

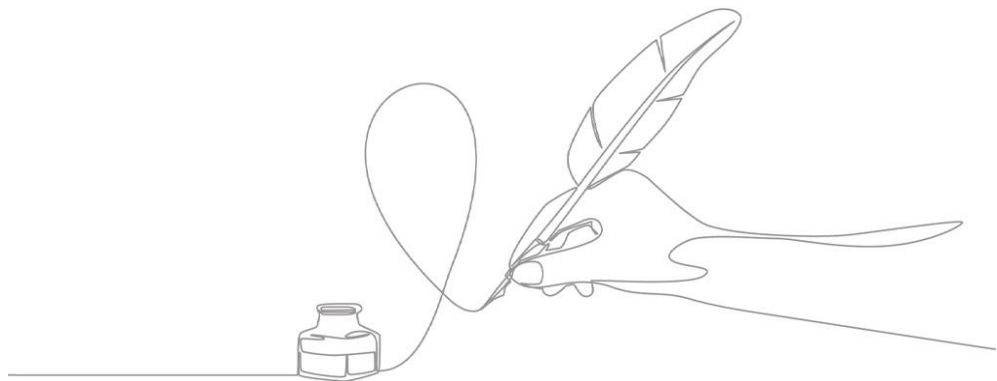
**Dear Readers,**

In this February edition we focus on the following issues:

- a) **proposed changes to keeping employee records** – introduction of part E, and extended catalogue of required documents in part B of the employee file;
- b) **default enrolment to Employee Capital Plans (PPK)** – this is the first time this mechanism will be applied, and it requires additional steps from employers;
- c) **problems affecting transgender employees** – especially discrimination at work and how transition can affect their employment.

**We wish you an enjoyable read!**

**Robert Stępień**  
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## Changes in employee records

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A new amendment to the regulations on employee records has emerged. A new part of employee files will be introduced – part E. The catalogue of required documents in part B will be expanded. It follows the introduction of new provisions on remote working and alcohol and drug testing.

The catalogue of required documents in part B will be expanded to include confirmation that newly hired employee has been informed that the employer is conducting alcohol and drug tests, which groups of employees will be tested, and how the tests are conducted. This part should also include documents regarding remote working, including employee's electronic or paper declaration of reading employer's occupational risk assessment and information on safe and healthy remote working.

A new addition is part E in the employee file. It will contain documents related to employees' alcohol and drug tests. Other required documents will be following that information. In particular, reports from sobriety tests carried out by the employer, or by the authorised law enforcement agency. All documents gathered in part E will be kept for a period not exceeding one year from their collection. The exception being documents that may be or are the evidence in legal proceedings – in this case it may be kept until the end of the proceedings or, if an employee received a disciplinary penalty due to a positive test result – until the penalty is declared null and void. Protocols and other documents related to the tests will be kept in separate parts (E1, E2, etc.) each covering the results of one test. The rules are similar to disciplinary penalties. At the end of the storage period, a particular part is removed from the file, and the employer will have to re-number further parts so there is no break in the numeration.

What is important, the information will be kept in the employee file only in case of a positive test result. In case of a negative result, the data will be kept only if it is necessary, e.g. in post-accident proceedings as evidence of employee's sobriety.

The new regulations on employees' records are anticipated to come into force together with alcohol and drug testing regulations, and remote work regulations. This means an intensive time to adapt in-company regulations to the planned changes, due to short vacation legis of the amendments' introduction.

## Default enrolment to Employee Capital Plans (PPK)

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In 2023 auto-enrolment to PPK will be applied for the first time. In practice, this means additional information obligation for the employers.

## What is auto-enrolment and who will it affect?

It is a mechanism that will be applied every four years. The next auto-enrolment will be in 2027, 2031, etc.

How the auto-enrolment works? Employed persons, who are under the age of 55, could opt out of PPK. However, these resignations expire on 28 February 2023. After this date, if the employee does not submit another resignation, the employer will be obliged to calculate and deposit payments to PPK (as well as establish a PPK agreement on the employee's behalf in case the person has not previously been a PPK participant).

Auto-enrolment will not apply to employees who:

- will be 55 years old before 1 April 2023 and have not applied to operate a PPK on their behalf,
- will be 70 years old before 1 April 2023.

## Employer's obligations

The employer must inform all employees who have opted out of PPK by the end of February 2023 about the auto-enrolment, so they will be able to submit their resignation again.

From March 2023, the employer is required to calculate and deposit PPK contributions from the March salary, or, in addition, establish a PPK agreement on behalf of those who do not opt out of PPK again.

By 17 April, employers must deposit PPK contribution on behalf of employees who have not resigned from PPK.

## Gender identity and employer challenges

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All employees should be treated equally. Court rulings show that discrimination on the basis of gender identity is in fact gender discrimination. An employer should therefore treat employees according to their gender identity before the change of metric gender. But does this apply to every aspect?

This question has been answered to some extent by the Supreme Court (ref. no I NSNc 575/21) which recently confirmed, that obliging a transgender employee to wear male attire is discriminatory.

The woman had already been employed by the security company before her formal gender reassignment, and therefore her documents indicated that she was male. The court emphasised that the employee felt and acted like a woman and was perceived as such (by recruiters, among others), and thus there was no doubt as to which gender the employee identified with and how she wanted to be treated – the failure to provide the employee with female attire is discriminatory and harassing. As far as the individual rights of a transgender employee are concerned, which do not at the same time affect other employees, the gender identity of such employee should definitely be taken into account. They should be provided with work

clothes appropriate to the gender they identify with. Gender-appropriate health and safety standards (including a list of prohibited work) should also be applied.

However, it is problematic to determine how a transgender person should be treated in aspects that may affect other employees, such as when it comes to changing rooms or toilets in the workplace. Given the lengthy process of medical transition associated with gender transition, especially in the initial stages of the process, other persons using the changing room or restroom designated for employees of a particular gender may feel uncomfortable in the presence of a transgender person, due to an appearance that does not correspond to that person's gender identity. On the other hand, it would be difficult to grant the employer full discretion to assess at what point a transgender person has reached a "sufficiently advanced stage of medical change", to allow the use of a changing room or toilet intended for (respectively) male or female employees. In such cases, it may be justifiable to 'assign' a person to the above-mentioned places according to their metric gender. On the other side we have the interests and rights of a number of other persons affected. This approach avoids unclear situations or abuses. It may, however, involve allegations of discrimination by a transgender employee, which is something that an employer should bear in mind.

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



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### **Webinar: Collective disputes – practical problems vs proposed changes in regulations**

Date: March 2<sup>nd</sup>, 11:00-11:45 a.m., online.  
Speakers: Sławomir Paruch, Robert Stępień.  
Registration form: [here](#).

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### **Let's talk money: Bonus systems – traps and most common mistakes**

Date: March 9<sup>th</sup>, 11:00-11:45 a.m., online.  
Speakers: Sandra Szybak-Bizacka, Sławomir Paruch.  
More: [here](#). | Registration form: [here](#).

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### **SOS PCS | Littler – Employer in crisis: GPRD emergency – data leak: what to do step by step?**

Date: March 10<sup>th</sup>, 11:00-11:45 a.m., online.  
Speakers: Sandra Szybak-Bizacka, Sławomir Paruch.  
More: [here](#). | Registration form: [here](#).

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**Training: Remote work. Prepare the company for changes**

Date: March 15<sup>th</sup>, 9:00 a.m.-3:30 p.m., Warsaw.

Organized by: Proability.

Speakers: Katarzyna Witkowska-Pertkiewicz, Piotr Kozłowski, Ilona Zacharska.

Registration form: [here](#).

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