



TOP 10 HR LAW CHANGES 2023

The year 2023 witnessed a whirlwind of transformative changes sweeping through the Polish employment law landscape. Some of them were long-awaited, others surprised everyone. Here is a round-up of the 10 most important changes in employment law in 2023.

I. REMOTE WORKING IN, TELEWORKING OUT

On 7th April 2023, the Labour Code regulations on remote working became effective and replaced teleworking for good. A key aspect of the new regulations is the imposition of specific obligations on employers, including reimbursing their employees for the costs of electricity and telecommunication services. This is particularly important in the context of the recent amendment to the regulation on working with display screen equipment.

II. SOBRIETY CHECKS IN THE LABOR CODE

A landmark shift emerged with the introduction of a clearer legal foundation for employers to conduct drug and alcohol tests on their employees, including preventive and random checks. This development was welcomed by many employers, who have decided to introduce appropriate workplace regulations.

III. STATEMENT OF REASONS FOR FIXED-TERM CONTRACT TERMINATION IS NOW MANDATORY

The amendment to the Labor Code, in line with the EU work-life balance directive and the directive on transparent working conditions, profoundly impacted fixed-term employment contracts. Employers are now compelled to provide a clear and justified rationale for terminating fixed-term contracts, as well as to carry out trade union consultation. Under the new legislation, terminating a fixed-term contract may be more difficult than terminating an indefinite contract.

IV. LABOUR CODE AMENDMENT: NEW TYPES OF LEAVE AND PARENTHOOD-RELATED RIGHTS

The recent amendments to the Labor Code introduced several new employee entitlements, including:

- Five days of unpaid care leave per year;
- Force majeure leave for urgent family matters caused by illness or accidents, amounting to two days or 16 hours per year (with the right to half pay);
- Extended parental leave: 41 weeks (for one child) and 43 weeks (for more children), with one parent allowed to take up to 32/34 weeks of leave, respectively;
- Additional work breaks;
- The right for an employee raising a child under eight to request flexible working arrangements;
- Permission for an employee employed for a minimum of six months to request a change in job type or switch to full-time employment.

However, it turned out employees have been reluctant to take advantage of the new entitlements, especially the additional days off.



V. CHANGES TO PROBATIONARY CONTRACTS

The Labour Code amendment also brought about a major shake-up of probationary contracts. The permissible duration of a probationary contract was linked to the anticipated length of employment, stirring discussions about the purpose of probationary employment contracts.

VI. PROHIBITION OF ADDITIONAL EMPLOYMENT NOT ALLOWED

The legislator has explicitly clarified that the prohibition under general labour laws only extends to competitive activities and does not restrict employees from pursuing other gainful employment opportunities. Indeed, it is not in the best interests of society to completely bar an employee from the labour market. However, the duty to act in the best interest of the employer and a wider perspective on social interest could lend a more liberal interpretation of the prohibition.

VII. CODE OF CIVIL PROCEDURE: NEW SAFEGUARDS

We believe that the new safeguard in the Code of Civil Procedure is the most controversial employment law change in 2023. Now, the Court may order an employer to continue to employ the dismissed employee(s) for the trial duration, unless the dismissed employee's claim is manifestly unfounded. This provision has drawn scrutiny regarding its compatibility with the Constitution and the principles of sound legislation. The initial court rulings in the numerous cases handled by PCS | Littler have demonstrated that courts have invoked the concept of manifest groundlessness to dismiss safeguard claims.

VIII. NO COURT FEES FOR EMPLOYEES

Under Article 35 of the Act on Court Costs in Civil Cases, employees have been completely exempted from paying fees on lawsuits filed with labour courts, even for cases exceeding PLN 50,000. This applies to initial suits, but not appellate cases where the value of the dispute exceeds PLN 50,000. This exemption is likely to lead to an increase in court cases and a subsequent lengthening of proceedings.

IX. EASIER CROSS-BORDER TELEWORKING

Since July, the Polish Social Insurance Institution has been covered by the EU Framework Agreement on the application of the Regulation on the coordination of social security systems. This agreement allows increasing the amount of remote work performed across borders to less than 50% of the total working time (previously it was 25%) while retaining insurance in Poland.

X. PAY TRANSPARENCY DIRECTIVE AND CJEU RULING ON WORKING TIME FOR PART-TIMERS

The year 2023 was also marked by significant actions taken by EU bodies. The Pay Transparency Directive, which came into effect on 6th June 2023, has the potential to enhance pay transparency and prevent pay discrimination. EU member states have three years to implement the provisions of the directive, with a deadline of 7th June 2026.

Meanwhile, the CJEU, in its ruling in Case C-660/20 Lufthansa City Line, addressed the issue of whether a proportionate reduction in bonus requirements is mandatory for part-time employees and whether working time should be considered when determining salaries. Based on this ruling, part-time employees should have their pay and bonus requirements reduced proportionally. Otherwise, they would be unjustly disadvantaged compared to full-time employees. The conditions and challenges of achieving additional remuneration and bonuses should be aligned for all employees.

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