Dear Readers,

In the latest issue of *HR Perspectives*, we discuss such matters as:

a) the planned introduction of a regulation concerning employees **covered by special protection against employment termination**. If such an employee is terminated and applies to the court for reinstatement or for the termination to be declared ineffective, they will have the right to return to the company before the court delivers a final judgment;

b) **the consequences of the epidemic state of emergency end** - we discuss the obligations that Employers should remember about;

c) **the new bill on collective bargaining agreements** - while some of the changes can be seen as positive for employers, others, such as the obligation to periodically renegotiate collective bargaining agreements, may become another obstacle for businesses without any significant and beneficial effect on cooperation between the company and employee representatives.

Enjoy your reading!

Robert Stępień
Agnieszka Nicińska-Chudy

Will dismissed employee return to the company before final judgement?

Author: **Kinga Rozbicka**, trainee attorney-at-law, lawyer, kinga.rozbicka@pcslegal.pl

A dismissed protected employee (trade unionist, pregnant woman, employee on maternity leave) will have the right to return to work before the court delivers a judgment in the case. On 16th June, the Sejm voted on the amendments to the Code of Civil Procedure which, if enacted, will cause a thorough shake-up of employment disputes for reinstatement or invalidating the employment termination (however, the Senate was not in favour of these amendments).

Currently, a first-instance court that finds the employee's claim to be valid may, at the employee's request, issue an injunction to keep them in employment until the final resolution of the case. Under the proposed amendment, however, it would be mandatory. It means that the decision over this matter will be taken out of the hands of the court which declares the termination as ineffective or reinstates the employee. If the employee applies for an injunction to keep them in employment during the proceedings, the court will have to issue an injunction requesting the employer to reinstate the employee until the final resolution of the case by the court of the second instance.

The enacted amendment also introduces a reinstatement injunction as a completely new form of securing the protected employee's claim. A dismissed protected employee, e.g. a trade union activist or a pre-retirement employee, who brings an action for reinstatement or invalidation of employment termination, will have the right to request an injunction to keep them in employment until the end of the proceedings. If the employee's claim is plausible, the court will have to grant the employee's request. The employee will not even have to prove their legal interest in obtaining the injunction. The court will only be allowed to refuse to grant the reinstatement injunction if the employee's claim is obviously unjustified.

Should the changes proposed by the Sejm be enacted in their existing form, it will have very serious repercussions. If an employee brings an action for reinstatement and at the same time applies for reinstatement injunction, it may turn out that as soon as one or two months after the dismissal, they return to work and remain with the company until the final resolution of the case.

Throughout this whole time, the dismissed employee may act to the detriment of the employer. Their return may also spoil the atmosphere of the team. For example, if an employee was dismissed for bullying, their immediate return is likely to escalate the conflict within the team. This, in turn, may induce the people who were bullied by the dismissed employee to leave the company. Another high-risk situation would be, for example, the return of a production worker dismissed for violating health and safety regulations, who might continue to put their colleagues at risk until the proceedings have become final.

However, even if an employee is granted the reinstatement injunction, the employer will not be completely powerless. It will be possible to file a complaint with the court of second instance. The complaint procedure is considerably less time-consuming than the standard proceedings before the court of first instance, so there is a chance that the first-instance court's decision on the temporary reinstatement will be reviewed before the final judgement.

The employer will also have the right to request the reinstatement injunction to be revoked if reasons for summary dismissal emerge after the issuance of the injunction for reinstatement.

On the other hand, it seems that the proposed regulation concerning an employer's obligation to keep a dismissed employee in employment imposed by the court of first instance allows for summary dismissal of a temporarily reinstated employee due to gross misconduct.

End of epidemic state of emergency - how will it affect employers?

Author: **Michał Olejniczak**, trainee advocate, lawyer, michal.olejniczak@pcslegal.pl

The epidemic state of emergency, which started in Poland on 16th May 2022, officially ended on 1st July 2023. This means that at the beginning of July, we bade farewell to the remaining COVID-19 emergency regulations. This brings some significant changes to employers.

Under the previous ("pandemic") legislation, the obligation to carry out periodic medical examinations was suspended. It meant that an employee without valid medicals could continue to work, and the employer could assign work to such an employee, with no obligation to refer that employee to a medical examination. After the end of the epidemic state of emergency, all employees who did not undergo their medicals during the pandemic must do so within 180 days, based on referrals from their employers.

Moreover, employers must also reintroduce regular and initial occupational health and safety (OHS) training on-site. Under the COVID-19 emergency regulations, it was possible to carry out initial OHS training online, while the obligation to provide regular OHS training to employees was suspended altogether. Because the epidemic state of emergency was lifted, employee OHS training must be carried out as it was before the pandemic. Employees who have not undergone mandatory OHS training because of the exemption provided by the COVID-19 emergency regulations must do so until 60 days after the epidemic state of emergency ends.

Furthermore, the limit on the amount of termination benefits, which during the epidemic state of emergency was ten minimum monthly salaries, does not apply anymore. Another change is that an employer can no longer unilaterally terminate any non-compete agreement with an employee. It can only be terminated in the circumstances provided for in the agreement. If such circumstances were not determined in the agreement, then the agreement will cease to apply only upon its expiry.

New draft legislation on collective labour agreements

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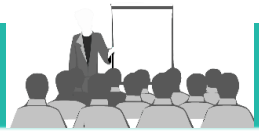
The Ministry of Family and Social Policy prepared a new bill on collective bargaining agreements – the proposed changes result mostly from the need to implement the EU directive on adequate minimum wages. Some of the most important changes in the legislation are as follows:

- repeated negotiations of the agreement – an employer with at least one trade union and more than 50 employees, not covered by an agreement, will be obliged to negotiate once every two years to conclude a collective agreement. In our opinion, this is an artificial solution that will not translate into an actual increase in the number of agreements. No one can be forced to conclude an agreement, which means that in many cases the implementation of this provision will end up with agreements being ostensibly negotiated every two years but still rarely concluded;
- simplified procedure to register the agreement – an electronic notification will be sufficient. This, in turn, is a positive and expected change, because the Labour Inspectorate will no longer have the power to question and refuse to register the agreement at will (which in practice happened quite often before). Only an entity with a legal interest will be allowed to apply to the labour court, within one month from the date of registration of the agreement or additional protocol to the agreement, to determine whether the agreement is compliant with the applicable regulations and was concluded in accordance with the collective bargaining agreements regulations;
- the list of issues that might be the subject of the collective agreement is open – which is a widely commented solution but a meaningless one. It does not reach the heart of the problem, namely the lack of appeal of the agreements for employers. A better solution would be to allow for regulating certain issues differently from what is provided for in the applicable legislation. It might be an added value for the employer (not necessarily at the expense of employees) and at the same time a negotiating asset for employee representatives. If the regulations allowed for flexibility beyond the rigid framework of the Labour Code, employers would be more keen to use this option;
- the agreement will be concluded for a maximum of 5 years – agreements already registered will also be valid for 5 years after the law becomes effective. Before the expiry of those deadlines, under an additional protocol, the parties will be allowed to extend the validity of the agreement for another 5 years. We assume that it will be possible only once. Limiting the validity of collective agreements is an interesting solution, especially in the context of existing agreements which often include the so-called “everlasting clauses”, which are unconstitutional clauses providing that the existing agreement is valid until a new one is made;
- negotiations may be carried out with a mediator (but only if both parties agree) – the provisions of the collective disputes regulations will apply, but not to the extent of the Ministry appointing the mediators. This is a good idea since it will eliminate the need to rely on a small group of mediators;
- according to the bill, an employer will be obliged to provide trade union representatives conducting the negotiations with information on the company's financial situation – this will apply in particular to information covered by Statistics Poland. Trade union representatives will not be allowed to disclose any information obtained from the employer and constituting a company secret under the act on unfair competition, as to which the employer has reserved the right to keep it confidential (it is the employer who determines the extent of confidentiality). However, the enforcement of these provisions may prove to be problematic;
- if the company is having financial difficulties, the parties to the collective agreement will be allowed to conclude an additional protocol, suspending the application of the existing collective agreement, in whole or in part, for a fixed period of less than two

years. The term of the agreement will be extended by the period of its suspension. Until now, it was three years and there were no provisions regulating the possibility to extend the agreement term.

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



Let's talk about money: Taxation of the salaries components and benefits that raise the most doubts

Date: 10th August 2023, 11:00 – 11:45 a.m., online.
Speakers: Sandra Szybak-Bizacka, Łukasz Chruściel.
Detailed agenda and registration: *here.*