

Dear Readers,

We bring you the December edition of HR Perspectives, where we look into the following topics:

- **Employee stock option plans** – an overlooked motivation strategy.
- **AI in the workplace** – using AI without risking data privacy or trade secret violations.
- **New challenges** for employers using increased deductible costs – amendments to the copyright law.

Additionally, you will find a list of upcoming events organized by PCS | Littler below. We encourage you to participate!

Enjoy your reading!

Robert Stępień
Miłosz Awedyk



Turning employees to investors – stock ownership programs

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Employee Stock Ownership Programs (ESOP) are an interesting tool used by employers worldwide. These programs allow employees to acquire or be granted shares of their employer (or the parent company) with the aim of generating profit for the employee. Typically, such programs involve earning the right to the shares over time or upon achieving specific goals.

Why ESOP?

This method of motivating employees offers a significant advantage over more "standard" approaches, such as retention bonuses. In the latter case employer must calculate and withhold income tax (PIT) at the time of payment. With ESOP any potential income (and corresponding tax obligation) arises only when the shares are sold for profit.

ESOP advantages

From the perspective of labour law ESOPs offer numerous benefits. Employers who implement such programs can expect increased company performance and employee engagement. Employees, often even subconsciously, act in ways that enhance the value of their shares or anticipate receiving dividends from the company's profits. Moreover, since ESOPs are typically structured over time, granting rights to shares after a certain period of employment, they help reduce staff rotation, promote team stability, and ensure continuity of work. This, in turn, lowers recruitment costs. As awareness of financial markets grows, ESOPs are becoming an attractive perk for job candidates, enabling companies to attract new talents.

For employees owning shares in their employer's company can lead to additional income through rising share prices or dividend payouts. In this way, ESOPs not only support capital accumulation and savings but also generate tangible financial benefits for shareholders. Additionally, employees included in these programs often feel more valued and develop a deeper understanding of their employer's activities, which can positively impact the company's overall performance.

ESOP drawbacks

Employee stock ownership programs based on shares, as defined by corporate law, cannot be implemented by every employer. Not all entities have the ability to issue shares that employees can own. This limitation significantly restricts the practical application of ESOPs and is one of the reasons they are not a widely adopted solution. Organizations unable to issue shares often turn to alternatives, such as phantom stock or units, which can achieve similar goals but take a different form. On a larger scale, implementing an ESOP can lead to capital dilution and a loss of control over the company. Therefore, careful management of share issuance is crucial to avoid compromising control of the business. Employees may also be dissatisfied with the fact that profits from the shares they receive are not guaranteed, and the company's valuation may decline. This dissatisfaction is often fuelled by the realization that share prices are influenced not only by their hard work but also by external factors beyond their control. Such scenarios can lead to frustration and a lack of trust in these programs.

For these reasons, it is essential to carefully plan and implement an ESOP – not only from a legal perspective but also in terms of communication. Before launching an ESOP, it is

advisable to thoroughly analyse its structure to maximize benefits. With our extensive experience in this area, we are ready to support you every step of the way.

The future of AI in the workplace: Employers hold the key

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The use of artificial intelligence in the workplace is a subject of growing public discourse.

As AI continues to evolve, it is crucial to establish clear guidelines to harness its benefits while mitigating potential risks, such as data privacy breaches or confidentiality violations.

Firstly, employers should decide whether to adopt AI tools and, if so, which tools to use, and for what purposes. Secondly, employees must be fully aware of AI's potential benefits and risks. It is crucial to emphasize that AI is not a substitute for human expertise; human factor remains indispensable in customer relations. AI should be seen as a tool to support human work, not replace it. Consequently, all AI-generated content should be reviewed.

Survey results indicate that clients want transparency about AI use in their cases and assurance that AI-generated content is reviewed by professionals.

This confirms that while we are not yet ready to fully trust a developing AI technology, it can add significant value when used responsibly.

To harness AI's benefits, it is essential to establish clear guidelines for its use. Our team can help you create and implement such guidelines. We also recommend checking out the PCS | Littler guide for practical tips on AI in the workplace.

The increased deductible costs scheme: New legal risks

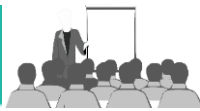
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In September, an amendment to the Copyright Act was enacted to transpose EU legislation on the transparency of copyright remuneration. Employers who have implemented the 50% tax-deductible costs (pl. 50% KUP) scheme are likely aware of the "bestseller clause", a potential legal risk associated with this system. Recent legislative developments in Poland have increased the likelihood of this risk materialising.

The "bestseller clause" stipulates that if the profits derived by the acquirer of the copyright (e.g., the employer) are disproportionately large in relation to the remuneration paid to the author (e.g., the employee), the author may demand an adjustment to the initial pay.

Under the new regulations, purchasers of copyrights (in this case, employers using the 50% KUP scheme) must provide annual or quarterly reports to employees about the profits generated from their copyrighted works. These regulations aim to inform creators about the profitability of their work, potentially enabling them to invoke the "bestseller clause". Employers who have implemented the 50% KUP scheme should conduct a thorough review of their current practices to ensure compliance with the newly enacted regulations and avoid potential legal liabilities.

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



Webinar: Modern Employer: Holiday celebrations – legal challenges and best practices

Date: 17 December 2024, 11:00-11:45, online.
Speakers: Michał Włodarczyk, Anna Kencel.
Registration form: [here](#).

PCS MeetUp: HR detective. When and how to carry out internal investigations?

Date: 18 December 2024, 11:00-11:30, online.
Speakers: Marcin Sanetra, Oskar Kwiatkowski.
Registration form: [here](#).



We are pleased to present the latest edition of **Employment Restructuring 2024**, published together with Rzeczpospolita.

This publication provides helpful insights into solutions and regulations for employers. It includes numerous examples and answers to common questions from business owners, making navigating implementation of various mechanisms much easier. Additionally, it is supplemented with relevant court rulings.

The publication covers, among others, the following topics:

- Modifying employment conditions.
- Non-wage benefits: ensuring a strong workforce for the company.
- Working hours.
- Remote work permanently included in the Labour Code.
- Terminating employment relationship.
- Voluntary redundancy programmes.
- Transitioning from employment contracts to B2B arrangements.
- Employee outsourcing.
- Platform work.
- Openness and communication during restructuring.

Authors: Sławomir Paruch, Karolina Kanclerz, Paweł Sych, Michał Włodarczyk, Michał Bodziony, Ilona Zacharska, Łukasz Marzec.

The publication is available on Rzeczpospolita's website.