

# Amendments to the Labour Code regarding fixed-term contracts

On 5 August 2015 the President of the Republic of Poland signed an act introducing important amendments to the Labour Code, aimed primarily at preventing employers from abusing fixed-term employment contracts. The act was promulgated on 21 August 2015. The amendments also organize the types of employment contracts, put fixed-term contracts on largely the same footing as contracts for an indefinite term, and expressly allow employers to grant garden leave during the notice period.

## Origins and substance of changes

The changes were brought about after the European Commission instigated proceedings against Poland with regard to the non-compliance of applicable regulations with the requirements of Council Directive 99/70/EC of 28 June 1999, as well as case law of the Court of Justice of the EU, in particular the judgment of 13 March 2014 in case C-38/13 *Nierodzik (question of the District Court in Białystok)*. The changes are primarily aimed at limiting the unreasonable use of fixed-term employment contracts. Currently, such contracts are often concluded for long periods without objective reasons. Meanwhile, the purpose of a fixed-term employment contract should not be to employ personnel for many years, as this is the purpose of employment contracts for an indefinite term, as confirmed by the case law of the Supreme Court.

## Probationary period only once

As a result of the amendment, only three types of employment contracts will be available: for a probationary period, a fixed term and an indefinite term, while existing

## Topics

- Contract for a fixed period possible only once
- Fixed-term contracts for a maximum total of 33 months
- New notice periods for fixed-term contracts
- Possibility to grant a garden leave to the employee during the notice period
- Entry into force of new regulations as well as transitional provisions

contracts for the duration of performing a particular work and contracts to temporarily replace an employee have rightly been deemed fixed-term contracts. The principles of concluding contracts for a probationary period have also been specified in more detail. Under the current law, a contract for a probationary period may precede each type of employment contract, hence, subject to certain reservations, it may be concluded repeatedly. The amendments provide that a contract for a probationary period may only be concluded once with the same employee, unless the employee is to be employed to perform a different kind of work or is to be employed for the same kind of work, but at least three years have passed since the prior employment contract expired.

## Fixed-term contracts for 33 months only

Currently, the conclusion of a third fixed-term contract with the same employee is synonymous with the conclusion of a contract for an indefinite term, provided the interval between the contracts does not exceed one month. While the new regulations do indeed allow the conclusion of as many as three contracts for a fixed term, at the same time they introduce a time limit for the duration of such contracts, i.e. 33 months at the maximum. If the parties conclude more fixed-term contracts, or the total duration of such agreements exceeds 33 months, then by operation of law the employee will be employed based on an employment contract for an indefinite term from the day following the conclusion of the fourth contract, or as of the date following the lapse of 33 months.

However, the above limits will not apply to fixed-term contracts concluded for the purpose of:

1. replacing an employee during a justified absence from work,
2. performing casual or seasonal work,
3. performing work during a term of office,
4. when the employer points to objective reasons attributable to the employer.

In all the above cases, concluding a greater number of contracts or contracts for a period longer than 33 months will be admissible, as long as it serves the purpose of satisfying a real, seasonal demand and is necessary in that respect in light of all the circumstances. Furthermore, in the case referred to in point 4 above, the employer will be obliged to notify the appropriate regional labour inspectorate, in writing or electronically, that such a contract has been concluded, stating the reason why it is being concluded. Additionally, a statement of the same reasons in the contract will be a mandatory element of the employee's employment contract. The employer's failure to fulfil this obligation may result in a fine of PLN 1,000 to PLN 30,000.

When compared with the current regulations and practice, the above legislation constitutes a drastic restriction on the repeated conclusion of fixed-term contracts. Nonetheless, practice will show to what extent the exceptions listed in points 1-4, especially the possibility of the employer's pointing to 'objective reasons attributable to the employer', will enable employers to circumvent the regulations, which are rather restrictive.

## Longer notice periods for fixed-term contracts

Another major change introduced by the amendment is putting fixed-term contracts (including the current replacement employment contract) on an equal footing with contracts for an indefinite term where the notice period is concerned. Currently, fixed-term contracts may be terminated upon two weeks' notice without any reasons being given, but only if the parties provided for this beforehand and only with respect to contracts that have been concluded at least for six months. Following the amendment, the notice period for fixed-term contracts will depend on the length of service with the given employer, and will be –as is presently in the case of contracts for an indefinite term –between two weeks and three months. It will be possible to shorten the three-month notice period to one month if the employer is declared bankrupt or is liquidated or due to other reasons not attributable to the employees.

Notice periods for contracts for a probationary period (ranging from three business days to two weeks), as well as employment contracts for an indefinite term remain unchanged. A replacement employment contract is deemed a fixed-term contract, so it will not be possible to terminate it, as is currently the case, upon three business days' notice, but only on the terms appropriate for fixed-term contracts.

## Possibility of granting garden leave

Another novelty is the express possibility of the employer's unilaterally granting garden leave to the employee during the notice period, with the employee's retaining the right to remuneration. While this is not expressly provided for in the current regulations, it has still been a very common practice, despite the doubts as to whether it is permissible without the employee's consent.

## Entry into force of the new regulations and transitional provisions

The amendments will enter into force after six months from the date of promulgation of the Act, that is, as of 22 February 2016.

With respect to fixed-term contracts currently in force and not under notice as at the date of entry into force of the Act, the principle of concluding up to three contracts for a maximum period of 33 months will apply, and such period is counted as of the date of entry into force of the Act, where the given contract is deemed the first of the three (or second, if it was the second contract concluded under the old regulations). This means that as of the entry into force of the Act, the maximum period of 33 months starts for the duration of all the permissible fixed-term contracts, before they are converted into a contract for an indefinite term. This does not apply only to fixed-term contracts concluded before the date of entry into force of the Act with the employees who are subject to special protection against termination upon notice or termination of an employment contract, if the termination of such employment contract would take place following the lapse of 33 months. In such a case, the contract will terminate upon the lapse of the period for which it was concluded.

If, on the date of entry into force of the Act, the employee is working based on a replacement employment contract, performs seasonal or casual work, or if there are objective reasons attributable to the employer which would justify exceeding the limits established for fixed-term contracts,

the parties to the employment relationship have three months to insert in the employment contract the purpose or circumstances of the case. Meanwhile, within five business days of inserting this information into the employment contract, the employer is bound to fulfil the information obligation vis-a-vis the regional labour inspectorate, by notifying it of the said circumstance.

If a fixed-term contract was concluded before the entry into force of the Act, but it did provide for the possibility of termination upon notice, the new notice periods will apply to such contract. Fixed-term contracts which did not provide for the possibility of termination upon notice at all, or which were concluded for a period shorter than six months, will remain in that respect outside the scope of application of the new regulations, and terminating them upon notice will not be possible.

Importantly, while determining the new notice period for a fixed-term contract, earlier employment periods with the given employee are not taken into account, so the shortest notice period will apply even to long-term employees employed based on fixed-term contracts. This is, without a doubt, a concession for employers, which would have had to face giving three months' (instead of two months') notice to their existing, long-term fixed-term employees.

## Contact



**Agnieszka Janicka**  
Partner

T: +48 22 627 11 77

E: [Agnieszka.janicka@cliffordchance.com](mailto:Agnieszka.janicka@cliffordchance.com)



**Tomasz Derda**  
Counsel

T: +48 22 627 11 77

E: [Tomasz.derda@cliffordchance.com](mailto:Tomasz.derda@cliffordchance.com)



**Joanna Kamińska**  
Associate

T: +48 22 627 11 77

E: [Joanna.kaminska@cliffordchance.com](mailto:Joanna.kaminska@cliffordchance.com)

This Client Briefing does not exhaust all the aspects of the discussed topics, and does not amount to a legal advice or advice of another kind.

[www.cliffordchance.com](http://www.cliffordchance.com)

Norway House, ul. Lwowska 19, 00-660 Warsaw, Poland

© Clifford Chance 2015

Clifford Chance, Janicka, Krużewski, Namiotkiewicz i wspólnicy  
spółka komandytowa

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta\* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

\*Linda Widyati & Partners in association with Clifford Chance.