

IMPLEMENTATION OF THE WORK-LIFE BALANCE DIRECTIVES

Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/UE (the "**Work-Life Balance Directive**") and Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (the "**Stability of Work Directive**") (jointly the "**Directives**") require EU Member States to introduce numerous labour law amendments into their local legal orders. On 9 March 2023, after a long proceeding of the bill, Polish Sejm adopted the final text of the Act on the amendment of the Labour Code and certain other acts, which implements the provisions of the Directives into the Polish legal order (the "**Amendment**"). The Amendment is now only awaiting the President's signature and publication in the Journal of Laws. The provisions of the Amendment will come into force 21 days after the date of publication.

Below we present a summary of the most important changes arising under the Amendment and their consequences for employers.

Changes in the establishment, rules of termination and content of employment contracts

Changes regarding the information obligation with respect to new employees

The Amendment significantly expands the catalogue of information that the employer is obliged to provide to the employee within 7 days from the date of admission to work. First, the catalogue of information has been expanded to include information on details related to the organisation of the employee's working hours as well as cash and benefits in kind to which an employee is entitled, other than those specified in the employment contract. In the context of the last point, it should be noted that specifying individual benefits in kind in the discussed information means that such benefits become an element of the conditions of employment and, consequently, any change to those benefits will

require an annex to employment contract or a notice on the termination of conditions of work and pay.

Changes regarding employment contracts for a trial period

The Amendment provides for a number of changes with regard to employment contracts for a trial period. Firstly, the maximum period for which such a contract can be concluded will change. The maximum duration of an employment contract for a trial period will no longer (as is now the case) be the same in all cases but will rather depend the type and duration of the contract that the parties intend to conclude next (after the end of the trial period). Additionally, if the parties' intention is to subsequently conclude a contract for a fixed term shorter than 12 months, it will be necessary to expressly stipulate that intention in the contract for a trial period.

Thus, in accordance with the Amendment, it will be possible to conclude an employment contract for a trial period for the following maximum periods of time:

- 1 month – in the case where the intention is to conclude a subsequent fixed-term employment contract for a period shorter than 6 months;
- 2 months – in the case where the intention is to conclude a subsequent fixed-term employment contract for a period of at least 6 months and shorter than 12 months;
- 3 months – in the case where the intention is to conclude a subsequent fixed-term employment contract for a period of at least 12 months or a contract for an indefinite period.

According to the Amendment, it will be possible to extend the trial period of up to 2 months once, but not more than by 1 month, if justified by the type of work.

Another change with regard to contracts for a trial period will involve the possibility to stipulate in the contract that its duration is extended by the time of holiday leave or other employee's excused absence from work.

Request for a change of the type of employment contract or for more predictable working conditions

Pursuant to the Amendment, an employee employed by the employer for at least 6 months (with the exception of an employee employed under a contract for a trial period) will have the right to submit once a year a request for a change of the type of employment contract into a contract for an indefinite period or a request for more predictable and safe working conditions. The latter change may, in particular, concern a change in the type of work or employment on a full-time basis. The employer is obliged to comply with the request where possible and, if request is denied, the employer needs to inform the employee of the reason for refusal.

Request for flexible working arrangements

The Amendment provides that an employee raising a child up to the age of 8 may submit a request for flexible working arrangements (including remote work). The employer is obliged to inform the employee within 7 days whether the request has been granted or declined and, in that second scenario, provide the reason for refusing the request, after considering the criteria set out in the Amendment (such as the necessity of ensuring normal workflow).

The above provision complements the remote working regulations, which will come into force on 7 April 2023, and therefore should be taken into account when implementing these regulations.

Additional activity on the part of employees

According to the Amendment, the employer will not be able to prohibit an employee from simultaneously remaining in an employment relationship with another employer (or performing work on another basis). Therefore, the Amendment excludes the possibility of prohibiting employees from conducting any additional activity, regardless of its scope and nature. It will still be possible to apply the prohibition of conducting additional activity only with respect to competitive activity or where the prohibition of combining different positions arises from the law itself.

The legislator has not provided for other carveouts to the discussed prohibition, based, for example, on the need to protect employee's health (which could apply when working several jobs for different employers) or avoiding a conflict of interest - even though such a possibility is explicitly predicted in the Directives. This solution of the Polish legislator must be assessed negatively as being highly irrational. It is to be expected that employers will try to find ways to prevent employees from engaging in additional professional activity, in particular activity that would cause an obvious and glaring conflict of interest, even if this might not be in line with the literal wording of the new provisions.

Changes in the rules regarding the termination of employment contracts

Termination of employment contracts concluded for a fixed term...

The rules regarding the termination of fixed-term employment contracts have been made aligned by the Amendment with the rules regarding the termination of employment contracts concluded for an indefinite period. This is one of the most important changes introduced by the Amendment, because it means that in the termination notice of a fixed-term employment contract, the employer will have to indicate the reason justifying the termination. Until now, the obligation to indicate the reason existed only in relation to contracts concluded for an indefinite period of time.

... and for a trial period

With regard to contracts concluded for a trial period, the general rules remain unchanged (i.e. the employer is not obliged to state the reason for terminating the contract). However, if an employee employed under such a contract believes that their contract has been terminated for one of the prohibited reasons listed in the Act or (seemingly at least, because the provisions of the Amendment are unclear in this respect) that a subsequent agreement, as specified in the contract for trial period, has not been concluded with the employee, the employee will be able to request that the employer states the reason why the termination / non-continuance of the contract.

Change regarding the burden of proof

If an employee challenges the reasons for termination of their employment contract and alleges that one of the prohibited reasons for termination set out in the Amendment has been applied (including, for example, the employee's performing side activity other than competitive activity), it will be for the employer to prove that the termination was justified by reasons other than prohibited reasons.

New types of leaves

Leave from work in urgent family matters

Employees will be entitled to leave from work on grounds of force majeure in urgent family matters caused by illness or accident if the immediate presence of the employee is necessary. An employee will be entitled to such leave in the amount of 2 days or 16 hours during a calendar year, and the employer will be obliged to grant it on the employee's request submitted no later than on the day on which the leave is taken. For the period of leave, the employee will retain the right to half of their remuneration.

Care leave

The Amendment introduces a new type of leave - care leave - to provide personal care or support to a family member or person living in the same household who requires care or support for serious medical reasons. An employee will be entitled to 5 days of care leave per calendar year and will not be entitled to remuneration for the time of the leave.

Parental leave

On the basis of the Amendment, the length of parental leave will be increased: from 32 to 41 weeks in the case of the birth of one child and from 34 weeks to 43 weeks in the case of the birth of more than one child. Both parents will be entitled to parental leave, but each parent will have an exclusive right to 9 weeks of the leave, which will not be transferrable to the other parent. Parental leave will be granted no later than by the end of the calendar year in which the child turns 6.

Enhanced maternity protection

The Amendment enhances the protection of employees during pregnancy, maternity leave and during the period from the date of submission of a request for maternity leave, leave on the terms of maternity leave, paternity leave, parental leave or part of these leaves. In particular, during these periods the Employer will not be allowed to give notice of termination or to terminate the contract, but also to make preparations terminating the agreement with notice or with immediate effect. According to the justification to the Amendment, making preparations means taking the decision to dismiss an employee and taking preparatory activities for an employee's dismissal, such as searching for and forecasting the replacement of the employee.

CONTACTS

Agnieszka Janicka
Partner

T +48 22 6271177
E agnieszka.janicka@cliffordchance.com

Grzegorz Nowaczek
Advocate

T +48 22 6271177
E grzegorz.nowaczek@cliffordchance.com

Aleksandra Ulatowska
Legal Adviser

T +48 22 6271177
E aleksandra.ulatowska@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

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