

Dear Readers,

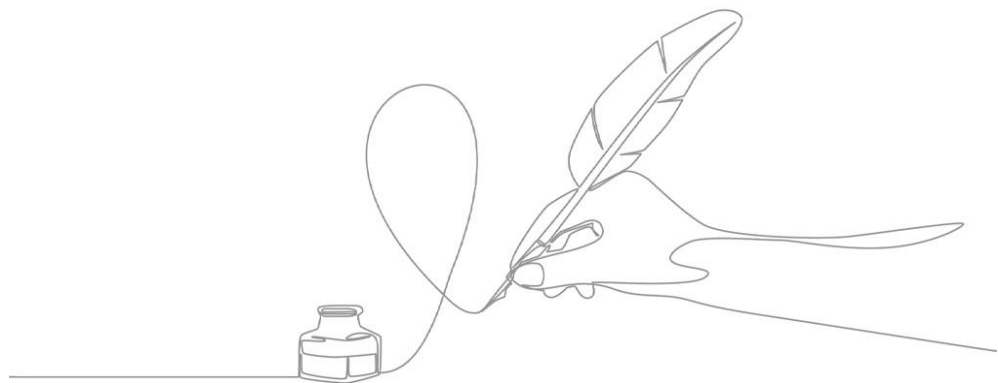
In the *HR Perspectives* edition we discuss, among other things, the following issues:

- a) carrying out workplace drug and alcohol testing without an appropriate procedure in place. The lack of an internal testing policy does not mean that employees cannot be tested for drug and/or alcohol;
- b) concluding non-disclosure agreements with trade union representatives. The use of such agreements with trade unionists is necessary for compliance reasons;
- c) the Pay Transparency Directive and the Gender Pay Gap.

We would also like to mention that the Sejm has just passed a law that gives a dismissed protected employee the right to apply for an injunction to keep them in employment until the final resolution of the case. Notably, the court will have to approve this application if the employee's claim is plausible. We elaborate more on this in the next issue of *HR Perspectives*.

Enjoy your reading!

Robert Stępień
Agnieszka Nicińska-Chudy



Workplace drug and alcohol testing without an appropriate procedure in place? Yes, for safety reasons

Author: **Krzysztof Gąsior**, advocate, partner, krzysztof.gasior@pcslegal.pl

In February, the long-awaited regulations on workplace drug and alcohol testing finally became effective. Based on the regulations, employers can now introduce an internal drug and alcohol testing policy in their workplaces. However, there is a significant group of employers who did not implement such a policy, be it for the nature of their business or as a result of negotiations with trade unions.

It may be argued that in such a situation, an employer's hands are tied, e.g. an employee cannot be tested or held accountable, even when it is evident that they are under the influence of alcohol or other intoxicating substances. However, such an approach would fly in the face of the basic duties of care for workplace safety and work organisation.

Under the new regulations, it is now possible to carry out random (preventive) testing. However, new rules do not affect the rights under the general duty of care. If an employee is suspected to be under the influence of intoxicating substances, it is an employer's duty not to allow such an employee to work. A reasonable suspicion would be based on objectively discernable facts, such as slurred speech, balance problems, a shaky gait or a characteristic smell. In such a situation, the employer should not only call the police but also has the right to test the employee, for example, with a breathalyser. This would be a reasonable suspicion testing, justified by the circumstances and the need to ensure safety at the workplace. It does not need to be enshrined in an internal company policy.

The employee may, of course, refuse to submit to the test. However, such a refusal, together with any other evidence (e.g. witness statements confirming the employee showed characteristic behaviour of an intoxicated person), should be accurately assessed if the case ends up in court. Undoubtedly, the lack of an internal drug and alcohol testing policy cannot lead to impunity for employees on the sobriety front. However, imposing disciplinary measures on an employee who refused to submit to a reasonable suspicion test entails some risk and places the burden of proof on the employer. Therefore, the best solution would be to have a well-thought-out and comprehensive drug and alcohol testing policy in place.

Non-disclosure agreements with trade union representatives

Author: **Michał Bodziony**, lawyer, michal.bodziony@pcslegal.pl

Is an employer allowed to require union representatives to sign non-disclosure agreements concerning company information gained through their cooperation? In some cases this is not only possible, but even necessary from the perspective of company interests and internal compliance rules. Disclosure of confidential information may expose an employer to significant losses, and there were situations in the past where members of trade unions have committed violations in this aspect.

Refusal to sign non-disclosure agreements may result in denial to provide the trade union with the information or documents that were requested.

The issue of signing non-disclosure agreements should particularly concern employers with inter-company trade unions. Indeed, there is the risk that the union's management boards may include employees from competitive companies, who should not be given access to certain data without adequate safety measures to protect employer's interest. The same approach should be applied to trade union representatives from regional and national organizations, who, for whatever reason, are involved with the employer.

Signing non-disclosure agreements should be treated as a confirmation of the already existing obligations. If trade union members do not intend to take any unlawful actions targeting the employer's interests, the agreement should not be a problem. Contrary to the trade union's claims, this requirement is not interfering with the union activities and does not pose any threat to the trade union.

Gender pay gap and Pay Transparency Directive

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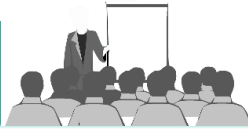
Michalina Lewandowska-Alama, trainee attorney-at-law, lawyer, Michalina.Lewandowska-Alama@pcslegal.pl

The gender pay gap is an issue that has caused a stir among both employers and employees for many years. The Pay Transparency Directive, which should be implemented by 7th June 2026, provides for a number of solutions to prevent unequal pay between men and women.

Employers will be obliged to provide job applicants with information about the starting salary level or salary range in the job advertisement or at the latest before the job interview. Job advertisements and job titles will have to remain gender-neutral. Furthermore, under the directive, employers will have to prepare and publish reports on remuneration policies. If the reports show a pay gap of at least 5 percent, the employer will have to carry out an assessment of wages, working together with employee representatives.

For many employers these regulations may not be a revolution. We are already supporting many companies in introducing practical solutions and mechanisms to ensure the highest standards of compliance with the principle of equal pay. The regulations will not come as a surprise for those who are already aware of this issue.

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



Conference: Wellbeing in the workplace. In times of change, the employee is more important than ever

Date: 28th June, 9:30 a.m. to 13.20 p.m., on-site.

Organised by: British-Polish Chamber of Commerce.

Session: **Most common problems of applying new work-life balance and transparent working conditions regulations – conclusions after first month of changes.**

Speakers: Karolina Kanclerz, Marcin Sanetra.

Detailed agenda and registration: [here](#).

Webinar: Gender diversity in the workplace

Date: 28th June, 11:00 - 11:30 a.m., online.

Speakers: Krzysztof Gąsior, Katarzyna Witkowska-Pertkiewicz.

Registration form: [here](#).

HR: how to successfully manage workation

Date: 5th July, 11:00 – 11:45 a.m., online.

Speakers: Sławomir Paruch, Robert Stępień.

Registration form: [here](#).

Let's talk about money: Oops, leaked payroll. What to do? Who should be notified? To whom and what payroll information should be communicated and how long should these records be kept?

Date: 6th July, 11:00 – 11:45 a.m., online.

Speakers: Sandra Szybak-Bizacka, Pawel Sych.

Registration form: [here](#).

On unions with unions: Verification of trade union members number – obligation from a compliance perspective

Date: 11th July, 11:00 – 11:45 a.m., online.

Speakers: Sławomir Paruch, Robert Stępień, Michał Bodziony, Kinga Krzysztofik.

Registration form: [here](#).



Report: Remote working

Read the report "Remote work", published with the Association of Entrepreneurs and Employers as part of the project "Needs and challenges of the remote working model implementation in private companies".

The report discusses the following issues:

- How to prepare for remote working?
- How to start remote working? How to stop remote working?
- Employer obligations related to remote working;
- Remote working checks;
- Remote working and data protection;
- Occasional remote working;
- The right to be offline;
- Recommendations for changes in remote working legislation.

Authors: Sławomir Paruch, Paweł Sych, Marcin Szlasa-Rokicki, Kinga Rozbicka, Julita Kołodziejska.

Read the report: [here](#).