Dear Readers,

We are pleased to present the latest edition of our HR Perspectives newsletter.

In this issue, we explore several key developments, including:

- **Phantom shares** – an increasingly popular arrangement within employee incentive programmes;
- **AI in recruitment and employee assessment** – exploring whether artificial intelligence will soon be subject to stricter legal regulations;
- **The end of salary confidentiality in contracts** – what this may mean for internal payroll communication.

We have also included a calendar of upcoming events organised by PCS.

We hope you enjoy this issue!

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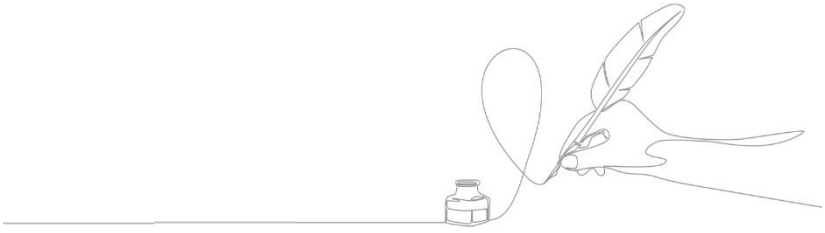
If there is a topic relevant to your organisation that has not been covered, or if you have any doubts about how to apply this information within your company, please feel free to contact us with any questions.

Send us a message



Phantom shares: a modern alternative for employee incentive schemes

Artur Dubelt, trainee advocate, lawyer, artur.dubelt@pcslegal.pl

Phantom shares are becoming an increasingly popular instrument within incentive schemes, particularly for companies that are either unable or reluctant to offer actual equity to their staff. In practice, these schemes grant a contractual right to a cash payment, the value of which is tethered to the company's valuation or specific financial benchmarks. Crucially, a participant does not become a partner or shareholder as specified in the Commercial Companies Code; they do not acquire corporate rights, such as voting powers or dividends. Instead, they benefit from a financial "reflection" of the company's growth in value.

The primary advantage of phantom shares lies in their flexibility. Because they are not subject to rigid statutory regulation, their structure is governed largely by the principle of freedom of contract. This allows parties to define the operational rules broadly within the scheme's terms or through individual participation agreements. Such autonomy extends to both the methodology for granting shares and the specific conditions for their vesting.

In practice, this means the core elements of a scheme can be customised. For instance, the parties can determine the exact trigger for exercising rights: whether that be a specific date, reaching a financial milestone, a company sale, or an IPO. Valuation methods are equally adaptable, with metrics ranging from EBITDA and revenue to Fair Market Value (FMV). Similarly, the transferability of these rights can be strictly prohibited or permitted under very specific circumstances.

This flexibility also covers the forfeiture of rights. It is common to introduce vesting mechanisms where the acquisition of rights is gradual and linked to length of service. Furthermore, agreements can specify the consequences of a contract termination, determining whether a participant retains their rights in part or loses them in full, based on the nature of their departure - be it by mutual agreement, notice, or summary dismissal.

Given this high level of customisation, the documents governing the scheme are the most critical component. The rights and obligations of all parties are defined solely by the incentive scheme's rules and the individual participation agreements; therefore, meticulous drafting is essential to ensure legal certainty. Ultimately, a well-structured phantom share scheme serves as an effective and adaptable incentive tool, perfectly aligned with a company's unique character and strategic commercial goals.

AI in recruitment and employee assessment – is your company ready for new regulations?

Michał Fijak, trainee attorney-at-law, lawyer, michal.fijak@pcslegal.pl

Algorithms are increasingly responsible for reviewing CVs, scoring candidates, and measuring employee engagement. While artificial intelligence is now a staple of the modern HR department, its use will be subject to strict new rules from 2 August 2026. Companies failing to adapt in time face significant penalties for non-compliance that could far exceed those imposed under the GDPR.

AI Act: high risk, high requirements

Under EU Regulation 2024/1689, commonly known as the AI Act, systems used in recruitment, employee management, and access to self-employment are classified as high-risk.

This classification means that liability does not rest solely with the software provider; users of systems employing prohibited AI practices are also liable to fines of up to €35 million or 7% of the company's global annual turnover.

What employers will be required to ensure?

Once the key provisions of the AI Act take effect, companies using AI for their HR processes will be required to:

- Maintain human oversight – every decision supported by AI must be verifiable by a competent employee who possesses the authority to challenge or override the system's output.
- Ensure transparency – candidates and employees must be explicitly informed when an AI system is involved in a process and provided with clear information regarding the primary assessment criteria.

Strict Prohibitions Under the AI Act

Beyond the above obligations, the AI Act introduces specific prohibitions that cannot be bypassed by any internal policy or procedure. Within the HR area, this primarily restricts the use of AI to analyse a candidate's emotions during interviews — such as interpreting body language, facial expressions, or detecting stress levels in video recordings — as well as biometric social scoring, which involves classifying or assessing individuals' social conduct.

The GDPR: still in force and still frequently breached

It is vital to remember that the AI Act builds upon existing protections. Article 22 of the GDPR already prohibits decisions based solely on automated processing if they have a significant impact on an individual. The automatic rejection of a candidate by an algorithm without human intervention, combined with a failure to disclose this process in privacy notices, remains a routine breach of the law. Moreover, uncontrolled algorithms trained on historical data run the risk of unintentionally replicating and entrenching patterns of discrimination.

Next steps: preparing for the deadline

With four months remaining until 2 August 2026, there is still enough time to audit your Applicant Tracking Systems (ATS) and scoring tools, update privacy notices, and establish monitoring procedures. Companies that delay action will face the dual risk of breaching the AI Act and the GDPR simultaneously. Given the increasing volume of complaints to the Data Protection Authority (UODO) and the UODO's commitment to active inspections, this risk has moved from the theoretical to the immediate.

End of pay confidentiality era in employment contracts

Michalina Lewandowska-Alama, attorney-at-law, senior lawyer, michalina.lewandowska-alama@pcslegal.pl

Until recently, pay confidentiality clauses in employment contract were almost standard. “You do not talk about money” was an unwritten rule within organizations. Today this approach is fading into the past. It Is not only the law that is changing, but also the way we should approach pay communication within companies – also at a strategic level.

Including pay confidentiality clauses in employment contracts

If the State Labour Inspectorate (PIP) discovers a clause restricting salary disclosure in an employment contract, the case may be considered straightforward. Employer’s intentions or actual practices will not be investigated – the clause itself is enough to create a real risk of penalties. Under the applicable regulations they may vary from 3 000 to 50 000 PLN. In practice, this means that HR documentation, once seen as a safe baseline is now the first line of risk. Most importantly, the risk arises simply from including a clause that prohibits disclosing the salary.

How to act as an employer?

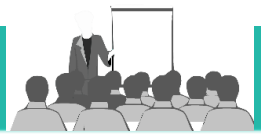
The first reaction for many organizations is to try to amend all contracts. In practice, however, especially in large companies, this means a significant effort – time-consuming, costly, and with a risk of errors. That is why more and more organizations are choosing a more pragmatic solution: issuing a formal internal notice stating clearly that existing contractual provisions restricting salary disclosure no longer apply. This approach allows companies to quickly reduce the risk of penalties without disrupting the organization. However, it requires not only proper documentation, but also clear communication. The real challenge lies not just in managing the change itself, but in managing employee expectations after it is introduced.

New rules, new employee expectations?

There are many myths in the public space around pay transparency. The most common one is that, from June 2026, employees will be able to freely check their colleagues’ salaries, especially once they can be discussed “openly.” If this issue is not properly addressed, it may create real problems: a surge in information requests, tensions between employees, pay pressure, and in extreme cases, legal disputes.

The conclusion is simple: contractual clauses prohibiting the disclosure of salary are no longer a neutral standard – they are becoming a real source of legal risk. Today, the key question is no longer whether to change them, but how to do it quickly and safely – in a way that both reduces the risk of penalties and prepares the organization for the new reality.

Upcoming Events & Publications



Webinar: New anti-bullying regulations in practice – an employer's action checklist?

Date: 20 April 2026, 11:00 – 11:45, online.
Speakers: Krzysztof Gąsior, Ilona Zacharska.
Registration form: *here.*

Webinar: An insider's view of pay transparency: employers and the new powers of trade unions

Date: 21 April 2026, 11:00 – 11:45, online.
Speakers: Sławomir Paruch, Robert Stępień, Michał Bodziony, Julita Kołodziejska.
Registration form: *here.*

Webinar: Navigating labour inspections – how to prepare and avoid common pitfalls

Date: 27 April 2026, 11:00 – 11:45, online.
Speakers: Sławomir Paruch, Bartosz Wszeborowski.
Registration form: *here.*

Webinar: Team conflicts and employee complaints - practical strategies for supporting your staff and keeping your peace of mind

Date: 28 April 2026, 14:00 – 15:00, online.
Speakers: Marcin Szlasa-Rokicki, Krzysztof Gąsior.
Organized by: Stowarzyszenie Praktyków HR.
Detailed agenda and registration form: *here.*
