

Dear Readers,

Firstly, we would like to wish everybody a happy New Year - on behalf of myself and other PCS Paruch Chruściel Schiffter Stępień Kanclerz | Littler partners we wish you every success in your professional careers, as well as profitable and exciting new ventures.

The new year traditionally brings further changes in the law. We have already written about the new remote working solutions [here](#). The January edition of *HR Perspectives* focuses on:

- the work in implementing the **work-life balance** directive;
- **drug and alcohol testing**;
- the planned law on the **employment of non-nationals**.

We don't know what else the new year will bring but we are keen to support you in preparing for possible crisis situations. That is why, on 10th February 2023, we are launching a new webinar series "SOS PCS | Littler - Employer in crisis". You will find more details below. It is guaranteed to be practical and interesting. You are welcome to join us.

We wish you an enjoyable read.

Karolina Schiffter



EU directives

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On 25th January 2023, the Sejm was conferred about a bill amending the Labour Code, seeking to transpose two EU directives: on work-life balance and on transparent and predictable working conditions to the Polish legal system.

New laws may be enacted as soon as in the first half of this year. As they are to set out some new rights for employees, it's good to have an early heads-up on the planned changes. Based on the recent version of the bill, we have drawn up a practical summary of the most significant changes. The summary includes new employee entitlements, guidelines on how to prepare for the changes, as well as practical advice on when to submit the required requests and applications and in what form.

We will be happy to support you in adjusting your internal regulations and documents.

Subject	What is the change?	Important dates	What must an employer do?	Additional information
Fixed-term employment contracts	<p>New obligations for employers:</p> <ul style="list-style-type: none"> • provide the reason for termination; • consult with a trade union; 	<p>The trade union will have 5 days from receipt of the employer's notice to submit justified (non-binding) objections.</p>	<p>When terminating a fixed-term contract an employer must each time</p> <p>provide the reason for termination</p> <p>and</p> <p>consult with a trade union.</p>	<ul style="list-style-type: none"> • Non-compliance with new requirements may render a termination notice defective and incur the risk of losing a lawsuit; • The court may award compensation or reinstatement.
Probationary employment contracts	<p>Linking the statutory term for a probationary contract with the period of planned employment.</p>	<p>1 month - when the parties intend to subsequently conclude a fixed-term contract for less than 6 months</p> <p>2 months - when the parties intend to subsequently conclude a fixed-term contract for</p>	<ul style="list-style-type: none"> • review probationary contract templates and procedures for entering into such contracts; • when concluding probationary contracts an employer must always consider the planned duration 	<p>It will be possible to extend the contract term:</p> <ul style="list-style-type: none"> • by one month if justified by the nature of the work; • by the time an employee was on holiday or other excused absence (if agreed in the contract).

		<p>more than 6 and less than 12 months</p> <p>3 months - in all other cases.</p>	<p>of further employment.</p>	
<p>Information on conditions of employment</p>	<p>Widen the scope of information provided to newly recruited employees to include the following:</p> <ul style="list-style-type: none"> • breaks to which they are entitled; • rules on overtime; • the applicable procedure for employment termination; • the right to training provided by the employer; • rules on movement between workplaces. 	<p>An employer must provide the information within</p> <p>7 days</p> <p>from the date an employee started to work.</p>	<p>Revise and adjust the template for the information provided to employees.</p>	<p>The information can be provided in writing or electronically (on condition that an employee will be able to print and store the information made available to them and the employer will keep a confirmation that the information was given to and received by the employee.</p>
<p>Request for more predictable and safer working conditions</p>	<p>An employee will be able to request: changing the type of work,</p> <p>changing the type of employment contract to a contract for an indefinite term</p> <p>or</p> <p>full-time employment</p> <p>and the employer, if feasible, should comply with such a request.</p>	<p>The request may be submitted by an employee who has been employed by the employer for</p> <p>at least 6 months.</p> <p>The employer will have to respond to the request within 1 month</p> <p>from the date of submitting the request.</p>	<p>Be prepared to respond to staff requests.</p>	<ul style="list-style-type: none"> • An employee will be entitled to submit a request once in a calendar year; • The application may be submitted in writing or electronically; • An employer who refuses a request will have to give the reason for the refusal.
<p>Additional employment of an employee</p>	<p>It will no longer be not possible to prohibit an employee from being simultaneously employed by another employer under an employment contract or</p>	-	<p>Consider entering into non-compete agreements with key employees.</p>	<p>The fact that an employee is being simultaneously employed by another employer under an employment contract or other employment</p>

	other employment base unless a non-compete agreement has been entered into and the additional employment would breach the provisions of such an agreement.			base, cannot constitute a reason for terminating their employment contract.
Work breaks	<p>Additional breaks for employees whose daily working hours:</p> <ul style="list-style-type: none"> • are longer than 9 hours - an additional break of at least 15 minutes; • are longer than 16 hours - an additional break of at least 15 minutes. 	-	Organise employees' working time so that they can take additional breaks.	<ul style="list-style-type: none"> • breaks to which employees are entitled will be counted towards their working time; • as before, employees working at least six hours a day will be entitled to at least a 15-minute break.
Training provided by the employer during working hours	If a collective agreement, work rules and regulations, statutory legislation or the employment contract make it obligatory for an employer to provide the training necessary for a specific type of work or job position, the employer will be obliged to provide it at its own cost and, if possible, during employee working hours.	-	<ul style="list-style-type: none"> • check what kind of professional training is provided to employees; • cover the cost of specific training courses. 	Training time outside employees' normal working hours should be counted towards their working time.

<p>Carer's leave</p>	<p>New leave of up to 5 working days per calendar year.</p> <p>Purpose of the leave: to personally provide care or support to a family member or a person who lives in the same household and requires continuing care or support for serious medical reasons.</p>	<p>Employees can request the leave</p> <p>at least 1 day in advance, either in writing or electronically.</p>	<p>Prepare for additional unexpected staff absences.</p>	<ul style="list-style-type: none"> the leave is unpaid; the period of leave is counted towards the employment period; a 'family member' is considered to be a son, daughter, mother, father or spouse; an employee will be required to provide the name of the person who needs care or support for serious medical reasons in the leave request.
<p>Excused absence from work</p>	<p>A new type of leave consisting of 2 days or 16 hours per calendar year.</p> <p>Purpose of the leave: to sort out emergencies caused by force majeure or urgent family matters - if the employee's presence is required immediately.</p>	<p>An employee can request the leave no later than on the day of absence.</p>	<p>Prepare for additional unexpected staff absences.</p>	<p>Employees will keep the right to half of their pay for the time of absence.</p>
<p>Parental leave</p>	<p>Extension of parental leave to 41 weeks for a single birth and 43 weeks for a multiple birth.</p> <p>Exclusive right to 9 weeks of leave for each employee (not transferable to the other parent).</p>	<p>An employee submits the leave request</p> <p>at least 21 days before the start of the leave, either in writing or electronically.</p>	<p>Prepare for greater fathers' involvement in childcare.</p>	<ul style="list-style-type: none"> one parent will still be entitled to a maximum of 32/34 weeks of leave; if the other parent does not take the 9-week leave, the entitlement is lost.
<p>Paternity leave</p>	<p>Paternity leave can be taken until the child turns 1 y/o</p>	<p>An employee submits the leave request</p>	<p>Prepare for greater fathers'</p>	<p>-</p>

	(compared to 2 years before).	at least 7 days before the intended start date of the leave, either in writing or electronically .	involvement in childcare.	
Flexible working arrangements	An employee with a child under 8 y/o will be entitled to request flexible working arrangements (i.e. teleworking/remote working, interrupted working hours/shortened working week/week-end working/mobile working hours, individual work schedule or reduced working hours).	An employee submits the request at least 21 days before the planned start date of the flexible working arrangement. The employer must inform the employee about the acceptance of the request or give a reason for the refusal within 7 days of receipt of the request.	<ul style="list-style-type: none"> respond to employee requests after considering the employee's needs and the employer's best interest, including the necessity to make sure the company runs smoothly give the reason for refusal if the request was rejected 	An employee can request that the previous working arrangement be restored at any time when the reason for requesting the flexible working arrangements no longer exists.
Longer period for working parents' mandatory consent	Employees with a child under 8 y/o (compared to 4 y/o before) will have to give their consent for work: <ul style="list-style-type: none"> overtime; at night; under the intermittent working time system on secondment outside their permanent workplace. 	-	Prepare for less work flexibility and availability of working parents.	This entitlement will be available only to one working parent.
Equal treatment in employment	Using any entitlement under the employment law will not constitute grounds for unequal treatment in employment .	-	Ensure that the principle of equal treatment is complied with.	Using employee entitlements will not constitute a reason for employment contract termination.

<p>Protection of working parents</p>	<p>Enhanced redundancy protection will apply to any employee from the date of submitting a request for:</p> <ul style="list-style-type: none"> • maternity leave; • leave on terms and conditions of maternity leave; • paternity leave; • parental leave. 	<p>-</p>	<p>Prepare for less work flexibility of working parents.</p>	<ul style="list-style-type: none"> • an employer will only be allowed to terminate such an employee if there are reasons for termination without notice through the employee's fault and the trade union representing the employee consents, or if the employer proves that the employee is terminated for other reasons; • an employer will not be allowed to make any pre-termination arrangements before the intended termination of such employees.
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Legislative work on employee drug and alcohol testing completed!

Author: **Paweł Sych**, attorney-at-law, partner, pawel.sych@pcslegal.pl

On January 13th, the work on long-awaited amendments to the Labor Code concerning, among others, workplace drug and alcohol testing, was completed. The legislative changes will become effective 14 days after being enacted. This means that employers who intend to test their employees should adjust their internal regulations to the new legislation.

Steps to follow

First of all, it is necessary to introduce appropriate changes to the employer's internal regulations, such as a collective bargaining agreement or work rules and regulations. If the employer is neither covered by a collective bargaining agreement nor obliged to have work regulations, then it is necessary to introduce and set out the rules for testing in the employer's information notice.

NOTE: In most cases, internal work rules and regulations will need to be changed. Notably, if there are workplace trade unions, such changes must be consulted and agreed on with them under a standard procedure for amending work regulations.

To do this, the employer will need to:

- identify the groups of employees who may be subject to testing;
- decide how to carry out the testing, including whether the tests will be carried out randomly or under reasonable suspicion;
- determine whether tests will only be for alcohol or other substances as well;
- secure appropriate equipment with a valid calibration certificate;
- inform employees about the introduction of and the rules for testing, and prepare information notice for future employees;
- authorize in writing any person who will have access to the testing data.

NOTE: Testing under new rules will be possible no sooner than 14 days after informing employees about changes to internal regulations!

What can be tested?

Under new regulations, it will be possible to test for alcohol and other substances with effects similar to alcohol.

An alcohol test result is considered positive when the alcohol concentration indicates that an employee has used alcohol, namely:

- 1) blood alcohol concentration is between 0.02 BAC and 0.05 BAC, or
- 2) breath alcohol concentration is between 0.1 mg/L to 0.25 mg/L.

Which drugs have effects similar to alcohol? According to the legislation, they are opioids, amphetamine and its analogues, cocaine, tetrahydrocannabinol (including marijuana) and benzodiazepines.

What methods can be used for testing?

As a rule of thumb, employers can test their employees by methods other than laboratory testing.

Therefore, a go-to tool for alcohol testing would be a breathalyzer. Employers can use two types of devices: active breathalyzers that can determine a person's BAC and display it on the monitor or passive breathalyzers that do not require a person to blow into a mouthpiece and can only detect the presence of alcohol. The latter is considered a preliminary test that can provide an employer with the reason to use an active breathalyzer for a specific result.

For other substances with effects similar to alcohol non-invasive saliva tests can be used.

NOTE: Both an employer and an employee may request the testing to be carried out by an authorised law enforcement agency, which means either national or municipal police.

Who can be tested?

First and foremost, all employees. The reasons for introducing drug and alcohol testing are quite general and include the protection of life, health and property, to name just a few. Therefore, practically all employees from any job group can be subject to testing. The decision

in this regard is up to the employer. If there are trade unions in the workplace, job groups must be agreed with them under a consultation procedure.

Apart from employees, individuals who work for or with the employer based on contracts other than employment contracts, such as contracts for specific work and B2B contracts, as well as contractors and service providers may also be subject to testing.

Consequences of a positive test result

A basic duty of every employee is to not use drugs and alcohol at work nor report to work under the influence of such substances. Therefore, a positive test result means inevitable consequences for the tested employee.

First of all, such an employee is not entitled to their pay for the time off work. Furthermore, the employee may face disciplinary measures, including a warning, reprimand, fine, or even summary dismissal.

Personal data - what, where and how long to keep?

The drug and alcohol testing data is kept by the employer in the employee record. For this purpose, a report is drawn up, including the name of the employee, the date, time and the result of the test. Moreover, the report should identify the person conducting the test and, possibly, describe testing circumstances. Notably, the testing report is kept only if the test result was positive. As a rule, the report is kept for a year. But if an employee was administered a disciplinary measure, the report is kept until the punishment is declared null and void. However, if the testing data is or may be evidence in court, for example, if the employee appeals against dismissal or the fine, then the employer has the right to keep it until the conclusion of the court proceedings.

New act on employment of non-nationals - digitalisation of procedures is dragging on

Author: **Marcin Snarski**, senior lawyer, marcin.snarski@pcslegal.pl

The Act on Employment of non-nationals is expected to be enacted in the first half of the year.

Timely completion of the work on the Act by the end of 2022 proved to be impossible because of the sheer number of submitted amendment proposals (more than 300).

The new law will change the rules for obtaining work permits and declarations on giving work to non-nationals. The procedure for obtaining visas and residence permits for non-nationals and special rules for Ukrainians working in Poland will remain unchanged.

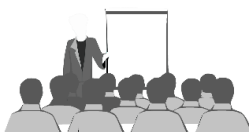
The most significant change in the updated version of the bill remains the **abolishment of the "labour market test"** which will speed up work permit processes by several weeks. Another focus of the bill is the full digitalization of procedures for work permits and declarations on giving work to non-nationals. However, a **complete shift to paperless procedures can take as long as three years**. This is the maximum transition period for individual institutions (such as the Social Insurance Institution) to adjust their IT systems to the new legislation.

The most recent version of the bill includes the following changes:

- It will be possible to refuse, at the request of trade unions, a **work permit or a residence permit application of a non-national seeking employment in one of the protected professions**. If the Ministry of Labour issues a relevant regulation, the list of protected professions will be drawn up by a district executive (Starosta)
- the rules for **processing data concerning the employment of non-nationals, such as the storage period**, will be clarified;
- if a person acting on behalf of an employer is convicted on the charge of obstructing a labour inspection, it will prevent that employer from obtaining a work permit or declaration, even if the inspection did not concern the employment of non-nationals;
- failure to **report the contract to the register of contracts for specific work** may also be a great hindrance to obtaining a work permit;
- the option of changing the employment terms and conditions for non-national workers due to **workplace downtime** is still on;
- it will be possible to **increase the working time of a non-national worker beyond the limit specified in the permit** but the relevant authority will have to be notified each time;
- **finances for illegal employment of non-nationals will be increased** (they will be calculated based on the number of illegally employed non-nationals and no less than PLN 500);
- there will be further **restrictions on outsourcing non-national workers to other entities by employers** who are not temporary work agencies - an entity using such an outsourced workforce may face a fine of no less than PLN 3,000.

Not all amendment proposals submitted during the consultations have been incorporated into the bill. More changes are therefore expected at further stages of the legislative process, even before the bill goes to the Sejm. Our team is closely monitoring the progress of the bill.

Here is a list of upcoming events which we hope you will be able to attend.



Webinar: Remote working can save companies money

Date: February 2nd, 11:00-11:45 a.m., online.

Speakers: Robert Stępień and Bartosz Wszeborowski.

Registration form: [here](#).

Employer and Employee in Court: The most interesting 2022 Supreme Court rulings for labour disputes

Date: February 8th, 11:00-11:45 a.m., online.

Speakers: Sławomir Paruch and Marcin Szlaska-Rokicki.

Registration form: [here](#).

Let's talk about money: Pay negotiations with unions or employee representatives. Formal aspects of introducing salary changes

We invite you to take part in the next 'Let's Talk About Money' meeting.

Date: February 9th, 11:00-11:45 a.m., online.

Speakers: Sandra Szybak-Bizacka and Robert Stępień.

More: [here](#). | Application form: [here](#).

SOS PCS | Littler - Employer in crisis: how to protect company reputation against online smear campaigns?

We invite you to participate in the first meeting of the 'SOS PCS | Littler - Employer in crisis' series.

Date: February 10th, 11:00-11:45 a.m., online.

Speakers: Karolina Schiffter and Robert Stępień.

More: [here](#). | Registration form: [here](#).

Webinar: Office romance – dos and don'ts for those involved, their employer and co-workers

Date: February 14th, 11:00-11:45 a.m., online.

Speakers: Slawomir Paruch and Karolina Schiffter.

Registration form: [here](#).
