

KEEPING EMPLOYEE DOCUMENTATION STARTING FROM 2019

A new Act introducing significant amendments with regard to the keeping of employee documentation by employers will come into force on 1 January 2019. Not only will the retention periods change (generally being reduced), but also the requirements as to the form of retention.

RETENTION PERIODS - CURRENTLY

Pursuant to the law currently in force, the retention period for employee documentation and payroll documentation is 50 years, calculated from the termination of employment (employee documentation) or from the moment when the documentation was created (for what is known as payroll documentation), respectively.

Employee documentation includes documents gathered in connection with the process of recruiting the employee and the establishment, existence and termination of the employment relationship. Payroll documentation comprises documents concerning the remuneration of employees, such as working time records and records of the remuneration and other benefits paid.

There is, however, a number of documents which in the light of the current regulations do not constitute employee or payroll documentation (such as employee remediation plans and annual appraisals). The current law does not specify any retention period and for such documentation. It seems that they should be retained until the expiry of the limitation period for potential claims by employees, i.e. for three years.

RETENTION PERIODS – AS OF 1 JANUARY 2019

The retention period of employee and payroll documentation will be 10 years from the end of the calendar year in which the employment relationship with the employee for whom such documentation was prepared has been terminated or expired. Additionally, if the retained documentation may constitute or constitutes evidence in proceedings to which the employer is a party, the documentation should be retained, as a rule, until the proceedings are finally concluded. If, however, the employer becomes aware of an action being brought or proceedings being commenced, the 10-year period of retention of the required employee documentation will be extended by 12 months.

The detailed scope of documents which an employer will be obliged to retain will be set out in the secondary legislation, a draft of which has already been

Key issues

- Retention periods - currently
- Retention periods – as of 1 January 2019
- Transitional provisions
- Form in which documentation is to be retained
- Assessment of the changes introduced

prepared. The list of documents specified in the draft is slightly broader than the one in the currently applicable secondary legislation, e.g. it includes statements or documents concerning personal data, gathered in connection with seeking employment. Therefore, the new 10-year retention period will not comprise a shortening of the retention period in every case. For documents which will now be included in employee documentation by the new secondary legislation, the retention period will, in fact, be extended.

TRANSITIONAL PROVISIONS

As a rule, the new retention period will apply to employees who commence employment on 1 January 2019 or later. It will, however be possible to apply it also to employees who were employed prior to that date (not earlier, however, than before 31 December 1998), if the employer provides an information report containing the data specified in the regulations to the Social Insurance Institution (ZUS). In such a case the 10-year period will run from the end of the calendar year, in which such report was filed. In the remaining cases, the retention period for documentation concerning employment relationships established prior to the date on which the Act comes into force should be determined based on the current law, which provide for a 50-year retention period.

FORM IN WHICH DOCUMENTATION IS TO BE RETAINED

As of 1 January 2019, an employer will be able to decide whether it wants to keep the documentation in paper or electronic form and will be able to change this at any time. The new law confirms that documentation in electronic form will be equivalent to documentation in paper form. The secondary legislation will specify the security measures which an employer should implement with respect to documentation retained in electronic form.

ASSESSMENT OF THE CHANGES INTRODUCED

The direction of the changes should generally be assessed as positive - the retention periods of employee documentation will, in the majority of cases, be shortened and it will no longer be necessary to retain documents in paper form.

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