

Dear Readers,

We bring you the November edition of HR Perspectives, where we delve into the following topics:

- **Remote work:** do employers have to accept remote work requests from special-status employees?
- **Minors in the workplace:** who needs a criminal record check certificate?
- **Pregnancy and employment:** can failure to inform employer about pregnancy affect reinstatement claims?

We also invite you to participate in events organized by PCS | Littler.

Enjoy your reading!

Robert Stępień
Miłosz Awedyk



Remote work is not a guaranteed right for special-status employees. Employers' right to organize work covers more than you think

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

Despite introduction of remote work provisions in the Labour Code over a year ago many practical questions remain, particularly regarding remote work requests from special-status employees, such as pregnant women, parents of young children and caregivers of disabled relatives.

A common misconception is that employers must automatically approve remote work requests from these employee groups.

Contrary to popular belief, law allows employers to deny such requests under certain circumstances - when the nature of the job does not allow remote work or when it is not feasible due to organizational constraints.

When making a decision, employers should consider the specific job requirements and provide a clear justification for any denial. The COVID-19 pandemic has demonstrated the viability of remote work in many industries. A particular concern arises in cases where employees who initially worked in a hybrid model now seek to increase their remote workdays. In such situations, the nature of the job is unlikely to be a valid reason for denial. However, history of remote work during the pandemic or current hybrid arrangement does not automatically mean that an employer cannot refuse a request for remote work or increased remote workdays.

As PCS | Littler, we are observing a growing trend of employees returning to office. Many employers, concerned about employee efficiency and process optimisation, are moving away from fully remote work models. Following the surge in remote work, managers are rediscovering the value of in-person collaboration and team building. However, this shift is sometimes contrasted with resistance from employees.

Therefore, carefully assessing such requests is crucial. Employers can justify denying remote work requests as part of their broader efforts to ensure proper work organisation, as outlined in the Labour Code. Ultimately, the employer has the sole responsibility and authority to determine the most efficient work model for the company. It is important to note that work organization is not the same as the type of work itself. Refusing remote work is justified not only when the nature of the job requires on-site work but also when it aligns with the broader organizational structure and culture.

Employing minors: Who needs a criminal record certificate and what will happen with the law?

Authors: **Miłosz Awedyk**, attorney-at-law, partner, miłosz.awedyk@pcslegal.pl
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Earlier this year the so-called “Kamilek’s Law” came into force introducing changes to the Family and Guardianship Code and several other acts. The new regulations have caused significant challenges for employers, particularly those hiring minors for internships or apprenticeships.

First confusion arises when deciding who should or must provide a criminal record certificate from the National Criminal Register (KRK).

The law requires that a KRK certificate be submitted by individuals who will either establish an employment relationship with the employer or be involved in activities related to the

upbringing, education, recreation, treatment, psychological counselling, spiritual development, sports, or other interests of minors.

But questions do not end there. Employers are also asking whether handwritten declarations of a clean criminal record are enough or whether they need to provide separate facilities like changing rooms and restrooms for minors.

We have been helping many of our clients navigate these changes by providing tailored recommendations addressing specific issues arising from the new regulations - such as determining who should be required to submit a KRK certificate - as well as developing comprehensive standards for protecting minors. Each case involves a detailed analysis, including identifying which employees in the organization need to provide appropriate certificates.

We are far from advising that every individual who has any interaction with minors must obtain a criminal record certificate. Instead, we take a more measured approach and are here to support you in meeting the new requirements effectively.

Late pregnancy disclosure does not invalidate reinstatement claims

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

In October 2024, the Supreme Court issued a resolution that sheds light on the employment protection for employees under special circumstances - specifically, pregnant employees.

The case involved an employee who:

- received a standard notice of termination,
- appealed the termination in court without disclosing that she was pregnant during the notice period, and
- revealed her pregnancy only during the legal proceedings while seeking reinstatement.

What did the Supreme Court decide?

The court ruled that delaying the disclosure of pregnancy does not make the employee's claim for reinstatement invalid. Law provides absolute protection of employment of pregnant employees.

What does this mean for employers?

This ruling has significant implications for employers. It states that whether or not an employer knew about the pregnancy at the time of termination doesn't matter in court. Even if the employer was not – and could not have been – aware of the pregnancy when ending the employment relationship court can still order employee's reinstatement.

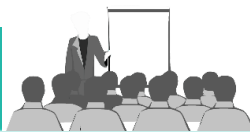
Focus is not on the validity of the reasons for termination but solely on the fact that the employee was pregnant during the notice period – even if this information is revealed much later. In some cases, employers might only learn about pregnancy together with receipt of a legal motion to secure the employee's claim for reinstatement under new rules introduced last year.

What should employers do?

Although the resolution strengthens employee protection there may still be grounds to argue that disclosing pregnancy only during legal proceedings could be an abuse of rights – especially in extreme cases. Interestingly, courts have recently begun stepping away from automatically granting protection under the new regulations, favouring a more careful approach.

Ruling of the Supreme Court – Labour and Social Security Chamber, dated 17 October 2024, case no III PZP 1/24.

Here is a timetable for the events that we are hosting in the near future.



Conference: The employer and ZUS

Date: 26th November 2024, 10:00 a.m.-2:00 p.m., online.

Moderator: Łukasz Chruściel.

Speakers: Paweł Sych, Sandra Szybak-Bizacka, Kinga Polewka-Włoch, Bartosz Wszeborowski, Anna Kencel, Michalina Lewandowska-Alama, Patryk Koziół, Agata Ankersztajn.

Registration form: [here](#).

Employer and employee in court: Controversial evidence - part 2

We are pleased to invite you to our 'Employer and employee in court' webinar series.

Date: 27th November 2024, 11:00-11:45 a.m., online.

Speakers: Marcin Szłasa-Rokicki, Sławomir Paruch, Robert Stępień, and Paweł Sych.

Registration form: [here](#).

Conference: Tax and payroll rollercoaster

Date: 27th November 2024, 10:00 a.m., online.

Speakers: Sławomir Paruch, and Karolina Kanclerz.

Organised by: Wolters Kluwer Polska.

Registration form: [here](#).

Webinar: Look out world, here we come! Polish professionals go global

Date: 27th November 2024, 1:00-2:00 p.m., online.

Speakers: Sławomir Paruch, Agnieszka Kulikowska, Senior Partner, Page Executive.

Registration form: [here](#).

Modern Employer: Beyond layoffs - the importance of outplacement

We are pleased to invite you to our 'Modern Employer' webinar series.

Date: 28th November 2024, 11:00-11:45 a.m., online.

Speakers: Michał Włodarczyk, Klaudia Majkutewicz-Jędrzejak.

Registration form: [here](#).

PCS MeetUp: Pay Transparency Directive – a guide for employers and HR

Date: 29th November 2024, 11:00-11:30 a.m., online.

Speakers: Michał Włodarczyk, Klaudia Majkutewicz-Jędrzejak.

Registration form: [here](#).

HR Lab Kraków: HR Challenges for 2025

We are pleased to invite you to our on-site meetings HR Lab.

Date: 10th December, 11:00 a.m.-2:00 p.m., on-site, Kraków.

Speakers: Robert Stępień, Michał Bodziony, and Kinga Ciosk.

Event partner: ASPIRE. Registration form: [here](#).