Dear Readers,

The latest issue of *HR Perspectives* is devoted entirely to the issue of **verifying the number of trade union members** and the upcoming **changes in employment legislation.**

By **11 July**, company and inter-company trade unions must inform employers about the number of their members. The employer will then have 30 days to challenge that number. We would like to share with you our insights concerning the procedure for verifying the size of a trade union and why it pays off to go through the process.

Later on, we look at changes concerning employment contracts for a fixed and trial period. The latter are related to the EU work-life balance directive which is being transposed into the Polish legal system. We have already discussed the main points of this directive in the previous editions of *HR Perspectives*.

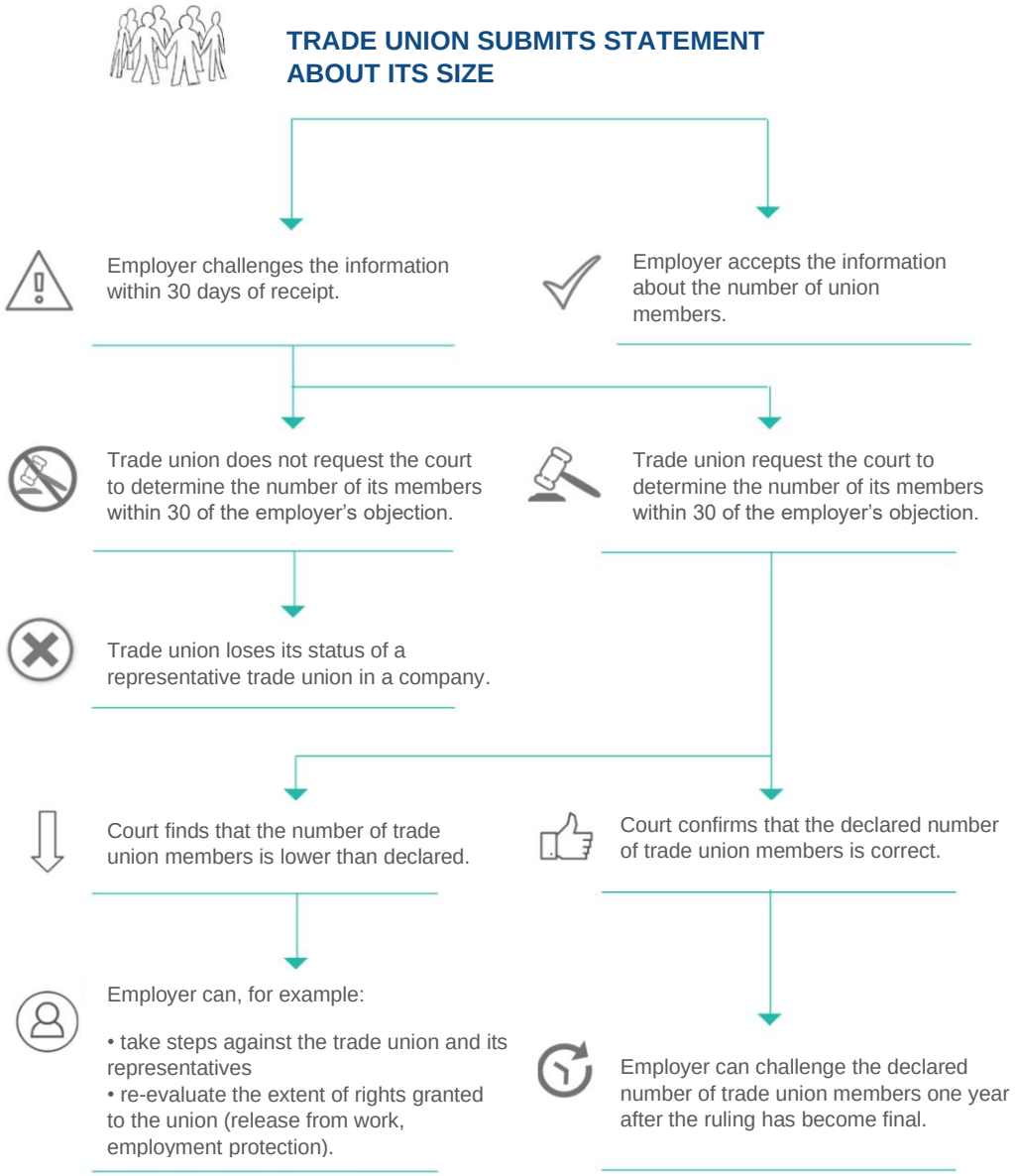
Enjoy reading!

Agnieszka Nicińska

Robert Stępień

Verification of trade union size - what is it?

By 11 July this year, each company or inter-company trade union should provide their employers with information about the number of their members. After receiving such information, the employer has 30 days to challenge it in writing. A trade union whose size has been questioned must apply to the court to have the number of its members determined. Otherwise, it will lose the status and rights of a representative trade union in a company (companies).



Why use it?

The procedure for determining the number of trade union members is one of the very few mechanisms enabling the employer to introduce transparency into trade union relations. Thus, it is relevant not only for determining the size of a trade union but, more importantly, to set the tone for trade union relations in general. This is probably the first time in the history of employer-union relations when the trade union has to provide documents to support its statements and to clarify any doubts or irregularities. This introduces a whole new quality to the relations with trade unions, who often hide behind the misunderstood concepts of self-governance and independence and assume employers should take their statements at face value.

Furthermore, verifying the union's size by a court makes it possible to:

- check the accuracy of the trade union's statement (it happens that trade unions overstate the number of their members);
- determine the extent of rights granted to the union (release from work, employment protection);
- establish whether a trade union has the status of a representative union in a company;
- taking steps against people responsible for overstating the number of trade union members (e.g., recovering unduly paid remuneration, terminating employment contracts)

The size of a trade union determines many issues, such as:

- the number of hours and union posts granted to the trade union;
- the number of employees covered by special protection of employment;
- the status of a representative trade union in a company or many companies which, in turn, determines the position of a given trade union among other trade unions at the workplace.

Raising objections is not enough

A proactive attitude of the employer who takes part in the proceedings for determining the number of trade union members is the key to success. The employer, as a party to the proceedings, has the right to actively participate and have access to case documents (including those concerning union membership; in fact, the thing that the employer cannot do is to process membership data but can have access to, for example, pseudonymised data), question witnesses, submit offers of proof, etc. In practice, it is the employer who has the inside knowledge of irregularities concerning the number of members declared by the union. The court cannot exclude the employer from participating in the proceedings. Furthermore, conducting such proceedings without the employer's participation would make no sense as it would render the aim of the proceedings, namely to verify reliably the number of trade union members, unattainable. Indeed, without the employer's participation, the proceedings will most likely result in giving the court's seal of approval on the union's statements. In such a case, from the employer's perspective, it would be better if such proceedings were not conducted at all. And that is why we encourage employers to actively participate in such proceedings.

Changes in fixed-term contract – the obligation of issuing a statement of reason

The legislator has planned a revolutionary change regarding fixed-term employment contracts. It requires employers to reason the fixed-term contract termination in the termination statement. As a result, fixed-term contracts will no longer be seen as an attractive and flexible form of employment in terms of termination. With regard to termination through notice, fixed-term and indefinite employment contracts will now basically be the same.

Besides the obligation to give reasons for termination, employers will also be required to consult the fixed-term contract termination with the trade union. Although the union approval is not necessary for the employer to dismiss an employee, omission of the union consultation can be recognized as unlawful by the court. This also applies to indefinite contracts. If the fixed-term contract termination is found to be unreasonable or unlawful by the court (which can happen both when the reason stated by the employee does not meet the necessary requirements and in case of union consultation omission), the employee can demand reinstatement or compensation.

Future regulations are supposed to act as an incentive for the employers to sign fixed-term contracts but are most likely to be counterproductive – employers will probably choose to enter into contracts under the civil code instead.

Changes in probationary contracts

The implementation of the UE work-life balance directive will change the rules for signing a probationary contract. The most important changes are:

a) **possibility of extending the trial period** – the bill allows employees to extend the trial period by vacation time, as well as by any other reasonable time of absence, if such occur. Both parties may agree to such a solution in the employment contract, or else the contract will not be extendable.

b) **duration of the trial period** – the duration on the trial period will depend on the expected duration of the employment contract signed immediately after the probationary contract ends. This means that the employer should decide on the length of employment contract offered to the employee in future already when entering into a probation contract.

The probation contract can be signed for the maximum period of:

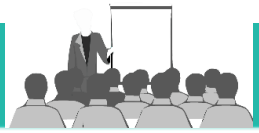
- **1 month** – if an employer intends to offer the employment contract for the period of 6 moths minimum;
- **2 months** – if an employer intends to offer the fixed-term employment contract from 6 to 12 moths maximum;
- **3 months** – in all other cases;

However, employers will be able to make use of a “loophole”, which would allow them to extend the duration of a 1- and 2-month trial period for no more than a month if the kind of the job is applicable. This possibility should be clearly stated in the employment contract.

c) **no possibility of signing a new probationary contract during the trial period** – the bill removes the option of signing a probationary contract until at least 3 years after

the employment contract termination or expiry. Renewing the probation contract would only be possible if the employee is to be employed to perform a different type of job.

We advise you to review the employment contracts forms you use, so that they do not raise any concerns in the light of the revised regulations.



On unions with unions: Business benefits of verifying the size of a trade union

We invite you to yet another *On unions, with unions* meeting.

Date: July 12th 2022, 11:00 – 11:45, online.
Presenters: Sławomir Paruch and Robert Stępień.
More: *here.* | Sign up: *here.*

Series: 10 most important rules of communication with employees after working hours

We invite you to the next meeting in the *10 most important rules* series.

Date: July 13th 2022, 11:00-12:00, online.
Presenters; Katarzyna Witkowska-Pertkiewicz, Sławomir Paruch.
More: *here.* | Sign up: *here.*

HR Compliance Expert course: New ways of remote work – securing employer interests when employees work from home

We invite you to participate in the *HR Compliance Expert* course.

Date: July 19th 2022, 11:00-11:45, online.
Presenters; Karolina Kanclerz and Bartosz Tomanek.
More *here.* | To sign up, message: perspektywyhr@pcslegal.pl

There is a fee to attend the event.

HR in Cloud: Data and personal information protection in the remote work reality – what to watch out for?

We invite you to yet another meeting in the *HR in Cloud* series.

Date: July 21st, 2022, 11:00-11:45, online
Presenters: Sławomir Paruch, Robert Stępień, Paweł Sych and Michał Bodziony.
More: *here.* | Sign up: *here.*

2022 Law Firm Ranking by Rzeczpospolita.

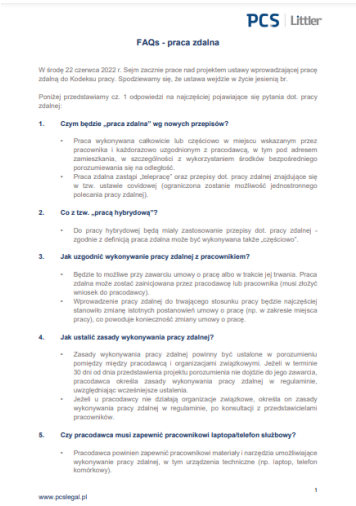
PCS | Littler was recognized as a leader among law firms in the "Labor and social security law" field.

Sławomir Paruch was recognized as the leader among lawyers in the „Labor and social security law" field.
More: *here.*

Thank you and congratulations to the other awardees!

Karolina Schiffter was awarded in the WWL *Global Elite Thought Leader - Corporate Immigration 2022* ranking and the *Global Leader - Corporate Immigration 2022* ranking.

More: *here.*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FAQs - praca zdalna

W środę 22 czerwca 2022 r. Sejm zacznie prace nad projektem ustawy wprowadzającej pracę zdalną do Kodeksu pracy. Spodziewamy się, że ustawa wejdzie w życie jesienią br.

Poniżej przedstawiamy cz. 1 odpowiedzi na najczęściej pojawiające się pytania dot. pracy zdalnej:

1. Czym będzie „praca zdalna" wg nowych przepisów?
2. Co z tzw. „pracą hybrydową"?
3. Jak uzgodnić wykonywanie pracy zdalnej z pracownikiem?
4. Jak ustalić zasady wykonywania pracy zdalnej?
5. Czy pracodawca musi zapewnić pracownikowi laptopa/telefon służbowy?

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FAQs – Remote work.

We present the most frequently asked question regarding remote work.

Authors: Sławomir Paruch, Bartosz Wszeborowski, Michalina Lewandowska-Alama.

Read: *here*.