

Legal alert

How to prepare for a small revolution in legislation?

Changes in labour law 2022/2023

Acts to amend the Labour Code

The changes in labour law announced for the turn of 2022 and 2023 cover **several areas** and stem from two separate acts.

The first act is to introduce the concept of **remote working** into the Labour Code; it will replace the current regulations on teleworking and remote working under the so-called anti-crisis shield. The act will also specify the legal grounds for employers **to carry out preventive checks for the presence of alcohol or substances acting similarly to alcohol in the bodies of their employees.**

The other act is to implement two EU directives into the Polish legal order, i.e. Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (the **Work-life Balance Directive**) and Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 **on transparent and predictable working conditions in the European Union.**

Remote working – the act was adopted by the Sejm

The act adopted by the Sejm on 1 December 2022 defines **remote working** as **the performance of work wholly or partly at a place indicated by the employee and always agreed upon with the employer, including at the employee's home address, in particular by means of distance communication.**

How remote working is to be introduced in the workplace, including cases when the employer will be required to grant the employee's request to work remotely, but also situations when it will be up to the employer to order employees to work remotely are to be laid down in the Labour Code.

In addition, for instance, the following issues will be regulated:

- obligations of the employee and the employer related to remote working;
- principles of accounting for remote working costs, including the possibility of an allowance being granted for remote working;
- control over a remote worker;
- health and safety rules and accidents during remote working;
- occasional remote working.

Employee sobriety checks – regulations have already been passed to the Senate

The act adopted by the Sejm on 1 December 2022 assumes that employers will be able to carry out **preventive checks** for the presence of **alcohol or substances that act similarly to alcohol** in the bodies of **their employees**. This will be possible in justified cases, i.e. when necessary to protect the life and health of employees or others or to protect property. A sobriety check will involve a test carried out using methods that do not require laboratory testing and determine either the absence or the presence of alcohol in the employee's body by means of a device for which a valid document confirming its calibration is held.

The new rules under the act will also address the following issues:

- not allowing a tested employee to work and rules for calculating his or her working time;
- rules for processing data on checks and their results;
- liability of the employee and the employer.

Work-life Balance Directive

Changes resulting from the implementation of the Work-life Balance Directive will concern the **rights of employees as parents and carers of children** and will guarantee that they are protected against unequal treatment in employment.

The key issues arising from the bill include:

- measures enabling greater use of flexible working arrangements;
- changes to parental leave and maternity benefits;
- new rules on paternity leave;
- new carer's leave and leave of absence for urgent family reasons.

Changes affecting employment contracts

Significant changes affecting probationary and fixed-term contracts are planned in connection with the implementation of the Directive on transparent and predictable working conditions in the European Union, such as:

- new rules for concluding probationary contracts; for instance:
 - it will be possible to extend a probationary contract by the period of annual leave or excused absence;
 - the term of the probationary contract will depend on the term of the planned fixed-term contract and will be:
 - one month if the fixed-term contract is to be concluded for less than six months,
 - two months if the fixed-term contract is to be made for between six months and twelve months;
- new rules for terminating contracts: obligations to justify the termination of a fixed-term contract and to respond to an employee's request to give him or her a reason for terminating a probationary contract;
- the employee's right to request a change in the type of contract and the employer's obligations in this respect.

What should you do?

Although the legislative work is still underway, **we think that this is the best time to start preparing** for the upcoming changes and, to this end:

- plan the process of implementing remote working in the company or adapt the current principles of remote working to the new regulations;
- start drafting remote working regulations or adapting them to the new legislation;
- train employees on the remote working rules adopted;
- prepare employees for the upcoming changes as regards sobriety checks;
- plan the adoption or update of internal company regulations;
- review the document templates used in the organisation to adjust them to the new requirements; e.g. information on employment terms.

When will the changes come into effect?

Parliamentary work is underway on the acts.

Still, the **act on remote working and sobriety checks** was adopted by the Sejm on 1 December 2022. We assume that the legislative process will be completed this year. The new regulations on **employee sobriety checks** will come into effect **14 days**, and those on **remote working** – **two months**, after the promulgation of the act. However, this period may be extended during parliamentary work on the act at the Senate, due to demands from employers.

The other act implementing the EU directives has not yet been passed to the Sejm. According to EU requirements, the **amendment should have come into effect by August 2, 2022**. This deadline has already passed. Little progress has been made on the act. The first half of 2023 is mentioned as the likely time when the law will be adopted.

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