Clifford Chance

BRIEFING

The Act on the State Labour Inspectorate not that concerning

13 April 2026 r.

On 2 April 2026, the President of the Republic of Poland signed the amendment to the Act on the State Labour Inspectorate (the "**Act**") of 11 March 2026 and simultaneously referred it to the Constitutional Court for examination of its compliance with the Constitution by way of an *ex-post* review. However, the review does not suspend the entry of the Act into force, which will take place on 8 July 2026.

By virtue of the Act, the State Labour Inspectorate (Polish: *Państwowa Inspekcja Pracy, PIP*) will therefore soon receive new powers, in particular with regard to the right of inspectors to issue administrative decisions determining the existence of an employment relationship, in situations where work is performed under conditions characteristic of an employment relationship and a contract other than an employment contract has been concluded or no contract has been concluded at all.

It is worth noting that - as it seems - in the latter case, it will be possible for the new power of inspectors to be used to determine the existence of an employment relationship not only in situations of classic "black market" employment, but also in arrangements where individuals perform work for a quasi-"user employer" under body-leasing arrangements implemented outside the temporary employment framework (e.g. where individuals are assigned to perform work for a user under the guise of service outsourcing), as well as in the context of the increasingly popular *employer of record* model.

This represents a significant change in the procedure for determining the existence of an employment relationship – currently, this is only possible through a court claim (brought by an employee or by PIP) and after conducting full proceedings before the labour court, which in the Polish reality may take up to several years. The procedure for determining an employment relationship by means of an administrative decision in the course of a PIP inspection therefore creates a new, significantly faster path in this regard.

Regardless of the above, the reform introduced by the Act should not be a cause for concern for entrepreneurs. In the version ultimately adopted, the Act does not contain any of the provisions which, in its earlier drafts, gave rise to the greatest concerns and the introduction of which would have created a significant economic risk for many entities.

Key Issues

- Who will be subject to inspection by the State Labour Inspectorate
- Determining an employment relationship – two-stage procedure
- Individual interpretations – a double-edged sword
- PIP checklist – significant concerns
- How to prepare?

Who will be subject to inspection by the State Labour Inspectorate

As regards the verification of the basis for the provision of work, the State Labour Inspectorate will be authorised to inspect employers (i.e. entities employing individuals under employment contracts) as well as entities that are not employers, for which work is provided by natural persons, regardless of the basis for the provision of such work.

Determining an employment relationship – two-stage procedure

Stage I – order to remedy infringements

If, in the course of an inspection by PIP, concerns are raised regarding the legal basis on which work is being performed, an inspector should, as a first step, issue an order to remedy the infringements. Importantly, such order does not necessarily have to require rectification through the conclusion of an employment contract – it may also require the removal of the irregularities concerning the functioning of the civil law contract, so that such contract corresponds to the nature of a civil law relationship. The entrepreneur will therefore have time to implement (depending on the nature of the infringement - either unilaterally or in agreement with the person employed) such changes as to eliminate the grounds for reclassification of the contract.

Stage II – administrative decision

If the inspector's order is not complied with, the inspector may, as a second step, issue an administrative decision determining the existence of an employment relationship (the "**Decision**").

The issuance of the Decision may not give rise to any retaliatory action against the employee concerned. In particular, the entrepreneur should not terminate the cooperation with such person for this reason.

Content of the decision – no immediate effect and no retroactive effect

Entrepreneurs who feared the retroactive effect of inspectors' decisions can breathe a sigh of relief. During the legislative process, the idea of extending the Decisions to cover past periods (an idea that had been pursued in the initial versions of the draft) was entirely abandoned, thereby removing the mechanism that would have posed the highest financial risk for companies. Retroactive effect of decisions would otherwise have required the settlement of outstanding employee benefits, social insurance contributions and taxes for entire years (even up to five years back), which in organisations relying heavily on civil law contracts could even lead to the collapse of the business or threaten its solvency.

Ultimately, under the Act, the date of establishment of the employment relationship will be the date of issuance of the Decision.

The Act also abandons the originally proposed immediate effectiveness of the labour inspectors' decisions, which would have necessitated treating the contract – often for many years – as if it were an employment contract until a final court judgment overturning the inspector's decision has been obtained (which would only then have allowed for a refundable settlement of payments made during the period of the proceedings).

Under the adopted text of the Act, the Decisions, as a rule, become enforceable once they become final (i.e. if no appeal is lodged by either party within the prescribed time limit, or after a court judgment upholding the Decision has been issued and becomes final). This procedure means that in the event of a final dismissal of the employer's appeal, the

employer will be required to retroactively settle the contract in accordance with the rules applicable to an employment contract from the date of issuance of the Decision.

In specific cases, a decision may be made immediately enforceable by way of a court ruling, against which a complaint may be lodged, although it appears that this mode will be applied only in rare and exceptional cases.

Appeal procedure

Each party (including the person employed) is entitled to appeal to the labour court against the Decision. The appeal must be lodged within one month from the date of service of the Decision. The Act introduces a separate, specific court procedure for such cases, designed to ensure the efficient resolution of the dispute by, for example, the possibility of the case being heard in chambers if the circumstances are not in doubt, or the obligation for the parties to present all their arguments and evidence in their first written submission.

Individual interpretations – a double-edged sword

In addition to the Decisions, the Act introduces a completely new mechanism: individual interpretations issued by the Chief Labour Inspector (Polish: *Główny Inspektor Pracy, GIP*) regarding the assessment of whether the legal relationship presented in the application constitutes an employment relationship.

An individual interpretation is the Chief Labour Inspector's official position on the assessment of the factual situation as described in the application submitted by a specific entrepreneur. Obtaining a positive interpretation (i.e. one consistent with the position presented in the application) serves as a protective measure for the applicant. This is because the applicant cannot be subject to sanctions to the extent that it has complied with the interpretation, and the assessment of the facts contained in the interpretation is binding on the State Labour Inspectorate. It should be noted, however, that this applies only to the facts corresponding to those presented in the application – to the extent that the facts differ, the State Labour Inspectorate will carry out an independent assessment.

Individual interpretations are, however, a double-edged sword. On the one hand, where an interpretation confirms the applicant's position, it provides protection against differing decisions by the State Labour Inspectorate (in respect of the same factual circumstances). On the other hand, by submitting an application to the Chief Labour Inspector, the employer risks receiving an interpretation differing from the position presented in the application, and such an assessment will also be binding on labour inspectors. In such a case, the only option to avoid negative consequences may be the reorganisation of the basis of employment (i.e. changing the factual circumstances compared to those described in the application for an interpretation).

Given the generally conservative approach of the State Labour Inspectorate (including the Chief Labour Inspector), which in practice tends to assess the existence of an employment relationship according to stricter (and sometimes highly unreasonable) criteria than those applied by labour courts, the risk of receiving such an unfavourable interpretation is real. In any case, it remains to be seen which approach the Chief Labour Inspector will adopt in practice, and this will be monitored with interest.

PIP checklist – significant concerns

The concerns of the business community and labour law experts, who had already lacked confidence in the State Labour Inspectorate's ability to make accurate assessments of whether the conditions for the existence of an employment relationship are met – linked to the granting of broad powers to the State Labour Inspectorate – have increased even more following the publication by the Chief Labour Inspector of a checklist intended to serve as a tool for verifying the employment nature of work arrangements. Although, out of the more than 40 criteria in this checklist, a dozen or so may be considered appropriate, the overall assessment of this tool is highly critical. This is because the checklist contains a number of criteria that are equally characteristic of both employment contracts and civil law contracts (e.g. voluntary commitment by the parties to cooperate, possession of qualifications by the worker, receipt of remuneration by the worker, compliance with health and safety procedures in the course of performing work). This document thus suggests that, where a given feature corresponds equally to more than one legal relationship, the Chief Labour Inspector may presume the existence of an employment relationship. Meanwhile, such features should not be taken into account at all when assessing the nature of a contract.

How to prepare?

Despite the significantly mitigated provisions of the Act regarding the severity of decisions issued by labour inspectors, the Act undoubtedly expands the powers of the State Labour Inspectorate, and thus increases the regulatory risk associated with the use of civil law contracts. It is therefore worth preparing properly for a potential inspection by PIP, primarily by reviewing the basis of employment within the organisation, taking into account not only the contractual terms of the contracts concluded, but, above all, the actual manner in which work is performed.

The Act should prompt employers to take a broader view of their employment strategy and to assess which cooperation models used for specific occupational groups are key from a business perspective, and which generate disproportionately high regulatory risks that cannot be mitigated (e.g. due to the nature of the work there is no scope to increase flexibility).

It is worth doing this now, also because the new powers of the State Labour Inspectorate will not apply to persons who cease to be employed under civil law contracts before the Act enters into force. Furthermore, the Act introduces a remediation period, under which an entity that, prior to the Act's entry into force, entered into a civil law contract with a person performing work, or to whom work was actually provided for remuneration on basis other than employment, even though the relationship met all the characteristics of an employment relationship, may, within 12 months of the Act's entry into force, voluntarily bring the situation into compliance with the law. In such a case, that entity will not be subject to liability for the offence relating to the unjustified use of civil law contracts, and in accordance with the Act the maximum fine for this offence has been increased from PLN 30,000 to PLN 60,000.

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