

Dear Readers,

This edition of HR Perspectives explores several topics:

- **Attendance Bonus:** what is it and should it be used;
- **Matrix Employment Structures:** a closer look;
- **Social Media Policy:** benefits of introducing clear social media policy for your company.

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

Enjoy reading!

**Robert Stępień
Miłosz Awedyk**



Attendance bonuses: will they be banned?

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

In recent days, the discussion about the permissibility of using attendance bonuses has reignited. This is due to a recent statement by the Minister of Labour and Social Policy, who questioned the practice of "no sickness" bonuses.

So what are attendance bonuses? In essence, attendance bonuses are additional cash incentives paid to employees who work a specific number of days during a pay period. While not mandated by law, these bonuses are commonly used by employers.

Currently, the legality of attendance bonuses is not widely disputed. The main controversy lies in how the bonus is structured. Often, the bonus is reduced or eliminated entirely in the event of an excused absence, even due to illness. A key challenge lies in regulating the bonus in such a way that non-payment or reduction during absence does not automatically lead to its full inclusion in the sickness benefit base. In such cases, the bonus's purpose is essentially negated (the employee would still receive 80% of the bonus as a benefit).

The Minister's statement raises the question: is the previously widely accepted use of attendance bonuses at risk? Unless significant legislative changes occur, the answer is likely no. The current legal framework does not address attendance bonuses at all, and some judicial decisions suggest that attendance bonuses based on objective criteria do not constitute discrimination.

The Ministry of Labour and Social Policy could propose broader regulations regarding employee bonuses in general. However, this would be controversial, as bonuses are currently an optional addition to employee compensation and employers have the freedom to implement them. Restricting them could deprive employees of these benefits.

Furthermore, attendance bonuses serve as a way to (positively) counteract the abuse of sick leave. Eliminating them could exacerbate this problem, which would be detrimental to social interests, as social security benefits are financed collectively.

Matrix employment structures – flexible or risky?

Author: **Michał Włodarczyk**, advocate, partner, michal.wlodarczyk@pcslegal.pl

Today, we work within complex, global organizational structures, where the boundaries between traditional employer-employee relations are blurred. Matrix employment structures are becoming more popular within corporate groups. In such arrangements, employers of subsidiary companies are directly subordinate to supervisors employed in another company within the group, for example in headquarters located abroad. In these structures, supervisors not only control the substantive aspects of their subordinates' work, but they may also hold managerial roles, deciding on matters such as holiday leaves or disciplinary actions.

Matrix employment structures are increasingly common in IT and SSC/BPO industries. This form of employment also approaches the concept of "Employer of Record" (EoR), where

the formal employer is responsible for employing the worker, even if the individual works for another company.

Such “triangular” employment relationships carry the risk of recognizing that the real employer is not the company with which the employment contract is formally concluded but the company that actually controls the employee’s work process. This risk was confirmed by the Court of Justice of the EU (CJEU: judgement of 20 October 2022, C 604/20), which stated that the existence of an employment relationship is determined by actual subordination, not by a formal employment contract. The consequences can be serious and may not only involve a formal change of employer. Employees may, for instance, raise claims regarding equal treatment in remuneration matters and demand, for example, from a foreign company, the same remuneration as their colleagues employed at the headquarters in equivalent positions.

Maintaining such an employment structure is possible but requires appropriate internal management, both in the relationship between entities within the corporate group and in the relationship between employer and employee or employee and supervisor.

Social media policy

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

Employees’ activity is shifting to the internet and online sphere. These activities, even if taken outside of working hours, can impact the situation and interests of the employer, the work atmosphere, or the interests of employees themselves (for example, of one employee threatens another, or violates their personal rights through online actions). That is why we recommend regulating these issues in the form of an internal policy – a set of rules that will determine which actions in the online sphere are permissible, and which are not, how they relate to their work duties, and what actions the employer can take in response.

We share the most important information on this policy below. A sample social media policy is available to our Clients in the Customer zone PCS | HR Point.

What is the purpose of implementing a social media policy? One of the employers’ fundamental obligation is to ensure a safe working environment and to prevent undesirable behaviors. They may occur not only on the premises of the workplace but also “after hours.” Moreover, they may take on a “virtual” form, associated with activity on social media. This is particularly significant because these media platforms are becoming increasingly important, if not dominant, forums where employees express opinions, including those concerning the organization and coworkers.

Employers, in fulfilling their obligation to combat bullying and undesirable behaviors, should therefore consider employees’ activity on the Internet. The response to the need to oversee this area is the implementation of a social media policy.

What should be regulated in the social media policy? Employers should focus on regulation the following aspects:

1. the purpose of introducing the policy;
2. the scope of obligations of individuals covered by the policy;

3. the procedure for reporting violations;
4. a catalogue of actions the employer may take in case of violations;
5. issues related to the personal data protection.

Regardless of the content of the policy, it is important to communicate to employees the purpose for introducing it in the workplace. Employees should be made aware that the introduction of the policy does not mean that the employer seeks to control activities taken "after hours." It is an instrument aimed at safeguarding their interests and enabling the employer to take appropriate action to protect their assets or the interests of the workplace in general.

Do employees have to comply with the policy "after hours"? Employees often question whether they can be obligated to adhere to the provisions of the policy "after hours," arguing that imposing such obligations is not justified in light of universally applicable legal provisions. However, this is not true. Such obligations as the duty to care for the welfare of the workplace or to adhere to principles of social interaction (collegiality) in relationships with the employer and coworkers bind employees not only during working hours but also "after hours" – which justifies the introduction of a policy in the workplace. This position is confirmed by the case law.

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



Discussion Panel: HR & Talent Trends 2024

Date: 27th March 2024, 9:30 a.m. - 1:45 p.m., Warsaw.

Speaker: Sławomir Paruch.

Organised by: British Polish Chamber of Commerce.

Registration and detailed agenda: [click here](#).

Let's talk about money: Preparing for pay transparency - ensuring success and addressing challenges

Please join our next Let's Talk About Money meeting.

Date: 4th April 2024, 11:00 - 11:45 a.m., online.

Speakers: Sandra Szybak-Bizacka, Łukasz Chruściel, Paweł Sych.

Registration form: [click here](#).

Webinar: Remote work one year on – expectations vs reality

Date: 8th April 2024, 11:00 a.m. - 12:00 p.m., online.

Speakers: Paweł Sych, Bartosz Wszeborowski, Patryk Kozieł, Michalina Lewandowska-Alama.

Registration form: [click here](#).

Workshop: Managing relations with trade unions – communication guidelines and handling requests and letters from trade unions

Please join us for the upcoming workshop, part of the Managing relations with trade unions series.

Date: 10th April 2024, 11:00 - 11:45 a.m., online.

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

Registration form: [click here](#).

No, because of GDPR!: Background screening and employees' online activity – latest market practices

Please join us for the next No, because of GDPR! meeting.

Date: 11th April 2024, 11:00 - 11:45 a.m., online.

Speakers: Paweł Sych, Rober Stępień.

Registration form: [click here](#).