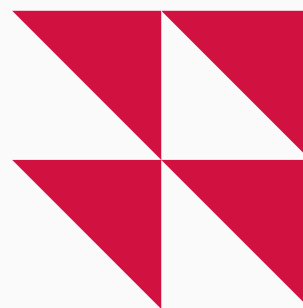


Newsletter

MARCH 2022



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The Work-life Balance Directive

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Going back to work after having a baby is an important and common concern among women. This issue has been addressed by the European Parliament in Directive (EU) No. 19/1158 of the European Parliament and of the Council of 2019/1158 of 20 June 2019 on work-life balance for parents and carers, known as the "Work-life Balance Directive" (the "Directive").

What is its main objective?

The main objective of the Directive is to support and complement the activities of the Member States concerning equality between men and women with regard to labour market opportunities and treatment at work. It introduces more flexibility in the current rules of granting parental leave and carers' leave and encourages fathers to share child-bearing responsibilities.

What will its implementation lead to?

The solutions proposed by the Directive are family-friendly policies that aim to encourage employees to have children. It is stated in the introduction to the Directive that work-life balance remains a considerable challenge for many parents and workers with caring responsibilities, in particular because of the increasing prevalence of extended working hours and changing work schedules, which has a negative impact on women's employment.

Are the provisions of the Directive already in force in Poland?

We need to wait a little longer. The deadline by which the Member States have to implement the Directive into national law is 2 August 2022. In the Polish legislation, the Labour Code will undoubtedly be amended, but the Polish government has not yet published a bill incorporating the assumptions of the Directive.

What facilities for parents does the Directive provide for?

The Directive addresses issues such as: paternity leave, parental leave, time off from work on the grounds of force majeure, the rules for granting payments or allowances, flexible working arrangements and protection against adverse treatment or consequences connected with exercising those rights.

It is worth mentioning that the Labour Code does already offer more advantageous rules than the proposals resulting from the Directive in some of these areas.

Which of the proposed regulations warrant special attention?

Let's start with paternity leave. In this area the regulations are as follows. Fathers or, where and insofar as recognised by national law, equivalent second parents, have the right to paternity leave of ten working days to be taken around the birth of the worker's child. The Member States may determine whether to allow paternity leave to be taken partly before or only after the birth of the child, and whether to allow such leave to be taken in flexible ways.

Under the rules provided for in the Polish Labour Code, a father is entitled to up to two weeks of paternity leave, to be used before the child turns 24 months. Paternity leave may be used on a one-off basis or in two week-long parts. This clearly shows that Polish law is more advantageous than the Directive in this respect.

Carers' leave

The Directive introduces carers' leave – up to five working days per year – in order to provide personal care or support to a relative, or to a person who lives in the same household as the worker and who is in need of significant care or support for a serious medical reason.

Currently, the Labour Code dictates that an employee with at least one child of up to 14 years is entitled to take paid time off from work of 16 hours, or two days, in a calendar year

Time off from work on grounds of force majeure

The Member States should take the necessary measures to ensure that every worker has the right to time off from work on grounds of force majeure for urgent family reasons, in the event of illness or an accident requiring the immediate attendance of the worker, whereas the Directive does not impose any obligation on employers to provide for any payment or any other allowance for such time off.

Under Polish law, similar solutions are included in the catalogue of reasons for absenteeism specified in §1 of the Regulation on the Manner of Excusing Absences from Work and Granting Leave to Employees.

Flexible working arrangements

Pursuant to Article 9 of the Directive, the Member States must take the necessary measures to ensure that workers with children up to a specified age, which must be at least eight years, as well as carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.

Granting the right to request flexible working arrangements may be subject to a period of work qualification or to a length of service qualification, not exceeding six months.

And what about parental leave?

Every employee should be individually entitled to parental leave of four months, to be taken before the child reaches a specified age, at least up to the age of eight. Two months of parental leave cannot be transferred to the other parent.

Granting the right to parental leave may be subject to a period of work qualification or to a length of service qualification, not exceeding one year.

Under the current provisions of the Labour Code, the entire period of parental leave (32 or 34 weeks) may be used by one parent until the child turns six.

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Limited joint-stock partnerships

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Since the entry into force of the new Polish Deal regime (Nowy Ład), businesses have been searching for a golden remedy, planning the reorganisation of their firms. Inspired by information found on the internet, many are storming to Ecovis Legal Poland to be transformed into a limited joint-stock partnership. However, please remember that all materials presented on the internet should be taken with a grain of salt. Since we cannot rely on website news when making our day-to-day business choices, we should certainly not apply second-hand advice to any key decisions, such as business transformation.

Based on recent enquiries, the following question arises:

Is a limited joint-stock partnership the best solution and cure to all evil?

We know that general partners as well as shareholders are not required to pay social insurance contributions or the solidarity levy (danina solidarnościowa).

Additionally, general partners of a limited joint-stock partnership may reduce the tax on a dividend by the CIT amount paid by the partnership (pro rata to their respective shares in the partnership's profit). This sounds attractive, but is this form really suitable for all? The costs of running this form of business are rarely discussed, but the operating costs are certainly not negligible, including: recording resolutions of the general meeting by a notary and concluding an agreement with an external service provider to maintain a shareholder's register, among others.

Large limited joint-stock partnerships, if they meet the conditions specified in the Polish Accounting Act, are required to have their annual financial statements audited by a certified auditor. In addition, the corporate structure itself is quite complex, to which we must partly apply the provisions governing a joint-stock company, and partly the regulations concerning a limited partnership. Therefore, it will be difficult to carry on its day-to-day business without the help of a lawyer who knows their stuff.

And now, what do we suggest?

Let's look at a simpler solution – a limited partnership. Partnerships do not pay a solidarity levy, just like in a limited joint-stock partnership. The general partners may reduce their dividend tax by the CIT paid by the limited partnership (pro rata to their respective shares in the partnership's profit).

In fact, partners in a limited partnership do pay a set percentage of annual income as their social insurance contribution, regardless of how much they earn. Since January 2022, the monthly social insurance contribution for partners in a limited partnership is PLN 559.89.

For sole entrepreneurs who have paid social insurance contributions themselves, a limited partnership often seems to be a more attractive solution. The earnings-related monthly social insurance contribution amounts to approximately PLN 560, but a limited partnership is much simpler and less expensive to operate. There are no shares involved, therefore there is no obligation to maintain a register of shareholders or keep records of resolutions adopted by partners in the presence of a notary. This form is a considerably simpler legal form and does not require professionals to be engaged.

It is important to remember that general partners in both limited partnerships and limited joint-stock partnerships agree to unlimited personal liability for the debts of the partnership. Depending on the risk that is inherent to the business, it may turn out that a limited liability company will be the best option for you.

Businesspeople, do not make a bad DEAL – do not choose the form in which you want to conduct business based on information presented on the internet. Consult your advisors and choose the form that best suits your needs and capacities.

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Polish Deal – undeclared work

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The issue of undeclared work is of great concern in Poland. What privileges do informal workers lose?

Working in the black economy has not been overlooked in the landmark overhaul of the Polish legal and tax system (the Polish Deal) implemented since 1 January 2022.

A declared worker is subject to all the provisions of the labour law, social insurance law and tax law.

Undeclared work deprives workers of their necessary benefits and protections (healthcare system and sick pay) and undermines public finances. At the same time, many people decide to work on the black (or grey) market for economic reasons.

From January 2021, the rules of liability for informal employment will change. What changes should we expect?

Before 1 January 2022, disclosing undeclared work resulted in the obligation for the employee concerned to settle the remuneration received and pay the tax; the employee was also required to return to the employer a relevant part of the social insurance contribution that is payable by the employee. These requirements discouraged employees from reporting undeclared work to the tax authorities. The Polish Deal places the liability for undeclared work on the employer only.

What does this mean?

In the grounds for the bill of the Polish Deal, the Ministry of Finance argued that modifying the regulations in this respect would encourage undeclared workers to pursue their rights and report their informal employment to the authorities.

In accordance with the details of the bill, where informal employment is disclosed, the employer will be required to add to its income all salaries paid under the table.

What amount of salary is it about? How will it be calculated?

Employers will be assigned an income at the level of the minimum wage per month (in 2022, it is PLN 3,010) for each month of undeclared work detected. At the same time, amounts paid to undeclared workers are not tax-deductible.

Employers will also be required to pay, out of their own funds, any outstanding taxes and social insurance contributions.

Additionally, under the Polish Deal, disclosed income from undeclared work is exempt from tax.

Will undeclared workers bear any consequences for their disclosure?

Workers will not bear any consequences from disclosing undeclared work, since all the tax and social insurance-related burdens will be put on the employers.

The new law states that these developments concerning illegal employment will be applicable to cases detected after 1 January 2022. At the same times, workers will be able to disclose their past undeclared work incidents, provided that such incidents are not subject to fiscal investigation.

Therefore, the application of the regulations of the Polish Deal may be very painful for unfair employers. It should be remembered that, in addition to the mentioned consequences with respect to taxes and social insurance, employers may also be liable for a criminal offence or a fiscal misdemeanour.

The Polish Deal materially changes the rules of liability for undeclared work. On the one hand, undeclared workers, being released from liability, may be more willing to report undeclared work to the authorities (such as after being fired by the employer). On the other hand, the risk may urge employers to move to regular employment.

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Whistleblower Act

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The Polish Act on the Protection of People Who Report Breaches of Law, known as the “Whistleblower Act” regulates the procedure for reporting breaches of law (internal and external reporting) and the protection of those that report them (whistleblowers).

The issue of the protection of whistleblowers, and the procedures applicable to the reporting of breaches, is addressed in EU Directive of 2019 (Directive (EU) No. 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law) (the “Whistleblower Directive”). The Whistleblower Directive should have been implemented in Poland (and in the other EU Member States) by 17 December 2021.

Since the bill has not been passed in Poland, at what stage is it in the legislative process?

Based on the information provided on the website of the Government Legislation Centre (RCL), the bill implementing the Whistleblower Directive is currently at the review stage. In turn, the Minister of Family and Social Policy has declared that it is currently analysing numerous comments to the whistleblower bill and it is not in a position to give an exact date when the bill will be referred to the lower house of parliament (the Sejm).

Who and what will the Whistleblowers Act apply to?

From 17 December 2021, regulations applicable to whistleblowers will refer to both employers from the public sector and employers from the private sector who employ more than 250 employees. Employers employing between 50 and 249 employees have until 17 December 2023. In turn, employers with less than 50 employees are not required to make any modifications.

The protection afforded by the Whistleblower Act covers a large group of people, including not only employees on employment contracts, but also anyone with “junk contracts”, B2B, trainees and volunteers. The protection also extends to the recruitment and the post-termination periods. The Whistleblower Act protects also members of the management board and partners in partnerships.

The Whistleblowers Act provides specifically for the possibility of whistleblowers making anonymous reports by following a specific process (most often internal, by creating the rules of procedure for internal reporting, including a procedure for reporting and follow-up activity).

It covers also the scope of protection afforded to whistleblowers, such as non-retaliation, non-discrimination, claims for damages for the loss and the liability for disciplinary action.

It also introduces specifically an obligation on employers to keep a register of internal reports, to define a path of external reporting and specifies that the central authority for external reporting is the Polish Ombudsman (Rzecznik Praw Obywatelskich) (except for any cases reserved for the Office for Competition and Consumer Protection; UOKiK).

The EU legislator has certainly provided for penalties for a failure to observe the new regulations. What penalties can we expect?

The penalties specified in the bill include: a fine, restriction of liberty or imprisonment of up to three years.

The punishable actions include: prevent reporting by whistleblowers, retaliating against whistleblowers, violating a whistleblower’s anonymity, whistleblowers providing false information and the employer failing to implement, or failing to implement properly, the relevant procedures (internal reporting procedures).

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