

24 September 2021

POLAND: REMOTE WORK "AFTER" COVID-19 AND THE CHANGING NEEDS OF EMPLOYEES

Despite the approach of the fourth wave of Covid-19 in Poland, employers are becoming bolder in expressing their desire to return to a regular working pattern. The fact that we are slowly getting used to Covid-19 has resulted in approximately 88% of employers wanting their employees to return to their offices. Is this the best approach, if you want to retain employees, especially the high performers? Should employers be concerned about remote work? To find the answer, we need to determine how legal provisions concerning remote work will be shaped.

NEW REGULATIONS ARE COMING IN POLAND

The final wording of the regulations governing remote work is still unknown. The latest project to amend the Labour Code (and several other minor acts) dated 16 July 2021 ("**Project**") introduces further changes to the previous project dated 18 May 2021, as listed below. However, regardless of the above, we can safely say that we are already able to predict how remote work will develop and what employers in Poland can expect in the near future.

THE LATEST AND MOST IMPORTANT CHANGES ARE AS FOLLOWS:

- **New definition of 'remote work':**

The Project changes the original definition of remote work and states that 'remote work' is any job that can be performed entirely or partially (that is, a hybrid model) in a place indicated by the employee and agreed with the employer on each occasion, which can include the employee's place of residence. The above means that each place where remote work is performed must be precisely agreed with the employer. The employer absolutely must know the place where the work will be carried out. Saying simply that 'work will be performed remotely outside of the office' will not be sufficient.

- **Demand to cease remote work:**

Once the remote work is established during the employment, both the employer and employee may demand a return to the previous working conditions at any time, i.e. may demand the cessation of remote work, and the employer and employee should then agree a date from which the previous conditions will be restored. The timing should not exceed 30 days from the date of receiving the

request. If the date is not determined by both parties of the employment, the restoration of previous working conditions shall take place on the day following the lapse of 30 days from the date of receipt of the request.

Once the agreement on remote work is made at the time of signing the employment contract, any change within this respect requires changes in the employment contract.

- **Employer's order to work remotely:**

The Project also reserves the employer's right to issue a remote work order. This will be possible in situations outlined in the Project and provided that the employee submits a declaration that he or she has the housing and technical conditions to perform work remotely. Contrary to the original version of the project, the employee's declaration should be submitted immediately before the employer's order. According to the Project, submitting this declaration at an earlier stage – for example, when concluding an employment contract - shall be considered unacceptable. Lack of housing and technical conditions makes it impossible to work remotely. The assessment of such conditions rests solely with the employee.

- **Remote work at the employee's request**

The Project extends the list of situations where the employee's request for remote work should be accepted unless it is not possible due to the organisation of work or the type of work performed by a specific employee. In such a case, the employer should within 7 days inform the employee of the grounds for any negative decision. The project preserves the above entitlement for parents of children up to the age of 4.

- **Reimbursement of the cost connected with remote work**

As a rule, the employer is obliged to provide the employee with all materials and tools necessary to undertake remote work. If these materials and devices are not provided by the employer, the parties of the employment contract may establish the rules for using such materials and tools which belong to the employee, in which case the employee is entitled to a cash equivalent (or lump sum fee) for the amount agreed with the employer. The employer is also obliged to cover all costs directly connected with the remote work, including in particular the cost of electricity and necessary access to telecommunication lines, and to provide the employee with training and technical support.

ESTABLISHING THE RULES FOR REMOTE WORK MAY HELP TO MITIGATE THE FEAR OF REMOTE WORK

Employers have traditionally feared losing direct control over employees and the work performed by them, and for these reasons remote work was not commonplace before Covid-19. However, such an introduction may not have a negative impact on the organisation of work by the employer once internal regulations govern precise procedures for working remotely.

According to the Project, rules for remote work should be confined to an agreement concluded with a trade union. If there is no trade union or no agreement was concluded, the procedure for remote work should be set out in internal regulations after consultations with employee representatives. If the employer is not obliged to create internal regulations, such a procedure should be described in the employer's order to work remotely or in an agreement concluded with the employee.

The procedure for remote work should describe precisely all aspects connected with remote work, such as the means of confirmation of arrival and presence of remote employees, the means of communication with supervisors, systems and schedules of working time applicable to such employees (to avoid unjustified demands for overtime) and the issues concerning health and safety conditions as well as the reimbursement of costs connected with remote work. Once such internal regulations remove any doubts, this may help to alleviate some of the potential concerns of employers.

ARE THERE BENEFITS FOR EMPLOYERS IN ALLOWING EMPLOYEES TO WORK OUTSIDE THE OFFICE?

Despite remote work being connected with some "new and additional" obligations for the employer, it does introduce many advantages both for the employee and for the employer. The introduction of remote work reduces costly employee turnover. When a company offers flexible forms of employment, that company may become more attractive on the labour market. Allowing employees to perform remote work will also reduce rent and other costs associated with operating an office.

Additionally, remote work may allow employees to maintain a healthy work-life balance, which leads to greater satisfaction with their work and thus increased productivity. Moreover, remote work is currently treated as a benefit, the lack of which may prompt some employees to seek other employment.

HOW TO ENCOURAGE EMPLOYEES TO GET BACK TO THE OFFICE BY USING LEGAL TOOLS?

For those employers who are concerned about losing talent by giving a direct order to 'get back to the office', there are a few options that could be implemented. For example, the organisation may introduce a "hybrid system" (work which could be performed both remotely and from the office, e.g., 3 days from home, 2 days from office.)

Another option is to encourage employees to work from the office by introducing additional incentives. The safest option (benefit) is to reimburse travel costs. Where such a benefit is offered to all employees and paid to all those who agreed to return to the office, then an allegation of violation of the principle of equal treatment in employment loses some of its credibility.

Already anticipating the doubts of many employers, the mere fact of working from the office should not be a basis for employers to change (increase) the amount of remuneration for some employees. It is highly risky to differentiate remuneration solely on the basis of the place of work, if the employee performs exactly the same tasks from home as someone working from the office. This is determined by the wording of Art. 18^{3c} of the Labour Code, according to which employees have the right to equal remuneration for the same work or for work of equal value.

SUMMARY

Irrespective of the fact that the exact day of the entry a new regulation covering remote work is still unknown, employers should consider implementing remote work. Furthermore, employers who have

already implemented this model of work, should ensure that they keep up to date with the latest regulations.

There is no doubt that if an employer's organisation and the type of work performed by employees allows remote work, employers should consider giving employees an entitlement to work from home even if only partially. Due to fierce competition on the labour market, such an approach will be necessary (irrespective of the pandemic) if the employer wants to attract and retain the best talent.

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