

## NEWSLETTER - Employment

We kindly encourage you to review the currently pending legislative proposals and recent changes in the area of employment law. In the latest WKB newsletter you will be able to learn more about: remote work, whistleblowers protection, an amendment to the Social Security System Act and obtaining information on employees' vaccinations.

### REMOTE WORK

Since May 2021, the government has been working on regulating the principles of remote work in the Labor Code. The primary purpose of the new regulations is to clarify the rights and obligations of employers and employees related to the performance of work outside the workplace, including, primarily, health and safety obligations, as well as protection of data provided to the employee.

In recent weeks, additional changes have been introduced to the project, covering i.e.:

- > clarification that the place of remote working is to be agreed with the employer in each case;
- > the possibility of filing a request to cease remote work at any time (both by the employer and the employee);
- > increase in the limit of so-called "occasional remote work" (from 12 to 24 days per calendar year), which does not require fulfilling some of the obligations covered by the proposed amendment.

The amendment will come into force after three months from the end of the epidemic in Poland.

We would like to remind you that until the introduction of remote work to the Labour Code, employers may resort to temporary regulations resulting from the so-called „Anti-Crisis Shield”, providing for the **possibility of ordering remote work**. The aforementioned right is granted to employers during the period of the epidemic threat or epidemic state, declared due to COVID-19, and in 3 months after their revocation.

Currently, the project is at the stage of agreements, opinions and public consultations.

### WHISTLEBLOWERS PROTECTION

By 17 December 2021, **employers employing 250 or more employees** should implement procedures to ensure appropriate protection of whistleblowers (i.e. individuals who report violations of EU law). This obligation results from Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (the „**Directive**”). As of the date of the newsletter, there are no Polish regulations in this area. Therefore, until appropriate Polish law is enacted, employers should use EU regulations as guidance.

The Directive introduces the obligation to implement:

- a mechanism allowing whistleblowers to report irregularities in a way that preserves the confidentiality of their data (an appropriate procedure and, e.g. an internal organizational whistleblowing channel);
- a protection system for whistleblowers;
- rules for investigating reported irregularities.

For each of these elements, the Directive formulates specific requirements.

The Directive contains a catalogue of areas that may be affected by violations. These include i.a. public procurement, product safety and compliance, privacy, protection of personal data and security of networks and information systems.

According to the Directive, protection will apply not only to employees but also to sole entrepreneurs, shareholders, partners and members of the administrative, management or supervisory body, volunteers and trainees (regardless of whether they are remunerated).

The main purpose of the new regulations is to prohibit retaliation against whistleblowers. Employers should not undertake actions like dismissal, transfer to a lower position (demotion), withholding a promotion, or not extending or early termination of a fixed-term employment contract.

Even though the first draft of the law implementing the Directive has not yet been presented, employers should already start working on introducing appropriate procedures to enable whistleblowers to report irregularities and ensure their effective protection.

The directive also imposes obligations regarding reporting and the investigating system as well as whistleblower protection system on employers engaging from 50 to 250 employees, however with an extended deadline (until 2023).

## AMENDMENT OF THE SOCIAL SECURITY SYSTEM ACT

On 19 August 2021, the President signed an amendment to the Act on Social Security System and certain other acts.

The amendment provides for several changes in the area of social insurance, below we present those which in our opinion are the most significant.

- **shortening the period of receiving sickness benefit after termination of employment**

Until now, an employee who became sick within 14 days from the date of termination of employment could receive sickness benefits for a maximum of 182 days. This period has been reduced by half and as of 1 January 2022, this period will amount to 91 days (in most cases).

- **combining periods of incapacity to work within the benefit period**

Under the currently applicable law, an employee may receive a sickness benefit for a maximum of 182 days (in the case of tuberculosis and during pregnancy – 270 days).

Until now the above limit applied to **one disease**, which means that if an insured person falling ill with another disease it was not included in the 182-day limit.

Under the amendment, the type of illness will no longer be relevant for determining the benefit period. In practice, this means that if an insured person within 60 days from the date of termination of a previous incapacity to work falls ill with another disease, the period of such incapacity will be included in the 182-day limit. Once the 182-day limit has been reached, the employee will have to work a minimum of 60 days to claim sickness benefits again.

The above regulations will become effective as of 1 January 2022.

- **social insurance coverage for partners in one-person limited liability companies (sp. z o.o.) and partnerships**

The amendment also introduces changes in social insurance coverage for partners in one-person limited liability companies, general partnerships, partnerships and limited partnerships. These persons will be covered by the insurance obligation from the date the company is entered into the National Court Register or from the date of acquisition of shares in the company, regardless of whether the company conducts business activities, generates income, employs individuals.

The above regulations will become effective as of 18 September 2021 r.

**OBTAINING INFORMATION ON EMPLOYEES' VACCINATIONS**

The government is working on draft legislation allowing employers to obtain information about employees' COVID-19 vaccinations.

According to the information presented in the list of legislative works of the Council of the Council of Ministers, employers will be entitled to verify whether employees have had COVID-19 infection in the past or are currently not infected with COVID-19. Upon obtaining such information, employers would be entitled to make decisions on:

- > posting an employee to work outside the permanent place of work,
- > posting an employee to another type of work with remuneration corresponding to the type of work, or
- > sending the employee on unpaid leave.

At the same time, and more opinions can be heard stating that the law will not be submitted to parliamentary work. This is since the description of the Act in the list of legislative works of the Council of Ministers raised many doubts and controversies, especially in the area of obtaining information on the health of employees by the employer, as well as the possibility of sending unvaccinated employees on unpaid leave.

The employers will have to be patient as the work on the law on obtaining information on employees' vaccinations will take some time.

**If you have any questions, please feel free to contact us:**



**Monika Walasek**  
advocate  
[monika.walasek@wkb.pl](mailto:monika.walasek@wkb.pl)



**Magda Kurowicka**  
attorney-at-law  
[magda.kurowicka@wkb.pl](mailto:magda.kurowicka@wkb.pl)



**Mateusz Gajda PhD**  
lawyer  
[mateusz.gajda@wkb.pl](mailto:mateusz.gajda@wkb.pl)



**Karolina Kornelak**  
lawyer  
[karolina.kornelak@wkb.pl](mailto:karolina.kornelak@wkb.pl)