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Poland

Employment and Labour Law

Contributor

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This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in Poland.

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Poland: Employment and Labour Law

1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

A justified reason is needed if the employer intends to terminate an open-ended employment contract as well as a fixed-term contract. The justifying reasons may occur either on the part of the employee or on the part of the employer (with the latter triggering the obligation of payment of statutory severance pay if the employer employs 20 or more employees). There is no fixed catalogue of lawful reasons for termination.

Justifying reasons on the part of the employer may consist, for example, of misbehaviour, mismanagement, underperformance of entrusted tasks or lack of the required expertise, skills, including expert knowledge, language, communication, project management etc.

The most common reason on the part of the employer is the liquidation of the employee's job position due to internal reorganization / restructuring and/or financial difficulties.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

The provisions of the Polish labour law regarding collective redundancies apply if an employer employs at least 20 employees and if it terminates, for any reasons not concerning employees, within a period of less than 30 consecutive days, employment relations with at least:

(i) 10 employees, when the employer employs less than 100 employees;

(ii) 10% of the employees, when the employer employs between 100 and 300 employees; or

(iii) 30 employees, when the employer employs more than 300 employees (the so-called 'Group Dismissals Act').

If the foregoing criteria have been met, the employer is subject to specific procedural obligations stemming from the Law of March 13, 2003 on Principles of Termination of Employment Relations for Reasons not Related to Employees. These obligations include notification and consultation with the trade union (or in the absence of a trade union, with employees' representatives), notifications to the local employment office and the obligation to pay severance pay to those employees made redundant.

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

Pursuant to local Polish laws, a business sale – especially one resulting in a TUPE transfer of employees – cannot constitute a justifiable reason for termination of one's employment. Accordingly, if the employer intends to terminate the employment of certain workers within the context of a business sale, it is necessary to demonstrate that a genuine post-transaction reorganization or restructuring has taken place as a result of which the employee's position has become redundant.

4. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

In cases of both fixed-term and open-ended employment contracts, notice periods are the same and equal to:

(i) 2 weeks – if the employee has been employed (by the terminating employer) for less than 6 months;

(ii) 1 month – if the employee has been employed for at least 6 months but not longer than 3 years;

(iii) 3 months – if the employee has been employed for at least 3 years.

There are no special categories of employees who would benefit from a longer period of notice.

5. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?

No, payment in lieu of the period of notice is not possible in the termination upon notice scenario.

Such an option would be possible only if the parties concluded a mutual termination agreement, in which case the parties may freely agree upon the date of termination. If the termination date is immediate, the employer can pay in lieu of notice.

6. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?

Yes. During the notice period. The employer may, however, require the employee to: (i) use his unused vacation leave (if any) during the period of notice; and/or (ii) release him from the obligation to perform work with the right to remuneration. There is a market practice of releasing employees from work performance upon remuneration also during employment.

7. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

Any statement of will of the employer which sufficiently expresses the employer's intent to terminate the employment contract – even a verbal one – is sufficient to achieve an effective termination of the employment relationship. In other words, there is no prescribed procedure to be followed to achieve an effective termination.

However, for the termination to be both effective and legal, the termination statement must meet certain formal legal requirements, e.g. written form, instruction about the right to appeal to court, and a justified reason. Additional procedural obligations may apply if there is a trade union present at the employing entity.

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

The employee may appeal against termination of employment to the labour court on the charge of breach of law in the process of termination. The appeal is a frequent practice in cases of termination upon notice.

The labour court, on finding the appeal of the employee well-grounded, may: (i) award compensation, in principle, for the amount not exceeding the employee's 3-months' remuneration; or (ii) reinstate the employee in the job and award him remuneration for the remaining period of unemployment (from 1 to 3 months' salary). Recently, reinstatement of employees has become more frequent.

When special protection against termination (e.g. pregnancy, pre-retirement age) is breached, though, rules of the employer's liability are more severe, and employees can be entitled to remuneration for the whole period of staying out of work.

Often in count disputes employees also raise claims for payment of additional benefits, overtime hours or discrimination, etc.

9. How, if at all, are collective agreements relevant to the termination of employment?

Collective agreements are nowadays less and less common among Polish employing entities and therefore their significance is rather limited.

As far as termination of employment is concerned, a collective bargaining agreement could be relevant if it provides for additional, non-statutory protection against termination to certain groups of employees or additional compensation for the dissolution of employment by the employer.

10. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

No, as a rule the employer is not obliged to seek the permission of any third party to legally terminate an employment relationship. Exemptions apply only if a trade union operates at a given employer. Consultations with trade unions are necessary, if the employer intends to terminate the employment of a member of a trade union organisation or a person covered by a union's protection. Without the consent of the trade union the employer may not terminate employment contracts with certain categories of employees such as, for example,

employees during pregnancy or maternity leave, trade union activists or social labour inspectors.

A breach of this requirement would render the termination in breach of law, enabling the terminated employee to seek either compensation for unlawful termination or reinstatement to work.

11. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

There are no dedicated rules designed to protect employees from discrimination or harassment in respect of the termination of employment specifically. In this context, the general provisions prohibiting the employer from discriminating or harassing workers apply to termination of employment scenarios. For instance, if the employer plans to terminate one or more employees from a larger pool of employees performing the same or similar duties, the employer is obliged to apply selection criteria that cannot be discriminatory, and such criteria must be disclosed in the notice of termination.

12. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

The employee might be able to file a successful appeal against the termination of employment based on the charge of breach of law in the process of termination. Regardless of the above, the employee could raise claims for compensation related strictly to discrimination or harassment.

13. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

Polish labour law provides for special protection of employment to a variety of groups of employees, e.g. employees during pregnancy and maternity leave, employees in pre-retirement age, employees during vacation leave or sick leave, trade union activists, etc.

The rules of protection of employees are significantly relaxed in case of collective redundancies. However, there are certain groups of employees who are protected against termination upon notice even in cases of a collective redundancy, subject to a few exceptions, e.g. the liquidation of an employer. These groups include among others: pregnant women, employees on maternity leave, persons who will reach retirement in no more than 4 years, certain trade union officers, members of a special negotiating body or a European or domestic works council, and social labour inspectors. In the protection period the employment contract can be terminated upon mutual agreement on termination.

The above means that if such protected employees are employed and they do not agree to sign the termination agreement, one could only try to offer them a financial incentive (usually corresponding to the period of protection) in order to encourage them to sign the mutual termination agreement.

14. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Poland has not yet implemented the EU Directive on whistleblowers and currently there are no provisions protecting employees who make disclosures in the public interest. Although the draft provisions of law have been in the works for the past year, the date of their implementation and their final wording is not yet known; however, they are planned to come into force this year.

15. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

Financial problems constitute a valid reason for termination of an employment contract as well as changing terms and conditions of employment. However, the situation differs significantly depending on whether or not the employer undergoing such difficulties employs at least 20 employees.

In cases where the employer employs at least 20 employees and intends to lay off staff due to economic problems or any other reasons on the side of the employer, special provisions of law apply. Under the 'Group Dismissals Act' employees dismissed due to reasons on the side of employer are entitled to additional severance pay (1-3 months' salary depending on the employment history – but no more than 15 times statutory minimum salary).

In case the number of laid-off employees exceeds certain thresholds, it is also necessary to instigate the group dismissals procedure involving notifications to the labour authorities, negotiations with trade unions or employees' representatives and establishing the rules for dismissals (often including severance pay higher than statutory).

The employer can re-hire employees who have been dismissed due to financial problems; moreover, under the Group Dismissals Act they should do so if within a period of one year after the group dismissals procedure the employer started re-hiring employees in given occupational groups. However, rehired employees cannot be treated less favourably than other employees. They have to receive the same remuneration for the same work or for work of the same value.

There is also an option to alter the terms and conditions of employment (including reducing salary) without actual termination of the employment relationship.

The employer can give an employee notice terminating (altering) terms and conditions of employment. Under such notice the employer offers employment conditions different to those agreed (e.g. lower position, lower salary).

If the employee accepts such an offer (or remains silent) the new terms and conditions enter into force after the expiry of the notice period. If the employee rejects such an offer before half of the notice period elapses, the employment contract terminates upon the lapse of the full notice.

16. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions? Have any court or tribunal claims been brought regarding an employer's use of AI or automated decision-making in the termination process?

Involving artificial intelligence in the process of recruitment or termination is currently an option for a very limited number of employers. Although AI is developing rapidly, we see risks related to the use of such solutions in the employment processes, especially at very sensitive times such as recruitment and dismissals.

Key risks include the fact that the decision-making process might not be fully transparent while the decisions need to be well justified, taking into account circumstances as well as objective criteria. The courts do not recognize nor understand AI involvement or processes. Thus, any AI use must be well documented and clearly defined in the labour process. It is also necessary to draw a firm line between the processes carried out by AI and final decisions made by humans.

In cases of termination of the employment contract, the reasons for termination must be true, accurate, concrete and fall within a reasonable timeframe.

In many situations employers struggle with finding true and accurate reasons for termination. In practice, defining the reasons for termination is often a complex process involving fact-finding, interviews with superiors and co-workers and challenging the outcome. At this stage it is doubtful whether AI would be able to address such matters properly. However, in some big organizations employing huge groups of employees AI is becoming increasingly essential in overseeing certain employment-related matters such as performance which then transform into termination of employment.

Even if court or tribunal claims regarding an employer's use of AI or automated decision-making in the termination process have already been brought, the resolution of such cases is not yet known.

17. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

As a rule, Polish law does not provide any obligatory financial compensation in cases of termination of employment contract.

Only in a situation where the employment contract is terminated (1) by an employer employing at least 20 employees and (2) due to reasons not related to the employee, is the employer obliged to pay additional severance pay amounting to 1-3 months' salary (but no more than 15 times statutory minimum salary). The severance pay amount depends on the period of employment with the employer.

In case of termination upon mutual consent of the parties, employers often offer voluntary compensation for amicable termination. Such compensation usually ranges from 1 to 3 months' salary of the employee.

18. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, in what form, should

the agreement be documented? Describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

The parties are free to terminate employment upon mutual consent of the parties and agree the terms and conditions of termination. This includes date of termination, additional payments or restrictions including non-disclosure or confidentiality clauses.

In termination agreements the parties often provide for one-sided or mutual waiver of claims. Such clauses are effective, with one significant exception. Under Polish law an employee cannot waive their right to basic remuneration or other remuneration elements. This is understood very broadly, and in consequence any withdrawal of right to overtime remuneration, bonuses, severance pay, holiday equivalent etc. may be deemed invalid. In this context, careful formulation of the agreement is crucial to minimise the risk of any such waivers being found null and void.

19. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

Restricting an employee from undertaking work for a competitor after termination of employment requires signing a non-competition agreement. Such an agreement can be concluded with an employee who has access to important information, the disclosure of which could be harmful for the employer. The agreement has to define the scope of the non-competition clause, period of restriction and the compensation due to an employee for observing such restriction. The compensation cannot be lower than 25% of the employee's aggregate remuneration received prior to termination during a period corresponding to the post-employment period of restriction on competition. For instance, in the case of a 6-month post-employment prohibition on competition, the compensation cannot be lower than 25% of the employee's aggregate remuneration – e.g. including bonuses – received during the last 6 months of employment.

20. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Employees are obliged to keep company business secrets confidential during and after termination of employment under the Act on Combating Unfair Competition (1993).

An important element of the protection of business secrets is a statutory requirement that the secrets must be defined (i.e. the employer must indicate what information constitutes a company secret) and the employer must undertake necessary measures to maintain its confidentiality (i.e. must secure the information against unauthorised access or disclosure).

The parties to the employment contract may also conclude a special confidentiality agreement regulating the scope and period of restriction. Concluding such an agreement is a key element in the protection of the employer's secrets, as it allows the implementation of additional security measures (e.g. contractual penalties applicable only after termination of employment) which can better protect the interests of the employer.

21. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

Employers are not obliged to provide references to new employers, even upon the request of the employee.

Upon termination of employment the employer is obliged to issue a certificate of employment (Pol. *świadectwo pracy*). Such a document contains key information concerning employment: the employee, job position, period of employment, manner of termination, absences, holidays, parental leaves used, etc. The certificate of employment is highly regulated and its contents are explicitly defined by the provisions of law. It does not include any evaluation of the employee's performance.

Polish GDPR provisions in the area of labour law are very restrictive and employers are very much limited in their right to collect, process and disclose any personal data of employees and former employees. Therefore, the references are provided only upon request by the employee. However, there is no common practice of issuing such documents and employers hesitate to comply with such requests.

22. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

Termination of employment contracts is problematic for employers for several reasons, the first being due to the

inconsistent case law of the courts examining appeals against the termination of the contract. Labour courts often adopt a pro-employee approach and thus apply various criteria or expect additional measures not explicitly provided by law.

Secondly, under Polish law there is a wide category of employees protected against termination of employment. This often leads to confusion, as the employers may not be aware that certain persons are protected.

Thirdly, employers struggle to identify the reasons for termination of employment contracts and to collect relevant evidence.

The risks can be mitigated by involving in the process all interested parties (business, HR, legal) and ensuring that every decision is not only well justified but also well documented.

23. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

1. Increased employment guarantee for specially protected employees

In 2023 an amendment to the Code of Civil Procedure came into force, according to which protected employees gained a greater employment guarantee. The amendment provides new protections in cases in which an employee subject to special protection against termination with or without notice (i) pursues a claim for declaring termination ineffective or (ii) seeks reinstatement.

According to the amendment, if a protected employee submits a request for intention injunctions, the court secures the claim by ordering continued employment of the protected employee until the proceedings have become final. The increased employment guarantee applies to all employees subject to special protection, e.g. union activists, pregnant employees, employees taking parental leave or under pre-retirement protection.

2. Implementation of Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law;

The establishment of internal reporting procedures will be mandatory for entities for which at least 50 people perform or provide work. For other entities, the establishment of internal reporting channels will be optional. The whistleblower will be protected against dismissal.

According to the newest draft law, the legislation is expected to come into force a month after its promulgation, after which employers will have another month for introducing appropriate internal reporting procedures. Entrepreneurs will be given a very short time to implement procedures and internal whistleblowing systems. Employers obliged to introduce internal procedures where there are no union organizations can already select representatives to participate in the consultations. Such action will certainly speed up the process of introducing the procedure once the law comes into force. Employers who already have internal procedures in place must remember to review and adjust them to the final wording of the law once it comes into force.

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