

Legal alert

Remote work and sobriety control

2023 opened with significant changes in labour law. Starting from 21 February, employers will be able to control employees' sobriety under new rules, and provisions introducing remote work into the Labour Code will become legally binding from 7 April. Furthermore, a bill implementing the "work-life balance" directive and the directive on transparent wages is currently going through the legislative process. The requirements that an employer needs to comply with in order to introduce remote work and sobriety control can be found below.

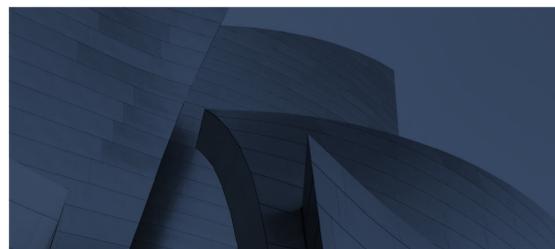
Remote work

The most significant change to the Labour Code is the introduction of a complete set of regulations regarding remote work. During the legislative process, the Sejm rejected two amendments proposed by the Senate, i.e. amendments intended to increase the amount of occasional remote work from 24 days to 30, and to extend the vacatio legis from two months to three.

The above-mentioned regulations apply to work performed completely or partially (hybrid) in a place designated by an employee and each time agreed with their employer, and, in particular, by means of direct remote communication.

Employers interested in introducing remote work will be required to conclude either company-wide or individual agreements setting forth the detailed rules for the performance of such work. Remote work can be introduced by:

- concluding an agreement with trade unions or establishing company-wide rules concerning remote work (in each case requiring the cooperation of the employees); or
- establishing guidelines regarding remote work for individual employees – without the need to amend or supplement existing employment agreements.



In each of the above-mentioned cases, the terms concerning remote work should specify, among other things, the rules concerning the reimbursement of remote work costs to be covered by an employer, which reimbursement will not constitute income under the tax law, and the rules concerning the provision of the training and technical assistance necessary to perform the specific tasks required of an employee performing remote work. The regulations also stipulate that an employer will be required to provide work tools and technical equipment, as well as cover costs related to, among other things, the provision of work tools, electricity and telecommunications services.

An employer will be entitled, at the place where the remote work is performed and during an employee's working hours, to inspect the employee's performance of such work, including as regards occupational health and safety, and compliance with data protection procedures, which should be in accordance with the rules set forth in the relevant agreement concluded with a trade union, the workplace regulations or in an agreement concluded with the employee.

As a rule, an employer will be required to permit remote work by, among others:

- pregnant employees;
- employees raising a child up to the age of 4; and
- employees caring for a close family member or another person in a common household who have a disability certificate.

Performing remote work on an occasional basis, i.e. to the extent that it does not exceed 24 days per year, will not require an employer to make the arrangements noted above. Significantly, in regard to occasional work, an employer will not be required to pay for the costs related to remote work.

Furthermore, the regulations introduce the possibility for an employer to mandate remote work:

- in the event of the declaration of a state of emergency or a state of epidemic emergency, and for a period of three months after the cancellation of such state; or
- during a period in which it is temporarily impossible for the employer to provide safe and sanitary working conditions at the employee's current workplace due to a force majeure event.

The existing conditions for remote work specified in workplace regulations or in an agreement may be used for no longer than six months after the date of entry into force of the above-mentioned amendments.



Sobriety control of employees and other individuals

The regulations introducing remote work also include provisions regarding the sobriety control of employees in the workplace. These provisions are aimed at allowing employers to examine employees for the presence of alcohol, other drugs or other similarly acting substances without the involvement of police or other authorities.

The amendment provides for the possibility of verifying the sobriety of employees only if it is necessary to ensure the protection of the life and health of the employees or other persons, or the protection of property. Up until now, the issue of blood-alcohol level by an employer had never been directly regulated, and the only possibility of testing an employee that was completely risk-free from the perspective of an employer was an examination conducted by the relevant authorities (such as the police) on the basis of the Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism. Prior to such amendment coming into force, an examination performed by an employer will, according to the interpretation of the UODO (Personal Data Protection Office), lead to a breach of data protection regulations. The new provisions provide for the possibility of such examination being conducted by an examiner provided the internal rules and regulations regarding such examinations have been previously provided to the employees.

Similar to the current legislation, under the new regulations, an employer will not be able to allow an employee who is in a state of intoxication or drunkenness to work. Cases in which an employee's alcohol level does not exceed the relevant threshold values will be deemed as equivalent to the absence of alcohol in the employee's body. Thus, the presence of alcohol will also be considered absent in cases where an individual's blood alcohol level does not exceed:

- 0.2‰ of blood concentration; or
- 0.1 mg per 1 dm³ of exhaled air.

Sobriety testing may only be conducted with the use of a device that has been certified as to its calibration and/or standardisation.

The issue of processing the personal data of the subject of a test has been covered by indicating what information may be processed (e.g. the date, time of the test, and result indicating the presence of alcohol or an intoxicated state), and according to the relevant circumstances and within a relevant timeframe. The storage of such employee data, as a rule, should not exceed one year from the date of collection.

In connection with these new regulations, employers are advised to amend their workplace regulations (possibly with a collective company bargaining agreement or notice) with at least two weeks' notification. Detailed regulations regarding sobriety testing can be found in the relevant draft regulation of the Health Ministry.

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Contact:



Marek Kanczew

marek.kanczew@rymarz-zdort.com
+48 600 092 413



Honorata Skibicka

honorata.skibicka@rymarz-zdort.com
+48 663 092 698