

Dear Readers,

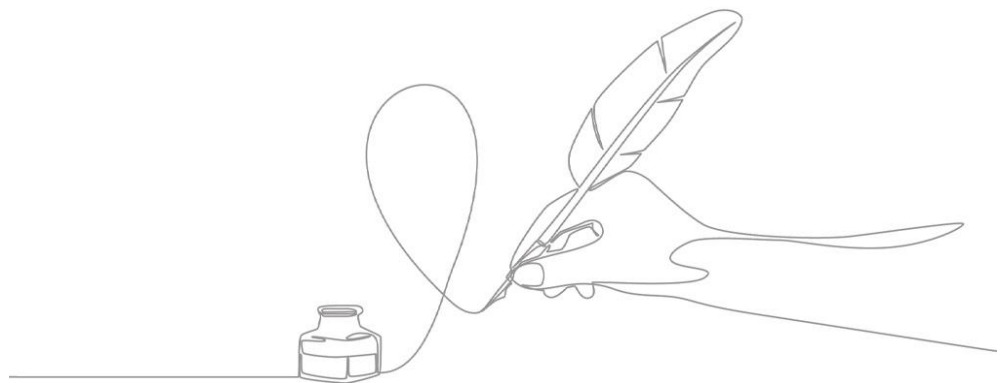
Here in this January issue of HR Perspectives we take a look at three key areas:

- a) **The Whistleblower Protection Directive and Direct Application of EU Rules by the courts** – it has been over 2 years since the Directive should have been transposed in Poland. Nevertheless, employers should make sure all issues covered by the Directive are implemented into their internal procedures;
- b) **Mental health and well-being policies** offering different forms of support to employees and what to look out for when putting such policies in place;
- c) **Appeal Court composition changes** and how they may affect employment court cases.

See also below for a timetable of upcoming events organised by PCS | Littler. We hope you will be able to attend.

Enjoy reading!

Robert Stępień
Miłosz Awedyk
Agnieszka Nicińska-Chudy



The Whistleblower Protection Directive applied directly by the Court

Authors: **Ilona Zacharska**, advocate, lawyer, ilona.zacharska@pcslegal.pl
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The District Court in Toruń took a landmark decision by directly applying the Whistleblower Protection Directive. The case concerned an employee in conflict with the public university that employed him. Thus, there was an individual-state relationship, which made it possible to directly apply the Whistleblower Directive.

Furthermore, other requirements were also met:

- the transposition deadline had expired,
- the directive had not been fully incorporated into Polish law, and
- the provision of the Directive granting rights to the individual in the relationship with the state was precise and unconditional.

In the considered case, the court granted employment protection to the dismissed whistleblower and awarded him damages. The court had the power to protect the whistleblower's rights under the directive due to the principle of its direct application, even though national legislation does not explicitly prohibit contract termination for employees who report irregularities in the workplace.

While the direct application of the directive only applies to cases involving public entities, the decision is still a warning to private-sector employers. The Ministry of Family, Labour and Social Policy indicated that the Whistleblower Protection Act is a priority for the new government, and the latest draft of the Whistleblower Protection Act suggests that the legislation could come into force within a relatively short time frame of one month, followed by a further month for employers to establish the necessary reporting channels.

With the prospect of imminent legislation and the court's ruling serving as a wake-up call, Employers need to get ready by reviewing their whistleblowing policies and procedures.

Mental health and wellbeing policies - what to look out for

Author: **Anna Kencel**, trainee advocate, lawyer, anna.kencel@pcslegal.pl

As employers increasingly recognize the importance of employee well-being, they are adopting mental health and well-being policies to provide various forms of support and set up the rules for using them. While offering support services like free therapy sessions and helplines can be beneficial for employees, it is important to note that these services often involve collecting personal health information which falls under a special category of personal data (sensitive data).

Apart from certain exceptions, the employer should not collect and process them. Therefore, when considering the introduction of any well-being solutions, employers should avoid providing in-house mental health support services, such as on-call support from qualified employees, but rather opt for outsourcing these services to external providers.

Otherwise, this could lead to the direct collection and processing of sensitive health data at the employer's initiative, which would create additional difficulties and obligations for the employer. Furthermore, offering free in-house mental health support may be misconstrued as encouraging employees to disclose sensitive health information, which is generally prohibited.

Employers should also exercise caution when reimbursing employees for mental health support services provided by a third party. They should avoid collecting any information about the specialists that employees consult with (e.g. psychiatrist, psychotherapist, or psycho-dietitian) from the service provider. If such information is inadvertently provided to the employer, it should be deleted immediately and not processed.

Court composition in flux - new rules, old problems

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Amendments to Polish civil procedure resulted in a shift from three-member to single-member panels hearing appeals in typical employment law cases. This amendment echoes similar provisions introduced under the COVID-19 emergency laws, which temporarily allowed for single-member panels during the state of epidemics and epidemic threat. However, the Supreme Court, in its landmark (and controversial) resolution no. III PZP 6/22, deemed this practice unconstitutional, arguing that it violated the right to a fair trial.

The Supreme Court established a legal principle stating that the hearing of civil cases by a single judge in second-instance courts is not necessary to protect public health and leads to invalidity of proceedings.

The recent amendment to the Code of Civil Procedure mirrors the contested provisions of the COVID-19 emergency laws by reducing the number of judges on second-instance panels. The amended provisions, which closely resemble those struck down by the Supreme Court in its III PZP 6/22 resolution, raise concerns about their constitutionality and potential to invalidate proceedings conducted by single-member panels. This is particularly relevant for hundreds of employment law cases that have already been decided or are currently pending in second-instance courts under the new rules. Losing parties in these cases may consider challenging the final judgments by filing cassation appeals based on the premise of invalidity of proceedings.

Here is a timetable for the upcoming events that we are hosting in the upcoming weeks.



Let's talk about money: Experienced Insight – Navigating the 5 Most Common Bonus Rule Pitfalls

Join us for the next instalment of our *Let's Talk About Money* series.

Date: 1st February, 11:00-11:45 a.m., online.

Speakers: Sandra Szybak-Bizacka, Łukasz Chruściel, Patryk Kozieł.

Registration form: [click here](#).

Webinar: 10 rules of a dismissal meeting

Join us for the next instalment of our *10 rules* series.

Date: 6th February, 11:00-11:45 a.m., online.

Speakers: Krzysztof Gąsior, Agata Ankersztajn.

Registration form: [click here](#).

Webinar: Social Media Policies

Date: 8th February, 11:00-11:30 a.m., online.

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

Registration form: [click here](#).

Webinar: Strategically on HR and labour law in 2024

Date: 8th February, 12:00-1:00 p.m., online.

Speakers: Andrzej Borczyk, Business leader,

Monika Smulewicz, labour law and HR expert, CEO "HR na szpilkach",

Krzysztof Nowak, President of Mercer Polska

Sławomir Paruch, attorney at law, partner w PCS | Littler.

Registration form: [click here](#).

Conference: Top 10 HR Law Changes in 2024

Date: 15th February, 11:00 a.m.-12:40 p.m., online.

Speakers: Sławomir Paruch, Łukasz Chruściel, Robert Stępień, Karolina Kanclerz, Paweł Sych, Bartosz Tomanek, Marcin Sanetra, Łukasz Marzec.

Registration form: [click here](#).

Springboard to ESG: Practical Aspects of Reporting Standards (ESRS): Employees in the Supply Chain (S2)

Join us for the next instalment of our *Springboard to ESG* series.

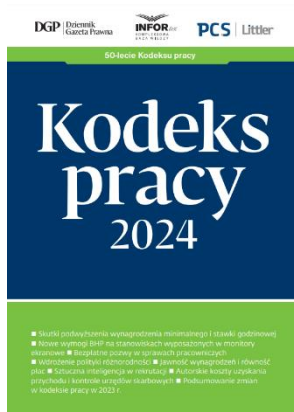
Date: 19th February, 11:00-11:45 a.m., online

Speakers: Bartosz Tomanek, Michalina Lewandowska-Alama, Mateusz Krajewski.

Registration form: [click here](#).



Stay up-to-date with latest developments in Polish employment law and working time regulations with our comprehensive publications, Labour Code 2024 (Kodeks Pracy 2024) and Working Time 2024 (Czas pracy 2024), published in collaboration with Dziennik Gazeta Prawna.



Labour Code 2024 discusses such issues as:

- The impact of the minimum monthly salary and hourly rate increases;
- Abolition of filing fees for employees;
- Pay transparency and equality;
- AI in recruitment;
- A summary of Labour Code changes in 2023.

Authors: Sławomir Paruch, Robert Stępień, Paweł Sych, Agnieszka Nicińska-Chudy.



Working Time 2024 covers a range of crucial topics, including:

- Navigating working time for remote work arrangements;
- Flexible work arrangements;
- Working time systems and schedules;
- Overtime work settlement;
- Working time settlement for various working time systems;
- Night work, Sunday and public holiday work;
- Working time in 2024.

Authors: Łukasz Chruściel, Sandra Szybak-Bizacka, Kinga Polewka-Włoch, Katarzyna Stępień.

Both publications are available on the Dziennik Gazeta Prawna website.