

Track Changes

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June 2019

UPCOMING CHANGES TO THE POLISH LABOR CODE

The work on a particularly significant amendment to the Polish Labor Code has been finalized. On 20 May 2019, the Act amending the Polish Labor Code and other acts ("**Act**") was passed to the President of Poland for a signature. The Act contains several changes, but the two most significant are related to mobbing and the issuing of work certificates. The first one aims to encourage employers to effectively counteract mobbing and therefore expands a catalog of individuals entitled to demand compensation due to mobbing. The second change provides for an extension to applying for corrections to an employee's work certificate.

AN INCENTIVE FOR EMPLOYERS TO INTRODUCE EFFECTIVE ANTI-MOBGING POLICIES?

Pursuant to the revised wording of the Polish Labor Code ("**PLC**"), an employee who has suffered from mobbing, or has terminated an employment contract due to mobbing, has the right to claim compensation from the employer in an amount not lower than the monthly minimum remuneration for work, determined on the basis of separate provisions.

Before the above amendment was signed, the right to claim compensation was granted only to an employee who, as a result of mobbing, terminated an employment contract. Consequently, a victim of mobbing who, perhaps due to their financial situation did not terminate their employment contract, or a victim of mobbing whose employment contract was terminated solely by the employer, was not entitled to raise such claims under the provisions of the PLC.

The possibility of demanding compensation due to mobbing based on the general provisions included in the Polish Civil Code ("**PCC**") were not considered as sufficient protection towards employees who did not decide to terminate their employment relationship. As the above right was not included in the PLC, most employees are not aware of the rights they are entitled to under the PCC, and if such knowledge about their rights was known, their claim, under the PCC, was connected with an obligation to pay a court fee. In many cases, this fee discourages an employee from suing an employer before the court.

From an employee's perspective, the Act is a positive change. However, it will require employers to be more active in protecting against mobbing.

CAN AN EMPLOYER BE RELEASED FROM THE LIABILITY?

A basic duty of an employer is to prohibit and counteract mobbing. If an employer wishes to be free from liability they must demonstrate before the court that they have taken real actions to counteract mobbing, and those actions, from an objective point of view, should be considered sufficient by the court.

One of the most effective ways to counteract mobbing is to create an internal anti-mobbing policy. The policy may be either a part of the working regulations or a separate document. All employees must become familiar with this documentation and a confirmation of such fact should be stored in an employee's personnel file. The internal anti-mobbing policy should, in particular, define the term mobbing and determine the procedure to be followed if mobbing occurs, including the necessity for all employees to report any observed instances of mobbing.

GREATER RESPONSIBILITY

Due to the above changes, employers should pay even more attention to the obligation to counteract mobbing. An anti-mobbing policy, provided that an employer allows employees to follow such policy and the employer responds to any and all observed cases of mobbing, may help to release the employer from liability in cases of mobbing.

WORK CERTIFICATE – AN EXTENSION TO APPLY FOR CORRECTIONS

The Act also extends the deadline for an employee to submit an application for rectifying a work certificate to their employer. The deadline will be 14 days from the date of receipt of a work certificate. If an employer does not agree to the requested correction, then the employee, within 14 days from the date of notification about the rejection of his/her request, will be entitled to apply to the court with a request to rectify. Until now, an employee had 7 days to submit an application, as well as to apply to the court. Please also note that based on the Act, a work certificate should be handed over to an employee on the day when the employment contract is terminated. If, due to objective criteria, this is not possible, an employer has to deliver a work certificate to an employee or other authorized person within 7 days via post or other measure. If an employer fails to issue a work certificate, an employee will be entitled to make a claim to commit an employer to issue such a certificate. The previous provisions of the PLC did not provide for this type of remedy.

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