Employment Guide

A – Z for Poland (per April 2012)

1. Anti-discrimination regulations

Polish Labour Code provides that employees have equal rights arising from the equal performance of the same duties. It prohibits discrimination on the grounds of sex, age, disability, race, religion, nationality, political views, trade union membership, ethnic origins, belief, sexual orientation, as well as on the grounds of employment for a fixed or indefinite term or full or part-time work.

Employees must be treated equally with regard to their terms of employment (including entering into employment contract), their promotion, their access to professional training and their rights upon dismissal.

An employee who has experienced discrimination is entitled to damages in the amount not lower than the minimum statutory pay.

2. Business transfers

If an entity is transferred (in whole or in part) to a new employer, the new employer legally enters into the position of the former employer and the employees retain all their rights.

The new employer must retain the transferring employer's existing CBA (Collective Bargaining Agreement) during the first year unless the new employer's terms are more favourable to the employees. After one year, the employer may offer new terms and conditions of employment. If the new terms are less favourable and the employees reject them, their contracts terminate after the notice period ends. If there is no CBA, the new employer can offer the new terms and conditions immediately after the transfer.

3. Compromise agreements

The compromise agreement offers the opportunity to amicably terminate an employment contract. It is a chance for both employers and employees to end the contract on mutually agreed terms.

A well-drafted compromise agreement provides both parties with a clear understanding of their rights and obligations in relation to the termination of the employment contract as well as to the period after the termination. Written form is not obligatory, however it is recommended for evidential purposes.

Although a compromise agreement is generally profitable for both parties, it can be disadvantageous for an employee. By signing a compromise agreement an employee waives his rights to claim for an unfair dismissal. Additionally it prohibits him from being granted unemployment benefits for a period of 6 months.

4. Employment contracts

An employment contract does not have to be in writing to be valid. However, the employer must provide employees with a written confirmation of the type of contract and its terms, at the latest, on the first day of employment.

The parties are free to decide the terms of the employment contract provided that these are no less favourable than the provisions in the Labour Code and other employment legislation (e.g. Collective Bargaining Agreements). If the parties do not agree on specific terms, the corresponding provisions of the Labour Code generally apply.

An employment contract can be concluded for an indefinite period of time, a definite period, the time required to complete specific work or for the period of absence of another employee. Any of these contracts may be preceded by a trial-period contract (lasting up to 3 months). An employment contract should contain the following minimum information: the starting date of employment, the parties, the type and place of work, the remuneration and the working hours.

In addition, the employer must inform the employee in writing of any restrictions on working hours, the intervals at which remuneration is paid, paid holiday entitlement, the notice period, and the collective bargaining agreement (CBA) which covers the employee, if any.

The difference between an employment contract and other types of contracts for work is not always easy to make. However, the consequences for both parties in terms of rights and obligations are substantial. The whole nature of the contractual relationship has to be taken into consideration. If the person is more or less free to decide how to do the work and if he/she furthermore is free from instructions with regard to time and place, the person is allowed to perform his/her work on the basis of a contract for services. A contract for services is based on the civil code (not the Labour Code) and gives both parties more flexibility in terms of conditions of the contract. However if a person is obliged to perform work of a specified type for the benefit of the second party, under his supervision, in a time and place determined by that second party an employment contract has been concluded, independent of whether the contract is called an employment contract or not.

Collective Bargaining Agreements (CBA) are considered by Polish law as sources of employment law. These agreements are divided into multi-enterprise agreements and single-enterprise agreements. Since these agreements are considered a source of employment law by the Labour Code, employment contracts must not be less favourable to employees than these agreements. Any less favourable provisions of the contract would be considered null and void and replaced by the more advantageous provisions of CBA.

5. Employee benefits

Polish employment legislation provides a number of statutory benefits for employees. There is no statute that covers all of the benefits. Part of them are provided by the Labour Code, for instance holiday entitlement, extra remuneration for overtime and remuneration guaranteed while an employer is on sick leave. Many benefits, in particular social benefits, are governed by separate statutes. A minimum pay is guaranteed by the Minimum Statutory Pay Act and unemployment benefits are granted on the terms of the Act on Employment Promotion and Labour Market Institutions. Some benefits such as, for example, maternity leave are regulated both in the Labour Code and in a separate statute.

6. Handbook for employees

An employee handbook normally details guidelines, expectations and procedures of a business or company to its employees. It is not a typical practice of Polish companies to have an employee handbook. Instead employers who employ 20 employees or more are obliged to introduce a work regulation, unless they are covered by a Collective Bargaining Agreement. The content of the work regulation is prescribed by the Labour Code. It includes information on organization of work such as workers equipment and health and safety rules rather than on company policies.

7. Health and Safety

The employer has a number of obligations regarding the health and safety of his employees. His duties include:
- Organisation of the work in a way that ensures working conditions are safe and hygienic;
- Observation of provisions and rules relating to health and safety in the workplace;
- Remedy of any breaches of health and safety rules, and ensure instructions are carried out;
- Ensure that orders, decisions and rulings of agencies that exercise supervision over working conditions are implemented;
- Ensure that recommendations by a social labour inspector are implemented.

An employer commencing or changing the place, kind and/or scope of his business activity is obliged to inform appropriate institutions if such events occur. Every employee hired by an employer is subject to initial medical examination. In case of a work accident an employer is obliged to conduct all the necessary actions eliminating or reducing the danger, provide first aid, establish the cause of the accident and apply proper measures to prevent similar accidents in the future. An employer is obliged to inform a labour inspector and a prosecutor about fatal, serious or/and group accidents.

If working conditions do not comply with health and safety rules and directly endanger the life or health of an employee or if work conducted by him can be dangerous to others, the employee is granted a right to refrain from conducting his work, and he should immediately inform his supervisor about it.

An employer of more than 100 persons must create a special ‘health and safety at work’ service. An employer of fewer than 100 persons can choose to delegate the duties of this service to an employee, who is not a health and safety officer. An employer of fewer than ten or twenty employees may – depending on the circumstances - perform the duties of health and safety services himself, provided that he is qualified to do so. An employer of more than 250 employees must appoint a special health and safety committee as an advisory and opinion-issuing body.

There exist many other rules and regulations that have to be observed by both employers and employees.

8. Illness Regulations

In case of illness or injury, employees have the right to sick leave (granted on the basis of a medical certificate). During sick leave, employees generally receive 80% of their standard pay. If employees are admitted to hospital, they receive 70% of their pay.

However if the illness occurs during pregnancy or the injury is caused by an accident on the way to or from work, employees receive their full remuneration. If the accident occurred at work, employees are also entitled to benefits from the Social Security Office. The amount of these benefits depends on the scale of the injuries.

The employer has to pay sick pay up to the first 33 days of illness or injury; after this period the Social Security Office pays.

However, sick pay is generally not available for longer than 182 days. If the employee cannot return to work after this period, but is likely to be able to do so following further treatment or rehabilitation, he is entitled to rehabilitation pay. This can be awarded for up to 12 months.

9. Immigration and Work Permits

If a foreign national is an EU citizen no work permit is required. The person has to register their place of residence in Poland but only if he/she stays there for more than three months. EU citizens gain the right of permanent residence after five years of residence in Poland, provided that all requirements specified by Polish law are met. However, citizens of EU countries who introduced a protection period for Polish workers (e.g., Germany) require a work permit to work legally in Poland.

Non-EU nationals must generally obtain a work permit. Once they have received a promise that such permit will be issued, they must obtain either a 'residence visa' (for a maximum of one year) or a 'residence permit for a fixed period of time' (for a maximum of two years).

To obtain a work permit there are three steps: Firstly, the employer files the application with the Provincial Governor and obtains a promise that a work permit will be issued. Subsequently, the foreign national obtains a residence visa or residence permit for a fixed period of time. Thirdly, the work permit is issued.

The residence visa is obtained by applying to the Polish consul in the country of residence of the applicant. The residence permit for a fixed period of time is obtained by applying to the Provincial Governor. If the Governor's decision is positive, the foreign national then submits the Governor's decision to the office that issues work permits. Additionally, employment of foreigners is admissible only if an employer is not able to find a Polish national suitable for the post.

However, there are some professions specified in the law which do not require a work permit because of their special nature (e.g. correspondents of foreign media). The right to work without a work permit is also granted to citizens of countries who are neighbours of Poland for a period of not more than 6 months during a calendar year.

10. Industrial action (strike)

Collective disputes between employees and employers may concern the terms and conditions of employment, remuneration, social benefits and/or a trade union's freedom. Employees' rights and interests can be represented only by trade unions. If there is more than one trade union in an enterprise every one of theses unions can represent employees' rights and interests. However, they can also create a joint

representation. As a rule, a collective dispute is not allowed to support individual demands of employees.

A collective dispute exists from the date of presenting demands by a trade union that can be a subject of collective disputes, if an employer does not accept all of the demands within three days. In notifying an employer of a dispute, a trade union may also say that a strike will be declared if the demands are not satisfied. An employer should immediately start negotiations aimed at resolving the dispute. If they are not successful the dispute moves to the next stage – mediation.

A mediator is chosen by the parties involved in the dispute. If they cannot agree within five days, a mediator is designated by the Labour Minister. If the mediation process justifies the view that the dispute will not be resolved, a two -hour warning strike can be declared. If mediation is unsuccessful a strike can be declared. However, a trade union may try to resolve the dispute by way of arbitration. The result of the arbitration is binding unless any of the parties declare that they would not comply with its result.

A strike consists in refraining from work in order to resolve the dispute. It is an extreme measure and cannot be used without completion of the above mentioned procedures. However, a strike may be declared immediately if the employer terminated an employment contract with the trade union member who conducted the dispute. A strike is declared by a trade union after the acceptance of a majority of employees if at least 50 % of them took part in the voting. Participation in a strike is voluntary.

11. Non-competition Clause/ Other restrictive stipulations

The employer can agree a non-competition clause with his employee, to the effect that the employer prohibits the employee during or, more importantly, after termination of the employment contract, to carry out certain work activities. By means of such a non-competition clause the employer can prevent an employee for example from performing work for a competitor or from establishing a business of his or her own after termination of the employment contract.

The non-compete agreement typically covers a fixed post-termination period. To be valid the agreement must be in writing, and set out in a specifically drafted document or a separate part of the employment contract.

Compensation for any non-compete clause is compulsory and must not be lower than 25% of the remuneration that the employee received before the employment relationship was terminated for the period corresponding to the non-compete period.

12. Restructuring and redundancy

Restructuring and redundancy matters are governed by a separate statute commonly named Group Redundancies Act. It provides for the main rules of group redundancies. According to the law a group redundancy occurs when at least 10 to

30 employees, depending on the size of an undertaking, are being made redundant within 30 days. When an employer considers group redundancies he is obliged to consult trade unions. Depending on the circumstances there are different possibilities of making protected workers (e.g. pregnant women) redundant which under other normal circumstances would not be allowed.

13. Secondment of employees and expatriates

a. Secondment is the situation whereby a company hires temporary staff from an employment agency or in general from another employer.

The Act on Employing Temporary Workers of 9 July 2003 (as amended) regulates temporary work in Poland. The Act regulates a three-way relationship between the: temporary worker, the work agency who is the worker's employer, and the user employer. The user employer enters into a contract with the agency to use the worker.

The main goal of the Act is to protect a temporary worker's rights. Generally, the temporary worker has the same rights and benefits as permanent employees concerning remuneration, staff training (if the user employer employs him for longer than six months), and benefits from the Social Security Office in the event of an accident at work or illness.

b. With EU accession the EU Social Security Decrees (1408/71 and 574/72) became binding in Poland. Pursuant to these regulations, EU nationals working in Poland are subject to social security in Poland regardless of the place of employment. This does not apply to individuals who were sent to Poland on short-term secondments. They are allowed to stay in the home country system if the secondment period is less than 12 months (this can be extended to 2 years).

Similar rules apply to Polish nationals working in other EU countries. If the individual works in more than one member state, social security is paid in the country of residence.

14. Social Security

Social security is financed by either the employer, the employee or both in the same or differing portions. The contributions are deducted at the source by the employer. They include:
- Retirement pension contribution;
- Incapacity pension contribution;
- Sickness insurance;
- Accident at work insurance;
- Labour fund;
- Employee-guaranteed benefits fund;
- Health insurance.

The total social security burdens borne by an employer and employee are around 40% of the total cost of remuneration of an employee. However, health insurance contribution is almost fully deductible from personal income tax.

15. Characteristics of Polish Employment Law

Issues concerning Polish employment law are mainly regulated by the Labour Code of 1974. However, there are separate statutes governing particular issues related to employment such as the Trade Unions Act of 1991, the Group Redundancies Act of 2003, the Temporary Employment Act of 2003, the Resolving of Collective Disputes Act of 1991 and other. Most of the provisions in the Code are semi-imperative. This means that the terms of employment regulated in the Code can be changed only in favour of the employee. As a general rule, an employee cannot waive his rights arising from the Code and such a waiver is considered to be null and void. Provisions of the Labour Code are effective only towards persons performing their work under an employment contract. Provisions of the Labour Code do not concern persons rendering services based on civil-law contracts.

16. Tax Matters

Personal income tax rates are currently 18% and 32% depending on the threshold of income earned. The employer must calculate and pay (by withholding from the employee's salary) the PIT monthly advances due on the income paid to the employees. Tax-deductible costs of employees' income are paid as a lump-sum. More importantly, a major part of health insurance contribution is deductible from the personal income tax. Poland has entered into more than 80 double taxation agreements which allow employees to avoid taxation in both Poland and foreign country in a situation where one person is a resident of one country and performs his work in another country. The deadline for filing a final tax return on PIT for the previous year is 30 April.

17. Termination of Employment

An employment contract can be terminated:

- by mutual agreement of the parties,
- upon declaration of a party with observance of the period of notice (termination by notice),
- upon declaration of a party without observing the period of notice (termination without notice),
- upon expiration of the time for which it was concluded,
- upon completion of a task for which it was concluded.

Termination by mutual agreement is allowed in every kind of employment contract. Termination by notice is allowed in case of contracts concluded for:
- an indefinite period of time (termination notice from 2 weeks to 3 months, depending on the duration of the employment period of an employee)
- a trial period (termination notice from 3 working days to 2 weeks depending on the duration of the trial period)

- the period of absence of another employee (termination notice of 3 working days).
Termination of a contract concluded for a definite period of time is allowed only if the contract is concluded for more than 6 months and the contract stipulates the possibility of termination by a 2-week notice period.

Termination without notice can be issued by an employer as well as by an employee. It is only possible in certain cases which are strictly defined by the Labour Code, mainly because of a serious breach of the contract by the other party to the contract. In case of termination that is against the rules provided for by the Labour Code an employee may claim for the reinstatement on former conditions or due compensation.

Termination of an employment contract is not allowed in relation to trade union executives, pregnant women and other persons specified by the law.

18. Trade Unions

Trade union density is relatively low at around 15% and most of the trade union members are divided between two large confederations of more or less equal size, NSZZ Solidarnosc and OPZZ, and one smaller one, FZZ. However, this is only part of the picture as union structures are very decentralised. Many local union groupings do not belong to any of the main confederations, and, where they do, the links may be weak.

Trade Unions are obliged to represent all of the employees in cases concerning collective rights and interests. In individual cases they represent its members. Trade Unions are entitled to lead collective negotiations and conclude collective labour agreements. They control observance of the labour law and participate in controlling the observance of health and safety rules, furthermore they have rights to be informed, including in case of a business transfer.

19. Works Council

a. Trade unions traditionally provided representation for employees at the workplace and where there were no trade unions there is was no representation. New legislation implementing the EU directive on information and consultation provides for the creation of the works councils in undertakings employing at least 50 employees. But where trade unions are present works council members are chosen by them. There is an election only if there are no trade unions, or if the trade unions do not agree on the nominations.

The employer must inform and consult with them about a range of issues including the employer's activities and financial position, the structure and probable development of employment, and measures planned to maintain the current level of employment, any decisions likely to lead to substantial changes in work organisation or contractual relations.

b. Regarding employee representatives at supervisory board level these exist in state-owned and partially privatised companies, as well as – with even greater

powers - in some state-owned operations. However, there is no right to employee representatives on the boards of private companies.

Contact: Marcin Gorazda, Gorazda, Swistun, Watroba, Krakow,
marcin.gorazda@gsw.com.pl, renata.lewicka@gsw.com.pl

***