

Dear Readers,

enclosed please find the December issue of the *HR Perspectives*.

As an initial matter, we discuss the just-published **bill that will regulate collection of negative COVID-19 test result data by employers**. In practice, the regulations also provide an opportunity to verify and collect data on vaccination or convalescent status. In addition, they indicate which actions an employer may take with respect to individuals who fail to “present” a covid passport or negative test result. We point out the basic assumptions of the legislation – but we will continue to watch the legislative process and keep you informed.

In addition, we focus on **fringe benefits** – extra days off, 4-day work week, sabbatical and remote working. We suggest what to look out for in order to achieve the expected business effect and avoid risks.

We also share our experiences on how to tie **employee benefits** to loyalty agreements and employee time commitments. Such agreements are gaining popularity in the market. And they don't have to be exclusively about training, as is commonly believed. See the details below.

Good reading!

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#ALERT:
Bill regarding verification of negative test results and COVID-19 vaccinations

Finally, there is the long-awaited bill regarding verification of negative test results and COVID-19 vaccinations. These are solutions that we have been talking about for a long time and, in our view, even without a change in the law, have been and still are allowed.

The legislation decides that in the interest of safety an employer will be able to request information about a negative test result, while a covid passport will waive this requirement!

The bill also provides for possible action against employees who refuse to take a test or provide the data. The question is whether this is a closed catalog and whether employers will be authorized to take other actions that they deem effective!

We describe the highlights of the bill below:

1. Employers will be able to require employees (individuals employed under civil law contracts) to provide information about **having a negative coronavirus test result** (taken up to 48h before presentation). The employee will be required to provide this data **whenever requested by the employer**. As a general rule, the employee will provide this data in the form of a statement. The employer will be able to request that the data be documented by showing a negative test result.
2. Employees (and those employed under civil law contracts) will be able to test for SARS-CoV-2 **free of charge**. The tests will be financed **from public funds**. This solution will provide a universal possibility to test employees.
3. If an employee provides information to the employer that he/she has recovered from a SARS-CoV-2 infection or has a COVID-19 vaccination, he/she **will be exempt from the obligation** to provide information about having a negative test result. The employer will be able to request that the data be documented by showing a medical certificate of having had the illness or a certificate of vaccination. In practice, verification will be done through a provided application scanning the so-called covid passport.
4. The employer will be permitted to retain relevant data for the period necessary to fulfill the purpose of the regulation (i.e. as long as is necessary to prevent the spread of COVID-19 in the workplace), but no longer than the expiration of the state of epidemic threat or state of epidemic.
5. If an employee refuses to provide information, the employer will treat such employee as **not having a negative test result/convalescent status/COVID-19 vaccination**.
6. In the case of an employee who has provided information about having no test (no convalescent status/no vaccination) or has refused to provide the information, the employer will be able to:
 - 1) make a change in the workplace or other place designated for performance of work, including the manner in which employees perform their work;

- 2) make changes to the employees' work time systems or schedules;
 - 3) instruct the employee to perform work outside the workplace specified in the contract, within the same locality, or assign the employee to another type of work for remuneration corresponding to the type of work, not lower than the previous one.
7. The employer's actions will not constitute a violation of equal opportunity in employment.

Additional days off, unlimited holiday leave, sabbatical, leave granted "in hours"

The benefit of offering employees more time off is gaining popularity. In various countries around the world, ideas of a four- or even three-day work week emerge. The concepts of additional holiday leave or even unlimited leave are also popular.

There are no impediments to increasing employees' annual holiday leave. We can always give employees more benefits than the regulations provide for. It is only important that the rules regarding equal treatment of employees are maintained. This does not mean that such additional leave must be uniformly granted to everyone. Its granting, as well as its amount, may depend, in particular, on the employee's performance or even on the type or nature of the work.

Some employers are introducing what they call "unlimited vacation days" in their work establishments. Employees are granted an unlimited pool of paid time-off to use. The prerequisite is that they remain productive and perform their assigned tasks effectively. This unconventional solution certainly will not work everywhere. In the case of a task-based working system, however, it may be worth considering.

A solution that is gaining popularity in Poland is the so-called sabbatical – a long leave granted to employees who are most deserving for the organization. It is often granted for as much as one year. During this leave, employees have an opportunity to improve their competences, pursue their passions and regenerate, which allows them to fight professional burnout. The rules of granting the sabbatical, its duration or its purpose can be regulated in any way.

What about granting leave in hours? Employees often ask for such leave, viewing this arrangement as beneficial. In our view, there is no reasons for not granting leave this way, in accordance with the principle of benefit to the employee.

However, the labor inspection service opposes the practice, despite declarations from employees that it is beneficial to them. So by using such an arrangement you have to reckon with a dispute with the labor inspection service.

"Free Fridays"

Some employers choose to put in a day-off on Friday in exchange for extended hours on other days of the week. Others provide reduced work hours for the entire team on Fridays

or organize non-work team activities on Friday afternoons. There are lots of options to modify this benefit. Its essence is that the productivity or efficiency of employees should not be equated with the number of hours spent in the office. This requires a mature organizational and work culture that will keep employees really engaged and feeling accountable for company performance, while spending less time in the office.

Implementation of such a solution often has to be preceded by adaptation of formal issues, such as change of the working time system or existing regulations and schedules.

Working 100% remotely – benefit or threat?

The coronavirus pandemic has made remote working the new reality for employers and employees. Its advantages have been recognized by employees who began to treat remote work not as a means to eliminate the risk of coronavirus infection, but as a benefit. Remote working is also beneficial for employers, because it reduces the cost of renting office space, to name one benefit.

There are employers where 100% of the work is performed remotely. The success of such an arrangement depends on the specifics of the employer's business – for some it will be beneficial, for others it will pose a threat. There are also no obstacles to introducing 100% remote work on some positions and hybrid work on others (i.e. combining remote work with in-office work). It is only important that such differentiation of the employees' situation be based on objective criteria. One of these may be the type or nature of the work performed by the employee. It is also important that the rules of remote cooperation between the employee and the employer are properly regulated, in the remote work rules and regulations. Clearly defining these rules will allow for efficient management of the remote work process and at least mitigate risks in many areas that are not yet explicitly addressed in the regulations.

Employee benefits in loyalty agreements

Certain benefits granted to employees can be tied to a loyalty agreement, i.e., the employees' obligation to work a certain amount of time. In such case we achieve not only the effect of rewarding the employee, but also the retention goal of keeping the employee employed.

Such agreements may be entered into not only for training purposes. In accordance with the principle of freedom of contract, they may also concern other forms of support for employees, e.g. subsidies for the purchase of a home. In doing so, the employer is not bound by the requirements set for training agreements. For the regulations do not provide for loyalty agreements other than training agreements. The employer therefore has a great deal of discretion in this regard.

It is important that the condition of having worked a certain amount of time be defined as having to actually perform work. The employer may exclude periods of absence. In the case of a sick leave, the issue arises as to how to include the value of the awarded benefit in the sick leave benefit base. As a general rule, if a benefit is not paid during a period of illness, it should be included in the benefit base. However, it is possible to limit this obligation to a certain extent by properly structuring the rules for granting such a benefit.



Publication: Company Social Benefit Fund (ZFŚS) – questions with commentary

We invite you to read the latest publication **Company Social Benefit Fund (ZFŚS) – questions with commentary**, published together with *Dziennik Gazeta Prawna*.



In the publication you will find discussion of the following topics, among others:

- the purpose of establishing the ZFŚS,
- types of financial benefits,
- the amount and timing of the ZFŚS contribution,
- sanctions for violations,
- solutions introduced by the provisions of the COVID-19 anti-crisis shield.

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