



POLAND

[Agnieszka Fedor](#)

[Wiercinski, Kwiecinski, Baehr Sp. k.](#)



1. GENERAL PRINCIPLES

Forums For Adjudicating Employment Disputes

Employment disputes are adjudicated in the Labour Courts, which are departments of the regional and district courts, and in the Court of Appeal. Dispute can be settled also through a conciliatory procedure. However, this rarely happens in practice. A conciliatory commission is established by an employer in cooperation with employees.

The Main Sources Of Employment Law

The Polish Constitution includes only general provisions concerning labour. The main source of employment law is the Labour Code and the Civil Code (regarding issues not regulated by the Labour Code). There are also particular laws and regulations which include the following: the Employment Promotion and Labour Market Institutions Act, Collective Dispute Settlement Act and Trade Unions Act. Jurisprudence of the Polish Supreme Court do not constitute a source of law, but provide an indication of how labour law will be interpreted and may set a precedent. Since 2004, when Poland entered the European Union, *acquis communautaire* has become a part of the Polish legal order.

National Law And Employees Working For Foreign Companies

National Law is applied to employers and employees who are within the Polish territory regardless of their nationality and the seat of employer's company. However, the parties can agree that an employment contract is subject to the law of a different jurisdiction. The choice of jurisdiction cannot deprive an employee the protection of general rules which would be applicable in case of lack of selection of jurisdiction (pursuant to the provisions of convention 80/934/ECC on the law applicable to contractual obligations (Rome Convention)). If the parties do not chose which law is to be applied to the employment relationship, the law of the state in which the work is performed will be binding.

National Law And Employees Of National Companies Working In Another Jurisdiction

If a Polish employee is employed abroad by a Polish company, national law is applicable only if the parties expressly agree. Where no express agreement has been made the law of the state in which the work is performed is applied.

2. HIRING THE EMPLOYEE

Legal Requirements As To The Form Of Agreement

The Polish Labour Code stipulates that an employment contract shall be concluded in writing. If there is no written contract, the employer shall confirm to the employee in writing the parties to the contract, the kind of employment and its conditions. The employee must receive this statement no later than on the first day of work. If there is no such written confirmation, the employer might be fined for violating the employee's rights.

Mandatory Requirements

- Trial Period

An employee may be preliminarily employed for a trial period of no more than 3 months. Trial periods are common practice, but are not mandatory.

- Hours Of Work

The standard working week is 40 hours per 5 working days, with an average of 8 hours per day. The employer keeps a record of the hours worked by all employees. The weekly hours of work, including overtime, must not exceed 48 hours. Variations to working hours may occur because of

the nature of a particular profession.

- Earnings

The monthly minimum wage is decided every year by the Trilateral Commission and announced by the Prime Minister. The minimum wage applies equally to all employees regardless of their age and sector of economy in which they work.

- Holidays/Rest Periods

Employees are entitled to 20 to 26 days of paid holiday every year. The amount of holiday that each employee is entitled to depends on seniority (seniority takes into account an employee's education and includes periods of employment with previous employers). In addition to paid holiday, employees are entitled to apply for unpaid holiday leave.

Employees are entitled to a minimum weekly rest period of 35 uninterrupted hours. Employees should receive a minimum daily rest period of 11 hours.

- Minimum/Maximum Age

Employers cannot employ people below the age of 16. Specific rules apply to employees who are between 16 and 18 years old. In certain situations (e.g. upon gaining the consent of the State Labour Inspector) it is possible to employ children. There is no maximum age limit. However, it is common practice that employees cease to work when they reach the retirement age.

- Illness/Disability

On presenting the employer with a medical certificate, the employee is released from performing his/her duties. During sick leave the employee is entitled to receive 80% of his / her salary (sick pay). Sick pay is financed by the employer for 33 days (or 14 days in case of employees older than 50). If the illness lasts longer the employee receives a sickness benefit, which is a social security benefit financed by the Social Security Fund. If the illness/disability lasts longer than 182 days, then the employee might receive a rehabilitation benefit. Rehabilitation benefit is available if the employee is likely to go back to work after the rehabilitation period.

Where an employee is certified as disabled, the employee can apply for a pension and/or work in a place adjusted to accommodate his/her disability.

- Location Of Work/Mobility

The employee's place of work shall be included in the employment contract. If an employee is obliged to perform his duties outside his specified place of work, then he is entitled to be reimbursed the cost of his travel.

- Pension Plans

Pensions are part of the obligatory public social security system. The employer and the employee both make contributions to the public Social Security Institution and private Open Pension Fund, which then superannuate the pension. The Social Insurance Institution pension is superannuated on a pay-as-you-go basis. The Open Pension Fund is capitalized and invested until the end of the contribution period. Employees are also entitled to contribute to a voluntary pension plan.

- Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

There are numerous "family friendly" rights in Poland. Such rights include: protection for pregnant women against dismissal; paid maternity, paternity and adoption leave; parental leave; and part-time employment. These rights are regulated by the Labour Code and the Sickness and Maternity Social Benefits Act.

- Compulsory Terms

The terms which shall be included in any employment contract are: the parties of the contract, the identification of the type of contract, date of its conclusion and the conditions of work and pay, the place of work, salary, hours of work and the date at which the employment starts.

No later than 7 days after concluding the contract, the employer must inform its employee in writing about: the standard daily and weekly working hours, when salaries are paid, the length of holiday leave, the period of notice and any collective agreement that is applicable to the employee. If there is no collective agreement then the employer will need to inform the employee about the regulation of night time work (if applicable), when and how salary payments are made, the way employees confirm their arrival at work and the justifiable reasons for an absence from work. The employer can provide the employees with some of the above information by giving the employees the relevant labour law regulations.

- Non-Compulsory Terms

The parties can agree other terms, however, they cannot be less favourable for the employee than those defined by labour law.

Types Of Agreement

The type of employment agreement depends on the period of employment (indefinite, fixed, specific time in performance of a particular task) and their function (e.g. substitution, trial period). Compulsory terms apply to all types of employment agreements.

If the parties conclude a different kind of contract, which includes elements of an employment relationship as provided by labour law (performing work for the employer, under his direction, in a defined place and time, receiving a salary from the employer) then it is deemed an employment contract. Concluding a civil law contract instead of an employment agreement can be punished by a fine.

Secrecy/Confidentiality

Employees are under an obligation to keep secret certain information that they acquire during the course of their employment confidential, according to the rules provided by law.

The scope of information which is regarded as company secret is defined in the act of April 16, 1993 on combating unfair competition or/and in non-competition contract, which is a separate contract, which may be concluded by the parties of the labour relation. According to the provisions of the above mentioned Act, the secret of the enterprise is technical, technological, organizational or other information of the enterprise of economic value, which are not revealed to the public, with regard to which the entrepreneur undertook necessary steps to keep them secret.

The employee is obliged not to reveal information which would expose the employer to damage for two years after the termination of employment agreement. The parties of labour relation may also conclude a non-competition contract for the period after the termination of employment agreement. Such an agreement shall have a written form and shall define the period for which it is concluded as well as the amount of compensation, which the employee receives during the non-competition period for obeying the non-competition obligations (more details in: "restricting future activities").

Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual term, there are statutory provisions which will apply to determine the ownership of IP rights. The legal status of such ownership depends, inter alia, on the subject of a particular IP right. Generally, the rights to any work created by an employee, in the scope of his employment, belong to the employer.

Hiring Non-Nationals

The rules relating to the employment of a non-national depend on the citizenship of a particular employee. Nationals of EEA (including the EU) member states are employed according to the rules which are applied to the Polish citizens, subject to the *acquis communautaire*. To work in Poland, non-EEA employees need a work permit issued in accordance with the Employment Promotion and Labour Market Institutions Act.

Hiring a non-national without the relevant work permit can result in a penalty being issued against both the employer and the employee.

Hiring Specified Categories Of Individuals

There are statutory restrictions mainly relating to the type of work, overtime, night time work and business trips for the following categories of employees: pregnant women, minors and disabled persons.

Outsourcing And/Or Sub-Contracting

There are no labour law provisions concerning outsourcing. Outsourcing is regulated by civil law. However, principles relating to temporary workers are set out in the Employment of Temporary Workers Act.

3. MAINTAINING THE EMPLOYMENT RELATIONSHIP

Changes To The Contract

Any changes to the employment contract must be agreed by the employer and the employee.

The employer may change the terms of employment by giving the employee written notice of termination regarding the terms and conditions of employment and simultaneously propose new conditions of employment in a new contract. If an employee does not accept the new conditions, as set out in the new contract, then his contract terminates at the end of the notice period. If the employee does not inform the employer until half of the employee's notice period has passed that the new conditions are rejected, then the new conditions are deemed to be accepted.

If the change does not change the basic elements of terms and conditions of employment, does not mean a reduction in the employee's salary and does not last for longer than 3 calendar months then it is not necessary to make a formal change to the written conditions of the employee's contract.

Change In Ownership Of The Business

The change in the ownership of the business does not result in an interruption of the employment relationship. The former and new employer shall inform the employees or the trade unions (where they operate) in writing about the change of ownership no later than 30 days before the transfer. The information shall define the expected date of the transfer, reason for the transfer and its consequences, planned actions referring to the conditions of employment, in particular to the conditions of work, remuneration and retraining. Within two months after the transfer of the business an employee can terminate her/his employment without notice, however, she or he is obliged to inform the employer of an intended termination at least 7 days in advance.

If the new employer intends to change the terms and conditions of employment of the transferring employees, consultation and agreement should be reached with the trade unions at least 30 days before the transfer.

The new owner becomes a party to the employment relationship by law. The new employer becomes liable for employees' claims resulting from employment relationship. Where only part of the business is transferred, both the old and the new employer are jointly and severally liable for the obligations arising from the employment relationship, which came into existence before the transfer.

Social Security Contributions

There are obligatory social security contributions towards old age pension insurance and other pension insurance, sickness insurance and work accident insurance. Only employees are obliged to contribute to sickness insurance and only employers are obliged to contribute to work accident insurance. The other contributions are financed by both, the employer and the employee in equal parts.

Health insurance is also obligatory and is paid by the insured persons from their own resources.

All the social security premiums are calculated, deducted and paid by the employer.

Failure to make social insurance contributions can be penalised with a fine.

Accidents At Work

The employer is obliged to insure employees against accidents in the work place with the national Social Security Institution. The employer is also responsible for safety in the work place.

Where an accident occurs in the work place, the employer must identify the reasons for the accident, provide first aid, inform the district labour inspector and undertake necessary measures to prevent similar accidents from happening in the future.

If the employee loses the ability to work as a consequence of the accident at work, he is entitled to a pension financed by the Social Security Fund.

Discipline And Grievance

If an employee fails to comply with workplace rules, safety and hygiene regulations or fire regulations, the employer can discipline the employee (by applying admonition or reprimand). In certain cases the employee may be punished by the imposition of a minor fine.

The employee shall be informed about such punishment in writing. The punishment must be enforced within 3 months of the employee's misconduct, but no later than 2 weeks from the day in which the employer becomes aware of the misconduct. The employee has the right to object to the punishment to the employer and to the court.

Harassment/Discrimination/Equal pay

Work of a similar value shall be rewarded with a similar pay. Pay includes all elements of remuneration, regardless of their name and character, and other employment-related benefits whether monetary or in kind. For work to be of a similar value employees must be required to have comparable professional qualifications and be required to take on a similar degree of responsibility and effort.

Employees shall be treated equally, in particular regardless of their sex, age, disability, religion, race, nationality, political views, trade union affiliation, ethnic origins, faith, sexual orientation, as well as part time or full time employment and indefinite or fixed time employment. The catalogue of criteria which are considered discriminatory is open, what makes Polish anti-discriminatory regulation particularly broad. Equal treatment applies to the hiring of employees, the conditions of employment, promotion and the access to training. Direct and indirect discrimination is prohibited.

Discrimination based on sex is any unwanted behaviour of a sexual nature, or referring to the sex of an employee, which aims at or results in an infringement of the employee's dignity. Such behaviour creates an intimidating, hostile, humiliating or insulting atmosphere for the employee. The behaviour can be either verbal or non-verbal (harassment). Subjecting an employee to such behaviour as well as reporting such behaviour shall not have a negative impact on the employee's employment (victimisation).

The victim of discrimination is entitled to compensation and is protected from unfair dismissal based on discriminatory grounds.

The employers are obliged to inform the employees about their non-discrimination and harassment policy and try to prevent discrimination in the work place.

Compulsory Training Obligations

The employer is obliged to organise training for the employees in safety and hygiene in the work place. The training shall take place within working hours, at the cost of the employer, before an employee starts performing his/her duties. The training shall be repeated periodically.

Offsetting Earnings

Employer's can offset an employee's earnings but only when provided for by law or on the basis of written consent of the employee. Deductions which do not require the employee's consent concern amounts executed on the basis of enforceable titles, disciplinary fines and advance payments from the employer. The employer can deduct wages for periods of absence.

Other debts (including those credited by the employer) can only be deducted with the employee's written consent. Depending on the kind of debt there are limits to the amounts which can be deducted and part of the salary is protected from the deduction regardless of any legal title of a creditor.

Payments For Maternity And Disability Leave

During sick leave the employee receives a sick pay, which amounts to 80% of his usual salary. In certain cases (e.g. accident at work) a sick pay may amount to 100% of employee's salary.

Maternity leave can last from 20 to 37 weeks depending on the number of children born. After 14 weeks of the maternity leave, the father is entitled to use a part of the maternity leave in addition to paternal leave.

Both male and female employees are entitled to additional maternity leave of 6 or 8 weeks. Employees must make a written application to the employer requesting such leave. The employer is obliged to consent to such leave. During maternity leave an employee has the right to a maternity benefit, which is a social security benefit and is equal to the employee's full salary. Employees who fulfil certain conditions may also take up to additional 28 weeks of remunerated parental leave.

Compulsory Insurance

The employer is not obliged to provide insurance other than social security.. However, an obligation to insure may be imposed on the employer in certain kinds of business. The employees may conclude a contract with an insurance company without the assistance of their employer.

Absence For Military Or Public Service Duties

Since there is a professional army in Poland, the need for the employer to allow employees' leave for military service is diminished significantly. Employees are entitled to take leave for public service duties.

Works Councils or Trade Unions

The creation and activities of trade unions' are regulated by the Trade Union Act of 1991. Employees, regardless of their employment agreement, have the right to create a trade union. A trade union is independent in its statutory activity from the employer, public administration and other organisations. Being a member of a trade union is voluntary and employees who become members shall not suffer any negative consequences resulting from their membership. For example, becoming a trade union member cannot affect the employment, its duration or employment promotion.

A trade union can only be created by a minimum of 10 employees, who enact a resolution concerning its creation and its charter and then elect its founding committee. A trade union shall be registered in the National Court Register.

In an enterprise, in which there are no trade union representatives, the employees can elect their representatives. There is no unified procedure for such elections.

When there is a recognised trade union employers must e.g. notify to the trade union about an intention to terminate an indefinite employment agreement; notify to the trade union the employment conditions of transferring employees when a transfer of ownership (or part of) the business is planned; consult with the trade unions the conditions of group redundancy. A member of a trade union, who is elected the representative, shall not be dismissed without the trade union's consent.

The election of work council's members and the rules of their activity are regulated by act of April 7, 2006 on information and consultancy with employees. The act is in general applicable to companies, which employ at least 50 employees. It provides that the work council members are elected by employees. The employer shall inform the work council among others about the economic standing of the company, company's employment policy and planned changes in the organization of work. The employer shall consult with the work council relevant plans regarding employment in the company. Violation of regulations concerning creation of work council and obligation of information and consultancy can be penalized with a fine or restriction of liberty.

Employees' Right To Strike

Where there is a collective dispute, employees can declare a strike if the employer ignores their demands. A strike can only take place 14 days after the declaration of a collective dispute.

The employees have the right to strike when the mediation process fails. A strike is the last resort and shall not be executed before all other means of settling the dispute have been explored. However, employees can go on strike in case where the employer has committed an illegal offence, which makes negotiation or mediation impossible. Employees can also strike when the employer terminates a

contract with the employees' representative, who leads the dispute. Participation in a strike is voluntary. A strike shall be announced no later than 5 days in advance.

There are categories of employees, who are not entitled to strike, such as: public administration employees, law enforcement agencies' and prosecution employees. When employees do not have the right to strike, the trade unions can organise a solidarity strike.

Employees On Strike

Where an employee goes on strike, in accordance with the statutory provisions, the employee's actions do not constitute a breach of his / her employee's duties. The employee keeps the right to receive social security benefits and other rights resulting from the employment relation, apart from the right to remuneration for the time of strike.

Employers' Responsibility For Actions Of Their Employees

The employer is responsible for the employees' actions which are performed in relation with the business activity of the enterprise. However, an employee is responsible for the damage caused to the employer. The employer shall be required to prove the employee's responsibility.

4. FIRING THE EMPLOYEE

Procedures For Terminating the Agreement

When an employer dismisses an employee, the employer must provide the employee with a written statement of termination. Where the employer dismisses an employee employed for an indefinite period the statement of termination must include the reasons for the dismissal. The termination of contract is effective after the period of notice or as a result of an instant dismissal or a mutual agreement.

Where an employee under an indefinite employment contract is dismissed, the employer shall inform in advance a trade union organisation, which represents an employee.

Instant Dismissal

The instant dismissal of an employee is possible in three cases: (1) heavy breach of the employee's duties; (2) when the employee commits a crime which precludes further employment because the employee is subject to a final sentence; (3) when the employee loses necessary qualifications due to her/his fault.

The employee must be instantly dismissed within one month of the employer knowing about the employee's reason for the dismissal.

Employee's Resignation

An employee can resign at any time. The resignation can involve a period of notice or it can be executed instantly. Resignation can be instant where an employee has a medical certificate to certify that the work is harming the employee's health and the employer is not able to provide the employee with other work which is appropriate for the employee's health condition and professional qualifications.

The employee can also resign instantly if the employer commits a gross breach of his basic duties. In this situation the employee has the right to compensation for the period of notice.

The employee must give the employer a written statement setting out the reason for the resignation. The employee must resign within a month of the reason for such a resignation.

Termination On Notice

Termination on notice is applicable for contracts concluded for indefinite periods of time and for contracts concluded for more than 6 months (in the latter case - only if it is provided in the contract). The length of the notice period of contract concluded for indefinite period depends on the seniority (with the current employer) of the employee and ranges from 2 weeks to 3 months. When the notice period is a number of weeks, the notice period will end on a Saturday. When the notice period is given in months, the notice period will end on the last day of the last calendar month.

Termination By Reason Of The Employee's Age

An employer is not allowed to terminate an employment contract for the sole reason of the employee's age; such an action would be considered discriminatory. However, if the age of the employee means that he cannot perform his job then the contract can be terminated and justified, even if it is indirectly based on the employee's age.

Automatic Termination In Cases Of Force Majeure

The employment contract will automatically end on the death of the employee, imprisonment of the employee which lasts more than three months and on any other circumstance defined in the specific provisions for the particular profession.

Termination By Parties' Agreement

The parties are free to terminate the contract by mutual agreement at any time. The agreement shall be concluded in writing.

Directors Or Other Senior Officers

There are no particular regulations concerning the dismissal of a director or other senior officer. The termination of such a contract depends on the statutory provisions concerning the particular institution or enterprise, its internal regulations and the contract.

Special Rules For Categories Of Employee

There are special rules for the dismissal of certain groups of vulnerable employees such as: pregnant women and the employees who are in the period of 4 years before their retirement age. It is also forbidden to terminate a contract with an employee during his/her justified absence from work (i.e. holiday leave, sick leave).

Specific Rules For Companies in Financial Difficulties

If the employment contract is terminated because of the liquidation of the company, the notice period might be limited to one month (where it would last 3 months) and the employee is entitled to compensation for the remaining notice period.

The specific rules for companies in financial difficulties apply only to companies which employ more than 20 people and when at least 10 employees are dismissed at once. The group dismissal procedure starts with the consultation with the employees' union representatives. The employer must send the information about its redundancy plan to the employees' representatives and to the district labour office. Within 20 days of receiving the information, the employer and the union representatives will agree the redundancy conditions. However, if an agreement cannot be reached, the employer can establish by-laws and send these to the labour office. Only after following this procedure can the group of employees be dismissed.

Restricting Future Activities

If the employer and the employee have access to particularly important information, which if revealed could expose the employer to damage, the parties can conclude a contract concerning non-competition during the employment relation as well as after their employment relationship terminates. The non-competition agreement for the period after termination of employment relationship is concluded in writing for a fixed period and provides the employee with compensation. The compensation cannot be less than 25% of the employee's salary and is paid for the whole non-competition period stipulated in the contract.

Where the employer fails to pay the due consideration, the employee is freed from the non-competition restriction but retains the right to claim compensation.

Severance Payments

Where the employment contract is terminated with or without notice due to the employee's fault and the termination is justified and lawful, the employee is not entitled to severance pay. If however, the employee is made redundant due to reasons attributed to the employer, the employee is entitled to severance pay of the amount from 1 to 3 months salary, depending on the seniority of the employee,

but no more than a maximum amount stipulated by law. There is a cap imposed on employees who have high salaries.

When the employment agreement terminates because the employee reaches the retirement age or the right to receive a pension, an employee has the right to severance pay equal to the amount of one month's salary.

Where an employee dies, his family has the right to severance pay equal to 1 to 6 months salary, depending on the seniority of the employee.

Special Tax Provisions And Severance Payments

Contractual payments as well as non-contractual severance payments are subject to income tax. The employer is responsible for calculating and paying income tax.

Allowances Payable To Employees After Termination

There are no obligations imposed on the employer to pay an allowance to employees after termination of an employment agreement. However, in some enterprises in which a Social Fund is established, the employees, whose contract was terminated for the reasons of pension or retirement, are sometimes included in the group of its beneficiaries.

Time Limits For Claims Following Termination

The time limit for most claims arising from the employment relation is 3 years. The time limit for claims by the employer concerning compensation for damage caused by employees is one year from the date of the damage, but no more than 3 years after the day the damage was caused.

5. GENERAL

Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no specific matters which are important or unique to this jurisdiction.

WKB Wiercinski, Kwiecinski Baehr Sp. k.
IBC II, 11 Polna Street
00-633 Warsaw, Poland
Tel: +48 22 201 00 00 Fax: +48 22 201 00 99
www.wkb.com.pl