The consent of the trade union is required only in the case of employees with special protection against dismissal (trade union board members).

6.4 Are there any categories of employees who enjoy special protection against dismissal?

The following groups of employees enjoy special protection:

- pregnant women;
- employees who will reach retirement age in less than four years;
- trade union activists;
- employees on childcare leave, vacation, maternity leave or unpaid carer's leave;
- members of the works council;
- members of the European works council;
- so-called social labour inspectors; and
- employees during their justified absence at work, in particular those on holiday or sick leave with a doctor's certificate.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

Reasons related to the individual employee may include personal reasons (e.g. long-term sickness) or reasons related to the employee's behaviour (e.g. loss of trust). The employer may also terminate an employment contract without notice if the employee is at fault (disciplinary dismissal). In practice, the most common reason for disciplinary dismissal is a serious breach of basic duties (such as unauthorised absence at work or refusal to carry out a task).

An employment contract may also be terminated without notice if there is no fault on the employee's part but he/she is unable to work due to incapacity to work caused by an illness lasting for a specific period of time.

In practice, business-related reasons may require that the job position of the employee be liquidated due to economic or organisational changes in the company. Justified reasons for dismissal not related to employees include the following:

- where there is causality between the position's liquidation and the termination (further employment is no longer needed);
- where the liquidated position is identified in a manner that does not give rise to any doubt; and
- where a relevant authority or other entity has approved organisational changes, if required by law.

If the employer employs at least 20 employees, an employee who is dismissed solely for reasons not attributable to him or her is entitled to severance pay in the amount depending on the length of service – from one up to three times the employee's monthly remuneration.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

The employer must meet the following requirements:

- termination must be preceded by informing trade unions (if they exist and represent the particular employee);
- it must be done in writing;
- it must contain the reasons for termination (in contracts for an indefinite term and in case of termination without notice) and information on how to appeal against termination; and
- after the termination, the employer is obliged to issue and provide the employee with a certificate of employment.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

The employee may bring a claim for a court to invalidate the termination, or if the contract of employment has already been terminated, for reinstatement to work or for compensation. The

compensation must be awarded at the amount of remuneration due for two weeks up to three months, but in any case it may not be lower than the amount of remuneration for the notice period.

The remedies for a successful claim mostly depend on the ability to prove the reasons of termination and observance of the termination procedure. Mistakes made during such procedure significantly increase an employee's chances of success before the labour court.

6.8 Can employers settle claims before or after they are initiated?

An agreement with the employee can be settled both before and during the course of court proceedings until the final judgment is passed.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

Group layoffs are regulated by the Act of the Specific Principles of Terminating Labour Relationships for Reasons not Attributable to the Employees (implementing 98/59/EC Directive). The Act applies to entities that employ at least 20 employees and plan to terminate within 30 days, (including a minimum of five terminations by mutual agreements) and for business reasons, employment contracts, of at least:

- 10 employees when the total number of employees is lower than 100;
- 10% of employees when the entity employs at least 100 but less than 300 workers; and
- 30 employees when the entity employs at least 300 workers.

Before the group layoffs, the employer is obliged to:

- consult its decision with trade unions or other employees' representatives;
- provide trade unions with information on reasons for layoffs, number and professions to be laid off, the planned date of layoffs, the criteria of selection for dismissal and the order of layoffs;
- provide the same information to the local Employment Office; and
- award dismissed employees a severance pay which amounts to:
  - one month's remuneration, if the employee was employed for less than two years;
  - two months' remuneration, if the employee was employed from two to eight years; and
  - three months' remuneration, if the employee was employed for more than eight years.

The employer must settle an agreement with the trade unions regarding the terms of layoffs or – if there is no trade union or when the agreement is not possible – the employer must itself regulate the layoffs.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

If the employer fails to fulfil its obligations in cases of mass dismissals, it can lead a court to invalidate the termination, or alternatively award compensation or reinstate the employee to work. The employee can also claim for rightful severance pay.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

There are a few restrictive covenants after termination:

- post-contractual non-compete clause;
- confidentiality clause; and
- non-solicitation clause.

7.2 When are restrictive covenants enforceable and for what period?

The parties may set, in a separate agreement, a non-compete obligation which will be binding after the termination of the employment contract. Such an agreement must be in writing, must stipulate the period of the non-compete clause and the compensation for compliance. There are no restrictions as to the duration of such covenants. The confidentiality clause and non-solicitation clause may be a part of such agreement.

7.3 Do employees have to be provided with financial compensation in return for covenants?

In the case of a post-contractual non-compete obligation, the former employee is entitled to receive, for the entire period of the covenant, compensation which must not be lower than 25% of his/her recent remuneration during the non-compete period. The compensation may be paid in monthly instalments.

7.4 How are restrictive covenants enforced?

The former employee is liable for a breach of the non-competition clause under the Labour Code. An employer who does not perform its obligations, i.e., stops paying compensation, may be sued by the employee before a labour court.

In the case of a breach of the non-competition clause, the Suppression of the Unfair Competition Act will also apply. The Act defines actions which may be considered acts of unfair competition and regulates the rules for liability for such acts. In accordance with the Act, any act such as: "transfer, disclosure or use of third party information which is confidential or receipt of such information from an unauthorised person, if it threatens or violates the interests of the entrepreneur" is considered an act of unfair competition. This provision applies to the former employee three years after termination of the employment contract.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

The employer controls its employees' personal data and is obliged to protect such data. The employer cannot share such data with any third party without a legal basis (e.g. obligatory medical examination), a legitimate interest (e.g. outsourcing of personnel services) or express consent of the employee (e.g. to take advantage

of a sports benefit system). The personal data protection rules also apply to job candidates and former employees.

Under the Polish Labour Code, an employer may require a job candidate/employee to provide specific information only and may require them to provide additional information if necessary to exercise special rights to which the employee is entitled under labour law.

In accordance with the GDPR provisions, the employer has additional information obligations towards employees.

Generally, transfers of the employee's personal data by the employer to other companies within its group of companies is permitted, however such transfer to other countries, in particular outside the European Union, must be made in compliance with the GDPR.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

In accordance with the new Labour Code provisions that will be in force from January 1, 2019, employers must issue a copy of all or part of their employee documentation at the request of an employee or a former employee.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

The employer may only require a candidate to provide the data set out in the Labour Code and other statutes. In Poland, the possibility of examining the criminal record of a candidate for employment only exists for professions and positions specifically set out in multiple separate statutes (e.g. judges, doctors, university teachers).

As of June 27, 2018, provisions legalising the practice of criminal checks in financial institutions came into force. Employers from the financial sector have the right to demand that applicants and persons employed in specific positions provide information about final convictions for specific offences, specified in detail in the "Act on the principles of obtaining information about the criminal record of applicants and persons employed in financial sector entities".

Some entities are listed explicitly in the Act, while the inclusion of other entities in the group covered by the Act requires verification of the scope of services provided by them to financial sector entities.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

If it is necessary to ensure work organisation enabling full use of working time and appropriate use of equipment, the employer may introduce the monitoring of employees' emails. Such monitoring, however, may not violate the secrecy of correspondence and other personal rights of employees.

Moreover, visual monitoring is lawful if it is necessary to ensure employee safety, to protect property or to keep confidentiality of information whose disclosure could expose the employer to damage. Visual monitoring may cover the premises of an establishment and surrounding areas but generally it may not be used in sensitive places such as bathrooms, canteens, cloakrooms, smoking rooms or offices used by trade unions. The goals, scope and method of monitoring should be set out in a collective agreement or workplace regulations or a notice, if the employer is not covered by a collective agreement or is not obliged to have workplace regulations in place.

The employer informs employees about the introduction of monitoring in a manner accepted by the employer, no later than two weeks before its launch. Employers have to mark monitored areas using conspicuous and clear signs.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

No regulations concerning social media use in the workplace exist in Poland. Under general legal provisions, it is necessary to refer back to general principles when regulating an employee's use of social media, such as: (i) privacy protection; (ii) the right of the employer to manage employees' labour; and (iii) the protection of trade secrets. Also, under the Polish Labour Code, the employer is obligated to inform employees about any form of monitoring (including Internet use).

In practice, the rules for the employees' use of social media during working hours or outside the workplace may be specified by the employer in workplace regulations or in any other document specifying the company's policy in this regard, e.g. the Social Media Policy (SMP). A Polish SMP must contain:

- a statement of purpose motivating the introduction of the policy;
- a list of actions and behaviours on social media that the employer prohibits; and
- a list of possible disciplinary measures that may be applied when the SMP is violated.

Employees must remember their duty to take care of the best interests of the company and keep confidential any information in case its disclosure could cause damage to the employer. Publishing some information about the company via social media may therefore be recognised as a breach of duties and may result in disciplinary termination.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

In Poland, labour courts are competent for all legal proceedings between employers and employees.

Claims arising out of employment relationships are decided by labour courts: that constitute separate organisational units of district courts; and labour and social insurance courts that constitute separate organisational units of regional courts.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

Civil procedure applies to employment-related complaints. Conciliation before both the labour court and the civil court is not mandatory. A settlement ending a dispute between the employer and employee is possible at each stage of proceedings before the labour court. If a conciliatory commission exists in the workplace of the employee, before submitting a claim to a court, the employee may request such conciliatory commission to initiate mediation.

Employees do not have to pay a fee for submitting claims to a labour court unless the value of the case exceeds PLN 50,000 – then a fee of 5% of the value of the dispute will apply.

9.3 How long do employment-related complaints typically take to be decided?

On average, first instance decisions concerning employment-related complaints take between six months to two years to be decided, depending on the court.

9.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

It is always possible to appeal against a first instance decision. Appeal courts rule on such appeals (depending of the region of Poland) in about six months to one year.

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