

#HR LEGAL UPDATE

Summary for employers – what changes will EU Directives bring?



9 March 2023

Warszawa | Katowice | Kraków | Poznań | Wrocław | Gdańsk

www.pcslegal.pl

What is the change?

New obligations for employers:

- provide the reason for termination;
- consult with a trade union.

What must an employer do?

When terminating a fixed-term contract an employer must each time provide the **reason for termination** and **consult with a trade union**.

Additional information

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**.

The existing regulations shall be applied to employment contracts that are valid **on the date of entry into force of the legislation and which were terminated before that date**.



Important dates

The trade union will have 5 days from receipt of the employer's notice to submit justified (non-binding) objections.

What is the change?

Linking the statutory term for a probationary contract with the **period of planned employment**.

What must an employer do?

Review probationary contract **templates** and **procedures** for entering into such contracts;

When concluding probationary contracts an employer must always consider the **planned duration of further employment**.

Additional information

It will be possible to extend the contract term:

- 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).



Important dates

1 month - when the parties intend to subsequently conclude a fixed-term contract for **less than 6 months**;

2 months - when the parties intend to subsequently conclude a fixed-term contract for **more than 6 and less than 12 months**;

3 months - in all other cases.

What is the change?

It is **not possible to prohibit** an employee from additional employment and non-employee employment unless a non-competition agreement has been signed.

What must an employer do?

Consider **entering into non-compete agreements** with key employees.

Additional information

In the absence of a non-competition agreement, **additional employment will not be able to constitute a reason justifying termination of the employment contract.**

What is the change?

Using any entitlement under the employment law will not constitute grounds for unequal treatment in employment.

What must an employer do?

Ensure that the principle of equal treatment is complied with.

Additional information

An employee whose rights are violated by the employer will be entitled to compensation in an amount not lower than the minimum wage.

Information on conditions of employment

What is the change?

Widen the scope of information provided to newly recruited employees to include the following:

- breaks to which they are entitled;
- rules on overtime;
- the applicable procedure for employment termination;
- remuneration and benefits other than those agreed in the employment contract,
- rules on movement between workplaces.

What must an employer do?

Revise and adjust **the template for the information** provided to employees.

Additional information

The information can be provided **in writing or electronically**.

Failure to inform an employee on time about the conditions of their employment may be subject to **penalty of up to PLN 30,000**.



Important dates

An employer must provide the information within **7 days** from the date an employee started to work.

In case of employment contracts valid on the date of entry into force of the legislation, the employer shall, within **3 months** from the date of submission of the request **in paper or electronic form**, complete the information on the terms and conditions of employment of the employee with additional information.



What is the change?

- New leave of up to **5 working days** per calendar year.
- 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**.



What must an employer do?

Prepare for additional unexpected staff absences.



Additional information

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.

Violation of the carer's leave regulations by the employer may be subject to **penalty of up to PLN 30,000**.



Important dates

Employees can request the leave at least **1 day** in advance, either in **writing or electronically**.

What is the change?

- Extension of parental leave to **41 weeks** (one child) and **43 weeks** (more than one child).
- Exclusive right to **9 weeks** of leave for each employee (not transferable to the other parent).

What must an employer do?

Prepare for greater fathers' involvement in childcare.

Additional information

One parent will still be able to use a **maximum of 32/34 days of leave**.

Failure to use the 9-week leave by the child's parent **will result in the loss of the right to the leave**.



Important dates

An employee submits the leave request at least **21 days** before the start of the leave, either **in writing or electronically**.

What is the change?

Paternity leave can be taken until the child turns **1 y/o** (compared to 2 years before).

What must an employer do?

Prepare for greater fathers' involvement in childcare.



Important dates

An employee submits the leave request at least **7 days** before the intended start date of the leave, either **in writing or electronically**.

What is the change?

- A new type of leave consisting of **2 days** or **16 hours** per calendar year.
- Purpose of the leave: to sort out emergencies caused **by force majeure or urgent family matters - if the employee's presence is required immediately.**

What must an employer do?

Accept applications submitted at the latest **on the day of release.**

Additional information

Employees will keep the **right to half of their pay** for the time of absence.



Important dates

An employee can request the leave **no later than on the day** of absence.

What is the change?

The employee will be able to request:

- to change the type of employment contract to a **contract of indefinite duration**;
- for more predictable and safe working conditions, including:
 - a change in type of work or
 - full-time employment,

and the employer, if feasible, **should comply with such a request**.

What must an employer do?

Be prepared to **respond to staff requests**.

Additional information

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**.

Failure to respond in a timely manner may be subject to **penalty of up to PLN 30,000**.



Important dates

The request may be submitted by an employee who has been employed by the employer for **at least 6 months**.

The employer will have to respond to the request within **1 month** from the date of submitting the request.

What is the change?

Employees raising a child up **to the age of 8** will be able to apply for **flexible work arrangements** (i.e. remote work/shortened work week/weekend work/mobile working hours) for application of flexible work arrangements (i.e. remote work, flexi-time/shortened work week/weekend work/fixed working hours, individual work schedule or reduction of working hours).

What must an employer do?

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.

Additional information

Violation of the flexible work arrangements regulations by the employer may be subject to **penalty of up to PLN 30,000**.

In the case of termination of the employment of an employee requesting for flexible work arrangements, the employer will have to prove that he **was motivated by another reason**.



Important dates

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.

What is the change?

In the case of training necessary for the performance of a specific type of work, work in a specific position, or training on the employer's instructions, the **employer will be obliged to conduct the training at his expense and, if possible, during the employee's working hours.**

What must an employer do?

Check what kind of professional training is provided to employees;

Cover the cost of specific training courses.

Additional information

Training time outside employees' normal working hours should be counted towards their working time.

Violation of the provisions on covering training costs may be subject **to penalty of up to PLN 30,000.**

What is the change?

Additional breaks for employees whose daily working hours:

- **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.

What must an employer do?

Verify the content of the Labor Regulations.

Additional information

Breaks to which employees are entitled **will be included in their working time.**

What is the change?

Enhanced redundancy protection will apply to any employee from the date of submitting a request for: maternity leave, leave on terms and conditions of maternity leave, paternity leave, parental leave.

The employer will not be able **to make preparations in connection with the intention to terminate the employment relationship with these employees.**

What must an employer do?

Prepare for less work flexibility of working parents.

Additional information

In the event of termination of employment with the named employees without notice or due to liquidation or bankruptcy of the employer, **the burden of proof will be on the employer.**



Important dates

The prohibition on termination of contracts applies on:

- **14 days** prior to the beginning of maternity leave and part of maternity leave;
- **21 days** prior to the beginning of parental leave or part thereof;
- **7 days** before the start of paternity leave or part thereof.

Contact us:



Karolina Schiffter

Advocate, partner

karolina.schiffter@pcslegal.pl

+ 48 506 745 523



Bartosz Wszeborowski

Advocate, senior lawyer

bartosz.wszeborowski@pcslegal.pl

+ 48 509 500 527



Kinga Ciosk

Trainee attorney at law, lawyer

kinga.ciosk@pcslegal.pl

+ 48 573 788 664