

Track Changes

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January 2019

AMENDMENTS OF THE TRADE UNIONS ACT

On 1 January 2019, important amendments of the Trade Unions Act came into force enabling individuals engaged under civil law contracts, in particular contractors or self-employed individuals, to set up or join trade unions, provided that such individuals do not employ other persons for the same kind of work they perform for the employer. Consequently, unionized contractors and self-employed individuals will enjoy rights that result from trade union membership, in particular, special protection. For example, if the management board of a trade union indicates individuals as protected persons, or certain individuals are entitled to represent the trade union towards the employer, then the employer cannot terminate their contracts or unilaterally change the terms and conditions of remuneration or work to their detriment without the consent of the trade union management board. Consent has to be given or rejected within 14 days of notifying the trade union about the intention to terminate a contract or to unilaterally change its terms and conditions, or within 7 days in the case of an intention to terminate a contract without notice. If the trade union is inactive, the lapse of these deadlines is regarded as the granting of consent.

In the case of infringement of special protection, protected individuals engaged under civil law contracts are entitled to a lump sum compensation unrelated to the loss suffered, amounting to six months' worth of remuneration. If remuneration is not paid on monthly basis, the compensation amounts to six times the average monthly salary (approximately PLN 4.550 and EUR 970) in the national economy in the previous year.

Another important change is the obligation of a trade union to report to an employer every six months (meaning until 10 January and 10 July at the latest) on the number of trade union members. Individuals engaged under civil law contracts can be counted as union members only if they perform work for the employer for at least six months. Newly established trade unions have to provide such report within two months from the day of their creation. If a trade union infringes the reporting obligation, the union is not regarded as an in-company trade union (which requires at least 10 members) until fulfilment of the reporting obligation. If the trade union loses its qualification as an in-company trade union, the employer does not have to, in particular, consult with the trade union on the intention to terminate an open ended employment contract, nor inform and consult with the trade union regarding a transfer of work establishment.

The new legislation has also introduced a verification procedure regarding the number of union members. The employer may object to information provided by the trade union

within 30 days. If objections are raised, the trade union is obliged to submit a motion within 30 days to the court for determining the number of union members. A trade union's failure to file the motion results in, after the lapse of 30 days, the loss of rights granted to an in-company trade union until the fulfilment of this obligation.

The extension of the right to set up and join a trade union will result in an increase in trade union membership, as well as an increase in the number of contractors or self-employed individuals that enjoy rights resulting from trade union membership, particularly rights to special protection against termination. In case of any doubts regarding the number of union members, employers will be able to verify this information.

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