

**Dear Readers,**

In the March issue of *HR Perspectives* we discuss a variety of important topics:

1. can asking employees uncomfortable questions be justified by counteracting COVID - 19? - Conclusions from the ruling of the District Court in Olsztyn;
2. is pay transparency coming? - a draft directive aimed at ensuring equal pay for men and women;
3. when is the last call to withdraw from the 2021 Company Social Fund?
4. is an Anti-harassment Committee a personal data controller - guidelines from the President of the Personal Data Protection Office;
5. is PLN 7,500 gross salary enough for foreigners to obtain the EU Blue Card? - Communication from the President of the Central Statistical Office.

**Enjoy your reading.**

**Łukasz Chruściel**

### **An employer may require an employee to provide some data in order to prevent the spread of Covid-19.**

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With the coronavirus spreading rapidly, such values as life and health as well as the employee right to work in safe and hygienic conditions are more important than the right to privacy. Thus, the employer, in order to fulfil its duty, has the right to interfere with employee privacy, and employees have the duty to comply with instructions in this regard. So, the employer may require the employee to provide some data in order to prevent the spread of coronavirus. This is what the Regional Court in Olsztyn ruled on 29 January 2021 (ref. no. IV Pa 79/20). It is a milestone ruling for a significant number of employers and employees alike.

The case concerned a summary dismissal of an employee who did not comply with an order issued as part of the "anti-covid" policy, which introduced the duty to inform about any travels abroad. The dismissed employee not only failed to inform his employer of the trip he had taken, but also lied when his supervisor asked him about it.

From the very beginning of the pandemic, we have advocated the view expressed by the court. Indeed, the right to privacy is not absolute and may be subject to limitations due to other legally protected rights and values. Personal data protection laws, including the GDPR or employment laws, do not in any way prohibit such processing of data if it is necessary for the achievement of overriding objectives.

This ruling has an impact on a number of actions taken by employers to reduce the infection risk at their workplace. Apart from the duty to inform about travelling abroad, other prevention measures include the duty to inform about coming in contact with an infected person, staying in places of higher exposure risk (e.g. large gatherings of people) or experiencing symptoms that may indicate infection, as well as testing body temperature before entering the workplace. The ruling confirms that such measures can be used if they are aimed at preventing infections among the staff and that it is obligatory to comply with the employer's instructions in this respect. Employees who fail to comply with the introduced rules and do not fulfil their duties in this respect may face negative consequences, even as serious as a summary dismissal.

### **Transparency of pay = equal pay**

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The legislation is intended to ensure EU-wide pay transparency and a guarantee of equal pay for men and women. On 5th March 2021, the European Commission presented a draft directive on measures to ensure equal pay for equal work.

The proposal focuses on two aspects: measures to ensure pay transparency to employees and employers and better access to justice for victims of pay discrimination.

The draft includes such measures as:

- informing job applicants about the offered pay, preferably in the vacancy notice or before the interview;
- forbidding to ask the candidate about the previous pay;

- ensuring the right to information on pay levels within a group of employees doing the same job;
- obliging large companies (+250 employees) to report on the gender pay gap.

In the event of violations, employees are to be entitled to compensation for pay discrimination with measures in place to facilitate the compensation recovery (including the measures regarding the burden of proof). Furthermore, Member States should lay down specific penalties for breaching the equal pay principle, including the minimum fines.

The draft will be submitted for adoption by the European Parliament and the Council. Once adopted, Member States will have two years to incorporate the Directive into the national law. We will follow the legislative process and keep you informed.

### **Deadline for winding-up the Company Social Fund**

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The Company Social Fund Act is riddled with loopholes and contradictions. For example, the Act allows to wind the Fund up in a given calendar year, but it does not set out a deadline for doing so. An exact date is set only for employers with less than 50 employees – they must do it by the end of January of a given year. However, there are no consequences whatsoever for missing the deadline. The deadline for other employers must be inferred from the entire Act. We believe that a winding-up is permissible until the end of a given calendar year, as the Fund is accounted for in a calendar year cycle. However, we recommend doing it before the deadline for transferring the first tranche of contribution to the Fund, i.e. by the end of May of a given year. It allows to avoid ambiguity about whether not transferring the contribution by this deadline constitutes a breach of the provisions of the Act or not, since the Fund may be wound up even after this deadline with effect from 1st January.

### **Guidelines of the President of the Personal Data Protection Office for DPOs on the Anti-harassment Committee**

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The President of the Personal Data Protection Office (“the PDPO”) stated that the anti-harassment committee does not meet the requirements to be classified as a separate personal data controller, as it is an assisting body of the employer. This conclusion is consistent with the opinion we have expressed before.

Notably, the President of the PDPO also covered in the analysis the involvement of external entities, i.e. persons not employed by the employer, such as external experts, in the Committee's work.

As a result of considering the committee an assisting body, there is no need to fulfill a number of duties related to the processing of personal data under the conducted investigation procedure, such as a separate information duty or providing justification for the transfer of necessary data to the committee. An equivalent status will also be given to other bodies through which employers fulfil their objectives or duties, including, first of all, a social committee carrying out the tasks related to the Company Social Benefits Fund.

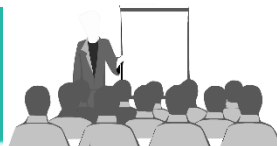
### Higher salaries for foreigners applying for the "Blue Card"

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The President of Statistics Poland (pl. GUS) has announced the amount of the average monthly salary in Poland for 2020. This means that the foreigners who apply for a residence permit for a fixed period for the purposes of highly qualified employment (known as the "EU Blue Card" or "Blue Card") based on employment contracts concluded in 2021 must demonstrate that their gross monthly salary is no less than PLN 7,751.21.

The above-mentioned change applies only to contracts that have been concluded with foreigners this year. Employees who have already applied for this type of permit based on an employment contract concluded in 2020 (either an employment contract or a civil law contract) and, therefore, have met the last year's salary requirements (lower by nearly PLN 400 gross), are not required to obtain a pay increase to receive the permit. Moreover, their Blue Cards will be valid on the existing terms and conditions. Such Blue Card holders can still be legitimately employed, even if their salary is lower than the above-mentioned amount.

No other conditions for obtaining the Blue Card have changed. This means that foreigners planning to apply for such a permit must not only prove that their salary is at a sufficiently high level, but also that they have concluded a contract with the employer for at least 1 year.



### Online workshop: New rules for pay policies in financial institutions - implementation of the EU regulations

Please join us for upcoming workshop organised by MMC Polska.

Date: 12th April, online.

Speaker: Bartosz Tomanek, advocate.

Registration and detailed agenda: [here](#).

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### 3<sup>rd</sup> Polish Labour Law Congress

PCS Paruch Chruściel Schiffter | Littler Global is a partner of the 3<sup>rd</sup> Polish Labour Law Congress organised by Must Read Media publishing house.

At the event our lawyers will address the following issues:

1. Holiday leaves during the pandemic - rights of employers and employees - Karolina Kanclerz, attorney-at-law.
2. Personal data protection during remote working – best practice and mistakes - Paweł Sych, attorney-at-law.

Date: 15th April, online.

Registration and detailed agenda: [here](#).



## Chambers&Partners Europe 2021

**Chambers**  
AND PARTNERS

**Sławomir Paruch**, attorney-at-law, partner recommended in the **Chambers&Partners Europe 2021** ranking in the Employment category.

## WWL Thought Leaders: Corporate Immigration 2021



**Karolina Schiffter**, advocate, partner, is the only lawyer from Poland to have been awarded the prestigious title of **WWL Thought Leaders: Corporate Immigration 2021**, which puts her among the world's leading immigration practitioners.

## Restrukturyzacja zatrudnienia 2021



We are happy to share our latest publication **Restrukturyzacja zatrudnienia 2021**, published jointly with Rzeczpospolita.

Read more: [here](#).

## E-book: Flexible working time. Q&A



**E-book: Flexible Working Time. Q&A** - is a collection of answers to questions asked by participants of “Flexible working time - what to do to make the mechanism work?” webinar organised on 3rd March 2020 by PCS Paruch Chruściel Schiffter | Littler Global under the auspices of Dziennik Gazeta Prawna.

The webinar addressed selected issues included in the *Czas pracy* (Working Time) periodical published jointly with Dziennik Gazeta Prawna.

E-book to download: [here](#).