



# Legal alert

## Work-life Balance Directive and changes to the Labour Code

On 9 March 2023, the Polish Parliament passed a long-awaited law implementing EU directives regarding work-life balance and pay transparency. The amendment provides for significant changes to the conclusion and termination of employment contracts and provides employees with a number of new entitlements. The law is currently awaiting the President's signature, with a planned effective date of early April 2023.

### **Information obligations**

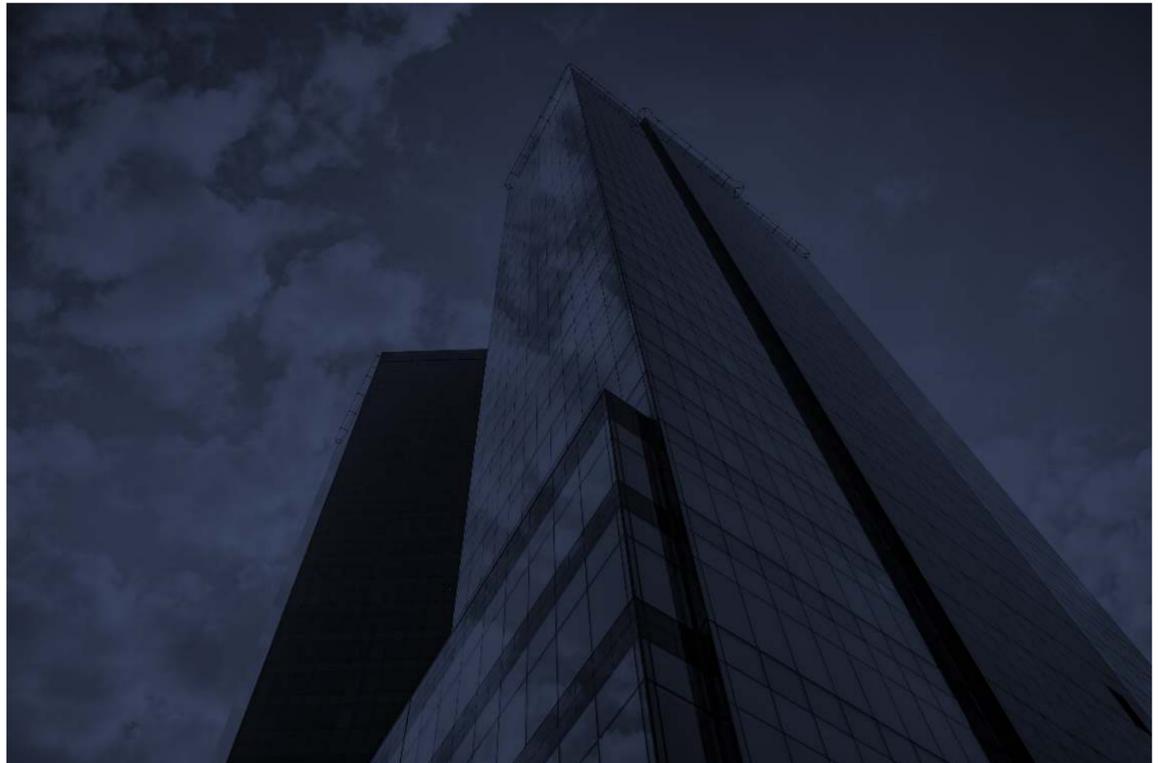
The law provides for new information obligations. An employer will be required to inform an employee no later than seven days from the start of their employment about, among other things:

- the daily and weekly working hours applicable to the employee;
- the work breaks to which the employee is entitled;
- the daily and weekly periods between working hours to which the employee is entitled;
- rules concerning overtime work and the compensation therefor;
- in the case of shift work – the rules concerning the transition from shift to shift;
- in the case of several places of work – the rules concerning traveling between places of work;
- additional components of the employee's remuneration and benefits (in cash or in kind), other than those agreed upon in the employment contract; and

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- the employee's right to training, if the employer provides it, in particular regarding the general principles of the employer's training policy.

Importantly, most of the above-mentioned information obligations can be met by indicating, on paper or via electronic form, the relevant labour and social security law provisions.



## **A contract for a trial period**

The law provides for regulations that limit the applicability of trial period contracts. The employer must provide the employee with information at the time the trial period contract is concluded as to whether the target contract is an employment contract for an unspecified or specified term. This is due to new regulations providing for the possibility of concluding a contract for a trial period not exceeding:

- one month – in the case of an intention to conclude an employment contract for a specified term of less than six months; and
- two months – in the case of an intention to conclude an employment contract for a specified period of at least 6 months but less than 12 months.

Importantly, the re-entry into an employment contract for a trial period with the same employee will be allowed only if the employee is to be employed to perform a different type of work.

## Termination of an employment contract

The previous labour law legislation provided for an obligation to indicate the justification for the termination of an employment contract, but only in the case of an employment contract for an unspecified term. Under the new law, this obligation has been extended to employment contracts for a specified term as well. In addition, in the case of the termination of an employment contract for a specified term, the employer will be required to notify the company trade union organisation representing the employee about the termination and the reasons for it.

Furthermore, the law identifies situations that do not justify the termination of an employment contract, which include, among others, simultaneous employment with another employer or simultaneous employment in a legal relationship that is the basis for the provision of work other than an employment relationship, unless restrictions in this regard result from separate regulations or a non-compete clause. Importantly, the burden of proof for justifying the termination of an employment contract will be borne by the employer.

Whenever it is determined that the termination of an employment contract for a specified term was unjustified or violated the provisions on the termination of employment contracts, then, as in the case of a contract for an unspecified term, the court will be able to adjudicate at the request of the employee:

- the ineffectiveness of the termination, and, if the contract has already been terminated, to reinstate the employee to work under the previous conditions; and
- compensation in an amount not exceeding the equivalent of three months' salary.

The law also introduces a new legal concept: an "effect equivalent to the termination of the employment contract." According to the explanatory statement concerning the new law, on the basis of Polish law, an action having an equivalent effect to the termination of an employment contract is, for example, a situation in which the employer does not assign work to an employee for an extended period of time or assigns tasks that are inadequate to the employee's qualifications and experience.



## **Employee entitlements**

The law provides for a number of new employee entitlements, the most important of which are described below:



### **I. The right of an employee to remain in an employment relationship with more than one employer**

An employer will not be able to prevent an employee from simultaneously remaining in an employment relationship with another employer or simultaneously remaining in a legal relationship that is the basis for the provision of work other than an employment relationship. This right will not apply in regard to employment restrictions arising from non-compete clauses or applicable law.

### **II. An employee's request for a change of an employment contract or for more predictable and secure working conditions**

An employee who has been employed with an employer for at least six months will be able to request, once per calendar year, by way of submitting their request in paper or electronic form, that the employer change the type of employment contract to an unspecified term contract, or for more predictable and secure working conditions, including a change in the type of work or full-time employment. This will not apply to employees employed under a contract for a trial period. The employer will be required to give the employee a paper or electronic response to the request, taking into account the needs of the employer and the employee, no later than one month from the date of receipt of the request; if the request is not granted, the employer must inform the employee of the reason for the refusal.

### **III. Exemption from work due to force majeure**

An employee will be entitled to an exemption from work during the calendar year, in the amount of two days or 16 hours, due to force majeure for urgent family matters caused by illness or accident, if the employee's immediate presence is necessary.

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During this exemption from work, the employee will retain the right to remuneration in the amount of half of their salary. The employer will be required to grant the exemption no later than the day the employee uses the leave.

## IV. Care leave

An employee will be entitled to care leave of five days per calendar year to provide personal care or support to a person who is a family member or resides in the same household and who requires care or support for serious medical reasons. A family member is defined as a son, daughter, mother, father or spouse.

## V. Extended protection due to parenthood

During pregnancy and during a period of: (i) maternity leave; (ii) maternity-related leave; (iii) paternity leave; and iv) parental leave, as well as from the date of the employee's submission of a request for any such leave (including partial leave), the employer will not be allowed to:

- conduct preparations for the termination or termination without notice of the employment relationship; and/or
- terminate or dissolve the employment relationship with such employee, unless there are reasons justifying termination without notice due to the fault of the employee, and the company trade union organisation representing the employee or the employee has agreed to the termination.

## VI. Entitlements of employees raising children under the age of 8

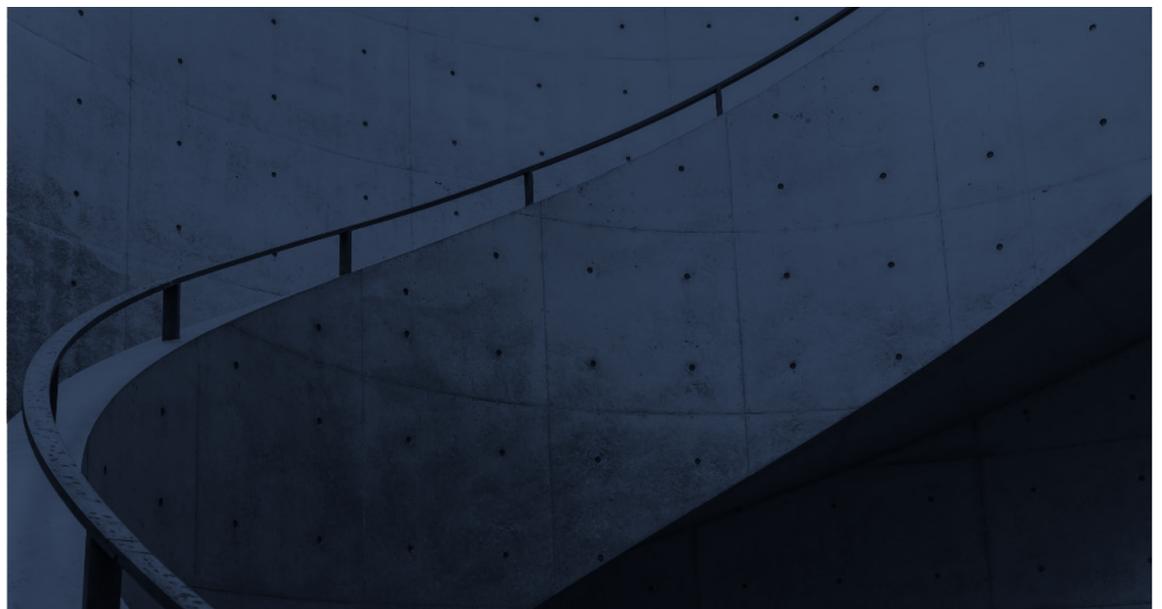
An employee raising a child up to the age of eight years will not be required to work overtime, overnight, intermittent working hours or be posted outside a permanent workplace without the employee's consent. In addition, an employee raising a child will, until the child turns eight years old, be able to submit a paper or electronic application requesting that they be permitted to avail themselves of flexible work arrangements. The application must be submitted no less than 21 days before the planned start of the use of such flexible work arrangements.



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The new Labour Code regulations will require employers to make certain adjustments, including:

- employers will need to review and eventually amend their workplace rules;
- employers will need to amend existing documentation so that it includes the information required to be provided to new employees;
- in respect of employment contracts entered into prior to the law coming into effect, employers will be required to provide new information at the employee's request;
- employers should prepare for the possibility of more frequent absences among their workforce due to the new leave regulations and additional work performance exemptions; and
- employers will be required to act with greater transparency in the event of an intention to enter into an employment contract or to terminate the employment of a person who may be about to take parental leave.



## Temporary provisions

The existing provisions will apply to employment contracts for a specified term that have been terminated prior to the date of entry into force of the law but which remain within their notice periods. The existing regulations will also apply to court proceedings regarding appeals against the termination of an employment contract. The law will enter into force within 21 days of its announcement.

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