

## **SIGNIFICANT CHANGES IN COURT PROCEEDINGS INVOLVING EMPLOYEES**

Recent amendments to the Code of Civil Procedure and the Act on Court Fees in Civil Cases have led to a significant improvement in the procedural situation of employees pursuing their rights in court. Although Polish labour courts were already perceived as pro-employee, the legislator has recently introduced or modified existing solutions to protect the interests of employees by requiring the employer to continue to employ them during court proceedings and has also facilitated the pursuit of claims by abolishing the court fees on lawsuits. These solutions may contribute to more frequent court proceedings against employers by employees, and these proceedings will entail greater risks for employers.

### **An open route to pursue high employee claims**

Until now, under the Act on Court Fees, an employee filing a lawsuit in an employment case could do so free of charge, provided the value of the dispute did not exceed PLN 50,000. In other cases, there was a proportional fee of 5% of the amount above PLN 50,000, which discouraged many employees from bringing high claims against their employers. The amendment to these provisions, which came into force on 28 September 2023, introduces a complete exemption of employees from paying court fees on a lawsuit, regardless of the value of the subject matter of the dispute. Employees will pay a proportional fee of 5% only on appeals, but only on the amount above PLN 50,000.

While the need to increase the exemption from court fees could be perceived as justified, if only due to the dynamically growing level of salaries in Poland, the abolition of such a threshold seems to be too far-reaching. After the amendment, we can expect an increase in the appetite of employees to pursue very high claims against employers, especially in the area of bullying or discrimination claims. It is also possible that these claims will be deliberately inflated to improve the negotiating position in potential settlement talks with the employer. In the long run, we believe that higher claims may also lead to higher awards of damages to employees.

## **Order to continue to employ any employee during the course of legal proceedings**

Pursuant to the current wording of Article 477(2) § 2 of the Code of Civil Procedure ("CCP"), a dismissed employee filing a lawsuit with a claim for reinstatement or for declaring the termination of an employment contract ineffective could also apply to have the employer ordered to continue employing the employee in a judgment of the first instance until the legally final conclusion of the proceedings. However, the court hearing the case was not obliged to grant such a request and its decision was based on all the circumstances of the case. In practice, the courts have used this solution very rarely.

After the amendment of this provision as of 22 September 2023, if an employee submits an appropriate application, the labour court adjudicating the case in the first instance will be bound by it, i.e. it will mandatorily require the employer to continue employing the dismissed employee until a final ruling in the case is issued. As a result, the employer, regardless of whether the court of second instance changes the judgment of the court of first instance or not, will be obliged to continue employing the employee during the appeal proceedings before the court of second instance, until the final conclusion of the proceedings, and to bear the related costs. In practice, appeal proceedings in employment cases usually take several months.

### **... and an employee enjoying special protection**

In addition, starting from 22 September 2023, thanks to the introduction of a new Article 755(5) to the Code of Civil Procedure, employees enjoying special protection have the right to demand security during proceedings to declare the termination of their employment to be ineffective or for reinstatement in the form of an order to continue employment until the final conclusion of the proceedings. Such employees include, among others, pregnant women and women on maternity leave, employees of pre-retirement age, trade union activists and members of works councils.

Under the new regulations, the court, on the application of a dismissed employee enjoying special protection who seeks to have a court declare that the termination of their employment relationship is ineffective or that the employee be reinstated, will grant security by ordering the employer to continue employing the employee until the final conclusion of the proceedings. An employee may file such an application at any stage of the proceedings (e.g. in the statement of claim itself), and the only prerequisite for granting security is the employee having a case. The court may refuse to grant interim relief only if the claim is manifestly unfounded.

If the decision to grant security becomes final, the defending employer will be able to demand it be overturned only if it proves that after the security was granted the conditions referred to in Article 52 § 1 of the Labour Code (hereinafter referred to as the "**Labour Code**") existed, i.e.:

- there was a serious breach of the employee's basic employment duties;
- the employee committed an offence during the term of the employment contract that makes it impossible to continue employing him/her in the position held, if the offence is manifest or has been established by a final judgment; or

- the employee loses the qualifications necessary to perform work in the position held due to his/her fault.

It should be emphasised that this measure of interim relief may be granted by the court at any stage of the proceedings, including immediately after the filing of the lawsuit, and not only when it issues a judgment, as is the case with the application of an employee not enjoying special protection.

Granting such security, solely on the basis of a plausible claim (and this may potentially be the termination of the contract in violation of the employee's special protection), may in certain cases give rise to significant doubts and difficulties for the employer, in the event of an order to continue employing a protected employee who has been dismissed due to a serious breach of employee duties, for example due to a breach of a non-competition agreement. Especially if, to the employer's knowledge, that employee is still engaged in competitive activity. At the same time, the enforcement of such security will give rise to significant costs for the employer. These include the obligation to pay remuneration for the entire period of the dispute, which in Poland usually lasts many years. There will also be practical difficulties when, for example, the position held by the dismissed employee has been eliminated in the meantime.

For employers, those amendments also mean they must take a much more cautious approach to terminating contracts, especially with specially protected categories of employees. In practice, we expect that due to the risk of security being granted, there will be an even stronger desire to terminate employment contracts with such employees by mutual agreement. The new regulations will certainly strengthen the negotiating position of employees in talks on such agreements.

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