

## Employment Practice

## Newsletter Q3/2024

October 2024

Changes in the law &gt;

Important issues &gt;

Legislative work &gt;

Positions and  
interpretations >Important case law  
on employee matters >

Dear All,

In spite of the third quarter of 2024 falling during the holiday period, many new HR topics and issues have emerged, both then and now in early autumn, which we will summarise in this edition of the Newsletter. It is particularly worth paying attention to the entry into force of the Act on the protection of whistleblowers and the controversies associated with it, the new minimum wage rates that will be effective from 1 January 2025, the extension of deadlines for submitting applications for certificates for persons with disabilities, and the extension of the validity of disability or degree of disability certificates, special measures prepared in response to the floods, which may remain with us for a longer time, as well as the ongoing work at the EU and national levels on draft directives and laws that may soon affect the labour market in Poland.



**Monika Krzyszkowska-  
Dąbrowska**

Counsel  
Head of Employment Practice

## Changes in the law

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



### 1. The entry into force of the Act on the protection of whistleblowers

On 25 September 2024, the Act of 14 June 2024 on the protection of whistleblowers came into force, except for the provisions concerning external reporting of breaches of the law, which will come into effect on 25 December 2024. The most important obligation arising from the Act is the requirement to establish an internal procedure for reporting breaches of the law and taking follow-up actions by legal entities for which, as at 1 January or 1 July of a given year, at least 50 persons provide paid work (the 50 individuals performing remunerated work for a legal entity are counted as employees on a full-time equivalent basis or persons providing paid work on a basis other than an employment relationship, provided they do not employ other persons for this type of work, regardless of the basis of employment, i.e., based on named or unnamed civil law contracts, including “one-person” B2B), and such an obligation, regardless of the number of the aforementioned persons, applies to entities performing activities in the areas of financial services, products and markets, anti-money laundering and anti-terrorist financing, transport safety and environmental protection, covered by EU legal acts listed in Parts I.B and II of the Annex to Directive 2019/1937.

**Importantly:** The entry into force of the Act on the protection of whistleblowers has raised numerous concerns, which we discussed in more detail in our series of articles under "HR in the Know", [HR In the Know 10/2024 | HR in the Know 10/2024 \(linklaters.com\)](#)

*(Act of 14 June 2024 on the protection of whistleblowers (Journal of Laws 2024, item 928))*

### 2. New minimum wage rates from January 2025

On 13 September 2024, the Regulation of the Council of Ministers of 12 September 2024 regarding the amount of minimum wage for work and the amount of the minimum hourly rate in 2025 was published in the Journal of Laws. According to the Regulation, from 1 January 2025, the minimum wage will increase to PLN 4,666, and the minimum hourly rate, for each hour of executing of a contract or providing services, payable to the contractor or service provider, will be PLN 30.50.

**Importantly:** It should be remembered that the increase in the minimum wage also affects the amount of related employee benefits. Changes will include, for example, the amount of the night work allowance, ‘standby’ remuneration, and the maximum statutory severance pay in the event of dismissal for reasons not attributable to the employee.

*(Regulation of the Council of Ministers of 12 September 2024 regarding the amount of the minimum wage for work and the amount of the minimum hourly rate in 2025)*

## Changes in the law

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



### 3. Regulations related to mitigating the effects of floods

Due to the challenging flood situation that has recently affected parts of Poland, on 5 October 2024, the Act amending the Act on special solutions related to mitigating the effects of floods and certain other acts entered into force. The most significant provision proposed by the Act is the granting an employee residing in areas affected by flooding the right to no more than eight days of "on-demand" leave and the granting to an employee affected by the flood of an up to twenty-day leave to mitigate flood effects concerning their own property or the property of a related or unrelated person with whom they have a factual relationship, cohabiting and managing the household, while retaining the right to remuneration.

**Importantly:** The Act provides for the possibility of reimbursing employers for the costs incurred for remuneration and social security contributions for employees affected by the floods, up to the average monthly remuneration in the national economy from the previous quarter, as announced by the President of the Central Statistical Office based on the provisions on retirement and disability pensions from the Social Insurance Fund. To achieve this, it will be necessary to submit an application through the voivodeship labour office appropriate for the location of the business, containing a statement on the costs incurred for remuneration and social security contributions, as well as a list of employees whose remuneration will be subject to reimbursement.

*(Act of 1 October 2024 amending the Act on special solutions related to mitigating the effects of floods and certain other acts (Journal of Laws 2024, item 1473))*

*(Act of 16 September 2011 on special solutions related to mitigating the effects of floods and certain other acts (Journal of Laws 2024, item 654, as amended))*

### 4. Extension of deadlines for submitting applications for persons with disabilities

On 3 August 2024, the Act of 24 July 2024 amending the Act on vocational and social rehabilitation and employment of disabled persons, whose main aim was to amend the existing Act on vocational and social rehabilitation and employment of persons with disabilities with regard to the rules for issuing certificates of disability or degree of disability, came into force. The most crucial change is the extension of the period in which one can apply for a new certificate – to no earlier than 2 months (for applications for a certificate of disability or degree of disability issued for a fixed period) and no earlier than 3 months (for applications for a certificate of degree of disability by persons who already have a certificate of disability) before the expiry date of the currently valid certificate of disability.

## Changes in the law

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



Another significant new provision is the extension of the validity of certificates of disability or degree of disability until the issuance of the next final certificate, but no longer than the last day of the sixth month following the date indicating its validity. However, to maintain the validity of the existing certificate, an application for the next certificate must be submitted during the validity period of the current certificate of disability or degree of disability. This results in extending the validity of certificates that would otherwise expire on 30 September 2024 to a maximum of 31 March 2025. Additionally, a transitional provision has been introduced, according to which the provisions of the Act on rehabilitation, as amended by the amending act, apply to ongoing, not yet concluded, procedures for establishing disability or disability degree. A novelty also includes the possibility of applying for a certificate that takes into account a change in the health condition for a disabled person who already holds a certificate of disability or degree of disability.

**Importantly:** Employers who hire disabled persons should inform these individuals about the extension of the validity of certificates of disability or degree of disability while awaiting the issuance of a new certificate and about the possibility of submitting an application earlier. These measures will ensure the continuity of the status of a disabled person as an employee, which may affect the continuity of the support received by employers employing disabled persons.

*(Act of 19 December 2023 on special solutions aimed at maintaining the validity of certain certificates of disability or disability degree (Journal of Laws 2023, item 2768))*

*(Act of 24 July 2024 amending the Act on vocational and social rehabilitation and employment of disabled persons (Journal of Laws 2024, item 1165))*

### 5. Extension of facilitation for Belarusian citizens regarding issuance of Polish travel documents for foreigners

On 1 July 2024, the Regulation of the Minister of the Interior and Administration of 13 June 2024, which extended the period during which Belarusian citizens can apply for the issuance of a Polish travel document for foreigners until 31 December this year, came into force. The facilitation for obtaining Polish travel documents for Belarusian citizens entered into force on 1 July 2023 and was initially set to be valid until 30 June 2024. The extended facilitation involves an exemption from the obligation to pay the fee for the issuance of a Polish travel document for a foreigner (the exemption applies as long as the regulation remains in force) and allows a person who has not yet had a travel document to apply for a Polish travel document for a foreigner. The preferential possibility for Belarusian citizens to obtain a travel document arises from Article 252a of the Act on foreigners, according to which a foreigner with a specified nationality is issued a travel document if the foreigner

## Changes in the law

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



jointly meets the following conditions: (i) they have lost their travel document or their travel document has been destroyed or has become invalid or they have not had a travel document before; (ii) they have been granted a permanent residence permit, or a residence permit for a long-term European Union resident, or a temporary residence permit, or subsidiary protection, or permit to stay on humanitarian grounds; (iii) the application for the issuance of a Polish travel document for a foreigner was submitted by the foreigner within the period specified in the regulation of the minister responsible for internal affairs.

**Importantly:** One of the conditions for Belarusian citizens to benefit from the preferential procedure for obtaining a Polish travel document is submitting the application for its issuance during the period from 1 July 2023 to 31 December 2024.

*(Regulation of the Minister of the Interior and Administration of 13 June 2024 amending the regulation on citizenships which entitle a foreigner to apply for the issuance of a Polish travel document for a foreigner under the conditions specified in Article 252a(1) of the Act of 12 December 2013 on foreigners (Journal of Laws 2024, item 873))*

*(www.gov.pl -> Urzędy, instytucje i placówki RP -> Urząd do Spraw Cudzoziemców -> Aktualności -> Aktualności UdSC -> Przedłużenie obowiązywania ułatwień dla obywateli Białorusi dotyczących wydawania polskich dokumentów podróży dla cudzoziemca)*

## Important issues

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



### 1. Safe work during heatwaves

The Ministry of Family, Labour and Social Policy, together with the Central Institute for Labour Protection, the State Labour Inspection, and the Institute of Occupational Medicine, is analysing ways to increase employee safety during heatwaves. The Ministry's assessment indicates that the current occupational health and safety regulations are insufficient, as they lack provisions such as the maximum temperature at which work can be performed. The analysis aims to propose regulations providing protection for employees against high temperatures which are to be implemented by next summer. The Ministry has prepared an informational package "Dobry Klimat w Pracy," (Eng. "Good Climate at Work"), available for download on the Ministry's website.

**Importantly:** According to the information provided by Minister Agnieszka Dziemianowicz-Bąk at a press conference, the Ministry plans to introduce the above changes via regulation. In areas where changes cannot be made through regulation, amendments to the acts will be considered. It is important to remember the existing legal provisions regulating work during heatwaves and the responsibilities of employers in this regard.

*(Information published on the website of the Republic of Poland Service under the section Ministerstwo Rodziny, Pracy i Polityki Społecznej -> Aktualności -> Wiadomości -> „Wspólnymi siłami możemy zapewnić większe bezpieczeństwo i zdrowie pracowników w czasie upałów” zapewniła Ministra Pracy Agnieszka Dziemianowicz-Bąk.)*

### 2. 100% remuneration during sick leave in Government plans

The Government has announced changes in the amount of sick pay and the rules surrounding its payment. The plan is for the Social Insurance Institution (ZUS) to finance sickness benefit from the first day of an employee's absence and to increase its amount to 100% of the sickness benefit base. Currently, the remuneration/sick pay amounts to 100% of the calculation base only if the inability to work or incapacity to perform work: (i) occurs during pregnancy, (ii) results from undergoing necessary medical examinations required for candidates for donors of cells, tissues, and organs and the procedure of harvesting cells, tissues, and organs, or (iii) results from an accident on the way to or from work. In other cases it is at 80% of the calculation base. From Minister Agnieszka Dziemianowicz-Bąk's speech delivered at the Economic Forum in Karpacz in September, the Ministry of Family, Labour, and Social Policy is already working on implementing the above-mentioned solutions.

## Important issues

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



**Importantly:** So far no draft amendment to the regulations has been presented. Although the proposal may seem beneficial at first glance for both employers and employees, the changes could pose a risk of employees abusing sick leave.

*(Government position published in Gazeta Prawna)*

*(Act of 25 June 1999 on cash benefits from social insurance in the event of sickness and maternity (consolidated text, Journal of Laws 2023, item 2780))*

*(Minister Agnieszka Dziemianowicz-Bąk's statement published on the website of the Republic of Poland Service under the section Ministerstwo Rodziny, Pracy i Polityki Społecznej -> Aktualności -> Wiadomości -> „Rynek pracy wymaga zmiany” przekonywała Ministra Agnieszka Dziemianowicz-Bąk na Forum Ekonomicznym)*

### 3. Guidelines for employers employing people with depression

Recently, the Central Institute for Labour Protection – National Research Institute published guidelines on its website for adjusting working conditions for people with depression. These guidelines offer specific advice for employers on how to accommodate employees dealing with depression. The Institute particularly highlighted aspects of work such as quantitative demands on employees, rewards for completed work, employees' influence on their work, support from supervisors, fairness and respect, appropriate quality of leadership, opportunities for development, and maintaining a balance between work and private life. It also recommended that employers sponsor mindfulness training for people with depression, noting that this training is an essential element of personal and professional development for individuals coping with this condition.

**Importantly:** There are no legal provisions specifying exact requirements for how to adjust workstations for various types of disabilities or for people with depression. There are no specific obligations imposed on employers, and the issue itself is ambiguous and debatable from the perspective of employers.

*(www.ciop.pl -> BHP Info -> BHP Info – Serwisy -> Depresja w pracy -> Jak dostosowywać warunki pracy dla osób z depresją?)*

### 4. Update of the UODO guide on personal data processing in employment coming soon

The Office for Personal Data Protection (UODO) is working on updating the guide on data processing in employment, „Ochrona danych osobowych w miejscu pracy. Poradnik dla pracodawców” (Eng. "Personal Data Protection in the Workplace. A Guide for Employers,") from 2018. Until 21 June 2024, comments, suggestions, and

## Important issues

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



proposals for changes could be submitted, which were then discussed in July by UODO employees and representatives of the Social Expert Team at the President of UODO. The comments mainly addressed issues related to processing data of applicants during the recruitment process, including, among others, candidate data verification (background screening), the retention period of candidate data, the admissibility and conditions for using artificial intelligence, and the necessity to delete candidate data after the recruitment process is completed. At the meetings, among other things, the format of the guide was analysed, the inclusion of new topics was considered, and a preliminary plan for further work was adopted.

**Importantly:** The submitted comments (if taken into account) suggest that the updated guide could be a valuable source of information for employers. Thus, it is worth monitoring the progress of work in this area.

*(Information published on the website of the Office for Personal Data Protection under the section Aktualności -> Czas na rewizję poradników UODO – czekamy na Was)*

*(Information published on the website of the Office for Personal Data Protection under the section Aktualności -> Analizujemy uwagi do poradników UODO)*

*(Comments published on the website of the Office for Personal Data Protection under the section Aktualności -> Co robimy -> Współpraca -> Uwagi Poradnik dla pracodawców -> Uwagi do poradnika)*

### 5. Introduction of the obligation to respond to job applications for the Ministry of Family, Labour and Social Policy's consideration

On 16 July 2024, the Ministry of Family, Labour and Social Policy received an anonymous petition regarding the introduction of a regulation imposing the obligation to respond to job applications. The petition addressed the issue of employers leaving submitted CVs or other forms of job inquiries unanswered. A proposal has been made to introduce the obligation to respond to job applications within 7 days for public institutions and large enterprises and 14 days for small and medium-sized enterprises. The Ministry announced that during meetings and consultations with employer organisations, it will address the problem described in the petition.

**Importantly:** Current regulations do not require employers to respond to submitted CVs and job inquiries, so the proposed solution would significantly modify the organisation of the recruitment process. However, from the Ministry's response, it is clear that no legislative changes in this regard are expected in the near future.

*(The petition and the response from the Ministry of Family, Labour and Social Policy were published on the website of the Republic of Poland Service under the section Ministerstwo Rodziny, Pracy i Polityki Społecznej -> O ministerstwie -> Biuletyn Informacji Publicznej -> Petycje -> Rejestr petycji -> Rejestr petycji 2024 r. -> Petycja 102-2024 dotycząca wprowadzenia przepisu nakładającego obowiązek udzielenia odpowiedzi na aplikację o pracę)*



## Legislative work

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



### 1. Draft act on minimum wage

On 26 August 2024, the draft act on minimum wage dated 22 August 2024 appeared in the list of legislative works of the Government Legislative Centre. The aim of the proposed act is to implement Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union regarding minimum wage into the Polish legal system. Poland has time to implement these provisions until 15 November 2024. According to the draft, the new act would repeal the existing provisions of the Act of 10 October 2002 on the minimum wage. The rules and procedure for determining and updating the minimum wage should be specified with the participation of the Social Dialogue Council ("**RDS**"), within which the level of the minimum wage will be negotiated annually. As part of the procedure for determining the minimum wage, the Council of Ministers would present the RDS with a proposal for the minimum wage for employees and the minimum hourly rate for certain civil law contracts by 15 June each year, along with a range of economic and statistical information. The negotiations would be conducted for 30 days from the date of receipt of the proposal. The failure to agree on the aforementioned minimum wage for employees and the minimum hourly rate would result in the Council of Ministers making a decision in this regard by regulation by 15 September each year. However, the levels of the minimum wage and the minimum hourly rate set by the Council of Ministers would not be lower than those proposed for negotiation within the RDS. The draft act anticipates that the minimum wage will be updated at least once every four years. An indicative reference value, set at 55% of the projected average wage in the national economy, adopted for preparing the draft budget act, would be used for the annual assessment of the minimum wage.

**Importantly:** The draft act also envisages an amendment to the Labour Code under which, if an employer delays the payment of wages, the employee will be entitled to interest for the period of delay, even if no harm was suffered and regardless of whether the delay was due to circumstances for which the employer is not responsible. Additionally, fines for offences against employee rights would be increased from the current range of PLN 1,000 to 30,000 to a range of PLN 1,500 to 45,000, and the non-payment of wages for at least three months will be classified as a crime against employee rights under the Penal Code.

*(Draft act on minimum wage dated 22 August 2024)*

## Legislative work

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



### 2. Draft regulations on improving gender balance among directors of listed companies

On 23 September 2024, a draft act dated 5 September 2024 amending the Act on public offering and conditions for introducing financial instruments to an organised trading system and on public companies, and the Act on implementing certain provisions of the European Union in the field of equal treatment, was published on the Government Legislative Centre website. This draft is currently at the opinion stage. It constitutes the implementation of the Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures aimed at promoting equal opportunities for men and women in managerial positions. The draft entails an obligation for companies headquartered in the territory of the Republic of Poland with at least one share admitted to trading on a regulated market, to adopt, through a resolution of the general meeting, an employment policy for the company's bodies. This policy should particularly define the principles of the candidate selection process for positions within the company bodies, aiming to ensure a gender balance within these bodies. This obligation will not apply to micro-enterprises, small, and medium-sized enterprises. This means that only specified listed companies will be required to adopt an employment policy for their company bodies. The company will be obliged to make its employment policy and information about sanctions available on its website in a section designated for communication with shareholders. Detailed recruitment rules were specified. It will also be necessary for the management board to prepare detailed reports. The draft plans for companies subject to the regulation to achieve a 33% gender parity for all positions, both in the management board and the supervisory board. In cases where the selection process involves choosing between candidates with equal qualifications, preference should be given to the candidate from the underrepresented gender. Furthermore, an individual whose rights are violated by the company concerning gender parity requirements would be entitled to compensation of at least the minimum wage. The draft act will also introduce a reverse burden of proof - the person alleging a violation of the requirements will only be required to substantiate the fact of their holding equal qualifications to the selected candidate. In the case of substantiating this fact, the entity accused of violating the aforementioned requirements will be obliged to prove that no violation occurred. The above rules will not be applied if, in every company body comprising at least three members, the number of individuals from the underrepresented gender is no less than the closest approximation to 33% and no more than 49% of the total number of members of that body.

## Legislative work

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



**Importantly:** The proposed regulations require the aforementioned companies to take measures to ensure that individuals from the underrepresented gender hold positions in the company bodies in numbers no less than the closest approximation to 33% and no more than 49% of the total number of members of that body, by 30 June 2026. If these companies fail to meet the obligations specified in the draft act, the Financial Supervision Authority will be able to impose a fine of up to the equivalent of 10% of the total annual revenue reported by the company in its most recently audited financial statement for the financial year.

*(Draft act amending the Act on public offering and conditions for introducing financial instruments to an organised trading system and on public companies, and the Act on implementing certain provisions of the European Union in the field of equal treatment, dated 5 September 2024)*

### 3. Changes to the Act on foreigners

On 24 July 2024, a new version of the draft act amending the Act on foreigners and some other acts dated 19 July 2024 was published on the Government Legislative Centre website. This draft is related to the implementation into Polish law of the Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC. This directive requires EU member states to adopt legal solutions regulating the issues of entry and residence of third-country nationals for the purpose of taking up employment in a highly qualified profession - the EU Blue Card - as well as the conditions of entry and residence for their family members. The new version of the draft act has not introduced significant changes compared to previous versions, only minor editorial changes reported so far in the legislative process. The draft is currently at the stage of consideration by the Council of Ministers but, due to the advanced level of work at the governmental level, it is likely to be forwarded to the Sejm within the next few weeks or months.

**Importantly:** On 30 July 2024, a draft annex to the regulation of the Minister of the Interior and Administration was published, containing a list of professions, the performance of which results in the recognition of a foreigner obtaining qualifications in the manner specified in the Act of 12 December 2013 on foreigners, corresponding to the list of professions in Annex I to the European Parliament and Council Directive (EU) 2021/1883 of 20 October 2021. Consequently, interested employers and employees can now review the list of professions, the performance of which by their employed foreigners may result in obtaining professional qualifications. The list mainly includes professions related to information and telecommunications technologies, information and communication technologies, IT and computer systems, and databases.

## Legislative work

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



*(Draft act amending the Act on foreigners and some other acts dated 19 July 2024)*

*(Annex containing a list of professions, the performance of which results in the recognition of a foreigner obtaining qualifications in the manner specified in the Act of 12 December 2013 on foreigners)*

### 4. Proposed ESG Regulations in Poland

At the beginning of August, the public consultations on the draft act amending the Act on accounting, the Act on statutory auditors, audit firms and public oversight, and certain other acts, which aims to implement the Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, also known as the CSRD Directive, concluded. Currently, work on the act is ongoing in the Council of Ministers. On 28 September 2024, a new version of the draft act dated 24 September 2024 was published on the Government Legislative Centre website. The latest version does not introduce significant changes compared to the previous versions, which we reported on in previous newsletters. Poland was supposed to implement the provisions of the CSRD Directive by 6 July 2024; therefore, the legislator is already late in its implementation. The draft act will still need to go through several stages of the governmental procedure before it reaches the Sejm. Thus, despite the delay in the implementation of the directive, it is expected that the final version of the act will still take some time to be completed.

**Importantly:** Although ESG reporting regulations have not yet been implemented in Poland, the reporting obligation concerning, among other things, entities' policies regarding social and employee matters for 2024 will still apply to entities that were previously required to provide non-financial information statements along with the activity report or to prepare a separate non-financial information report in accordance with the previous wording of the Act on accounting.

*(Draft act amending the Act on accounting, the Act on statutory auditors, audit firms and public oversight, and certain other acts dated 24 September 2024)*

*(Act of 29 September 1994 on accounting (Journal of Laws 2023, item 120))*

### 5. Proposed changes in calculating work seniority in the Labour Code

On 11 July 2024, a draft act amending the Labour Code, dated 4 July 2024, was published on the Government Legislation Centre's website, aimed at changing the method of calculating work seniority as specified in the Labour Code. According to the draft, the employment period would include the periods of: performance by a natural person of a mandate contract or other services agreements; performance of an agency contract by a natural person or by a person cooperating with such persons; remaining by a natural person a member of a farming cooperative and

## Legislative work

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



farmers cooperative association (the above-mentioned periods of employment will also be calculated if during these periods the natural person was not subject to retirement and disability insurance under separate regulations); documented period of gainful activity abroad other than employment. Additionally, the following periods would also be calculated: receiving remuneration during the period of holding the mandate of a Member of Parliament, Senator or Member of the European Parliament; active military service by a non-professional soldier; performing substitute military service; education at a doctoral school; receiving a sports scholarship by the scholarship holder; education at the Krajowa Szkoła Administracji Publicznej im. Prezydenta RP Lecha Kaczyńskiego; performing paid employment by a convict; receiving benefit and scholarship by unemployed person; and documented employment abroad with a foreign employer; running an individual farm or working on such a farm (provided that, under separate provisions, the above-mentioned periods within the scope and on the terms provided for therein are calculated in the employment period or are the period on which employee rights depend). The draft also expands the catalog of service periods calculated under Article 302 of the Labour Code for the period of employment about the Parliament Guard and the Customs and Tax Service. There are also rules to prevent overlapping of the above-mentioned periods in parallel with each other or in parallel with being in an employment relationship. The proposed amendment to the Labour Code is currently at the opinion stage.

**Importantly:** If the draft was adopted in its current form, it would result in millions of people currently working, among others: on the basis of civil law contracts and those performing non-agricultural activities would receive additional rights in this respect. They would then be entitled to, among others: a higher amount of annual leave, longer period for termination of employment contracts, an increase in the amount of potential severance pay for termination of an employment contract, or the possibility of faster receipt of severance packages or jubilee awards. According to the assumptions of the draft, the act would enter into force on 1 January 2026, to enable the determination of the length of service of individual employees in the light of the new regulations, as well as to give employers time to adapt company regulations or secure the necessary financial resources.

*(Draft act amending the Labour Code, dated 4 July 2024)*

### 6. Proposed amendment to the directive on European Works Councils

In June 2024, the Council of the European Union agreed its general approach regarding the proposed amendments to the directive, which aims to enhance the effectiveness of employee representation in multinational corporations. The proposed directive will improve the functioning of mechanisms contained in the current Directive 2009/38/EC of the European Parliament and of the Council, by, among other things, specifying the definition of issues considered transnational, so as to include in the information and consultation procedure

## Legislative work

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



matters that may initially appear significant only in one Member State, such as collective redundancies.

The proposed changes also stipulate that members of the special negotiating body would be elected or appointed in a manner that ensures a balanced gender representation of employees. Additionally, when concluding an agreement on the detailed arrangements for implementing the information and consultation of employees, the central management and the special negotiating body would, as far as possible, ensure a balanced gender representation of employees such that it comprises at least 40% women and at least 40% men.

Another significant change would also address the issue of funding special negotiating bodies. The proposed directive foresees the removal of the possibility for central management to limit expenses related to negotiations conducted by the special negotiating body by covering the costs of only one expert. Planned, among other things, is a solution whereby central management would bear the costs of experts, including legal experts, as necessary to properly fulfil the mission of the special negotiating body. However, these expenses would have to be reported to central management before they are incurred.

It has also been proposed that if central management provides confidential information within the framework of the information and consultation procedure, it would have to inform members of the special negotiating bodies, European Works Councils, or employee representatives of the reasons justifying the confidentiality of the information provided, in order to make it more difficult to unnecessarily classify information as confidential. Attempts to withhold information under the pretext of causing serious harm to the functioning of the enterprise would also be hindered, as in this case, central management will also have to provide a reason. Additionally, Member States would be required to ensure that European Works Councils have more effective access to judicial proceedings.

If the proposed directive is agreed upon with the European Parliament and adopted in the form proposed by the Council of the EU, Member States will have two years to transpose these amendments to the directive into national law, and then another two years to fully implement its provisions.

**Importantly:** The changes to the directive may result in an increasing number of groups of companies being subject to the provisions on informing and consulting employees. Employers should bear this in mind when undertaking significant legal and employment-related reforms or restructurings that might initially seem to affect only one jurisdiction.

*(The Proposal for a Directive of the European Parliament and of the Council amending*

## Legislative work

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



*Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees contained in the document of the Council of the European Union of 10 June 2024, 2024/0006(COD))*

*([www.consilium.europa.eu](http://www.consilium.europa.eu) -> Home -> Press -> Press releases -> Strengthening representation of EU workers in multinational companies: Council agrees its position on the European works council directive)*

### 7. Planned changes in the procedure for employing foreigners

On 26 September 2024, a draft act amending certain acts to eliminate irregularities in the visa system of the Republic of Poland, authored by the Ministry of Foreign Affairs, appeared on the website of the Governmental Legislative Centre. It provides for, among other things, a reform of the national visa issuance system for the purpose of employment by a foreigner and the system for performing work by a foreigner in the territory of the Republic of Poland. The drafted changes include, among others, the following: (i) introduction of the obligation for the voivode to refuse to issue a work permit for a foreigner if the circumstances indicate that the application was submitted for show, the permit will not be used for the purpose of performing work, or the entity assigning the work to the foreigner does not fulfil its obligations related to running the business or assigning work to other individuals, (ii) expansion of the indicative catalog of mandatory refusal grounds for issuing a permit by the voivode to include cases where there are reasonable doubts about the employer's credibility regarding the number of foreigners they intend to employ, based on available evidence or objective circumstances indicating that the number might be lower than declared, (iii) introduction of the obligation for the entity assigning work to a foreigner to notify the voivode in writing within 7 days if the foreigner does not take up the job within a month from the start date of the work permit's validity, interrupts the job for more than a month, or ends the job earlier than a month before the work permit's expiration date and (iv) modification of criminal provisions, particularly providing for the amount of the fine for certain offences to be dependent on the number of illegally employed foreigners. The reforms are to be introduced through the amendment of the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions and the Act of 12 December 2013 on Foreigners. The solutions planned in the draft act amending certain acts to eliminate irregularities in the visa system of the Republic of Poland are similar to the solutions proposed by the Ministry of Family, Labour, and Social Policy in the draft act on the conditions for the admissibility of employing foreigners in the territory of the Republic of Poland. However, there are concerns regarding their compatibility, which is currently under discussion. As announced by the Consular Department of the Ministry of Foreign Affairs, both draft acts are being processed in parallel, and a decision on their final form will be made at further legislative stages.

## Legislative work

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



**Importantly:** Currently, the draft act is at the opinion stage, it is worth monitoring the legislative process as the proposed solutions introduce significant changes to the procedure for employing foreigners, including imposing new obligations on employers and tightening penalties.

*(Assumptions for the draft act published on the website of the Service of the Republic of Poland in the tab Chancellery of the Prime Minister Republic of Poland -> O Radzie Ministrów -> Wykaz prac legislacyjnych i programowych Rady Ministrów -> Projekt ustawy o zmianie niektórych ustaw w celu wyeliminowania nieprawidłowości w systemie wizowym Rzeczypospolitej Polskiej)*

*(Draft act amending certain acts to eliminate irregularities in the visa system of the Republic of Poland, dated 23 September 2024)*

*(Draft act on the conditions for the admissibility of employing foreigners in the territory of the Republic of Poland, dated 14 August 2024)*

*(Consular Department of the Ministry of Foreign Affairs's statement issued for Dziennik Gazeta Prawna, <https://www.gazetaprawna.pl/praca/artykuly/9621242,dwa-ministerstwa-dwa-sprzeczne-projekty-ustaw-chodzi-o-zatrudnianie.html>)*

### 8. Draft act on Artificial Intelligence systems coming soon

On 9 September 2024, on the list of legislative and programme works of the Council of Ministers, the assumptions for the draft act on Artificial Intelligence systems were published. According to the published information, the aim of the draft is to introduce into the national legal order regulations that facilitate the application of Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 on laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139, and (EU) 2019/2144, and Directives 2014/90/EU, (EU) 2016/797, and (EU) 2020/1828 (Artificial Intelligence Act).

The proposed solutions primarily envisage the establishment of the Committee for the Development and Security of Artificial Intelligence, which will serve as the market oversight body for AI models and systems. The Committee is to be composed of representatives of bodies and offices relevant to the subject of the regulation (the assumptions indicate that representatives of institutions key to the development of the artificial intelligence technology sector are proposed as members of the committee), and its work will be led by a Chairperson appointed by the Prime Minister through an open and competitive selection process. The main tasks of the Committee would include: (i) considering applications for permission to place high-risk AI systems on the market or put them into use, (ii) accepting reports of serious incidents, (iii) considering complaints lodged by individuals subjected to the actions of AI systems, (iv) cooperating with public institutions, including market surveillance authorities, in proceedings related to the use of the aforementioned systems. The Committee will also have the authority to initiate proceedings ex



## Legislative work

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



officio upon obtaining information about potential violations of the Artificial Intelligence Act, and to conduct inspections of the entity against which such proceedings have been initiated.

**Importantly:** The use of artificial intelligence has already been regulated at the community level by Regulation (EU) 2024/1689 of the European Parliament and of the Council (the Artificial Intelligence Act), which came into force on 1 August 2024. The solutions proposed by the Council of Ministers are only intended to introduce regulations into the national legal system to implement the EU provisions. As of now, the draft text has not yet been published on the website of the Government Legislative Centre. The planned date for the Council of Ministers to adopt the draft is the fourth quarter of 2024.

*(Information published on the website of the Service of the Republic of Poland in the tab Chancellery of the Prime Minister Republic of Poland -> O Radzie Ministrów -> Wykaz prac legislacyjnych i programowych Rady Ministrów -> Projekt ustawy o systemach sztucznej inteligencji)*

### **9. Act amending certain acts to support entrepreneurs employing Territorial Defense soldiers or Active Reserve soldiers**

On 1 October 2024, the Sejm adopted the Act amending certain acts to support entrepreneurs employing Territorial Defense soldiers or Active Reserve soldiers. As stated in the reasoning, the aim of the Act is to encourage employers to hire Territorial Defense and Active Reserve soldiers. Regulations include the introduction of tax reliefs for entrepreneurs (both natural persons and legal entities) employing workers who are simultaneously Territorial Defense and Active Reserve soldiers, the promotion of entrepreneurs employing Territorial Defense and Active Reserve soldiers in the selection criteria for partners and suppliers in the public procurement process, and the abolition of the obligation to pay severance pay to an employee called to perform territorial military service, replacing it with an initial benefit.

*(Draft act amending certain acts to support entrepreneurs employing Territorial Defense soldiers or Active Reserve soldiers)*

### **10. Planned amendments to the regulations on the employment of persons with disabilities enabling an employer to more efficiently verify the validity of disability certificates**

On 23 September 2024, the draft act amending the Act on vocational and social rehabilitation and employment of disabled persons appeared on the list of legislative and programme works of the Council of Ministers. According to the information provided, it primarily aims to introduce regulations that streamline the work of the disability evaluation board and to clarify and organise certain provisions of the

## Legislative work

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



current act on rehabilitation. Among the assumptions for the draft act, there is also one concerning the employment of persons with disabilities. One of the proposed changes is the introduction of a legal solution that would enable the verification of the validity of certificates of disability and degree of disability. This will allow employers to check the status of a person with a disability more easily and quickly, enabling them to obtain funding for the person's remuneration from the State Fund for Rehabilitation of People with Disabilities. According to the published assumptions, the district or provincial board, based on the data collected in the Electronic National System for Monitoring Disability Certification, is to provide information on the validity of the certificate free of charge upon request, authenticated by the disability certificate sign or disability degree certificate sign and the PESEL number of the person the certificate concerns. As of now, the draft text of the act has not yet been published on the website of the Government Legislation Centre.

**Importantly:** The proposed changes, if entered into force as announced, will introduce significant facilitation for employers hiring persons with disabilities. The planned date for the Council of Ministers to adopt the draft is the fourth quarter of 2024.

*(Information published on the website of the Service of the Republic of Poland in the tab Chancellery of the Prime Minister Republic of Poland -> O Radzie Ministrów -> Wykaz prac legislacyjnych i programowych Rady Ministrów -> Projekt ustawy o zmianie ustawy o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych)*

## Positions and interpretations

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



### 1. Changing an employment contract to a services contract and tax avoidance

The Head of the National Revenue Administration, in a letter dated 12 June 2024, denying the issuance of a protective decision no. DKP3.8082.10.2023, emphasised that in a situation where a joint stock company intended to establish a subsidiary, in which it would hold 100% of the shares, and then planned to change the employment contracts signed by employees with the parent company to services contracts signed with the subsidiary within the scope of business activities, the taxpayer's aim is tax avoidance. The authority emphasised that the company would not be obliged to withhold tax as a payer, while employees would gain the ability to tax their income at a flat tax rate of 19% or a tax on registered income without deductible costs ranging from 2% to 17% of revenue, instead of the progressive tax rates of 12% and 32%. According to the Head of the National Revenue Administration, the aforementioned action was deemed to potentially lead to a tax benefit contrary to the legislator's intent, as the taxpayer's activity would only formally be classified as a business activity, whereas, in reality, it would constitute an informal employment relationship.

In light of the above, employers should be aware that tax authorities may question and challenge the tax arrangements of taxpayers as entrepreneurs if they consider that these taxpayers are actual employees of the given entity. There are also indications that in the near future, these authorities will more closely scrutinise the transitions from employment contracts to self-employment with regard to tax avoidance.

*(Letter of 12 June 2024, issued by the Head of the National Revenue Administration, DKP3.8082.10.2023, Założenie spółki i zmiana umów o pracę na umowy o świadczenie usług)*

### 2. Establishing the internal reporting procedure and its implementation deadline

The Ministry of Family, Labour and Social Policy, at the request of the Dziennik Gazeta Prawna, provided an explanation indicating that the internal reporting system for whistleblowers must be implemented by 1 January 2025. Only from this date will it be possible to impose sanctions on employers with at least 50 people for failing to implement this procedure, even though the Act on the protection of whistleblowers, in the part concerning internal reporting, comes into force on 25 September 2024. The deadline by which procedures should be operational at the employer is a subject of discussion among doctrinal representatives, the Ministry, and lawyers. The Ministry emphasises that the *vacatio legis* period between the publication of the Act and its entry into force is a time during which the law is

## Positions and interpretations

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



already in effect but does not yet have legal consequences for the addressees of the legal norms. During this period, legal entities can take actions to implement internal reporting procedures and also start consultation processes with trade unions or employee representatives. We believe that such a solution may cause problems in a situation where, after 25 September 2024, but before 1 January 2025, whistleblowers want to report breaches and the internal procedure has not yet been established and implemented.

According to the Ministry, each employer with at least 50 people as of 1 January 2025, should independently estimate the time needed to implement the internal reporting procedure for whistleblowers.

*(Position of the Ministry of Family, Labour and Social Policy issued to the Dziennik Gazeta Prawna regarding the establishment of an internal reporting procedure, <https://www.gazetaprawna.pl/praca/artykuly/9564482,procedury-dla-sygnalistow-w-firmach-dopiero-od-1-stycznia.html>)*

### 3. Settling the remuneration of a contractor who loses student status

The Social Insurance Institution (ZUS), in a letter dated 6 August 2024, reference number DI/100000/43/684/2024, addressed the situation in which a contractor reaches the age of 26, and their mandator, using the statutory exemption, did not pay contributions for them. According to the provisions of the Social Insurance System Act, an exception to the rule of being subject to pension and disability insurance applies to individuals who are students of secondary schools or university students up to the age of 26. The Social Insurance Institution highlighted that, for determining the obligation to pay social insurance contributions for a person with student status, it is primarily important to specify the period of being subject to social insurance under the mandate contract. The letter dated 6 August 2024, also indicated that the obligation to pay contributions is derivative of the obligation to be insured; thus, the duty to pay social insurance contributions will only arise if there is an obligation to be covered by social insurance. Additionally, the obligation to pay contributions is determined by the period for which the remuneration under the mandate contract is due, not by when it is paid.

The Social Insurance Institution indicated that in a situation where a contractor loses their student status before turning 26, or conversely, where a contractor has student status but is already 26 years old, social insurance contributions should be paid proportionally to the number of days for which the contractor is subject to mandatory social insurance in a given month.

*(Letter of 6 August 2024 issued by the Social Insurance Institution, reference number DI/100000/43/684/2024, <https://www.gazetaprawna.pl/praca/artykuly/9582535,jak-rozliczyc-wynagrodzenie-zleceniobiorcy-ktory-traci-status-student.html>)*

## Important case law on employee matters

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



### 1. The possibility for an EU Member State to require a residence permit for a worker

The European Court of Justice, in its ruling of 20 June 2024, held that the EU Member State in which the worker performs their work has the right to require them to obtain a residence permit. However, the fee for issuing such a document cannot be excessive or unreasonable. The Court ruled that the requirement for a service provider with its seat in another Member State to apply for a residence permit for each seconded third-country national worker is an appropriate measure to achieve the objective of increasing legal certainty concerning this group of workers and ensuring that these workers do not pose a threat to public order. Articles 56 and 57 of the TFEU should be interpreted to mean that third-country national workers seconded to work in another Member State cannot automatically be deemed to have a derivative right of residence. Additionally, the Court emphasised that although the fees for issuing a residence permit to a third-country national worker seconded to a Member State by a company from another Member State are higher than the corresponding fees for EU citizens, they must not be excessively high and should correspond to the administrative costs incurred in processing the permit application, which should be determined by the court in the respective Member State.

The above ruling clarifies to employers hiring non-EU workers that, in the event of seconding them to provide services in another Member State, there may be a need to obtain a residence permit in the host country as well, for an appropriate fee. This requirement does not contradict the freedom to provide services.

*(Ruling of the European Court of Justice of 20 June 2024, C-540/22 Staatssecretaris van Justitie en Veiligheid)*

### 2. The right of an employee who found out about her pregnancy after the deadline to appeal against an agreement termination to challenge the termination of contract within an additional, reasonably long period

In its ruling of 27 June 2024, the European Court of Justice stated that a pregnant employee should be provided with a reasonable period to lodge a complaint against her dismissal, and that a period of 2 weeks is insufficient and non-compliant with Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. The background of the case involves a question referred to the European Court of Justice by a German labour court in a case where an employee contested her dismissal, citing the prohibition on terminating pregnant women. The Court noted that according to

## Important case law on employee matters

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



German regulations, a pregnant employee who is aware of her pregnancy at the time of dismissal has 3 weeks to file a lawsuit to appeal against her dismissal. However, an employee who is not yet aware of her pregnancy for reasons beyond her control before the expiry of the above deadline has 2 weeks to submit an application to allow the lawsuit. According to the Court, the 2-week period is too short, considering the situation of a woman at the beginning of her pregnancy, which might hinder her ability to effectively seek legal advice and formulate and submit an application to allow a late-filed lawsuit, followed by the proper lawsuit. Therefore, this period is incompatible with Council Directive 92/85/EEC, as articles 10 and 12 of the directive should be interpreted to allow a pregnant employee to lodge an appeal within a period that does not unduly hinder her from exercising this right and complies with the requirements of the principle of effectiveness. Ultimately, it is up to the labour court to individually assess in each specific case whether the aforementioned period was indeed too short and prevented the pregnant employee from challenging the termination of her employment contract.

The ruling in the aforementioned case serves as an indirect guideline for European legislators to ensure a reasonable period for appeal to the court in cases of termination of employment of employees who are pregnant but unaware of their pregnancy at the time of dismissal.

*(Ruling of the European Court of Justice of 27 June 2024, C-284/23 Haus Jacobus)*

### **3. Compensated and fixed-term nature of a non-compete agreement after termination of employment, including the possibility of termination or withdrawal from such an agreement**

The Supreme Court's ruling of 12 June 2024, case number II PSKP 52/22, provides explanations regarding the non-compete agreement after the termination of employment, reiterating the previously established jurisprudence. Firstly, concerning compensation, the Supreme Court emphasised that such an agreement is of a compensation nature. It also stated that the non-compete restriction ceases to be binding before the termination of the agreement if the reasons justifying the restriction no longer exist or if the employer fails to fulfil the obligation to pay compensation. This means the employee is released from the obligation to refrain from engaging in competitive activities, rather than the employer being obligated to pay compensation. Secondly, regarding the term, the Supreme Court emphasised that a non-compete agreement after the termination of employment is a fixed-term agreement. However, the parties can terminate or amend it at any time by mutual agreement. Thirdly, the Supreme Court noted that the parties may include a right to withdraw from the non-compete agreement within the content of the agreement,

## Important case law on employee matters

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



provided that a specific time frame for exercising this right is stipulated. Although the Labour Code does not provide for the possibility of terminating a non-compete agreement after the termination of employment, it is permissible for the parties to agree on such a possibility within the agreement itself, based on the principle of freedom of contract.

The ruling serves as an important reminder and confirmation of the key characteristics of this agreement for both employers and employees bound by a non-compete agreement, particularly regarding the possibility of terminating such an agreement.

*(Ruling of the Supreme Court of 12 June 2024, II PSKP 52/22)*

#### **4. Was the reason for termination of employment properly communicated to the employee?**

The Supreme Court, in its decision of 24 April 2024, case number II PSK 103/23, provided instructions for employers on properly communicating the reasons for termination of employment to employees and reminded that the assessment of whether these reasons were communicated properly will require consideration of the specific circumstances of each case. The Court also indicated that a defect in the declaration of will arises only from the lack of precise and comprehensible communication to the employee of the reason for termination of the employment contract without notice, which could violate the regulations on the termination of employment. The main objective is to enable the employee to defend against substantively unjustified actions by the employer. As long as the manner in which the reasons for termination are communicated allows for this defense, the Court considers that this function is fulfilled.

For employers, it is also valuable information that an imprecise indication of the reason for termination of employment does not violate the relevant provisions (Article 30 § 4) of the Labour Code if the circumstances of the specific case, including the information provided in other ways (e.g. when handing over the notice orally or during discussions related to leaving the workplace), sufficiently justify and elaborate on that reason.

*(Decision of the Supreme Court of 24 April 2024, II PSK 103/23)*

## Important case law on employee matters

Changes in the law >

Important issues >

Legislative work >

Positions and interpretations >

Important case law on employee matters >



### 5. Premises for violating principles of community life in the context of social insurance

In the decision of the Supreme Court of 24 April 2024, case number II USK 128/23, the Court listed the premises that must be met to determine that there has been a violation of the principles of community life through the conscious intent to gain benefits from the social insurance system at the expense of other participants in the system. The two necessary premises indicated by the Court are: (i) setting a remuneration above the limit of fair, just, and decent salary, especially exceeding the contribution of work, and (ii) establishing such a remuneration just before the anticipated occurrence of an insurance risk.

Employers should therefore observe employees' insurance situations with greater caution, as they can lead to irregularities in benefiting from entitlements. Consequently, the Court's decision also serves as a warning against concluding employment contracts shortly before an event that entitles benefits and setting a high remuneration to obtain benefits calculated from that base. Such an employment contract may be deemed null and void in the part that establishes excessive and unjustified remuneration not corresponding to the actual conditions of work performance, due to its inconsistency with the principles of community life.

*(Decision of the Supreme Court of 24 April 2024, II USK 128/23)*



## Contact

- Changes in the law >
- Important issues >
- Legislative work >
- Positions and interpretations >
- Important case law on employee matters >



**Monika Krzyszkowska-Dąbrowska**

Counsel

Head of Employment Practice

Tel: +48 22 526 5080

[monika.krzyszkowska-dabrowska@linklaters.com](mailto:monika.krzyszkowska-dabrowska@linklaters.com)

### About Linklaters Warsaw Employment Practice

Our Linklaters Warsaw employment team combines in-depth knowledge, innovative thinking and commercial acumen to support your business, whatever your legal issue – and wherever in the world you do business. What it really comes down to is helping you manage your most important asset: employees and workers. We handle everything from day-to-day matters to unique situations that require innovative solutions or strategic decisions. We work with our clients on their most complex and sensitive employee relations issues, including hiring managers, termination of employment, all types of investigations, restructurings and labour disputes, risk management, all aspects of remote work.

With our expertise on your side, you can be sure that your legal needs are in the best possible hands.

### What we can currently do to help you:

“ The flexibility and availability of the Linklaters team is appreciated, in addition to the clear communication of the team members regarding anticipated delivery of legal counsel or document reviews.

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Poland: Employment

“ The team provides fast and commercially-minded advice. They understand how international groups function and can put Polish law into perspective for international clients.

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We draft remote working regulations tailored to the specifics of a given organisation as well as the implementation of various scenarios of remote work. We develop draft labour law regulations regarding sobriety testing.



We carry out internal training on anti-mobbing and anti-discrimination in the reality of remote and hybrid working.



We advise on the preparation for new labour law regulations, as a result of the implementation of the so-called work-life balance directive and the directive on transparent and predictable working conditions, including amendments to labour law documents and HR procedures.



We train and advise in the field of ESG in the field of the "S" element, in particular on HR matters.