

Dear Readers,

The September issue of *HR Perspectives* focuses on three topics that have stirred public opinion lately - **employee vaccinations, pay reductions for remote workers** and **employee activity in social media**.

In particular, we address the following questions:

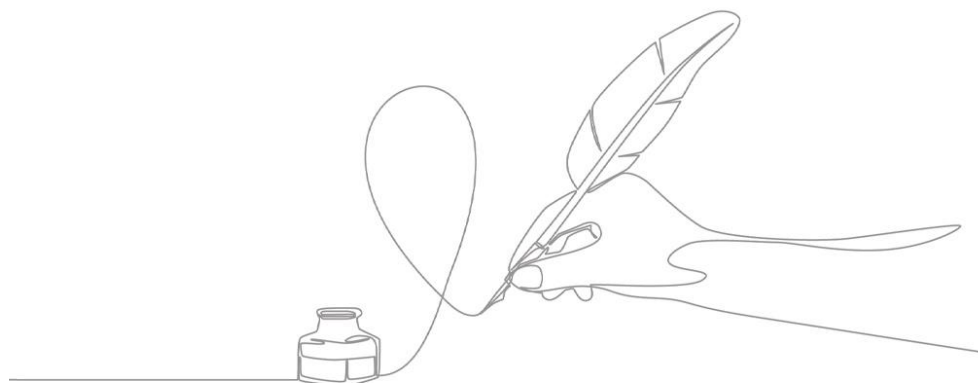
- Can an employer ask their employees whether or not they are vaccinated?
- Is pay reduction for remote employees allowed?
- Can an employer monitor their employees' social media activity, hold them accountable for abuses in this area, and make use of the content published by employees?

The answer is **3xYES**. You will find the details below.

Enjoy the reading!

Sławomir Paruch

Robert Stępień



Employers may process vaccination data. No need to wait for new regulations

An employer may request and process vaccination information from employees. Apart from employee consent, the basis for such processing may also be the necessity to fulfil labour law obligations, protect the public interest in the area of public health or preventive health care. The Labour Code stipulates that an employer may request such data when, for example, it is necessary to fulfil statutory obligations. Therefore, employers do not need to obtain employee consent to process their data. The other bases for data processing are also applicable.

Bearing in mind that an employer has an absolute duty to ensure safe and hygienic working conditions and take care of employees' life and health, the necessity to fulfil this obligation is a sound basis for such processing. Even more so, if the risk assessment demonstrates that work on a given position involves a risk of exposure to infection which may be further transmitted to other employees. Since the employer is obliged to organise work in a way that ensures safe and hygienic working conditions, it is sometimes necessary to know which employees are vaccinated.

This issue has been much debated lately. One of the arguments in the discussion is that collecting such data violates employees right to privacy. However, this right is not absolute. When it comes to ensuring the safety of other people, it is not lawful to hide behind the right to privacy. The duty to protect life and health and to ensure safe conditions at work definitely trumps employee privacy rights.

The Polish Ministry of Health has recently published the objectives of a draft law that will give employers a clear legal basis for obtaining vaccination information from employees. However, there is no need to wait for it - the relevant data can already be processed.

Considering the above, employers will be allowed to gather employee information concerning COVID-19 vaccination, active or past infection or a negative diagnostic test result for SARS-CoV-2. If an employee informs an employer that they have neither recovered from COVID-19 nor vaccinated against it, the employer would be able to direct such a person to work outside their permanent place of work or to another type of work. The Ministry of Health also provides for the possibility to send an unvaccinated employee on unpaid leave. Notably, in the future employers will be allowed to request information on vaccination or history of infection from candidates before entering into an employment relationship with them.

Pay cuts for remote employees

Differentiating pay based on the location and form of working may be justified. It is a classic example of location-based pay.

If some employees choose to work remotely and move to places where the costs of living are much lower, adjusting their pay is reasonable and fair towards the rest of the staff.

However, adjusting employee pay to reflect the changed form and place of work must be based on objective criteria. Such criteria may be the social factors and local conditions affecting the ratio of pay level to the cost of living in a given place.

Furthermore, there are no contraindications to introducing additional benefits for office-based employees. Some companies are already trying new strategies for increasing the appeal of onsite working to encourage their employees' returns to the office. Office-based employees can often count on additional perks, including free fruit at work or subsidised commuting. Providing such benefits to employees working in the office does not violate the principle of equal treatment in employment, especially if an employer offers the opportunity to work in the office to all employees. This way, an employer does not deprive any employees of the fair chance to receive additional benefits. It is only conditional on coming to the office.

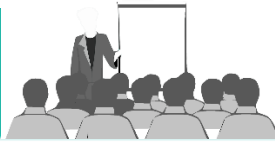
Policy on employee social media use and hate speech

Probably most of employers have experience at least one of the following manifestations of employee online activity: discussing and commenting an employer on Facebook, posting negative opinions on GoWork or carrying out activities in closed employee groups by trade union agitators, to name just a few. Can an employer react? Definitely yes, if an employee abuses their rights. In such a case, the freedom of speech and expression is not an excuse.

If the sole purpose of an employee is to express a fair and reasonable opinion within generally accepted boundaries, they have every right to do so. If, however, an employee acts with the purpose of damaging the employer, it is considered abuse. Such activity cannot be explained as exercising the right to freedom of speech and expression and, therefore, is not protected under this right.

The data protection legislation is also not a problem here. An employer can easily demonstrate a legitimate interest in processing such data. In some cases it will even be necessary to fulfil an employer's statutory duties, for example, to counteract workplace bullying. Therefore, the employer can use and refer to any content published by employees (also in closed employee groups) for the purpose of an internal investigation or court proceedings.

We recommend regulating this issue internally in the form of an employee social media policy or a policy against hate speech. We have helped many of our clients to introduce such policies. With employee online activity on the rise, it is a burning issue that should be addressed and regulated by employers as soon as possible. The question of regulating working time or occupational health and safety is undebatable. It should be the same for regulating employee online activity. All the more so, as the consequences of the latter may be much more damaging for the employer.



On relations with trade unions Rules for working with a trade union - scope of rights and privileges

We invite you to participate in the *On relations with trade unions* webinar series devoted to the management of relations with trade unions.

Date: 16 September 2021, 11:00 - 11:45, online.
Panellists: Sławomir Paruch and Robert Stępień.
Please apply here: perspektywyhr@pcslegal.pl | More: [here](#).

#autumnwithHR2021: Employees and social media

PCS Paruch Chruściel Schiffter | Littler Global together with Polskie Stowarzyszenie Zarządzania Kadrami (the Polish Human Resources Management Association) invites you to participate in the *#autumnwithHR2021* webinar series.

Date: 21 September, 14:00-15:00, online.
Panellists: Sławomir Paruch and Robert Stępień and Michał Bodziony. | More: [here](#).

Webinar: Remote working - new solutions and their consequences for employers

Date: 22 September 2021, 11:00 – 12:00, online.
Panellists: Sławomir Paruch and partner and Robert Stępień.
Moderator: Rafał Hermański, Management Board member of PZZW.
Please apply here: perspektywyhr@pcslegal.pl | More: [here](#).

IV Polish Labour Law Congress

We invite you to participate in the IV Polish Labour Law Congress organised by Must Read Media.

Date: 29-30 September 2021.
Panellists: Karolina Kanclerz and Paweł Sych. | More: [here](#).



WWL
Thought Leaders
Global Elite 2021

Karolina Schiffter recommended in the WWL Global Elite Thought Leader - *Corporate Immigration 2021* and *Global Leader - Corporate Immigration 2021* categories.

Read more: [here](#).

WWL
Labour & Employment 2021

Sławomir Paruch and **Łukasz Chruściel** recommended in Global Leaders category of Who's Who Legal: *Labour & Employment 2021*.

Read more: [here](#).