Dear Readers,

This December edition of *HR Perspectives* is devoted entirely to **employment restructuring**.

The economic situation and forecasts for the coming months are changing so dynamically that reducing the workforce or making collective redundancies in some cases may be premature. In this issue, we discuss a range of alternative solutions for employment restructuring and making redundancies the last resort.

Enjoy reading!

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1. Modifying working conditions or temporarily suspending the duty to comply with certain statutory provisions

Legislative provisions allow the temporary modification of employment terms and conditions. Some of these options involve collective agreements with employee representatives, others are the result of individual negotiations between the parties.

a) **Modifying the employment contract terms and conditions** - the employer may consider entering into an agreement with the employees' representatives (or trade unions, if applicable) to use less favourable employment terms and conditions than those resulting from their employment contracts.

The above option boils down to the employer being able to temporarily modify the employment terms and conditions if faced with a particularly dire financial situation. Notably, there are no additional criteria the employer should fulfil to use this solution. Above all, it does not matter whether the company's poor financial condition is the result of factors beyond the employer's control (such as an epidemic) or due to the employer's fault (e.g. poor management).

NOTE: *This option may be used by employers who are not covered by a collective labour agreement and employers with fewer than 20 employees.*

The agreement for temporarily suspending the duty to comply with certain statutory provisions may prove to be a particularly attractive solution for employers. Such an agreement gives employers the freedom to choose which provisions will be suspended and which will continue to apply. However, this option is time-limited. Terms and conditions modified by the agreement cannot apply for longer than three years.

b) **Suspending the application of internal rules and regulations** – as in the case of temporary modification of employment terms and conditions, it is possible to suspend internal rules and regulations (e.g. some internal provisions, collective agreements or collective bargaining agreements).

Note *that it is not permitted to stop complying with mandatory provisions based on the agreement. In contrast, the suspension of collective agreements is possible, but a separate procedure applies in this case.*

An employer faced with a difficult financial situation can suspend the application of, for example, work and pay regulations or bonus policy for no longer than three years.

Notably, an employer is given quite a lot of autonomy in this matter. By way of an agreement, an employer may not only suspend the application of certain provisions in their entirety but also modify certain rights. Moreover, it is generally accepted that suspending the application of internal regulations can be combined with granting other benefits to employees as a kind of compensation.

2. Making the most of working time management

An effective way that can be used by employers considering restructuring their workforce is to apply the following working time regulations.

a) **Extending the reference period** – one of the options is to extend reference periods. In principle, reference periods should be no longer than four months but the legislation allows employers to **extend them by even up to 12 months**.

The reference period may be extended for reasons beyond employers' and employees' control such as, for example, production requirements, weather conditions or, as recent years have shown, the epidemic threat.

This solution allows to settle overtime work, daily and weekly rest hours or working time over a longer timeframe, extending to even a year. As a result, the employee's regular volume of work can be staggered. Then, periods when the workload is low or when there is no workload at all will not automatically result in the employer's loss which could otherwise have forced the employer to make staff cuts.

b) **Introducing the equivalent working time system** - another solution is to extend the daily working time up to 12 hours, which is possible under the equivalent working time system. However, introducing the equivalent working time does not mean that employees will have to work 12 hours every day. On the contrary, in exchange for the extension of the daily working time limit, employees will have either reduced working hours on certain days or additional days off.

This option allows for more flexibility in employment arrangements. The employer has more freedom in shaping working time and, above all, can plan the work schedule in such a way that in peak workload periods employees work longer and in less busy periods they work less. This solution works particularly well when combined with the reference period extension to 12 months. This way, even though employees will work significantly longer on some days, overtime will not accumulate because of additional days off.

Note *that despite introducing the equivalent working time system, a daily uninterrupted rest period of 11 hours must be maintained. Therefore, under the system that allows for 12 working hours, an employee may work overtime no longer than 1 hour.*

3. When it is going to be collective redundancies and when individual dismissals

Not every case of dismissals involving a larger number of employees will be collective redundancy. First of all, for dismissals to be considered collective redundancy, the following legislative criteria must be met - depending on the size of the employer's workforce at least 10 to 30 employees must be dismissed over 30 consecutive days.

Notably, the said 30-day period should be counted as each period of 30 consecutive calendar days. If in any period of 30 consecutive days redundancies cover more employees than provided by the statutory limits, they will be considered collective redundancies.

However, it may turn out that the number of dismissals exceeds the limits, but they are staggered and the limits are not exceeded over 30 consecutive days. In such a case, there is no collective redundancy, provided that the 'staggering' of redundancies is not intentional nor undertaken to circumvent the collective redundancies provisions. If an employer decides to proceed with such dismissals (without implementing the collective redundancy procedure), the 'staggering' of the redundancies over time must be objectively justified, whether for business, organisational or other reasons (e.g. different production areas are gradually closed down or

some lines of the employer's business are discontinued, resulting in the redundancies being carried out in stages and not at the same time).

4. How to take care of the company's image during restructuring?

A key element is to estimate which restructuring model will be most optimal for the employer and the whole business establishment.

Next, it is important to prepare managers properly. They will play a key role in the entire restructuring process, as they will be responsible for communicating with employees. Managers should be the employer's ambassadors throughout the process.

Another component is transparent communication at all levels, both internal and external. It should prevent the spreading of unnecessary rumours or misinformation regarding the restructuring processes. The more thorough the preparation for restructuring, the better for the company and its image. For example, if an employer changes terms and conditions of employment and thus initiates a collective redundancy procedure, there is no need to communicate collective redundancies, which they aren't. Instead, the communication may be about the collective termination of terms and conditions of employment and pay. The tone of such communication is completely different than in the case of collective redundancies.

A frequently used solution for employment restructuring and maintaining a positive company image is outplacement. Outplacement or 'soft dismissal' is a support service provided to help employees transition to new jobs. It may be offered to people who have been or might be made redundant. It does not always work out and is not always welcomed by employees. Nevertheless, it can be offered to those employees who want to use it. Especially when it is mandatory for employers to offer outplacement services (i.e. when an employer intends to terminate at least 50 employees over 3 months).

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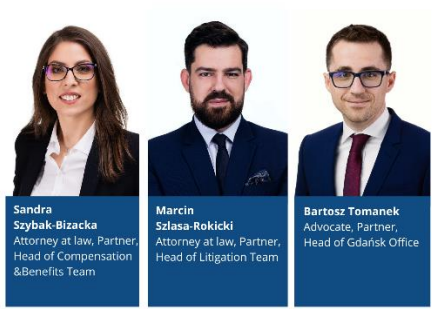


New Partners at PCS Paruch Chruściel Schiffter Stępień Kanclerz | Littler

Sandra Szybak-Bizacka, Bartosz Tomanek and Marcin Szlasa-Rokicki have been promoted to Partners at PCS Paruch Chruściel Schiffter Stępień Kanclerz | Littler.

Congratulations to our new partners! We wish you all the best! Read more: *here.*

Interview: The employment system for Ukrainians in Poland has completely changed

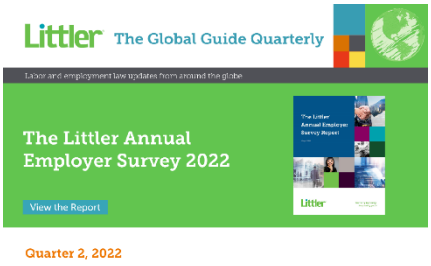
We would like to invite you to listen to Aleksander Dżuryło's interview for Polskie Radio.

Issues discussed during the interview include the steps Ukrainians must take to work in Poland, who can get a residence card and what is the profile of a Ukrainian employee. More: *here.*

The Littler International Guide - Fall 2022

The Littler International Guide provides a comprehensive analysis of international employment and labour laws in more than 45 countries. The Guide is organized in a question-and-answer format and was written by selected attorneys and scholars from around the world and then edited by Littler's attorneys. It covers over 90 employment law issues in 14 categories.

To receive the full e-book, please email us at: perspektywyhr@pcslegal.pl



Littler Global Guide - Poland - Q3 2022

The Guide provides employment and labour law news from around the world. The publication includes the following HR & legal news from Poland:
- bill on employment of non-nationals;
- bill on collective disputes.

To receive the full e-book, please email us at: perspektywyhr@pcslegal.pl