

New employment contract solutions already in the Labor Code

I. More changes to Labor Code as of 26 April 2023

The Act of 9 March 2023 amending the Labor Code and certain other acts was published in the Journal of Laws on 4 April 2023. In accordance with Article 46 of the document, the Act goes into effect 21 days after its publication, i.e. as of 26 April 2023. The purpose of the amendments is to implement into the Polish legal system: Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, and Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers.

II. After six months employees able to request change in type of contract

Under the new regulations, an employee who has worked for at least 6 months will have a right to once a year request a change in the type of contract - to an employment contract for an indefinite time or more predictable and secure work terms. The employer will have to respond to the request in writing. The new regulations do not modify the maximum period of a probationary employment contract - it still cannot exceed 3 months. They do, however, provide for an exception to this rule whereby the parties will be able to agree in a probationary employment contract that it will be extended by the period of annual leave and other excused absences, if any. In addition, probationary period contracts will be concluded for periods not exceeding: 1 month - if the intended contract of employment is to be concluded for a fixed term of less than 6 months, or 2 months - if the contract of employment is to be concluded for a fixed term of at least 6 months, but less than 12 months. Probationary employment contracts for no more than 2 months will list the period for which the parties will conclude a fixed-term employment contract if they intend to conclude such a contract for less than 12 months. The regulations also clarify that an employment relationship is formed on the day specified in the contract as the day of work commencement. For fixed-term contracts the amendments provide that employers will have to provide the reasons for terminating such a contract (and inform the trade unions of the termination).

26 April 2023 is the effective date of the new Labor Code provisions that, among others, change the regulations on employment contracts, employer disclosure requirements, additional work breaks, introduce carer's leave and force majeure leave, and modify parental leave. They also permit the conclusion of employment contracts with more than one employer at the same time.



III. More information to be provided to employees

The amendments widen the scope of information on the terms and conditions of employment that employers will be required to provide to their employees. The employer will have to inform his employee, in paper or electronic form, no later than within 7 days of admitting the employee to work, of the following: the daily and weekly working time norms that apply to the employee; the breaks to which he is entitled; the daily and weekly rest to which he is entitled; the rules on overtime work and overtime pay; for shift work - the rules on moving from shift to shift; for work at several locations - the rules on moving between those locations; non-contractual components of remuneration and benefits in cash or in kind; the rules on terminating employment; the right to training; any collective labor agreement or another collective agreement; where the employer has not established work regulations - of the date, place, time and frequency of pay; night time hours and the method adopted by the employer for employees to confirm their arrival and presence at work and to excuse absences from work; it will also be necessary to inform of the right to training or the length of paid annual leave.

IV. Employees able to have more than one employment contract

The new provisions of the Labor Code will explicitly prohibit barring employees from simultaneously remaining in an employment relationship with another employer. This rule will not apply only in the presence of a non-compete agreement, or if separate regulations provide otherwise. What is more, after the regulations change on 26 April, simultaneously remaining in an employment relationship with another employer or in another legal relationship underlying the provision of work (unless the relevant restrictions arise out of separate regulations) will not be allowed to be the reason for the employer to terminate or dissolve an employment contract without notice, to prepare for such a termination or dissolution, or to perform an action with a result tantamount to termination. It should be noted that the existing regulations also did not have an explicitly expressed ban on simultaneous conclusion of more than one employment contract.

V. Additional breaks for those who work longer than 8 hours

Two additional breaks, included in working time, have been added to the Labor Code. Employees will be entitled to: a second break of at least 15 minutes, if their daily working hours are longer than 9 hours; a third break of at least 15 minutes, if their daily working hours are longer than 16 hours. Today employees are only entitled to one break. In consequence, after the changes, where an employee's working hours amount to at least 6 hours - the employee will be entitled to a break of at least 15 minutes; to more than 9 hours - an additional break of at least 15 minutes (i.e. two breaks of 15 minutes); to more than 16 hours - the employee will be entitled to another break of at least 15 minutes (i.e. will get three 15-minute breaks). Another important change is that employees will also be entitled to free training during working hours, as necessary to perform the given type of work or position. The regulations will clearly require that such training be included in the employee's working hours.

VI. Employees to get carer's leave and days off for force majeure

As of 26 April employees will be entitled to 5 days of unpaid carer's leave per calendar year. Although no remuneration will be paid for such leave, the period during which such leave is taken will be added to the period of employment that underlies employee rights. The leave will be available to be taken all at once or in parts, to provide personal care or support to a relative (son, daughter, mother, father or spouse) or household member who requires care or support for serious medical reasons. Such leave will be granted at employee request submitted in either paper or electronic form no less than 1 day prior to the planned leave. In the request, the employee will indicate the name of the person requiring care or support for serious medical reasons, the reason why the employee needs to provide care or support, and if the leave is for a family member - his/her relationship to the employee, whilst if it is for a person who is not a family member - the residence address of that person. The amended Labor Code will also provide for time off on account of force majeure, equal to two days or 16 hours per calendar year. The employer will be required to grant such leave at the employee's request and on the day indicated by the employee, who will have to make the request no later than on the day of the intended leave. Similarly to on-demand leave, the employee will submit his/her request in any form available. Absence on account of force majeure will be subject to half the remuneration.

VII. Changes in parental leave

The amendments make changes to parental leave. Above all, male and female employees will have an individual right to parental leave. The Labor Code will provide that the parents of a child will have a right to parental leave to take care of that child, amounting to: 41 weeks - for the birth of one child, or 43 weeks - for multiple births (in some cases this period will be extended to 65 or 67 weeks). The father's right to parental leave will no longer be conditioned on the mother's employment (insurance) on the day of birth. In addition, a non-transferable portion of parental leave will be introduced, amounting to 9 weeks for each of the parents, where the use of at least 9 weeks of parental leave will mean the use by the employee - the child's parent of the non-transferable portion of that leave. Parental leave will be granted at once or in no more than 5 parts, no later than up to the end of the calendar year in which the child reaches the age of 6 years. At the same time, a 70% maternity benefit will be introduced for the entire duration of parental leave for both parents. This is only a portion of the large package of changes relating to parental leave.



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VIII. Wider use of flexible working arrangements

The amendments will provide for more flexibility in the organization of work, including through remote work, flexible working schedules (flextime, individual work time, weekend work system, shorter work week and intermittent work time), as well as part-time work. To this end, the Labor Code will now include a provision whereby employees raising children up to the age of 8 will be able to submit a paper or electronic request for a flexible working arrangement. Such requests will have to be submitted no later than 21 days prior to the planned start date of the flexible working arrangement. Employers will consider requests for flexible working arrangements taking into account the needs of the employee, including the dates and reasons for the need for the flexible working arrangement, as well as the needs and capabilities of the employer, including the need to maintain normal business operations, work organization or type of work performed by the employee.

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