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Breaking New Ground in Poland

Baker & McKenzie

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Abstract

[Excerpt] The purpose of this booklet is to provide of the summary of the major provisions applicable to the employment in Poland.

The law stated below is up to date as of March 13, 2006.

Keywords

Poland, employment, labor law, legislation, public policy, immigration, working conditions, discrimination

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Contents

General Introduction

The purpose of this booklet is to provide of the summary of the major provisions applicable to the employment in Poland.

The law stated below is up to date as of March 13, 2006.

1 Governing Rules

Scope of Polish Labor Law

Polish Labor Law applies to all employment relationships arising from an employment contract that is performed in Poland, regardless of the nationality of the employee and the employer.

Sources of Law which Govern Employment Relationships

- Statutory law - The Polish Labor Code and other subordinate labor laws,
- Collective bargaining agreements,
- Internal regulations - by-laws, remuneration regulations etc.
- Employment agreements,

The employment agreement or other act under which an employment relationship is established may not contain provisions less favorable to an employee than those contained in the Labor Code and other subordinate labor laws. Thus, the provisions of employment agreements and other regulations on the basis of which an employment relationship is established (such as collective bargaining agreements, by-laws, and statutes setting forth the rights and obligations of the parties to the employment relationship) may not be less favorable than those set forth in the Labor Code. Those provisions, which are less favorable than those set forth in statutory regulations, are invalid by operation of law and are replaced by statutory provisions.

2 Immigration Requirements

Employment of Foreigners under Polish Labor Law

Employment of non-EU citizens

Under Polish labor law, a foreigner may perform work in Poland only upon a permit granted by the Voivode (*Wojewoda*) (the "work permit"). The work permit is required if the foreigner performs work in Poland on the basis of an employment agreement, civil service position (*stosunek sluzbowy*), on another (civil law) basis (e.g., agency agreement, etc.), or is entrusted with the performance of any other kind of remunerated work within the territory of Poland. Said permit is also required if an employee renders work in a Polish company on the basis of a secondment by a foreign employer. Moreover, the foreigner who serves on the management board of a company seated in Poland needs a work permit if his/her stay in Poland exceeds 30 (thirty) days per calendar year and the foreigner does not permanently reside in Poland under an appropriate visa.

The Polish employer must enter into an agreement constituting a legal basis for the work performed by a foreigner for the period of the work permit's validity.

Administrative steps for Employee Work Permit

The work permit is obtained through an administrative procedure, which takes approximately two, three months. The following documents set forth the general conditions for the issuance of the work permit:

(i) an attestation (*przyrzeczenie*) (the "attestation");

(ii) a residency permit visa (*wiza uprawniajaca do pobytu*) (the "residency permit visa") or

(iii) a permit for temporary residence in Poland (*zezwolenie na zamieszkanie na czas oznaczony*) the "permit for temporary residence").

The work permit is granted for a definite period, which, however, it may not exceed the period determined in the residency permit visa or the term of validity of a permit for temporary residence.

Consequently, a foreigner must be granted a work permit for each work she/he will perform in Poland. For example, if a foreigner serves on a Management Board of two, three or more companies seated in Poland, she/he is obliged to have a work permit for the work performed for each company. Moreover, if a foreigner performs work in various positions at the same company, she/he needs to obtain a work permit for each position. For example, if the foreigner is appointed as a member of the management board and employed as the financial director of the same company, she/he must have a work permit for both the work she/he performs as a member of the management board, as well as for the work she/he performs as the financial director of the company.

The withdrawal of the work permit before its expiration

The withdrawal of the work permit before its expiration By the Voivode may occur if the foreigner:

(i) renders his duties in a manner inconsistent with the granted permit, or

(ii) loses his/her ability to perform his/her duties, or

(iii) acting as an employer, acts consistently and blatantly in violation of labor law provisions, requires the employer to terminate the employment contract concluded with the foreigner no later than three days after notification to the employer of the withdrawal.

Moreover, in case of termination of an agreement constituting a legal basis for the work performed by a foreigner before the expiry of the period for which the work permit was issued, the employer must immediately inform the Voivode and return the work permit thereto.

Employment of the EU Citizens

On 1 May, 2004, Poland joined the EU in which one of the basic principles is free movement of people and freedom of employment. However not all of the current member countries have opened their labor market to citizens of the new members. In response to this, Poland, according to the reciprocity principle, has introduced some restrictions on free movement of workers.

For the time being, the only exceptions will be for United Kingdom, Irish, and Swedish nationals, who do not need a work permit in Poland, as those countries have waived restraints in relation to access to their employment markets. The Polish labor market

will also be open for new EU member countries (the Czech Republic, Hungary, Latvia, Lithuania, Estonia, Slovakia, Slovenia, Malta and Cyprus) and nationals of those members will be able to seek employment in Poland without obtaining a work permit.

Furthermore, recent regulations also provide for another exception. There is no need to obtain a work permit for a foreigner who is a spouse of a Polish citizen when residing on the territory of Poland on the basis of a temporary residence permit issued as a result of the marriage, regardless of the foreigner's citizenship.

The EU employees delegated to Poland to provide services on the basis of the 96/71/EC Directive do not need to have a work permit except for citizens of Germany and Austria.

Citizens of Germany and Austria posted to work in Poland need to apply for a work permit if they are to provide services in following sectors:

In the case of Germany: construction, including related branches, industrial, and interior decorators.

In the case of Austria: Horticultural service activities, cutting, shaping and finishing of stone, manufacture of metal structures and parts of structures, construction, including related branches, security activities, industrial cleaning, home nursing, social work and activities without accommodation.

Please note that EU citizens appointed to the management boards of Polish companies are exempted from the obligation of obtaining work permit.

3 Terms of Employment

Form of the Employment Agreement

Polish labor law provides that an employment agreement must be executed in writing and should expressly define parties to the agreement, date of the execution thereof, the terms and conditions of the employment relationship and kind of the executed agreement (i.e. whether it is a probationary agreement, an agreement for a definite term or an agreement for an indefinite term). If the employment agreement has not been executed in writing and the employer does not confirm the terms of employment in writing on the day the employee commenced work, it will constitute a breach of the rights of the employee which may result in the employer being penalized with a fine.

The employment agreement should specifically describe:

(i) the kind of work to be rendered by the employee;

(ii) the place of work;

(iii) the start date of work;

(iv) amount of working time; and

(v) the remuneration appropriate for the work.

The kind of work should be understood as the activity or group of activities, which the employee has undertaken to perform for the benefit of the employer. It may be defined by naming the profession or the specialty, function or the position of the employee and should be supported by either a specific or a broad description of such employee's responsibilities. The kind of work is also determined by the existence or lack of financial responsibility of the employee.

The employer shall notify the employee in writing, no later than within 7 days from the date of conclusion of the employment contract, of the daily and weekly standards of working time, the frequency of payment of the remuneration for work, the vacation leave and the duration of notice period. If the employer employs less than 20 persons, and is not obliged to introduce working regulations, it shall also notify the employee about night period, location, date and time of remuneration payment, procedure of confirming arrival and presence at work, and justifying absence from work.

Language Requirements

According to Polish law in agreement at least one party to which is Polish and which is going to be executed in Poland should be concluded in a Polish language version (apart from any foreign language versions).

4 Working Conditions

Working Hours

Work time may not exceed 8 hours per day, and an average of 40 hours in a 5-day week within the adopted accounting period not longer than 4 months. Work time together with overtime may not exceed 48 hours in the adopted accounting period. Accounting periods in the agriculture, animal breeding, personal and property protection may be, however, extended to 6 months. This period may be extended to 12 months, if warranted by untypical organizational or technical conditions, which affect the course of work.

The employee is entitled to at least 11 hours of undisturbed rest per each day and at least 35 hours of undisturbed rest in any week, including 11 hours of undisturbed rest per day. The 35-hour rest period shall occur on Sunday, or on other day if work on Sunday is permitted.

Working time of managers

Work time of managers together with overtime may not exceed 48 hours in the adopted accounting period. However their daily rest may be shorter than 11 hours and the weekly rest time may be shorter than 35 hours (but at any rate not shorter than 24 hours). Managers do not need to register their working hours. They are also not entitled to receive additional payment for overtime working.

Overtime

Any work performed beyond the working-time standards applicable to the employee as well as work performed longer than extended amount of working time based on the working time system and schedule applicable to the employee, constitutes overtime work. An employee is entitled to an overtime allowance for such work subject to the below comments.

As a rule, the amount of overtime cannot exceed 150 hours annually and 4 hours daily per employee. Rescue actions in order to protect health and life, or property, or in order to repair breakdowns are exempted from the above-mentioned rule. The employer, however, may determine a different amount of overtime for a given calendar year. This should be done in a collective bargaining agreement, Work By-laws, or in an employment agreement, if there is no collective bargaining agreement or the employer is not obliged to determine the Work By-laws. In such case, however, the amount of overtime cannot exceed 48 hours per week in an accepted accounting period. Such period may be only

for overtime purposes and may not be the same as the period used for normal working time. Employees who are employed in positions which exceed the highest admissible levels of health hazards, are exempted from the aforementioned rule of increasing the overtime limit.

Overtime Allowance

The overtime allowance amounts to 50% of the remuneration for every overtime hour worked by an employee during the working week, irrespective of the number of overtime hours worked. In addition, an employee is entitled to the same allowance for overtime on Sundays and holidays that are working days for the employee pursuant to a binding work schedule. For overtime at night or on a Sunday or on holiday which are non-working days for the employee pursuant to a binding work schedule, the employee is eligible for an allowance equal to 100% of the remuneration for every overtime hour of work.

The employee may be granted days off for the overtime. Days off are granted at the employee's request and in an amount equal to the overtime. Days off may be also granted for the overtime without the employee's request. In such case, the employer grants such number of days off which corresponds to 150% of overtime. The days off are granted by the end of a given accounting period. This, however, cannot decrease the remuneration due to the employee for full monthly work time. The employee who is granted days off for his/her overtime is not entitled to overtime allowance.

Members of the management board, main accountants and directors of a company's units are not entitled to an overtime allowance. Such employees, however, apart from members of the management board, are entitled to separate remuneration for overtime performed at the employer's request on Sundays, holidays or additional days off, provided that they were not granted days off for such overtime.

Salary

General

The Labor Code requires that remuneration be paid at least once a month on an agreed day, but not later than the tenth day of the following month. At the employee's request, the employer must make available to the employee the documents used as the basis for calculating the remuneration. Remuneration should be paid in cash unless provisions of labor law or a collective bargaining agreement provide otherwise. Remuneration should be also paid personally to the employee unless the provisions of a collective bargaining agreement provide otherwise or an employee agrees in writing to another form of payment. The Labor Code provisions set forth certain limits of permissible withholdings from the employee's remuneration relating to child support, alimony and executionary payments.

Minimum Remuneration

The law determines the minimum monthly remuneration, which currently amounts to PLN 899,10 gross monthly. The minimum wage for minors during the period of their apprenticeship shall not be less than 4% of the national average wage for the first year of training and 5% and 6 % for the second and third year, respectively.

Pension or Retirement Severance Payment

An employee who satisfies the conditions entitling him to receive a pension due to incapacity to work or retirement pension, and whose employment relationship ceased in connection with pension, is entitled to receive a severance payment amounting to one-month remuneration.

Death Benefit

In case of a death of the employee during the validity of the employment relationship or during a period of receiving benefits following termination thereof due to incapacity to work by reason of illness the employee's family is entitled to receive a death benefit from the employer. The amount of the benefit depends on the period of employment of the employee by given employer and is equal to:

(i) one month's remuneration if the employee was employed for less than 10 years;

(ii) three month's remuneration if the employee was employed for at least 10 years;

(iii) six month's remuneration if the employee was employed for at least 15 years.

The employer is not obliged to pay death benefit, if he provided life insurance for the employee and the compensation from insurance company is not lower than the statutory requirement.

Additional Allowances for Work in Harmful Conditions

Granting the employees the allowances for their work in harmful conditions is voluntary. The employer's obligation for their payment may result from the internal labor regulations, such as for example, a collective bargaining agreement or Work or Remuneration By-laws.

Holidays

According to the Labor Code, the vacation period is as follows:

(i) 20 working days if employee has been employed for less that 10 years; and

(ii) 26 working days if employee has been employed for more than 10 years.

Employment periods for previous employers accumulate regardless of the manner in which an employment agreement was terminated. The periods of employment specified above also include periods of education that are added to the periods of actual employment.

An employee who commences work for the first time acquires (in the calendar year in which he commenced work) the right to leave after each month of work at 1/12 of the length of leave due to him after working for one year.

If an employment agreement terminates during a calendar year, the employee is entitled to vacation as follows:

(i) from the previous employer - vacation days are allocated in proportion to the period during which the employee worked, unless the employee used the entire vacation entitlement;

(ii) from the current employer - vacation days are allocated in proportion to the period remaining to the end of the year in the event of employment for a period not shorter than until the end of a given year. If the employment ends before the end of a given year, vacation days will be counted in proportion to the period of such employment.

An employee who used at the previous employer the vacation in proportion exceeding a number of vacation days to which he/she was entitled pursuant to point (i) above before the end of his/her employment agreement, is entitled to vacation at the current employer in amount respectively decreased. The aggregate number of vacation days of such employee, however, cannot be lower than the amount of vacations resulted from the total term the employee has worked during a given calendar year.

An employee hired for seasonal work will have the right to 1.5 vacation days per month of work.

Taking Vacation

Vacation is given in business days. Saturdays, Sundays, and days off resulting from the accounting period of work time in a 5-day week are not counted as vacation days.

The employer is obligated to allow an employee to use vacation days during the year in which the employee acquired the right to vacation. Upon the request of the employee, annual vacation may be divided, provided one part of the vacation lasts at least 14 days. Vacation should be given according to the schedule of vacation agreed to by an employer with the trade unions active in the company, taking into consideration the employees' needs and the undisturbed course of business. It also may be given in a term determined by the employer upon consultation with the employees if no trade unions are active in the company, or the existing trade unions agree to not having prepared vacation schedule. In addition, the employer is obliged to give the employee a vacation day upon his/her demand, which may be submitted to the employer even on the day of commencing such vacation (so-called "vacation on demand") (*urlop na zadanie*). However, the employee may use only 4 days of vacation on demand per each calendar year.

The employer must allow an employee who was unable to take vacation according to the agreed schedule to utilize such vacation no later than the end of the first quarter of the following year, *i.e.* by March 31, each calendar year.

An employee who has received or has been given a notice of termination of employment must take a holiday leave to which he or she is entitled, if the employer agrees to such leave.

Payment for Due Vacation

In the event an employee does not manage to utilize vacation before the employment agreement terminates or expires, such an employee is entitled to receive payment for the unused vacation upon the day of termination or expiration.

Additional paid leave

The employees are entitled to additional:

(i) Two-days paid leave in the event of employee marriage, birth of a child, death and funeral of the employees' child, spouse, parent, or step-parent.

(ii) Two-days paid per year if employees have a child/children under the age of 14. Either parent may also take paid leave (at 80% of regular compensation) for up to 60 days to look after a sick child up to the age of 14. Either parent may also take this leave to look after a healthy child up to the age of eight, if the school is closed and there are no other members of the family to look after the child. The employee may also take paid leave (at 80% of regular compensation) for up to 14 days to look after a sick family member.

(iii) One-day paid leave in case of child's marriage, death and funeral of sister/brother, parents-in-law, grandparents, or other persons under the worker's direct care.

Company Rules

Workplace regulations

Employer, who employs more than 20 employees, shall introduce workplace regulations. Workplace regulations regulate the organization of and order in the process of work as well as rights and duties of the employer and the employee connected therewith.

In particular the workplace regulations should specify organization of work, conditions of staying in the premises of the employing establishment, work time systems and schedules, night time, date, place, time and frequency of payment of remuneration, method of confirming time of arrival and presence at work, etc.

Remuneration By-laws

An employer employing at least 20 employees for which neither company nor supra-company collective bargaining agreement was concluded, determines the terms of the remuneration of the employees in the Remuneration By-laws. In general, the Remuneration By-laws must be adopted by an employer in coordination with a company trade union organization active at the company. The Remuneration By-laws enter into force fourteen days after they have been published in the manner practiced in the given enterprise.

Sick Pay

An employer is obliged to pay out 80% of remuneration to employees during the period that employees are incapable of performing work as a result of an illness lasting up to 33 days in a given calendar year, with the exception that if an employee is sick at any one time for a period of no more than 6 days, he/she shall not receive any remuneration for the first day of such sick leave. An employee is obliged to provide the employer with a doctor's certificate within 7 days. Employees employed by foreign companies which do not have any legal presence in Poland are not entitled to receive any further payments from the Social Security Office.

Maternity Pay, Maternity Leave and Paternity Leave

Paternity leave rights

Social security system

General information

The Polish social security system covers almost all economically active persons, i.e.: employers, self-employed people and members of their families.

The definition of an employee is quite broad for the purposes of social insurance and refers to people in an employment relationship, in a mandate contract, a contract of agency, contract to perform a specified task or work, or any other contracts for providing services - no matter what the specified time of those contracts is. This applies also to persons performing cottage industry work, to member of farmer co-operatives and farmers' co-operating groups, clergy and uniformed functionaries.

Self-employed persons are those who run their own non-agricultural businesses, creators and artists and people performing so-called "free occupations" in the meaning of regulations on reduced personal income tax from certain revenues[1].

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[1] Farmers and the members of their families working with them are covered by a separate social security system for farmers, which is run based on separate legislation and by a separate institution - the Farmers Social Insurance Fund (KRUS).

Additionally, the contribution to social security system for several groups is paid from the public sources. These groups include *i.e.*:

(i) unemployed with a right to unemployment benefits;

(ii) persons performing mandatory military service;

(iii) persons on maternity and parental leaves; and

(iv) persons taking care of their disabled children or other disabled members of families.

The social security system in Poland consists of three so-called pillars.

The first pillar, which is mandatory, is based on the "pay-as-you-go" principle which means that the pensions are financed out of the current contributions, for people born before 1948 (who were more than 50 years of age when the reform was introduced). The 80 percent of the whole social security contribution must be paid into the Social Security Fund, constituting the fund of the first pillar.

The second pillar concerns the persons born between 1949 and 1968 and is covered by a reformed "pay-as-you-go" system based on individual accounts. Those persons can additionally choose whether they want to be in funded part - a little more than 60 percent of this group chose that option. Persons born after 1968 are automatically covered by the first and second pillar, which is based on the principle of capitalization of contributions. The social security contributions are paid into pension funds and capitalized in order to constitute a source of future pensions.

The third pillar, which is optional, is mainly based on individual savings but there exists a possibility of establishing an employees pension program organized by the employer.

The statutory conditions necessary to be qualified for a retirement pension is as follows:

(i) the minimum retirement age is set at 60 years for women and 65 years for men; and

(ii) the aggregate amount of the contributory and non-contributory periods of social security is 20 years for women and 25 years for men.

Pension based on the new basis (for those who were born after 31st December 1948) is granted to woman of at least 60 years of age and man of at least 65 years of age. The minimum contributory period is not set, however the pension amount depends strongly on the contributory period, which motivates future pensioners to work longer in order to obtain higher pension. An important fact is that the law sets only the minimum retirement age, and does not set the obligatory retirement age.

Social Security and Retirement Contributions

The social security contribution for the first and the second pillar is equal to 36.58 percent of the gross salary of the employee. The social security contribution is covered partly by the employer and partly by the employee. The employer must deliver the whole contribution for the first and second pillar to *ZUS*, in the following amounts:

(i) 19.52 percent of the gross salary - for retirement pensions; half of this amount is covered by the employer and half by the employee;

(ii) 13 percent of the gross salary - for other pensions; half of this amount is covered by the employer and half by the employee;

(iii) 2.45 percent of the gross salary - for sickness benefits; the whole amount is covered by the employee; and

(iv) from 0.97 percent to 3.86 percent of the gross salary, depending on the safety of the employer's activity (the average percentage will be equal to 1.61) - for work injury benefits; the whole amount is covered by the employer.

Moreover, employers are generally required to remit a certain percentage of an employee's gross salary to the Labor Fund and to the Guaranteed Workers' Benefits Fund. In 2006, employers are required to pay 2.45 percent of their employees' gross salary to the Labor Fund and 0.15 percent of the gross salary to the Guaranteed Workers' Benefits Fund.

However, as soon as the total annual amount of the gross salary becomes higher than 30 times the average monthly remuneration in the national economy, an employer and an employee are no longer obliged to pay social security contributions in a given year for retirement pensions and for other pensions, as described under Items (i) and (ii) above.

The Collection of Social Security Contributions

Contributions for all parts of the mandatory social insurance (including funded pensions) are collected, as stated above, by ZUS. As far as, the collection system is concerned, ZUS's tasks include collection of contributions for:

(i) the mandatory social insurance, i.e. retirement insurance, disability insurance, sickness insurance, work - injury insurance;

(ii) the second funded pillar of the pension system and the distribution of contributions among the various pension funds as well as keeping the Central Register of Pension Fund Members;

(iii) other elements of the Social Security system, i.e.: the health insurance system and the Labor Fund.

Employers pay contributions to their employees, based on the gross wages specified in their contracts. A part of an employee's wages representing the mandatory contribution is withheld by the employer and transferred to ZUS together with the employer's part.

For social security contributions not paid in time, the Social Security Office charges interest on the delay, on the principles and in the amount defined in the statutory regulations on the tax obligations. Such contributions and the delayed interest amounts due and the additional fees, if not paid in time, are collected in a manner regulated by provisions on administrative execution procedure.

In the event of non-payment of the social security contributions, or paying them in amounts lower than the due amount, the Social Security Office may charge the employer or the person responsible for remitting the social security or retirement benefits contributions, an additional fee up to the level of 100 percent of the amounts due.

Collection of contributions for social insurance is performed separately from personal income tax, which is done by the tax authorities. This is due to the fact, that firstly, there are different bases and titles for payments of personal income tax (which is paid on most individual income) and social security contributions (paid only on income from labor or other, strictly specified, benefits). The other difference lays in the frequency of information processing - for social security, the contributions are processed monthly, whereas taxes are paid monthly, but all the reports are compiled annually.

Employer's Obligations Towards ZUS

Employers must register employees at ZUS upon employment. The self-employed register individually. This allows creating or updating individual records in the database of insured persons, which is necessary to reconcile paid contributions afterwards. The

registration of insured persons involves only an information transfer, in electronic or paper formats. Therefore, an employer is obliged to notify ZUS of the employment of every new employee within 7 days of the execution of the employment agreement.

Taxation of Social Security Contribution

Social security contributions paid into the first and second pillars are exempted from personal income tax. However, pensions and other social security benefits are taxed. The reverse principle is applicable to the third pillar: taxation of contribution and exemption from taxation of benefits.

Contribution for the General Health Care Insurance System

The health care insurance system is a system separate from the social security system. Generally, a contribution to the health care insurance system is equal to 8,5% of the gross salary less the amount of the social security contribution paid by an employee. The amount of contribution for health care insurance is deducted from the prepayment for the personal income tax and delivered to ZUS by an employer. Thereafter, ZUS provides this contribution to a special public health care institution, called National Health Fund (*Narodowy Fundusz Zdrowia*). The contribution is paid by the employee, while the employer covers the benefits for the first thirty-three days of the sick leave of the employee.

Labor Fund

The Labor Fund (*Fundusz Pracy*) is a state-operated dedicated fund administered by the Minister appropriate for Labor and Social Policy. Its main objective is to finance benefits for people who have lost their jobs and vocational activation programs for people looking for work and/or threatened by job loss. Labor Fund money is entrusted to self-governing bodies at the district and county levels (the county employment offices) which then disburse benefits to the entitled persons and finance programs for the active prevention of unemployment.

The Labor Fund derives its revenues, *inter alia*, from the contributions paid by employers, presently pegged at 2.45 percent of the basis for calculating the social security contributions (*i.e.* employees wages).

The contributions to the Labor Fund are paid for the entire period of the mandatory social insurance in a manner and on the principles provided for the social insurance rates and the retirement benefits rates. Labor Fund contributions are made monthly to the Social Security Office jointly with the social security and retirement benefits amounts - the amounts thus received by the Labor Fund after subtracting the current rates for social security arising from benefits and training allowances.

For Labor Fund contributions not paid in time, the Social Security Office charges interest on the delay, on the principle and in the amount defined in the statutory regulations on the tax obligations. Such contributions, the delayed interest amounts due and additional fees, if not paid in time are collected in a manner regulated by provisions on administrative execution procedure.

In the event of non-payment of the Labor Fund contributions, or paying them in amounts lower than the amount due, the Social Security Office may charge the employer or the person entitled to remit the social security or retirement benefits contributions, an additional fee up to the level of 100 percent of the amount of rates due.

Pension Funds

Employee pension programs can be executed in different ways i.e.:

a) as employee pension funds;

b) on the basis of a contract with an investment fund;

c) on the basis of a contract with an insurance company; and

d) on the basis of a contract with a mutual insurance association.

Pension funds constitute a part of the social insurance system and they are recognized, under Polish law, as a special type of legal entity established under the Pension Fund Law. In order to establish pension funds, a pension fund company, which manages said pension funds, should first be created. The establishment of both the pension funds and a pension funds company requires a permit from the Pension Funds Supervisory Office. The collected funds increase in value from their investment and must be designated for payment as a life-long pension to the members of the fund when they reach retirement age. A pension fund company is not allowed to undertake any activity other than collection and investment of the funds received from its members.

Confidentiality and Restraints against Competition

Obligation to keep professional secrets

Polish labor law (as well as other regulations) provides that an employee is obliged to keep secret any information regarding the employer, the disclosure of which could cause damage to the employer.

Apart from the statutory obligation to keep an employer's information secret, parties to an employment contract may agree on an employee's additional obligation on to keep certain information secret, both during and after the period of employment. It should be noted there are certain cases when an employee, regardless of the obligation, shall be obliged to reveal information obtained during the period of employment regarding the employer, for example when ordered to disclose such information by a court.

Non-competition agreement.

There are two types of non-competition contract. The first one binds parties of an employment relationship during the period of employment and the second comes into force upon termination.

Non-competition during the period of employment

According to Polish law an employer can conclude a non-competition agreement with an employee - this may be done in the form of a separate agreement, or proper provisions may be inserted into the employment contract. On the basis of this agreement an employee is prohibited from taking up activities competitive (specified in the agreement) with the activities of the employer and must not enter into an employment relationship or commercial agreement on any other basis with an entity performing such activities. An employer who suffers damage as a result of an employee's violation of non-competition provisions may claim compensation for such damage from the employee. The scope and terms of the compensation are limited to those provided for by the Polish Labor Code, unless the damage is caused as a result of the employee's intended guilt.

Non-competition after termination of employment

As explained above parties to an employment contract may agree upon a non-competition agreement to be binding after termination of employment. The parties should define the scope of activities that are to be understood as "competitive", the period of validity of the agreement, and the amount of compensation to be received by the employee for not being able to work in a competitive environment. It should be noted that the compensation shall not amount to less than 25% of the employee's salary during the period of employment.

5 Business Transfers

General principle

Polish Labor Code (Art. 23^1) provisions state that in case of transfer of business or the organized part of business to another company (the "Transfer"), the Purchaser by operation of law becomes a new employer for all employees employed in this business or the part thereof, under the terms and conditions of the existing employment agreements, as of the day of the Transfer. This automatic transfer rule can not be excluded by the parties.

Terms and conditions of employment

Polish law guarantees that the employees are transferred to the new employer under the same terms and conditions of employment they enjoyed with the previous employer. Consequently, there is no need to terminate employment agreements with the employees and enter into new ones. The employment period with the Seller is automatically included in the employment period with the Purchaser. This influences certain employees' rights connected with the length of service (e.g. notice period).

If the Purchaser wishes to amend the provisions of individual employment agreements, this must be done either with employee's consent or by unilateral employer's notice (alteration notice).

In case of part of business transfer, the Seller and the Purchaser are jointly and severally liable for any obligations arising out of employment.

Notification

The Purchaser and the Seller, shall provide their employees with a written notification concerning:

- the expected date of Transfer,
- the reasons thereof,
- the legal, economical, social consequences of the Transfer for their employees,
- intended actions relating to the conditions of employment, in particular the conditions of work, remuneration and retrain.

This notification should be made no later than 30 (thirty) days prior to the expected date of the Transfer.

Termination of employment

Each transferred employee may, within two months of the Transfer, terminate his/her employment agreement with immediate effect, upon giving 7 (seven) days' notice. Such termination creates the same consequences for the transferred employee, as the termination made by the notice of the employer (e.g. such employee will have the right to unemployment benefit).

As a general rule, the employees terminating their employment relationship are not entitled to the severance payment resulting from the organizational changes in the company. Please note, however, that in the light of certain jurisprudence in some situations employees may be entitled to severance payment. As the above position is highly criticized, and because the law on mass redundancies has been amended, then there is a little risk of employee's successful claim.

The Transfer may not constitute a reason for termination of any employment agreement by the Purchaser or the Seller. Such termination could be treated as an unlawful termination of the employment contract by the employer, and the employee could have a legitimate right to claim either (i) reinstatement to work or (ii) the compensation (or sometimes both). However the Purchaser and the Seller is still entitled to terminate any employment contract for any other justified reasons, in accordance with the provisions of law.

6 Sex Discrimination

Equal Treatment

Employees shall be treated equally as regards;

- the conclusion and termination of the employment relationships,
- conditions of employment,
- promotion and access to training in order to raise occupational qualifications,

particularly regardless of **sex, age, disability, race, religion, nationality, political views, trade union membership, ethic origin, religious convictions, sexual orientation or due to employment for definite or indefinite time or on full-time or part-time basis**.

A person, in relation to whom the employer has infringed the principle of equal treatment is entitled to claim indemnification in the amount not lower than minimum remuneration for work with no upper limit.

The Labor Code contains also definitions of molesting, sexual harassment (both treated as a manifestation of discrimination) and mobbing:

(i) Molesting is the following manifestation of discrimination:

- encouraging any other person to breach the principle of equal treatment in employment;
- behavior aimed at or resulting in violation of dignity or humiliation or abuse of an employee.

(ii) Sex discrimination shall also include any unacceptable sexual behavior or any behavior related to the employee's sex aimed at or resulting in violation of dignity or humiliation or abuse of an employee. Such behavior may be manifested by physical, verbal or non-verbal elements (sexual harassment).

Mobbing means any action or behavior relating to an employee or directed against the employee consisting of persistent and long lasting harassment or intimidation of an employee resulting in his or her decreased evaluation of professional capabilities, as well as resulting in or aimed at humiliating or ridiculing an employee, isolating him/her or eliminating him/her from a work team

7 Termination of the Employment Agreement

Introduction

An employment agreement may be terminated either by: (i) mutual agreement; (ii) giving a notice of termination; (iii) unilateral statement of an employer without a prior notice period; (iv) the lapse of time for which an agreement was concluded; or (v) completion of a job for the performance of which an agreement was concluded.

Dismissal for Personal Reasons

Termination of an Employment Agreement by a Notice

The employment agreement for an indefinite term, a probationary employment agreement and an employment agreement for a definite term longer than six months (if such a possibility was included in the agreement) may be terminated by giving a notice of termination.

An employer is obligated to indicate the exact reason for terminating the employment agreement for indefinite term and inform the employee about the right to appeal such a notice to a labor court. Statutory notice periods prescribed by the Labor Code are as follows:

(i) with respect to a probational agreement:

- 3 days' notice for a period up to 2 weeks;
- 1 week notice for a period from 2 weeks to 3 months;
- 2 weeks' notice for a period of 3 months;

(ii) with respect to an agreement for an indefinite period of time, it depends on the length of employment for a particular employer. If an employee has worked:

- less than 6 months - 2 weeks' notice;
- between 6 months and 3 years - 1 month notice;
- at least 3 years - 3 months' notice;

(iii) with respect to an agreement for a definite term:

if an agreement is concluded for a period longer than six months and the parties provided for the possibility to terminate it upon notice - two weeks notice;

(iv) with respect to agreements for a definite term and for the performance of a specific job:

if bankruptcy or liquidation proceedings are announced, such agreements may be terminated upon two weeks' notice, even if the agreement for a definite period of time does not provide for such a possibility.

The period of employment with a former employer may be added to the employment period with the current employer if the employee was transferred to the current employer as a result of the transfer of an employing entity from the former employer to the current employer, or if the present employer is the legal successor to the former one.

The employee whose employment agreement was terminated by the employer upon a notice is entitled to leave to seek a new job during the notice period. The leave period is as follows:

(i) 2 business days if the notice period does not exceed 1 month; and

(ii) 3 business days if the notice period is 3 months or if such period is shortened as provided in Section 1.3.3 below.

The employee may also terminate an employment agreement by giving a notice of termination.

Procedure for Consultations with Trade Unions

A specific procedure is prescribed for the termination of an employment agreement for an indefinite term. This procedure includes the following steps:

(i) before giving a notice, the employer must notify in writing the trade union to which an employee belongs, or which was selected by the employee to protect his/her rights, that it intends to give a notice and indicate the reason for the intended termination; and

(ii) the trade union should present its opinion as to the planned termination within five days of receipt of the notification. If the trade union fails to reply within five days, the employer may give a notice of termination. If the trade union considers the dismissal of a given employee unfair and presents such an opinion within five days, the employer may either accept the objection or give the employee a notice of termination regardless of the opinion of the trade union.

The opinion of the trade union regarding the termination is not binding for the employer, however, the procedure for affirmation must be undertaken by the employer in order to effectively terminate the employment. The employer takes a decision regarding the termination after review of the opinion of the trade union, and in event of lack of such opinion.

Possibility to Shorten the Statutory Notice Period

The parties to an employment agreement may agree after the notice has been served that the employment agreement will be terminated before the end of the notice period. Shortening of the statutory notice period, however, does not change a basis for the termination of the employment agreement.

In the event the termination of an employment agreement is caused by liquidation or bankruptcy or if such a termination is made in accordance with the redundancy procedure, the employer may shorten the statutory three-month notice period by two months. The employer must compensate the employee with his salary due for the remaining part of the notice period.

Termination of an Employment Agreement without Notice

Termination of an Employment Agreement Due to the Employee's Fault

The employer may terminate an employment agreement without a notice of termination due to an employee's fault if an employee:

(i) significantly breaches his/her basic duties;

(ii) commits an offence which makes him/her incapable of performing his/her duties, provided such an offence is obvious or is confirmed by a valid court verdict; or

(iii) loses, due to his own fault, the qualifications to perform his job in a given position.

The employer may terminate the employment agreement only within a month after it obtains information justifying such a termination. The employer must obtain an opinion of the trade union representing an employee before it terminates his/her employment agreement.

Termination of an Employment Agreement Unrelated to an Employee's Fault

The employer may terminate an employment agreement without giving a notice of termination, if:

(i) an employee is sick for a period longer than the period prescribed by the regulations regarding sickness benefits (usually six months, or in exceptional cases, nine months);

(ii) an employee is absent from work for reasons other than sickness for longer than a month.

If the employee, within six months after the termination of the employment agreement, reports to work immediately after the above reasons are no longer valid, the employer should, if possible, re-employ such the employee.

Termination of an Employment Agreement Due to The Employer's Fault

An employee is entitled to terminate an employment agreement without a notice if the employer commits a significant breach of duties towards the employee. An employee may also terminate his/her employment agreement if a medical certificate stating that a work performed by an employee is hazardous to his/her health has been issued and the employer fails to transfer such employee, within a time specified in a medical certificate, to another position appropriate to the employee's health and professional skills. In such case, the employee is entitled to compensation in amount equal to remuneration for a notice period or for two weeks if his/her employment agreement was concluded for a definite term or for performance of a specific job.

Termination of the employment agreement by an employee has the same effects as provided by labor law provisions in connection with the termination of the employment agreement by the employer upon a notice.

The employer may appeal the termination of employment by an employee to a court. Compensations may be awarded, however, they may not exceed the employee's remuneration for a notice period of for two weeks in event of the employment agreement for a definite term or for performance of a specific job.

Other Consequences of the Employee's Absence From Work

The employee's absence from work may be a justified reason for termination of his/her employment agreement upon notice if the employee is frequently absent from work and such absence disturbs the work organization or make it difficult.

Appeal to the Labor Court

Disputes arising from an employment relationship are resolved by labor courts. An employee who finds a notice of termination or the termination itself unjustified or illegal, may appeal such notice or termination to a labor court. The basic rules governing the right of appeal are described below.

Appeal from Illegal or Unfair Notice of Termination

An employee has the right to appeal an illegal or unfair notice to a labor court within seven days of its receipt. If the labor court finds a notice of termination illegal or unfair, it may, pursuant to the employee's request, decide that: (i) the notice is ineffective; (ii) the employee must be re-employed in the event an employment agreement was terminated; or (iii) the employee is paid compensation. The labor court may, regardless of the employee's request, decide that the employee must be re-employed or that re-employment is unreasonable or impossible and, therefore award only compensation. Such compensation may be equal to the remuneration for the period of two weeks to three months, but not more than the remuneration due for the notice period.

In the event the labor court finds the notice of termination of a probationary agreement, an agreement for a definite term, or an agreement for the performance of a specific job illegal or unfair, it may award only compensation.

The employee may lodge an appeal of the notice of termination to the labor court within 7 days from the date of its receipt.

Appeal from Illegal or Unfair Termination of an Employment Agreement Without Notice

An employee has the right to appeal from a termination of his/her employment agreement without a notice or expiry of his/her employment agreement. In such case, the employee may lodge an appeal from to the labor court within 14 days from the date of a receipt of notification on termination or a date of expiry of the employment agreement. If, the labor court confirms that the termination of the employment agreement without notice, or its expiry was illegal, it may order: (i) the re-employment of a given employee; (ii) compensation; (iii) only compensation with respect to the agreements for a definite period of time, or for the performance of a specific job.

Dismissal for Economic Reasons

General

The Redundancy Law dated March 13, 2003 ("Ustawa o szczególnych zasadach rozwiazywania z pracownikami stosunków pracy z przyczyn niedotyczacych pracowników") (Dz.U. no. 90, item 844, as amended) enables an employer who employs at least 20 employees to terminate employment contracts through a procedure other than that prescribed in the Labor Code.

Under the Redundancy Law, there are two types of specific redundancy situations:

(a) group redundancy; and

(b) individual redundancy.

Group Redundancy

Definition

The collective redundancies take place if the employer who employs at least 20 persons terminates the employment, within a period not exceeding 30 days, with:

(i) at least 10 employees, if the employer employs less than 100 employees; or

(ii) 10% of employees, if the employer employs at least 100 but less than 300 employees; or

(iii) 30 employees, if the employer employs at least 300 or more employees,

The collective redundancies as a rule take place for reasons not attributable to the employees. The collective redundancies may be carried out either by way of termination of employment by the employer, or on the basis of mutual consent of the parties.

Consultation

The employer must consult its plan to make collective redundancies with the trade unions active in the company. The consultations shall, specifically, concern ways and means of avoiding collective redundancies or reducing the number of employees affected, and other employment issues related to the planned redundancies.

The employer shall in reasonable time notify the trade unions in writing of:

(i) the reasons for the planned redundancies,

(ii) the categories of employees to be made redundant,

(iii) the number and categories of employees normally employed and their job categories,

(iv) the period over which the planned redundancies are to be effected,

(v) the criteria proposed for the selection of the employees to be made redundant and the order of redundancies, and

(vi) the proposals of how the employees' situation will be solved and, if any payments are concerned, the method for calculating any redundancy payments.

In addition to the above information, the employer has to provide the trade unions with all other relevant information that may influence consultations or the agreement that the trade unions and the employer will execute (as explained in point 3 below).

If there are no trade unions active in the company, all the rights and obligations attributable to the trade unions are exercised by employees' representatives.

The employer is obliged to forward in writing to the District Labour Office (*Powiatowy Urzad Pracy* - "PUP") all the information listed above in items (i)-(vi) (with the exception of the information concerning the method for calculating redundancy payments).

Procedure

Within 20 days after the notification, referred to in point 2 above, has been made to the trade unions, the employer and trade unions should conclude an agreement relating to the terms and conditions of redundancies and the duties of employer related to solving other employment matters connected with the redundancies. If the parties are unable to reach such agreement, the employer is free to unilaterally implement the terms and conditions of redundancies in specific regulations introduced in the company. In any event, however, the employer should take under consideration all the propositions made by trade unions in the course of consultations to the extent possible.

If there are no trade unions active in the company, the employer is obliged to introduce the regulations for collective redundancies after the employees' representatives have been consulted, and take their propositions under consideration.

The employer should notify in writing the relevant PUP of the arrangements considering collective redundancies. The law does not specify the time limit to make such a notification, but it is suggested to make such notification as soon as possible.

The above notification should include information on all arrangements made in relation to the planned collective redundancies, and particularly:

(i) the number of employees to be made redundant,

(ii) the reasons for their redundancies,

(iii) the number of employees normally employed,

(iv) when the redundancies are to be effected, and

(v) information on the consultations with trade unions or employees' representatives.

The employer should provide the trade unions active in the company or in absence of trade unions - employees' representatives with a copy of the notification mentioned above. The trade unions or employees' representatives may send any comments or opinions they may have, concerning collective redundancies, directly to PUP.

Protection of Special Groups of Employees

There are certain categories of employees, who are protected by law against the termination of employment. Until this protection expires, the employer is prohibited to terminate employment, and may only change the terms of work or payment of an employee who:

(i) is close to retirement age,

(ii) is pregnant or on a maternity leave;

(iii) is a member of work council of a national enterprise, or a member of management board of a trade union or person authorized to represent such trade union, or a person representing the employer or is a member of a special negotiating body or an European work council;

(iv) is a social labor inspector;

(v) is drafted for active military service (or similar).

However, if salary of the above persons is decreased, they are entitled to receive a compensation until the special protection expires.

Notice and termination of an employment

The notice of termination can be served only after the second notification to PUP (as referred to in point 3 above). The termination of employment agreements with employees may not occur earlier than 30 days after this second notification to PUP.

Severance Payments for Redundancy Termination

Each employee, with whom the employment is terminated during the process of collective redundancies, is entitled to receive the redundancy payment. The amount of such payment depends on the period of employment with the current employer and is equal to:

(i) one-month remuneration, if the employee was employed with current employer less than two years;

(ii) two-months remuneration, if the employee was employed with current employer two to eight years;

(iii) three-months remuneration, if the employee was employed with current employer more eight years.

The amount of redundancy payment may not exceed 15 times minimum salary (currently PLN 12,700 or ca EUR 2,742).

Individual termination

In certain circumstances employees with whom the employment agreement is individually terminated are entitled to the redundancy payment. This is applicable to employers employing at least 20 employees and if the termination occurs due to reasons not attributable to employees.

Right to Appeal Unfair or Illegal Termination

Termination of employment agreements made without or in violation of the above-mentioned procedure makes said termination illegal.

If an employee considers his/her termination unfair or illegal, he/she has the right to appeal it to a labor court within seven days of the receipt of such a notice. If the labor court finds that a notice of termination is illegal or unfair, it may, at the employee's request, decide that:

(i) the notice is ineffective;

(ii) the employee must be re-employed in the event an employment agreement was terminated; or

(iii) the employee must be paid compensation.

The labor court may, regardless of the employee's request, decide that the employee be re-employed or that re-employment is unreasonable or impossible and award only compensation. Such compensation may be equal to the salary for the period of two weeks to three months, but not less than the salary due for the notice period.

The employees cannot legally waive their right to appeal in the event that the termination of the employment agreements is illegal.

Re-employment

As a rule, the employer should reemploy the employee made redundant if it decides to employ personnel in the same occupational group. This obligation exists if the employee informs the employer of his/her intention to come back. The employee may apply in every available form, even verbally, within one year from the time of termination of employment agreement.

The employer should employ the employee in 12 months' period from the date of termination of employment agreement during collective redundancies.

8 Employee Representatives

The Competencies of the Trade Unions Under Polish Law

General Principles of the Polish Trade Union Law

Employees have a constitutional right in Poland to form and join a trade union. The Polish Constitution provides that the scope of liberty to organize trade unions and other trade union liberties may only be restricted by legal provisions of international agreements that are binding for Poland.

The main law regulating trade unions is the Trade Union Law. It provides that a trade union is a voluntary and autonomous organization of employees, which is set up to represent and defend their rights, as well as professional and social interests. In its statutory activity, a trade union is independent from the employer, governmental and self-governmental institutions and other organizations. The employer, governmental and self-governmental institutions are obliged to treat all trade unions equally.

The main objectives of trade unions are:

(i) to represent the employees;

(ii) to defend the dignity, and collective and individual rights of the employees; and

(iii) to defend the collective and individual material or moral interests of the employees.

Additionally, the Trade Union Law provides that trade unions are to participate in the creation of profitable conditions of work, existence and rest.

In the scope of collective interests of the employees, the trade unions represent all the employees, regardless of whether or not they are trade union members.

In the scope of individual interests of the employees, the trade unions represent the rights and interests of their members. However, upon the request of an employee who is not a member of any trade union organization, a trade union may undertake to defend his/her rights and interests vis-à-vis the employer.

Based on the Trade Union Law, trade unions perform the general control over the observance of the provisions of law regarding the interests of the employees and their families.

Under the Trade Union Law, an employee may not suffer adverse consequences as a result of membership in a trade union. Nor may an employee be subject to adverse consequences if he refuses to join a trade union. Furthermore, an employer may not condition employment or subsequent promotion to a higher post on whether the employee is a member of a trade union. Moreover, an employer may not prohibit the creation of a trade union within its company.

The organizational units of a trade union are created in the statute of the trade union, and they operate at a place of employment in the form of a trade union organization. There may be company and supra-company trade union organizations.

A company trade union organization is a trade union organization involving at least ten employees of a given employer.

A supra-company trade union organization is a trade union organization, which is:

(i) a nationwide trade union organization; or

(ii) an association of trade unions (a "federation"); or

(iii) a nationwide inter-trade union organization (a "confederation").

Obligations of an Employer Towards the Members of a Trade Union

The obligations of an employer in this respect consist of:

(i) granting of an unpaid leave of absence or a release from work to a trade union official; and

(ii) the obligation to obtain the consent of the management board of a trade union in order to terminate an employment agreement with the members of a trade union entitled to special protection.

Obligation to Grant an Unpaid Leave of Absence or Release from Work

An employee elected to perform a function in a trade union outside the company, if such election results in the employee being employed by a different company, is entitled to get an unpaid leave of absence from the original employer, upon the request of the trade union organization in which the employee is to perform his/her function.

If, following the unpaid leave of absence, the employee is willing to return to the previous employer, the period of his unpaid leave of absence is added to the work period based on which the employee's rights are established.

If an employee holding a position in a trade union is obliged to perform an emergency activity relevant to trade union activity outside the company, and this activity may not be performed outside working hours, the employee is entitled to be released from work while preserving his/her right to full remuneration for the time of the release.

Moreover, the Trade Union Law provides for the release from work of the employees performing functions in the management board of the company trade union organization. Such release right is granted:

(i) in part to one employee in the monthly amount of hours equaling the number of members of the organization employed with the subject employer, if the number of members of the organization employed with the subject employer is smaller than 150; or

(ii) in full to one employee, if the number of members of the organization employed with the subject employer is between 150 and 500; and

(iii) in full to two employees, if the number of members of the organization employed with the subject employer is between 501 and 1000, and

(iv) in full to three employees, if the number of members of the organization employed with the subject employer is between 1001 and 2000, and

(v) to additional employee, for each new thousand of employees if the number of members of the organization employed with the subject employer is beyond 2000;

(vi) part time, in such circumstances such release right may be granted to higher number of employees according to rules determined above.

The release from work is granted to the employees, upon a request of the company trade union and is granted with or without preservation of the right to remuneration, depending on the company trade union organization's request.

Obligations of an Employer in case of a Termination of an Employment Agreement - special protected employees.

Generally, an employer may not, without the prior consent of the management board of the company trade union organization:

(i) give notice of termination nor terminate an employment agreement with:

- a member of the management board of the company trade union organization, designated by name by a resolution of the management board of the company trade union organization; or
- another employee entitled to represent such company trade union organization towards the employer or towards a person performing acts within the scope of employment law on behalf of the employer;

(ii) unilaterally change the terms of the employment agreement unfavorably for the employee referred to above in point (i).

Such protection is attributed to the above-mentioned employees during the period specified by the resolution of the management board, and after the expiration of the protection period, for a period equaling half of the period specified by the resolution of the management board, no longer, however, than during one year after its expiration (the "Protection Period").

The management board of a representative company trade union organization organizing up to twenty members is entitled to indicate to the employer two employees entitled to the Protection Period, and for a representative company trade union associating more than twenty members, two members and additionally:

(i) one employee for each commenced unit of ten employees who are members of this organization within the scope of 21 to 50 employees;

(ii) one employee for each commenced unit of twenty employees who are members of this organization within the scope of 51 to 150 employees;

(iii) one employee for each commenced unit of thirty employees who are members of this organization within the scope of 151 to 300 employees;

(iv) one employee for each commenced unit of forty employees who are members of this organization within the scope of 301 to 500 employees; and

(v) one employee for each commenced unit of fifty employees who are members of this organization for over 500 employees.

The Trade Union Law provides that the management board of a representative company trade union organization indicates the number of employees entitled to the Protection Period:

(i) up to the number calculated in accordance with above-mentioned provisions; or

(ii) up to the amount of the number of persons occupying management posts with the employer, where the persons occupying such posts are:

a. a person individually directing the company and any substitutes therefore;

b. a person being a member of a collective management body of the company; or

c. other persons designated to perform acts within the scope of employment law on behalf of the employer.

The management board of a non-representative company trade union organization may indicate by name one person to be entitled to the Protection Period.

During the period of six months following the establishment of the funding committee of a company trade union organization, the Protection Period may be granted to no more than three employees specified by name by a resolution of the funding committee.

If the management board or the funding committee of a trade union organization does not indicate the persons entitled to the Protection Period, the Protection Period is attributed to the president of the trade union or to the president of the funding committee, until such persons are indicated.

All those employees who were granted protection before July 1, 2003, are entitled to such protection until July 1, 2004, apart from the members of the funding committee, who are entitled to the Protection Period for 6 months following the establishment of the company trade union organization.

Consequences of the Non-observance by an Employer of its Obligations Towards a Trade Union or Towards its Members

The Trade Union Law provides that a person who, in relation with his/her function or position:

(i) obstructs the creation of a trade union organization in accordance with law; or

(ii) obstructs the conducting of the activity by the trade union in accordance with law; or

(iii) discriminates against an employee due to its membership in a trade union organization, his/her refusal to join a trade union organization, or his/her performance of a function in a trade union; or

(iv) does not fulfill the obligation to notify the trade union of the transfer of the company, or to collect from the employee's remuneration a trade union contribution;

is subject to a fine of between 10 and 360 daily rates (daily rates may be set at between PLN 10 and PLN 2,000) or to a restriction of liberty between one month and twelve months.

The Social Labor Inspectorate

The company trade union organization manages the activity of the Social Labor Inspectorate (*Spoleczna Inspekcja Pracy*).

The Social Labor Inspectorate is the social service conducted by the employees for the purpose of assuring safe and hygienic conditions of work for the employees. Its main objectives are to facilitate the trade unions' ability to monitor the employer's observance of the provisions of the employment law.

The Social Labor Inspector, an organ of the Social Labor Inspectorate, may be appointed from among members of the trade unions. The company trade union organizations may, however, decide that an employee who is not a member of a trade union may be

appointed a Social Labor Inspector. The company trade union organizations hold the elections of the Social Labor Inspectors, based on the By-laws of the Elections of the Social Labor Inspectors, whereas the nationwide trade union organizations are entitled to set principles of the By-laws of the Election of the Social Labor Inspectors.

The company trade union organization may request the recalling of a Social Labor Inspector, if he does not duly perform its obligations.

Additionally, if the Social Labor Inspector wishes to apply for a control to be performed by the State Labor Inspection (*Panstwowa Inspekcja Pracy*), first he has to coordinate its application with a company trade union organization.

The Labor Medical Service

The Labor Medical Service (*Sluzba Medycyny Pracy*) is appointed:

(i) for the protection of the health of the employees working in conditions which are harmful due to the work environment and due to the manner of performance of work; and

(ii) to provide a prophylactic health care for the employees.

While performing its tasks, the Labor Medical Service is obliged to cooperate, inter alia, with the representatives of the employees, and in particular with the trade unions.

Such cooperation consists mainly in:

(i) the exchange of information on health dangers;

(ii) participation in health promoting actions, regarding in particular the realization of health promotion programs; and

(iii) choosing of the forms of medical assistance.

The Mediation Commissions

Mediation commissions (*komisje pojednawcze*) are appointed for the amiable settlement of disputes deriving from employee claims regarding the employment relationship. The members of these commissions are appointed jointly by an employer and a company trade union organization, and, if there is no company trade union organization in a given company, by an employer upon obtaining a positive opinion of the employees.

The European Works Council ("EWC")

European Work Councils Act has transported the EWC Directive into Polish Labor Law on April 5, 2002.

A company or a group of companies with "European dimension" must create an EWC where the company/group employs al least 1,000 employees and where at least two companies in the group employ a minimum of 150 employees in two different EU member states.

The competence of the EWC shall be limited to information and consultation on matters concerning the community scale undertaking or the group. The definition of consultation is "the organization of an exchange of views and the establishment of the dialogue".

Since institution of European Work Council is rather new in Polish Labor Law it is hard to predict what will be its role and meaning.