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Amendments to the labour law as of 22 February 2016

Payroll Alert 1/2016

Please find below the most significant, in our opinion, amendments to the labour law which shall become effective on 22 February 2016.

Legal basis:

1. Act of 25 June 2015 amending the Labour Code and certain other acts (Journal of Laws 2015, item 1220).

I. TYPES OF EMPLOYMENT CONTRACTS

In accordance with the new provisions, there shall be only three types of employment contracts:

- employment contract for a trial period,
- employment contract for a definite period of time,
- employment contract for an indefinite period of time.

Under the new provisions, there shall be neither employment contracts for a time of the completion of a specified task nor employment contracts for a period of time comprising the absence of an employee – they both shall take the form of standard employment contracts for a definite period of time.

II. EMPLOYMENT CONTRACT FOR A TRIAL PERIOD

Conclusion of a subsequent employment contract for a trial period with the same employee shall be possible in two cases:

- an employee must be employed to perform other works (multiple conclusion is admitted),
- it has been more than three years since the day of termination or expiry of the previous employment contract and an employee is to be employed to perform the same type of work (single conclusion is admitted).

III. EMPLOYMENT CONTRACT FOR A DEFINITE PERIOD OF TIME

The period of employment on the basis of an employment contract for a definite period of time and the total employment period on the basis of employment contracts for a definite period of time concluded by the same parties of an employment relationship shall not exceed 33 months, and the total number of these contracts shall be no more than **three**.

These limits shall be coincident.

Any break in employment shall have no effect on the abovementioned limits.

An amendment extending the termination of a contract shall have an equivalent legal effect as the conclusion of a subsequent employment contract for a definite period of time.

If the employment period based on an employment contract for a definite period of time exceeds 33 months or if the number of concluded contracts is more than three, an employee is considered, since the first day after the completion of the 33 months' period or since the day of conclusion of the fourth employment contract for a definite period of time, employed on the basis of an employment contract for an indefinite period of time.

EXCEPTIONS

The abovementioned limitations shall not be applied to employment contracts for a definite period of time concluded:

- for the purpose of substituting an employee during a justified absence from work,
- for the purpose of completing occasional or seasonal work, or tasks performed periodically,
- for the purpose of performing work during the term of,
- when the employer indicates objective reasons on his/her part.

– if their conclusion in a given case is to satisfy the actual temporary need and is necessary in this scope under all circumstances of the conclusion of the contract.

In the case of an employment contract for a definite period of time excluded from the limits, it shall be mandatory to conclude an additional contractual clause as regards the purpose and/or circumstances of application of this type of contract.

The parties to employment contracts for a definite period of time concluded for the abovementioned purposes applicable on 22 February 2016, shall be obliged to amend the contracts providing information regarding the purpose and/or circumstances of their conclusion within three months – only then shall it be possible not to include them in the limit.

A contract concluded for objective reasons on the employer's part shall require submission of such information at state Labour Inspectorate within five days since its conclusion.

TRANSITIONAL PROVISIONS

In the case of employment contracts for a definite period of time, applicable on the day when the new provisions become effective, the employment period on the basis of an employment contract for a definite period of time shall be included in the 33 months' period, counting from the day when the abovementioned amendments become effective.

The employment contract for a definite period of time, applicable on that day, shall be considered the first employment contract for an indefinite period of time or the second employment contract for a definite period of time if it has been concluded as the second.

IV. PERIOD OF NOTICE FOR EMPLOYMENT CONTRACTS FOR A DEFINITE PERIOD OF TIME

Under the new provisions, each employment contract for a definite period of time can be terminated irrespectively of the period of time for which it was concluded and whether or not such possibility is admitted by its provisions.

The period of notice for employment contracts for a definite period of time shall be the same as for employment contracts for an indefinite period of time, that is from two weeks to three months, depending on the employment period of an employee with a given employer, however, their termination shall still differ due to mandatory justification and trade union consultation over the intent to terminate them.

When establishing the period of notice for employment contracts for a definite period of time, concluded after 22 February 2016, all employment periods with a given employer shall be taken into consideration, including those before 22 February 2016.

Employment contract for a definite period of time concluded for the purpose of substituting an employee during a justified absence from work shall be treated as a standard employment contract for a definite period of time with regard to the length of the period of notice.

TRANSITIONAL PROVISIONS

Hitherto applicable provisions shall continue to be in force in the case of employment contracts for a definite period of time binding on the day when the new Act becomes effective, terminated before that day.

To employment contracts for a definite period of time concluded for a period of up to six months or concluded for a period longer than six months whose provisions do not admit the possibility of their termination with two weeks' notice, binding on the day when the new Act becomes effective, in terms of the acceptability of their termination the hitherto applicable provisions shall continue to be in force.

When terminating employment contracts for a definite period of time concluded for a period longer than six months whose provisions admit the possibility of their termination with two weeks' notice, binding on the day when the new Act becomes effective, the new provisions shall be applicable.

When establishing the length of the period of notice of employment contracts for a definite period of time binding on the day when the new provisions become effective, whose termination comes into force counting from the day when the new Act becomes effective, the employment periods with a given employer before the day when the new Act becomes effective shall not be taken into consideration.

V. RELEASING EMPLOYEES FROM DUTY TO PERFORM WORK

The release of an employee from duty to perform work shall be regulated by the Labour Code – an employer shall be entitled to release an employee from duty to perform work until the expiry of the period of notice. During the period of the release an employee shall keep his/her right to remuneration.

The release from duty to perform work shall be a unilateral entitlement of an employer, however, withdrawal of release from duty to perform work shall be subject to an employee's consent.



Should you wish to discuss the above mentioned amendments in detail, feel free to contact the HR & Payroll Department of RSM Poland.

RSM Poland
Spółka Doradztwa Podatkowego S.A.
ul. Miła 2
00-180 Warszawa
T +48 225600 666

www.rsmpland.pl
biuro@rsmpland.pl

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