

# The most important changes to the Labour Code 2022

## LEGAL ALERT

In 2022, employers will face significant changes in labour law. Currently, two significant amendments to the Labour Code are pending that will require companies to implement new internal regulations and to update their current internal labour law provisions.

### 1. Remote work

One of the most important modifications would fully regulate remote work. Regulations regarding remote work and sobriety checks have already been approved by the Council of Ministers and were submitted to the Polish Parliament on 7 June 2022 for the first reading thereof. The Polish Parliament is expected to continue working on the bill in the near future.

The new regulations will require employers to either introduce detailed provisions regarding remote work for the whole organisation, or on an individual basis. The bill requires the following for remote work (including hybrid) to be a permanent, regular form of work:

- > an agreement with trade unions or the introduction of remote work rules/specific regulations - both requiring cooperation with employees; or
- > an individual agreement with each employee regarding remote work, in respect of which a trade union agreement or the company's regulations

The planned changes will affect the following areas:

1. **remote work;**
2. **monitoring employee sobriety; and**
3. **work-life balance.**

are not necessary but the conditions specified in the bill must be taken into account.

In each of the above cases, the conditions for remote work will include, among others:

- > rules for determining the cash equivalent or lump sum for the costs that the employer will bear for employees' remote work. The bill requires employers to provide work tools and technical devices, as well as cover the costs related to the installation, service and maintenance of the work tools (including technical devices), electricity, telecommunications services, and other costs directly related to the performance of remote work; and
- > guidelines for providing the employee with the training and technical assistance necessary to perform the remote work.

The employer will have the right to monitor the employee's work performance at the location where the remote work takes place during the employee's working hours, including in respect of compliance with occupational health and safety rules and personal data protection procedures, on the terms set out in the trade union agreement, the regulations or the agreement concluded with the employee.

As a rule, the employer will be required to enable remote work for employees who are, inter alia:

- > pregnant;
- > raising a child up to the age of four; or
- > caring for another member of their immediate family or another person remaining in the same household who has been certified as having a disability.

If an employee only occasionally performs remote work, defined as not exceeding 24 days a year, it will not be necessary to meet the conditions indicated above.

The bill indicates a few exceptional cases in which an employer may require that work be done remotely (e.g. it is impossible to work in the current work place due to force majeure).

The probable date of entry into force of the regulations on remote work is 14 days from the date of promulgation of the act. The existing conditions for the use of telework as currently specified in the regulations or in a relevant agreement may be applied for no longer than six months from the date on which the act enters into force.

Employers that plan to retain remote work (including hybrid) as a permanent solution will need to introduce agreements or regulations and to cooperate with the employee representative in accordance with the established procedure.

## 2. Monitoring the sobriety of employees and other individuals

Another significant change that will require amendments to internal workplace regulations is the issue of employee sobriety.

The aim of such changes in the labour law is to enable employers to conduct tests for the presence of alcohol, other intoxicants or other substances with similar effects without the assistance of authorised bodies (such as police).

The bill provides for such a possibility if it is necessary to protect the life and health of employees, other individuals or property. Until now, the issue of alcohol tests performed by an employer was not directly regulated, and the only completely safe option from the perspective of an employer was an inspection carried out by authorised services (e.g. the police) in accordance with the Act of 26 October 1982 on maintaining sobriety and counteracting alcoholism. To date, an employer conducting an independent test has faced the risk of violating the provisions on the protection of personal data. The bill provides an employer with permission to conduct such an examination based on the principles specified in its regulations and included in the workplace rules.

As it is pursuant to current regulations, based on the new bill an employer will also not permit an employee who is under the influence of alcohol to perform work. However, the bill also explicitly states that an employee is not considered to be under the influence of alcohol if tests show that:

- > they have an alcohol blood concentration of less than 0.2‰; or
- > their exhaled breath contains less than 0.1 dm<sup>3</sup> of alcohol for each 1 dm<sup>3</sup> of measured air.

A sobriety check must be conducted using a device the calibration of which has been certified.

The issue of processing personal data which is subject to examination also needs to be taken into account by indicating what information may be processed (e.g. the date, hour and minute of the examination, and the result indicating that alcohol had been consumed or indicating a state of intoxication), and in what circumstances. Such employee data should not, as a rule, be stored for more than one year from the date of its collection.

In connection with these new rights, employers should plan to implement changes to their workplace rules (possibly by a collective agreement or an announcement, if applicable) with a minimum of two weeks' notice.

### 3. Work-life balance

The so-called Work Life Balance bill of 4 February 2022 sets out detailed solutions aimed at ensuring equal opportunities for women and men in employment, as well as facilitating or enabling a balance between work and family life. The bill is to ensure the implementation of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on the work-life balance of parents and carers. The deadline for such implementation is 2 August 2022.

The planned changes include:

- > leave due to force majeure (2 days or 16 hours a year – during the period of leave, the employee retains the right to remuneration in the amount of half of the due remuneration);
- > carers' leave of up to five days in a calendar year to provide personal care or support to a family

member or household member who requires substantial care or support due to serious medical reasons (without entitlement to remuneration);

- > a parent's exclusive right to nine weeks of parental leave – this part of the leave cannot be given to the other parent; and
- > introducing the possibility of flexible work. This means remote work / teleworking, reduced working hours, flexible work schedules, interrupted work schedules, a shortened working week, a weekend system and individual working hours, among others.

The planned changes may make it necessary to update document templates used in the workplace, e.g. applications for leave, for additional days off and for a flexible form of employment.

Please note that the above-described information contains only selected information on the planned changes. We will inform you of the final wording of these changes, especially regarding the obligations faced by employers.

*Prepared on the basis of the bills of 3 and 7 June 2022 on amending the Labour Code and other acts..*

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