Dear Readers,

we have devoted the August edition of *HR Perspectives* to the upcoming changes in employment and labour law. They include the proposed changes to how industrial actions are carried out, as well as to parental leave and entitlements. We also take a closer look at requesting a non-national to work overtime.

In particular, we answer the following questions:

- How will **an industrial action be carried** out if the planned changes come into force?
- Is it legal to **request a non-national to work overtime** if such overtime is not explicitly set out in the work permit?
- What **changes to parental entitlements** will be introduced as a result of transposing the EU work-life balance directive?

Enjoy reading!

Agnieszka Nicińska
Robert Stępień

A big industrial dispute and strike legislation shake-up

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The government has put forward a proposal for a new law on industrial disputes. This would be a major shake-up as the existing law has remained virtually unchanged for more than 30 years. Trade union rights will be limited by the changes, possibly resulting in mass protests organized by trade union heads. The following table provides a comparison of the existing and planned legislation:

	NOW	ACCORDING TO THE NEW ACT
STRIKE VOTING LEGALITY CHECK	• Not possible to go to court to check the legality of the strike voting.	• The legality of the strike voting will be determined by the court. Either a trade union or an employer can apply to the court to examine the legality of the strike voting; • The courts of first and second instance have 14 days each to make a ruling; • The strike may not commence until the court's decision becomes final.
REASONS FOR INDUSTRIAL DISPUTES	• Industrial disputes may concern working conditions, wages, social benefits, as well as trade union rights and freedoms.	• The list of potential reasons for industrial disputes will be extended to include virtually any collective employment case concerning.
JOINT UNION REPRESENTATION	• Trade unions can establish joint union representation if they decide to do so; • This hardly ever happens which means that each of the workplace trade unions, even those without a status of a representative union in a company, can initiate its own industrial action.	• Negotiations should be carried out through joint union representation; • If joint union representation is not established, negotiations are carried out with each trade union individually, provided that at least one trade union participating in the strike negotiations has the status of a representative union in a company; • A trade union which puts forth demands in an industrial dispute should notify the other unions about it.
DURATION OF THE CONFLICT	• An industrial dispute can go on indefinitely with neither party making any effort to end it and keeping a strike option open.	• The duration of industrial dispute and negotiations will be limited to 9 months from the initiation of the dispute (with the option to extend it further by 3 months); • The dispute expires within 9 or max. 12 months, if: ○ the parties fail to conclude an agreement ending the dispute or draw up

		a record of divergencies, followed by a strike voting and action; or ○ when the trade union drops the dispute. • Disputes initiated and unconcluded before the new Act becomes effective would expire 12 months after it is enacted.
COLLECTIVE LABOUR AGREEMENT DISPUTE	• If a dispute concerns the content of a collective labour agreement or an agreement to which a trade union is a party, it is not possible to initiate and carry out the dispute prior to the agreement termination.	• It is not necessary to terminate a collective labour agreement or an agreement to which a trade union is a party if the dispute does not concern the content of the agreement but the performance of the agreement or compliance with its provisions; • If a collective labour agreement does not provide otherwise, it can be terminated with a 3-month notice period
NOTIFICATION DUTY	• Should an industrial dispute arise, the employer must notify a district labour inspector.	• Should an industrial dispute arise, the employer must notify the Minister of Labour.
PREVENTIVE MEDIATION	• There is no "preventive" mediation. Only when the conflicted parties are unable to reach an agreement in the negotiations can a mediator step in.	• Parties may agree that a mediator would participate in the negotiations to help the conflicted parties come to an agreement at the early stage of the dispute.
WARNING STRIKE	• No obligation to give notice of a warning strike.	• Obligation to give a 3-day notice of a warning strike.
DATE OF STRIKE	• A strike cannot be initiated sooner than 14 days following the date of dispute notification.	• A strike cannot be initiated sooner than 21 days after the demands have been put forward.
STRIKE VOTING OBLIGATIONS	• No specific obligations.	• The strike voting should be carried out 30 days from drawing up the record of divergences; • At least one representative trade union must participate in the voting; • At the request of the trade union, the employer should provide information on the number of employees in the workplace; • The trade union keeps the voting documentation for 12 months following the strike voting to make it available for a labour inspection or judicial review.

It is legal for a non-national to work overtime

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The Chief Labour Inspector and the Ministry of Family, Labour and Social Policy claim that an employer may employ a non-national only for the number of hours set out in the work permit or in the declaration on entrusting work. According to their line of argument, the wording of the permit itself sets out the exact number of work hours, not the minimum number of such hours. Such strict adherence to the letter of the law leads to the conclusion that each time a foreign national works for more (or fewer!) hours than determined by the permit, for example more than 40 hours for a full-time job, their employment is not compliant with the conditions set out by the permit issued and thus is illegal.

This also applies to contracts under the civil law code, which should, in principle, be more flexible. Nonetheless, they are not exempt from this requirement and the number of a non-national's work hours (per week or month) must also be provided in the application and then included in the permit. Meanwhile, according to the line of argument mentioned above, any exception from the number of hours provided in the permit, whether above or below the limit, will render the employment non-compliant with the conditions of the permit issued.

We believe that the Ministry of Labour and Labour Inspectorate's interpretation of the regulations is wrong and leads to absurd results. Working time standards are not the same as the number of work hours that must be provided in the permit application. The above interpretation erroneously equates the two concepts. The rules governing when it is permissible to exceed the general working time norms and by how much are set out by the Labour Code and apply to all employees regardless of their nationality. Thus, it is legal for a non-national to work overtime as long as it complies with the limits determined by the Labour Code.

The existing regulations do not provide for a permit or declaration to include potential overtime work. Such an option is not included in the template forms at all, which is perfectly understandable. Otherwise, it would constitute unwarranted overtime scheduling. Thus, following the reasoning of the Ministry and Inspectorate, only those non-nationals who do not need a work permit to take up employment (e.g. graduates of full-time studies at Polish universities, holders of a long-term EU resident permit, etc.) may legally work overtime.

However, it should be underlined that non-nationals working based on a work permit or a registered declaration can be requested to work overtime subject to the same rules as Polish employees.

Changes in parental entitlements

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The planned amendment to the Labour Code related to the transposition of the EU work-life balance directive is to bring about significant changes in parental entitlements, especially concerning parental leave. Furthermore, a whole new set of tools for a more flexible response to personal and family emergencies are being planned.

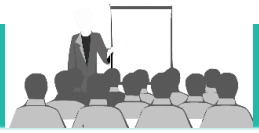
The first of such measures is the 'carer's leave'. It is to be granted for up to 5 days per calendar year. As the name suggests, its purpose is to provide personal care and support to a family member or a person living in the same household who requires care or considerable support for serious medical reasons. Notably, employees can take this kind of leave only for the sake of their children, parents or spouse. The period of carer's leave is to be counted towards the period of employment which is the calculation base for employee entitlements.

Another new solution is force majeure leave for urgent family matters caused by illness or accident, which require the employee's immediate presence. The leave on half pay will be 2 days or 16 hours per calendar year.

As regards parental leave, the most significant change from the employer's perspective is the extension of leave from 32 to 41 weeks for a single birth and from 34 to 43 weeks for a multiple birth. Each employed parent of a child has an exclusive right to 9 weeks of parental leave.

The protection of employment stability for employees exercising parental rights (including maternity, paternity and parental leave, as well as the new carer's leave) will be strengthened. This means that such employees will not only be protected against termination of employment (except for summary dismissal approved by the company trade union) but also that the employer will be forbidden from making any preparation for terminating the employment relationship with them. Moreover, if a protected employee is terminated, the employer will have to prove that there were objective reasons for their termination.

You will find information about the upcoming PCS | Littler events and interesting publications by our lawyers below.



The No, because of GDPR! Series: Remote working a data security risk – how to protect your data effectively?

We would like to invite you to another meeting in the *No, because of GDPR!* series.
Date: 3 August, 11:00-11:45, online.
Speakers: Paweł Sych and Robert Stępień.
More: *here.* | Sign up: *here.*

Series: The 10 upcoming changes in employment law

Join our next meeting in the *10 Most Important Rules* series.
Date: 10 August, 11:00-12:00, online.
Speakers: Katarzyna Witkowska-Pertkiewicz and Sławomir Paruch.
Read more: *here.* | Sign up: *here.*

Healthy Workplace: Employee mental problems - how to respond to them?

We invite you to participate in the next *Healthy Workplace* meeting.
Date: 11 August, 11:00-11:45, online.
Speakers: Katarzyna Witkowska-Pertkiewicz and Bartosz Wszeborowski.
More: *here.* | Registration form: *here.*

Healthy Workplace: OHS is a bone of contention with trade unions

We invite you to participate in the next *Healthy Workplace* meeting.
Date: 18 August, 11:00-11:45, online.
Speakers: Robert Stępień, attorney-at-law, and Bartosz Wszeborowski, advocate.
More: *here*. | Registration form: *here.*

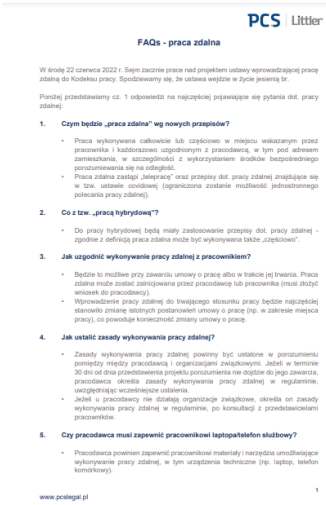
Webinar: Employment Law Changes: EU work-life balance and parental directives, sobriety tests and remote working

Please join our meeting organised with the British-Polish Chamber of Commerce.
Date: 24 August, 11:00-12:30, online.
Speakers: Marcin Szlasa-Rokicki, Paweł Sych and Bartosz Wszeborowski.
Host: Michał Dembiński, BPCC Chief Advisor.
Registration form: *here.*

HR Compliance Expert course: Protection of whistleblowers – act now or wait for the final version of the regulations?

We would like to invite you to participate in the *HR Compliance Expert* course.
Date: 30 August 2022, 11:00-12:00, online.
Trainers: Karolina Kanclerz and Bartosz Tomanek.
More: *here*. | Please register here: perspektywyhr@pcslegal.pl

There is a fee to attend the event.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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?
   - Praca wykonywana całkowicie lub częściowo w miejscu wskazanym przez pracownika i każdorazowo uzgodnionym z pracodawcą, w tym pod adresem zamieszkania, w szczególności z wykorzystaniem środków bezpośredniego porozumiewania się na odległość.
   - Praca zdalna zastąpi „telepracę" oraz przepisy dot. pracy zdalnej znajdujące się w tzw. ustawie covidowej (ograniczona zostanie możliwość jednostronnego polecania pracy zdalnej).
2. Co z tzw. „pracą hybrydową"?
   - Do pracy hybrydowej będą miały zastosowanie przepisy dot. pracy zdalnej - zgodnie z definicją praca zdalna może być wykonywana także „częściowo".
3. Jak uzgodnić wykonywanie pracy zdalnej z pracownikiem?
   - Będzie to możliwe przy zawarciu umowy o pracę albo w trakcie jej trwania. Praca zdalna może zostać zleconajowana przez pracodawcę lub pracownika (musi złożyć wniosek do pracodawcy).
   - Wprowadzenie pracy zdalnej do trwającego stosunku pracy będzie najczęściej stanowiło zmianę istotnych postanowień umowy o pracę (np. w zakresie miejsca pracy), co powoduje konieczność zmiany umowy o pracę.
4. Jak ustalić zasady wykonywania pracy zdalnej?
   - Zasady wykonywania pracy zdalnej powinny być ustalone w porozumieniu pomiędzy między pracodawcą i organizacjami związkowymi. Jeżeli w terminie 30 dni od dnia przedstawienia projektu porozumienia nie dojdzie do jego zawarcia, pracodawca określa zasady wykonywania pracy zdalnej w regulaminie, uwzględniając wcześniejsze ustalenia.
   - Jeżeli u pracodawcy nie działają organizacje związkowe, określa on zasady wykonywania pracy zdalnej w regulaminie, po konsultacji z przedstawicielami pracowników.
5. Czy pracodawca musi zapewnić pracownikowi laptopa/telefon służbowy?
   - Pracodawca powinien zapewnić pracownikowi materiały i narzędzia umożliwiające wykonywanie pracy zdalnej, w tym urządzenia techniczne (np. laptop, telefon komórkowy).

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FAQs – Remote working

Each week, as part of our FAQs - Remote Working series, we answer the most frequently asked questions about remote working.

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

Current issues: *here*.


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FAQs - uprawnienia rodzicielskie

Ojcowie w świetle nowych regulacji.

Poniżej przedstawiamy cz. 3 odpowiedzi na najczęściej pojawiające się pytania dot. nowych uprawnień rodzicielskich:

10. Jakie nowe uprawnienia w związku z urlopem rodzicielskim zyskują ojcowie?
    - W świetle nowych przepisów każdemu z pracowników – rodziców dziecka będzie przysługiwało wyłączne prawo do 9 tygodni urlopu rodzicielskiego.
    - Oznacza to, że niewykorzystanie 9-tygodniowego urlopu przez drugiego rodzica będzie wiązało się z utratą do niego prawa.
    - Niemożliwe będzie przenoszenie tego urlopu między rodzicami.
    - Celem takiej regulacji jest włączenie ojców w opiekę nad dzieckiem.
11. Czy z nowego urlopu rodzicielskiego będą mogli skorzystać także ojcowie dzieci urodzonych przed wejściem w życie nowych przepisów?
    - Tak, pracownik uprawniony lub korzystający z urlopu rodzicielskiego w dniu wejścia w życie nowelizacji będzie mógł skorzystać z wyłącznego prawa do 9 tygodni urlopu rodzicielskiego na nowych zasadach.
12. Jaka zmiana czeka urlopy ojcowskie?
    - Obecnie urlop ojcowski przysługuje w wymiarze 2 tygodni i można go wykorzystać do 2 roku życia dziecka.
    - Nowelizacja skraca okres, w którym ojciec może skorzystać z urlopu do 1 roku życia.
    - Celem takiej regulacji jest zmotywowanie ojców do zaangażowania się w opiekę nad dzieckiem już od pierwszych chwil jego życia.

Zapraszamy do kontaktu.

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FAQs - Parental entitlements

As a result of the EU work-life balance directive's transposition, working parents will get several new entitlements, including those concerning parental leave, flexible working time or special protection of employment.

Each week we provide answers to the most frequently asked questions about the new parental entitlements.

Authors: Katarzyna Witkowska-Pertkiewicz, Kinga Rozbicka.

Current issues: *here.*