

Dear Readers,

Here is our November edition of *HR Perspectives*.

Highlights:

- **Reputational damages** - the Supreme Court has ruled that employers may seek compensation for loss or harm caused by employees who post negative comments about them online. Therefore, should you introduce a social media policy in response to this ruling?
- **Tax deductions for creators** - the tax office is scrutinising the salaries of employee-creators, arguing that the "employee" part of the salary should be at least PLN 3,600 gross. How can you defend yourself against this line of argument?
- **Loyalty agreements and employee upskilling** - loyalty agreements can cover a lot more than employee skill development. Learn how to get the best out of loyalty agreements.
- **Menstrual leave** - while there is little hope for a nationwide menstrual leave regulation, employers are increasingly taking matters into their own hands. A fair menstrual leave policy is an interesting and sought-after employee benefit.

Check out our calendar of upcoming PCS | Littler events to stay ahead of the curve!

Enjoy your reading!

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Compensation to company for negative online reviews. Social media policy

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Can a legal person (e.g. a company-employer) sue for negative online reviews? Yes, in a landmark ruling of 3rd October 2023, the Supreme Court has confirmed that a legal person can also suffer loss or harm and therefore, seek compensation. This is a significant breakthrough, as it was previously unclear whether companies had the same legal standing as individuals to pursue such claims.

The Supreme Court's decision has several implications for employers. First, it increases the likelihood of success in lawsuits brought by legal persons for reputational damages. Second, it shifts the focus of the claim. Bearing in mind that legal persons can now seek damages for themselves instead of court-ordered charitable donations, the action will pivot around the loss and harm suffered by the company as a result of unlawful online activity.

The ruling is also relevant for unionised companies. It not only increases the chances of winning the lawsuit but also serves as a deterrent. The mere fact that an employer can take legal action that in the light of the new resolution has a good chance of success, is likely to make trade unions or employees more hesitant to engage in online defamation. Furthermore, such an action may be brought against either the trade union as a whole or against its individual representatives.

It's good to know that an effective remedy to defamation is now available to legal persons but there is much more that can be done prevention-wise. We strongly recommend that employers implement a social media policy that clearly outlines employee responsibilities and employer rights and expectations. Such a policy should serve as a preventive measure by making employees aware of what they can and cannot do and where is the line between exercising free speech and infringing upon the employer's interests.

A well-crafted social media policy can also provide a framework for responding effectively to any potential breaches (it will be more difficult for employees to hide behind an excuse that they didn't know they were in breach of their duties).

Tax deductions for creators under tax office scrutiny

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One of the changes introduced by the Polish Tax Deal (Polski Ład) was an increase in the tax threshold, which in turn raised the maximum amount of deductible tax expenses. This development has prompted the Tax Office to scrutinise the remuneration structure of creative employee-creators, particularly those who receive income from transferring copyright ownership of their creations.

In the case of employee-creators, their remuneration is typically divided into two parts: the one related to the fulfilment of their employment duties and the other concerning royalties for the use of copyright in specific ways and fields (to which the 50% tax deduction applies). The proportion of these two parts is determined by an agreement between the employee and the employer.

The Tax Office maintains that part of the remuneration for carrying out employee duties should not fall below the minimum monthly salary level. This means that if an employer has previously structured remuneration in a way that leaves this part below PLN 3,600 gross, it is highly likely that the Tax Office will challenge this arrangement.

However, there are arguments to counter this position. The Supreme Administrative Court and the Provincial Administrative Court in Warsaw have clearly stated that the remuneration for the creative part of employee work can even account for 100% of their total compensation. Additionally, the Minister of Finance in the 2020 General Interpretation does not require the base salary for employee duties to be at least the minimum monthly salary.

The potential consequences of this issue are significant, as Tax Office scrutiny reaches up to five years back from the end of the relevant tax year. On the other hand, employment-related claims become time-barred after three years. When considering the potential surcharges from several years multiplied by the number of employee-creators, the financial implications can be substantial.

Loyalty Agreements: Beyond Employee Upskilling

Author: **Mateusz Krajewski**, trainee attorney-at-law, lawyer, mateusz.krajewski@pcslegal.pl

Loyalty agreements are a valuable tool for protecting employers' interests while also providing benefits to employees. However, their use is often limited to employee upskilling scenarios, which restricts their full potential.

How to get the best out of loyalty agreements?

Usually, the first type of loyalty agreement that comes to mind when hearing this buzzword is an upskilling agreement. However, the principle of freedom of contract allows employers to enter into loyalty agreements for various purposes, not restricted to employee skill improvement. For instance, loyalty agreements have been successfully used for employee loans to buy a flat or a car.

As confirmed by the Supreme Court, employment relationships can accommodate loyalty agreements where the employee commits to continued employment in exchange for financial assistance.

And what about the tax implications of loyalty agreements, especially when an employer does not seek reimbursement from the employee for training costs? Generally, the value of employer-provided training (with certain exceptions) is exempt from personal income tax.

However, there are instances where employers may choose not to seek reimbursement, even though it is a valid option. According to the Social Insurance Institution, any write-offs will constitute taxable income for the employee.

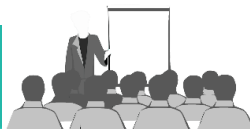
Menstrual Leave: Exploring Employer Practices and Perspectives

Author: **Kamil Nazimek**, trainee attorney-at-law, lawyer, kamil.nazimek@pcslegal.pl

While there is no universally accepted definition or practice, menstrual leave encompasses a range of arrangements implemented in various countries and workplaces. In Spain, menstrual leave falls under the category of sick leave specifically designated for painful menstrual periods. This leave is covered by the national health insurance system starting from day one, unlike other types of sick leave, which in Spain typically go unpaid for the initial days. Similar to Poland, a medical certificate is required for menstrual leave in Spain, preventing employees from self-granting such leave. Japan offers a different approach, treating menstrual leave as a holiday, typically unpaid. In Poland, discussions have centred around introducing an additional pool of days specifically designated as "leave on demand," allowing women to utilise this leave without depleting their allotted annual leave of 20/26 days. An alternative proposal involves adopting a modified version of the Spanish solution, namely introducing a new category of sick leave specifically for menstruation, fully covered by the Social Insurance Institution (ZUS) from the first day of leave.

In the absence of statutory regulation, the initiative for implementing menstrual leave currently rests with individual employers. Companies can introduce such leave in their internal regulations, using the options available under the Labor Code. However, it is important to appreciate that the potential cost of menstrual leave would be borne by the employer.

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



Webinar: Pay gap and the pitfalls of pay transparency

Date: 21st November 2023, 10:00 - 11:00 a.m., online.

Speakers: Sławomir Paruch, Krzysztof Nowak, Mercer Polska, Partner.

Organised by: Mercer Polska, PCS Paruch Chruściel Schiffter Stępień Kanclerz | Littler.

Registration form: [here](#).

Working Time Conference 2023

Date: 22nd November 2023, 10:00 a.m. - 2:00 p.m., online.

Speakers: Kinga Polewka-Włoch, Sławomir Paruch, Marcin Sanetra, Krzysztof Gąsior, Sandra Szybak-Bizacka.

Moderator: Łukasz Chruściel.

Registration form: [here](#).

Employee and employer in court: Artificial intelligence in employment litigation

Date: 23rd November 2023, 11:00 - 11:45 a.m., online.

Speakers: Marcin Szlasa-Rokicki, Sławomir Paruch, Paweł Sych.

Registration form: [here](#).



Karolina Schiffter among 25 top women lawyers in business

Forbes Women and the Women in Law foundation for the third time created a list of the most outstanding Polish women lawyers working for business. One of the goals of the initiative is building a supportive community for women.

Karolina was recognised for her activities in the legal industry, but also beyond it. Her professionalism and achievements inspire women.

Sometimes it is difficult for us women – we combine several roles, such as mums and law firm owners. Despite this, I have no doubt that both men and women can succeed as exceptional lawyers. - says Karolina.

Read more about the '25 Women Lawyers in Business' list in the latest issue of Forbes Women. The article in Polish is available: [Forbes Women](#).



Publication: Employer and Employee in Court

We are pleased to present our latest publication, "Employer and Employee in Court," co-published with Dziennik Gazeta Prawna.

This publication draws upon our extensive experience to provide insights and practical solutions to common employment disputes. We delve into such topics as:

- The timeframes and costs associated with employment cases;
- Overtime pay litigation;
- Work-life balance disputes;
- Workplace drug and alcohol testing and their legal implications;
- Workplace whistleblowing cases

The publication is available on the Dziennik Gazeta Prawna website.