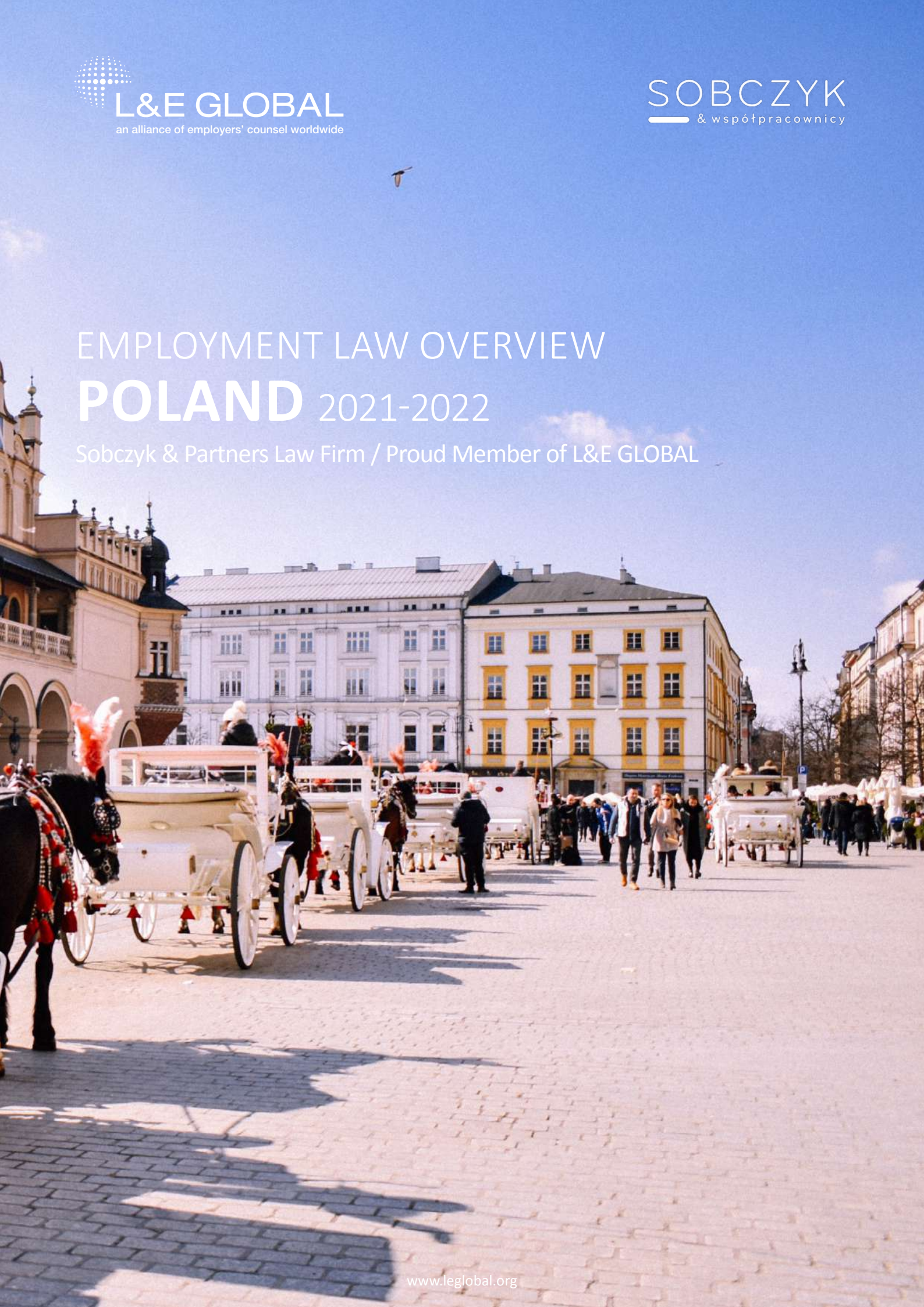


# EMPLOYMENT LAW OVERVIEW

# **POLAND** 2021-2022

Sobczyk & Partners Law Firm / Proud Member of L&E GLOBAL



# TABLE OF CONTENTS.

I.	GENERAL OVERVIEW	03
II.	HIRING PRACTICES	04
III.	EMPLOYMENT CONTRACTS	06
IV.	WORKING CONDITIONS	08
V.	ANTI-DISCRIMINATION LAWS	11
VI.	PAY EQUITY LAWS	13
VII.	SOCIAL MEDIA AND DATA PRIVACY	14
VIII.	TERMINATION OF EMPLOYMENT CONTRACTS	15
IX.	RESTRICTIVE COVENANTS	18
X.	TRANSFER OF UNDERTAKINGS	19
XI.	TRADE UNIONS AND EMPLOYERS ASSOCIATIONS	20
XII.	EMPLOYEE BENEFITS	22



# I. GENERAL OVERVIEW

## 1. INTRODUCTION

Poland is well known for its low personnel costs. Due to this fact, it is currently Europe's main outsourcing hub, with companies such as Amazon, General Motors, Dell and various major banks moving their plants and shared service centres to Poland. Easy access to qualified employees results from a state-paid university system, which produces many highly specialised and innovative workers, especially in the field of IT and engineering.

## 2. KEY POINTS

Risks to prepare for:

- an ever-evolving tax and social security system.
- high presence and activity of trade unions in case of major employers (mostly in industrial-related sectors).
- labour courts sensitive to employee rights.
- strict EU data protection regulations (i.e. hindering transfer of personal data outside of the EU).

## 3. LEGAL FRAMEWORK

Employees' and employers' rights and obligations are established in the following sources of labour law:

- the Constitution of the Republic of Poland, which defines general principles of freedom to work and social rights;
- the law established by appropriate organs of the European Union in the scope of labour law;
- International agreements concerning labour law issues;
- the Labour Code,
- acts and secondary legislation, defining the employees' and employers' rights and obligations;
- provisions of collective labour agreements and other agreements, rules and procedures, and statutes setting forth the rights and obligations

- of the parties to the employment relationship (these are generally only company-level or group-level collective labour agreements in cases where trade unions are active - sector-level collective labour agreements are not used in practice); and
- the mutual rights and obligations of the parties to labour relations are also defined by the employment contract.

## 4. NEW DEVELOPMENTS

From May 2019, new rules on protection of employees' personal data came into force. The regulations introduced detailed requirements in terms of various forms of monitoring at work (including video monitoring), as well as rigorous rules on processing the personal data of employees and job candidates.

As of September 2020, new legislation is pending in the field of remote work, which is intended to replace regulations on telework – however, the Ministry of Labour has not yet provided any precise draft thereof.

# II. HIRING PRACTICES

## 1. REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

### A. REQUIRED PERMITS

The current regulations on employing foreigners in Poland differentiate between the legal situation of citizens of EU member states and the legal situation of citizens of the remaining countries. There are also differences in the scope of the kind of work performed by a foreigner. In case of some professions, the law does not require a permit, whereas other ones require a permit issuance procedure.

Foreigners from the EU member states and from a state within the European Economic Area as well as their family members have unlimited access to employment in Poland. Foreigners from other countries must obtain a work permit and, in some cases an entry visa, if they want to take a job in Poland.

### B. OBTAINING PERMITS

A work permit is issued exclusively upon a written application of an entity, which commissions a foreigner to perform work. Such a permit is issued to a specific foreigner. Furthermore, it defines the entity which commissions a foreigner to perform the work and the position the foreigner is to hold or the kind of work he/she is to perform. The work permit is issued for a specific term, however not longer than three years, and can be extended. Besides the work permit, the entitlement of a foreigner to work in Poland also requires obtaining an appropriate visa unless the foreigner is staying in Poland legally by other means. In some cases, the immigration provisions waive the obligation of a work permit.

## 2. DOES A FOREIGN EMPLOYER NEED TO ESTABLISH OR WORK THROUGH A LOCAL ENTITY TO HIRE AN EMPLOYEE?

No. In Poland, foreign employers are allowed to hire employees directly.

## 3. LIMITATIONS ON BACKGROUND CHECKS

In Polish law, there are strict limitations on background checks. An employer is only allowed to obtain the information concerning the candidate as indicated in legal acts – in the Labour Code or, if applicable, in other specific acts that may concern specific job positions. Some limited forms of background checks (such as verifying the references from the previous employer) might be possible after obtaining the candidate's detailed and explicit consent. However, the lack of such consent or its withdrawal (and consequently – inability to process the verification) may not be the basis for disadvantageous treatment of the candidate and it may not cause any negative consequences for the persons, in particular, it may not constitute a reason justifying the refusal of employment.

## 4. RESTRICTIONS ON APPLICATION/INTERVIEW QUESTIONS

An employer should demand an applicant to provide the following personal data only: name(s) and surname, date of birth, contact data indicated by such a person, and in the scope necessary to

perform work of a specified type or in a given job position – education, professional experience and employment history. Personal data is provided to an employer in the form of a statement issued by the person whose data is provided. An employer may require the relevant documentation to confirm personal data of the persons. Employer may require the provision of personal data other than the data specified above pursuant to separate regulations.

The consent of a candidate may constitute the basis for processing their additional data by an employer, except for personal data relating to criminal convictions and offences. A lack of consent or its withdrawal may not be a basis for disadvantageous treatment of a candidate. Also, it may not cause any negative consequences for the person, in particular, it may not constitute a reason justifying the refusal of employment. It is important to note that the consent of the candidate does not justify processing any categories of personal data. Processing must always comply with basic principles arising from the GDPR, including the principle of adequacy and minimisation. Therefore additional questions that force the candidate to provide information about their personal life, especially those concerning the candidate's family life and personal relationships, are strictly prohibited.

# III. EMPLOYMENT CONTRACTS

## 1. MINIMUM REQUIREMENTS

When starting an employment relationship, an employee undertakes to perform work of a specific kind to the benefit of the employer and under the employer's management as well as at a place and for a time set by the employer, whereas the employer undertakes to employ the employee for remuneration. Employment under such conditions is employment under an employment relation regardless of the name of the contract the parties concluded. The Labour Code distinguishes three types of employment contracts, including an employment contract for a trial period, an employment contract for a fixed term and an employment contract for an unlimited term.

Regardless of its type, the employment contract should define the parties to it, the contract's type, the date of its conclusion, and the conditions of work and remuneration, in particular the kind of work, the venue of work, the remuneration for work reflecting the type of work performed with a specification of the components of the pay, working time, and the date of commencement of work. The employment contract is concluded in writing. If this form has not been preserved, then at the latest on the day of starting the work by the employee, the employer should confirm in writing for the employee the conditions as regards the parties to the contract, its type and terms and conditions. Additionally, the employer is obligated to notify the employee in writing about other conditions of pay indicated in the Labour Code within seven days from concluding the employment agreement.

All changes to the conditions of work and pay require a written form. It is also possible to conclude with an employee a part-time employment contract. Such employment may not, however, result in less

advantageous employment terms and conditions in comparison to full time employees who perform the same of similar work.

## 2. FIXED-TERM/OPEN-ENDED CONTRACTS

The Labour Code does not differentiate between the principles of concluding employment contracts. Independently of its kind, the employment contract is concluded under the same principles.

Unlimited-term contracts are most typical. Recently, however, there is a trend to depart from this form of employment toward fixed-term contracts or agreements in civil law. A fixed-term employment contract is concluded either until an agreed calendar date or until the date, which can be defined by a fact, which will occur in the future.

The Labour Code allows an employer to conclude consecutive fixed-term employment contracts with the same employee. However, the period of employment under a fixed-term contract, as well as the total period of employment under fixed-term contracts concluded between the same parties of the employment relationship, may not exceed 33 months, and the total number of the contracts may not exceed three. Moreover if the term of employment under a contract of employment for a fixed-term is longer than the 33 months, or if the number of concluded contracts is higher than three, it is understood that the employee, accordingly as of the day following the lapse of the 33-month period or the date of conclusion of the fourth fixed-term contract, is hired under a contract of employment for an indefinite term. Additionally the agreement between the parties, during the term of a fixed-term contract, upon a longer period of performance of work under the contract, is understood as a conclusion, as of the

day following the day of contract termination, of a new contract of employment for an indefinite term. There are four exemptions, when fixed-term employment contracts can exceed the period/number mentioned above:

1. for replacement for an employee during their justified absence from work;
2. for performance of occasional or seasonal work;
3. for performance of work for a term of office;
4. if the employer indicates objective reasons attributable to the employer.

The relevant district labour inspector must be notified in writing by the employer in case of conclusion of a fixed-term employment contract, in the event indicated in point 4 above.

### 3. TRIAL PERIOD

An employment contract for a trial period is concluded in the event when, prior to making a decision on initiating an employment relation, one or both parties thereto wish to get acquainted with the conditions of the future execution of mutual rights and obligations at a workplace. It is up to the parties to conclude such an agreement. The trial period may not exceed three months.

After the trial period, the parties are not allowed to conclude another contract for a trial period except in the situation where the employee is hired to perform a different type of work. It can be also concluded once again, after the lapse of at least 3 years from the termination or expiry of the previous employment contract.

In principle, an employee can be employed at the same employer under such a contract only once. However, the parties may extend the trial period for three months if, in the concluded contract, they set the trial period as a shorter one.

### 4. NOTICE PERIOD

Requiring a notice period in an employment contract is acceptable if provisions of law state so. The Labour Code allows for a notice period in a contract concluded for a trial period, for a fixed-term and for an unlimited term. The notice period to an employment contract concluded for a trial period

depends on the period for which the contract was concluded and the notice period in an employment contract concluded for fixed or unlimited term depends on how long the employee's length of service was. The notice period may vary from two weeks, one month, or three months for both fixed and unlimited terms; and 3 working days, 1 week or 2 weeks for contracts wherein the trial period is concluded.

In principle, it is possible, by way of normative agreements, to introduce longer notice periods than the ones provided for in the Labour Code. However, the provisions of the employment contract or normative agreement may not be less advantageous than the provisions required by the labour law. Therefore, it may happen that, in a specific factual state, longer notice periods will be considered as disadvantageous and, as such, shall not be enforced.

# IV. WORKING CONDITIONS

## 1. MINIMUM WORKING CONDITIONS

The most important principles regarding working and remuneration conditions are set forth in the Labour Code. Nevertheless, the provisions of the Labour Code in this scope constitute only a minimum of employee rights, which can be broadened by the employer. Therefore, the provisions of collective labour agreements and collective settlement agreements as well as the rules and procedures and statutes, have priority before the solutions in the Labour Code and the provisions of other acts and secondary legislation, as long as they are not less beneficial to the employees. Also, under the employment contract concluded by the parties thereto, it is acceptable to grant employee rights, which are more advantageous than the ones provided for in the Labour Code.

## 2. SALARY

The basis for the amount of employee's remuneration is found in the employment contract concluded with the employer. The most popular and the most important criteria for setting the amount of one's salary are the kind of work and the qualifications required to perform the work and the quantity and quality thereof. An employee has a guaranteed minimum pay, which is set pursuant to the principles and the procedure provided for in the Minimum Wage Act. If, however, a higher minimum salary has been set in collective labour agreements or the remuneration rules and procedures, then the employer is obligated to respect such agreements in place of the act.

Apart from his/her basic pay, an employee may receive different allowances. Granting the latter

is justified by special circumstances pertaining to the kind of work or skills of an individual employee. Additional remuneration can be divided into those which are obligatory (e.g., extra pay for working overtime, extra pay for working at night), and those which are optional (e.g., extra pay for working shifts, service premiums). An employee can also be granted different kinds of awards and bonuses.

## 3. MAXIMUM WORKING WEEK

The working time may not exceed eight hours a day and forty hours in an average five-day working week in an accepted settlement period, which does not exceed four months (there are however, cases where settlement periods of up to 12 months may be used). This means that a weekly norm always has an average character in the context of the settlement period, and its character may vary depending on the system and organisation of the working time. The legislator has introduced a possibility to shorten or extend the settlement period and the working time in a day in accordance with the cases defined in the Labour Code. The weekly working time together with the overtime may not however, exceed forty-eight hours in the accepted settlement period on average.

## 4. OVERTIME

Working overtime is accepted in two situations only: in the event when there is a necessity to conduct a rescue mission to protect human life or health, to protect property or the environment, or to remove a breakdown, or in the event of special employer's needs. It is the employer who assesses whether there have occurred special needs which justify working overtime.



Due to the special character of working overtime and the dangers, which are connected thereto, the principle is to impose a limit to overtime hours. The limit exclusively includes the work performed as overtime due to the special needs of the employer. It is the employer's duty to ensure an employee an uninterrupted eleven-hour rest period per 24-hour day. The weekly working time together with overtime may not, in turn, exceed forty-eight hours in an accepted settlement period on average.

In the case of an annual limit, the Labour Code states that, for an employee, the number of overtime hours may not exceed one hundred and fifty hours in a calendar year. If the employer is not obligated by a collected labour agreement or by work rules and procedures, it is acceptable to define another (higher) number of overtime hours in a calendar year. The maximum annual number of overtime hours is contingent on the need to maintain the maximum weekly number of working hours (on average, forty-eight hours per week in an average settlement period).

## 5. HEALTH AND SAFETY IN THE WORKPLACE

The Constitution of the Republic of Poland states that everyone is entitled to safe and hygienic work conditions. This principle has been specified in the Labour Code, which states that both the employer and the employee have obligations in the field of health and safety at work.

The employer is responsible for health and safety in the workplace. The employer's scope of responsibility is not affected by employees' duties in the field or by entrusting the performance of work health and safety service tasks to specialists from outside the employing establishment. The employers cannot free themselves from the obligation to provide safe and hygienic work conditions for their employees.

The employees' main duties in the field of health and safety in the workplace include: being familiar with the provisions and principles of health and safety at work, participation in training sessions and briefings in this field, compliance with the instructions and directives issued by superiors, undergoing initial and periodic medical examinations, check-ups and

other medical examinations as recommended, and co-operation with the employer and superiors in the performance of duties concerning health and safety at work.

### A. EMPLOYER'S OBLIGATION TO PROVIDE A HEALTHY AND SAFE WORKPLACE

The employer is obliged to protect the health and well-being of employees by ensuring conditions of health and safety at work, through the appropriate use of the achievements of science and technology. In particular, the employer is obliged to:

- organise work in a manner ensuring conditions of health and safety at work;
- ensure the provisions and the principles of health and safety at work are followed in the work establishment, issue instructions to remedy breaches within this scope, and supervise the implementation of such instructions;
- react to the needs related to ensuring health and safety at work, as well as adopt measures to improve the existing level of protection of health and well-being of employees, given the changing conditions of work;
- ensure the development of a coherent policy preventing accidents at work and occupational diseases; the policy should consider technical problems, work organisation, conditions of work and social relations, as well as the effect of factors of the work environment;
- consider the protection for the health of young employees, pregnant employees or employees nursing a child, as well as disabled employees within the preventive measures undertaken;
- ensure the implementation of orders, submissions, decisions and decrees issued by the authorities exercising supervision over the conditions of work;
- ensure the implementation of recommendations of a social labour inspector.

The costs of the acts undertaken by an employer as part of health and safety at work must not be borne by the employees in any way.

The employer and a person managing the employees are obliged to know, to the extent necessary to perform the duties imposed on them,

the provisions on the protection of work, including provisions and principles of health and safety at work.

## B. COMPLAINT PROCEDURES

In case of breach of health and safety rules, employees can submit their objections to the health and safety at work service operating at the workplace. If the health and safety at work service does not take appropriate action, or if there is no health and safety at work service at the workplace, employees can submit their objections to the State Labour Inspection, which can penalise the employer.

## C. PROTECTION FROM RETALIATION

Employees cannot be discriminated due to the fact of submitting their objections to the health and safety at work service or the State Labour Inspection.

# V. ANTI-DISCRIMINATION LAWS

## 1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

An employer is under the duty to respect the dignity and other personal rights of an employee and employees have equal rights for equal performance of the same duties. This principle in particular is applied to the equal treatment of men and women at work. It is not permissible to discriminate against an employee, either directly or indirectly, especially on the grounds of a person's sex, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, denomination, sexual orientation, as well as employment for a definite or indefinite term or on a full-time or part-time basis.

## 2. EXTENT OF PROTECTION

Equal treatment in employment is defined as prohibition of any discrimination, direct or indirect, on any grounds, especially those referred hereinabove. It is the employer's obligation to prevent discrimination in employment. Breaching of this obligation is a justified reason for termination of the employment contract without notice by employee.

Direct discrimination occurs where based on above factors one employee is treated less favorably than another is, has been or would be treated in a comparable situation. Indirect discrimination occurs where an apparently neutral provision, criterion or practice puts or would put all or a large number of employees belonging to a particular

group at a particular disadvantage or disproportion on one or more grounds listed hereinbefore as regards the establishment and termination of their employment relationship, terms and conditions of employment, promotion and access to training for the development of their professional qualifications, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim is appropriate and necessary.

## 3. PROTECTIONS AGAINST HARASSMENT

Any unwanted conduct with the purpose or effect of violating the dignity of an employee and of creating an intimidating, hostile, degrading, humiliating or offensive environment is treated as harassment, and sexual harassment is defined as any form of unwanted conduct of a sexual nature, or referring to a person's sex, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, including verbal, non-verbal or physical conduct. Employees have similar rights regarding both discrimination and harassment in the workplace.

Workplace bullying ("mobbing") is any act or behavior relating to an employee or targeted against an employee that involves persistent and long-term bullying or intimidation, resulting in lower self-evaluation by the employee of his professional abilities, with the purpose or effect of humiliating or ridiculing, isolating or eliminating that employee from the team.

## 4. EMPLOYER'S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

It is an employer's obligation to provide a workplace adequately adapted for disabled persons. The employer must take into account the limited motor abilities of disabled workers. This includes the need for adaptation to a reduced operability of the communication routes within the building, stairs (elevator) doors, windows, bathrooms, etc.

Disabled persons have additional rights, as their working time may be shortened, leave may be extended and additional breaks at work may be granted. However their rights depend on the level of disability adjudicated by respective authority. Nightshifts and overtimes are strictly forbidden.

## 5. REMEDIES

In the event of discrimination, employees can claim damages in a court proceeding. A person against whom the employer has violated the principle of equal treatment in employment, has the right to compensation of at least the amount of the minimum remuneration for work, as defined in separate regulations.

It is the employer's duty to prove that in differentiating the employee's situation, he has based his decisions on objective reasons.

The fact that an employee has exercised his/her rights due to a violation of the principle of equal treatment in employment, may not constitute a reason for the disadvantageous treatment of the employee and may not result in any negative consequences toward the employee; in particular, it may not constitute grounds for the termination of an employment relationship by an employer, with or without notice.

A bullied employee has additional rights if his/her health has deteriorated as a result of bullying at work, and may claim financial compensation from the employer for the damage suffered, in particular if he/her terminated the employment contract as

a result of the incident. The employee's statement of will when terminating the employment contract, must be made in writing, giving the grounds for termination that justify the termination thereof.

## 6. OTHER REQUIREMENTS

Employers are obliged to act against discrimination in employment. This also includes preventive actions. The employer should inform the employees of the kinds of actions that constitute examples of discrimination in employment, and how to react to witnessed or experienced violations.

The employer must provide employees with the contents of provisions concerning equal treatment in employment in the form of written information announced in the work establishment, or must ensure that employees have access to these provisions in other standard methods used by the employer. In Poland, it is quite a common practice among employers to introduce specific anti-discrimination policies.

# VI. PAY EQUITY LAWS

## 1. EXTENT OF PROTECTION

Employees have the right to the same remuneration for the same work or for work of the same value. Such remuneration includes all components of remuneration, regardless of their name and character, as well as other work-related benefits allocated to employees in cash or in forms other than cash. Work of the same value is understood as work, the performance of which, requires from the employees comparable occupational qualifications, confirmed by documents envisaged in separate provisions or by professional practice and experience, as well as comparable responsibility and effort.

## 2. REMEDIES

An employee who suspects discrimination in terms of remuneration or unequal remuneration, may take the case to court or file a complaint with the National Labour Inspectorate. In the event of a court dispute, if an employee accuses the employer of violating the provisions of non-discrimination, the employee should indicate the alleged cause of discrimination as well as facts to present the violation as probable. From this time, the employer bears the burden of proving that the differentiation of the situation of employees was caused by objective reasons.

## 3. ENFORCEMENT/ LITIGATION

In such cases, the decision of the labour court replacing the provisions of the employment contract with relevant non-discriminatory provisions, may shape the content of the ongoing employment relationship for the future. In the event of a breach of the principle of equal treatment in employment with regard to the amount of remuneration in the past (especially after termination of employment), an employee may claim compensation in the amount

of the difference between the remuneration they should have received without violating the principle of equal treatment and the remuneration actually received, for a period of up to 3 years.

## 4. OTHER REQUIREMENTS

It is becoming more popular among major employers (over 1000 employees) to introduce pay equity regulations, allowing for the monitoring of pay equity among employees and adjusting pay accordingly. Many employers, in order to avoid accusation of remuneration discrimination, introduce a clause of earnings confidentiality in employment contracts or work regulations, which forbids informing other employees about the amount of the employee's remuneration, sometimes even under the threat of dismissal, which is contrary to the law, and therefore null and void. For example, in the judgment of 26 May 2011 (file no. II PK 304/10), the Polish Supreme Court decided that disclosure of remuneration that was covered by a confidentiality clause, in order to prevent violation of the principle of equal treatment and to manifest the remuneration discrimination, cannot constitute a reason justifying the termination of an employment contract. An employee can disclose the information on his remuneration if he suspects that there are cases of remuneration discrimination at the workplace. It should also be remembered that the information on the amount of individual remuneration is the personal data of the employee, not the employer, so ultimately the employee has the right to use this information.

# VII. SOCIAL MEDIA AND DATA PRIVACY

## 1. RESTRICTIONS IN THE WORKPLACE

The employer may restrict the employee's use of Internet and social media during working hours.

### A. CAN THE EMPLOYER MONITOR, ACCESS, REVIEW THE EMPLOYEE'S ELECTRONIC COMMUNICATIONS?

As long as it is necessary to ensure the organisation of work enabling full use of working time and proper use of the work tools made available to the employee, the employer may monitor, access and review the employee's business e-mails, as well as other forms of communication. The provisions on such forms of monitoring should be included in work regulations.

## 2. EMPLOYEE'S USE OF SOCIAL MEDIA TO DISPARAGE THE EMPLOYER OR DIVULGE CONFIDENTIAL INFORMATION

The employee is obliged to take care of the best interests of the employer's establishment and keep confidential any information, disclosure of which could damage the employer. Violation of employer's personal rights or confidential information may be treated as a serious breach of the employee's basic duties and employer may terminate the employment contract without notice.

# VIII. TERMINATION OF EMPLOYMENT CONTRACTS

## 1. GROUNDS FOR TERMINATION

An employment contract can be terminated only on the grounds listed in the Labour Code. This means that both the parties to a collective labour agreement and the parties to the contract cannot establish other grounds for terminating the employment contract. They cannot combine or modify individual grounds, either. The employment contract is therefore terminated:

- under a settlement agreement between the parties thereto;
- by a unilateral statement of either party to the employment agreement while preserving the notice period (termination on a notice);
- by a unilateral statement of either party to the employment agreement without keeping the notice period (termination without notice);
- upon the end of the term for which the employment agreement was concluded.

As follows from the provisions of the Labour Code, settlement agreements and terminating the employment relation with or without notice pertain to all three types of employment contracts.

The Labour Code specifies the reasons that are considered to be acceptable in order to terminate an employment contract without notice. Each party is obligated to provide cause for terminating the employment contract without notice. In the case of giving notice to an employment contract, the Labour Code only indicates that the employer's statement of giving notice to an employment contract concluded for an unlimited time should include a reason justifying the notice. Both terminating an employment contract without notice and giving notice thereto should be made in writing.

## 2. COLLECTIVE DISMISSALS

Collective dismissals are those, which are made in the event where the employer who employs at least 20 employees needs to terminate multiple employment relations where the employees are not at fault. The collective dismissal must take place within 30 days and pertain to at least: a) 10 employees when the employer employs less than 100 employees; b) 10% of employees when the employer employs at least 100 employees, however not more than 300 employees; or c) 30 employees when the employer employs 300 or more employees.

The employer is obligated to consult with the company's trade organisations or with employee representatives prior to a collective dismissal. The consultations lead to concluding a settlement agreement defining the principles of actions in the matters concerning employees under the intended collective dismissal.

## 3. INDIVIDUAL DISMISSALS

Terminating an employment contract with notice is a unilateral statement of will made by one party to the other party, in an employment relationship. An employment contract will terminate on the day that the period of notice expires. The employer's statement of giving notice to an employment contract concluded for an unlimited time should include a reason justifying the notice.

Terminating an employment contract without notice is a unilateral statement of will made by one party to the employment relations to the other party which causes an immediate termination of the employment relation. The Labour Code lists three reasons for immediate termination due to employee misconduct (this list is exhaustive). The

employer does not have to exercise the option should he decide that the employee's faulty behavior makes it possible to continue employing such an employee. The reasons are: 1) gross violation of the employee's basic employee duties; 2) the employee's committing of a crime during the employment relation which makes it impossible to continue the employment relation; 3) the employee, through his/her fault, has lost his/her authorisations which are necessary for him/her to perform the work at a given position. Additionally, the employer can terminate an employment contract with an employee effective immediately, where the employee is not at fault, in the case of a prolonged unexcused absence of the employee at work.

## A. IS SEVERANCE PAY REQUIRED?

In connection with terminating employment relations within a collective dismissal and individual dismissals for reasons which do not concern the employee (if the employer employs at least 20 employees), the employee is entitled to a severance payment.

The amount of the severance payment may not, however, exceed the amount of 15 times of a minimum remuneration for work as set forth in the provisions of the Act on minimum wage (i.e. the maximum amount of severance is approx. 8.600 EUR). This limit may however, be exceeded by agreement of the parties.

There are also special categories of employees whose dismissal requires the employer to pay a specified amount of severance payment.

Such employees are government agency representatives, teachers and persons who perform home-based work, among others. The right to severance payments can also result from normative agreements.

However, these regulations cannot be less advantageous for the employee than general sources of labour law. The Labour Code also provides for severance payment to an employee in connection with his/her retirement or disability, and the payment of a death benefit.

## 4. SEPARATION AGREEMENTS

A separation agreement is not a concept recognised either in practice or by the labour laws of Poland.

## 5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

An employee seeking to challenge wrongful termination can file an appeal with a labour court. Most types of employment notices can be appealed against and the appeal should be filed with a competent labour court within 21 days from the delivery of the employment notice. In such a case, the employee can demand a ruling on the ineffectiveness of the termination of employment, or to be reinstated at work on previous terms, or a payment of damages.

The labour court may reject the employee's demand to declare the notice of termination ineffective, or to reinstate the employee in a job, if it determines that the demand is impossible or pointless; in such a case the labour court awards compensation.

In the event of terminating an employment contract, effective immediately and in violation of law, the employee is entitled to file a claim for damages or to be reinstated at work. The claim should be filed with a labour court within 21 days from the receipt of the notification on terminating the employment contract without notice, or from the day of expiration of the employment contract.

**Ineffective Termination of Employment Relation:** It is permissible under Polish law to terminate an employment contract by way of a unilateral statement of will, due to an ineffective contract; a court proceeding is therefore required in order for the court to rule on the ineffectiveness of such a statement or whether the employee should be reinstated at work. Under the Labour Code, only the employee is allowed to appeal against a defective employment notice. If the employee fails to appeal



against the received statement, the statement has the effect of terminating the employment contract (even if it is defective).

## 6. WHISTLEBLOWER LAWS

Work on the Act on Transparency in Public Life, which includes regulations on protection of whistleblowers, is currently in progress.

# IX. RESTRICTIVE COVENANTS

## 1. DEFINITION OF RESTRICTIVE COVENANTS

Restrictive Covenants are regulated by a limited extent within the labour law. An employee should not engage in any activity in competition with the employer, and should not perform work under an employment relationship, or on any other basis, to the benefit of any entity involved in such an activity (non-competition clause), unless such activity is specifically allowed as defined in a separate agreement. This includes non-solicitation of customers.

Accordingly, this rule applies to any post-employment non-competition agreement concluded by an employer and an employee, who has access to particularly sensitive information, the disclosure of which could cause damage to the employer. The agreement should define the extent of the non-competition clause and the amount of compensation due to the employee from the employer.

## 2. TYPES OF RESTRICTIVE COVENANTS

The extent of the restrictive covenant (i.e. in scope, length of time and geographic reach) as well as the consequences for each party in the event of a breach of said covenant, and any other pertinent details should be clearly defined in the agreement between the employer and employee.

Non-competition agreements and non-solicitation of customers clauses are recognised and may be enforceable under the law. However, non-solicitation of employee clauses are invalid based

on case law as they violate the right to free choice of employment; no person may be prohibited from exercising his/her profession.

## 3. ENFORCEMENT OF RESTRICTIVE COVENANTS – PROCESS AND REMEDIES

If an employer suffers damage due to the employee's breach of the non-competition provisions of the employment contract or a post-employment non-competition agreement, the employer may claim compensation.

The non-competition agreement becomes invalid before the expiry of the term of the agreement referred to therein, if the grounds justifying the non-competition clause have ceased to exist, or if the employer is in breach of the obligation to pay compensation.

## 4. USE AND LIMITATIONS OF GARDEN LEAVE

The employer may exempt the employee from the obligation to perform work until the lapse of the notice period, upon termination of the employment contract. During the period of exemption, the employee retains the right to remuneration.

# X. TRANSFER OF UNDERTAKINGS

## 1. EMPLOYEES' RIGHTS IN CASE OF A TRANSFER OF UNDERTAKING

Employees' rights in the case of a transfer of undertaking are defined in the Labour Code. Under the law, the new employer becomes a party to the current work relations. Consequently, under the principle of a legal successor, the new employer acquires any and all rights resulting from the work relations established with the previous employer, and all obligations which the previous employer owed to the employees of the entity. This entity's employees preserve the rights they were entitled to prior to the business transfer, and they are bound by the same duties they had toward the previous employer.

It is the new employer's duty to inform the company trade unions, and in the case of their absence, the employees, about the planned transfer of the company at least thirty days before the planned transfer of the business. This information should include the planned transfer date, the reasons for the transfer, the legal, economic and social effects thereof on the employees, as well as the intended activities concerning the conditions of employment, in particular the working conditions, salary and retraining.

An employee of the business being transferred may end the employment relation with the new employer. Within two months from the transfer, the employee can terminate the employment relation with a seven-day notice. However, the transfer to a new employer cannot constitute a reason for the employer to terminate the employment relation.

## 2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

The new employer is bound by the content of the employment relations in force at the time of the transfer. The content of the employment relation is shaped not only by the employment contract, but also by any normative agreements which the previous employer was a party to. The new employer is obligated to apply the provisions of collective labour agreements to those employees who were covered by such agreements, for a period of one year prior to the day of the business transfer.

# XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

## 1. BRIEF DESCRIPTION OF EMPLOYEES' AND EMPLOYERS' ASSOCIATIONS

The essence of the freedom to associate results in an unrestricted possibility to establish trade unions and employers' organisations and to join such organisations. The freedom is guaranteed both in the Constitution of the Republic of Poland and in the Labour Code. These issues are regulated in detail in the Act on trade unions and in the Act on employers' organisations. The special character of trade unions and employers' organisations results from the fact that they have the right to negotiate and to conclude collective labour agreements and other settlement agreements.

Trade unions are social organisations that associate working people, which includes not only employees but also certain categories of contractors (however, in practice, contractors rarely form or join trade unions). They are a voluntary form of self-organising that operate on the basis of statutorily shaped organisational structures, which have a legal personality. Trade unions represent employees and protect their dignity, rights and material and moral interests, both collective and individual. They also have a right to represent employees' interests internationally. Trade unions co-participate in creating advantageous conditions for work, life and rest.

Employers' associations on the other hand, are corporate organisations that have the status of a legal person based on the collectiveness of their members. Such organisations protect the employer's rights and interests in employment relations. Therefore, they aim at protecting business, financial, economic as well as organisational and

functional interests. All employers are entitled to the freedom to form an employer association.

## 2. RIGHTS AND IMPORTANCE OF TRADE UNIONS

The manner of establishing the principles of functioning and the entitlements of the trade unions are regulated in detail in the Act on trade unions. As organisations aimed at representing employees and protecting their interests, trade unions are authorised to appear on their behalf, to conduct collective negotiations and to conclude collective labour agreements, as well as other agreements, to ensure appropriate working conditions. They also oversee whether the labour law is being observed and participate in supervising the rules and regulations of health and safety at work. They are also authorised to issue opinions regarding labour law development. Trade unions may conduct economic activities; however, the income therefrom should be used for statutory tasks and cannot be divided among the members.

As a result, trade unions may exercise considerable influence over the distribution of the national income and the content of legislative decisions concerning labour legislation and social insurance. Trade unions ensure that the employer complies and appropriately implements the labour legislation. They also play a critical role in shaping policies on working conditions.

In the scope of individual labour law, the authorisations of the trade unions pertain to issuing opinions on notices to employment contracts concluded for an unlimited term, and terminating an employment contract without notice. The trade unions have this entitlement as regards to their

members and employees who have turned to trade unions to represent their interests.

### 3. TYPES OF REPRESENTATION

Employees can organise themselves into trade unions. A trade union is established under a resolution on its establishment, adopted by at least ten persons authorised to establish a trade union. The persons who adopted a resolution on establishing a trade union also adopt the statutes and elect a founding committee composed of between three and seven persons. An established trade union must be registered. Upon its registration, the trade union and its organisational units indicated in the statutes, acquire a legal personality.

#### A. NUMBER OF REPRESENTATIVES

The law does not introduce any limitations regarding the number of trade unions functioning in a given company or associating employees of many companies. The only limitation is the requirement to adopt a resolution on establishing a trade union by at least ten authorised persons. An employee can also belong to more than one trade union.

#### B. APPOINTMENT OF REPRESENTATIVES

Each trade union is entitled to representation in the scope of collective rights and interests of all employees under the statutory scope of operations. However, in individual employment relations, trade unions represent the rights and interests of their members. Upon a motion of a non-associated employee, the trade union may undertake to defend the employee's rights and interests against the employer.

### 4. TASKS AND OBLIGATIONS OF REPRESENTATIVES

The Labour Code and the Act on trade unions regulate trade union rights in employment relations.

The trade union concludes a collective labour agreement on behalf of employees and defines the terms, which should be reflected in the content of the employment relation and other provisions, including those concerning mutual obligations of the parties to the agreement. Furthermore, the employer is obligated to consult or inform the trade union about all-important decisions concerning its employees. This pertains to such issues as the transfer of the workplace to another employer, an intention to give notice to an employment contract, conditions of telework, agreeing on rules and procedures and taking actions within health and safety at work, among others.

### 5. EMPLOYEES' REPRESENTATION IN MANAGEMENT

Polish labour law does not provide for employees or their representatives to participate in managing the employer's business, with the exception of commercialising state entities in which employees retain the right to elect some members of the supervisory board and the management board.

### 6. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES

In some cases (e.g., within the procedure of collective dismissals), in the event when there is no trade union at a workplace, the employer must conduct consultations with representatives of the employees. The principles of electing employee representatives are defined at each employer separately. Employers with at least 50 employees can establish a works council. It is up to the employees to demand the establishment of a works council, after being informed of passing the 50 employee threshold by the employer. The rights of the works council are mostly consultative and advisory.

# XII. EMPLOYEE BENEFITS

## 1. SOCIAL SECURITY

The principles of social insurance coverage and the rules of establishing social insurance contributions are regulated in the Act on the social insurance system, under which employees are subject to mandatory pension, disability, health and accident insurance.

The amounts of contributions to pension, disability and health insurance are expressed in the form of a percentage rate that is equal to all insured, as set forth in the Act. The percentage rate for accident insurance varies for individual payers of the contribution and is calculated on the level of occupational risks and the effects of the risks. Depending on the type of contribution, it is financed by the employer and the employee in different proportions. Nevertheless, it is the employer who is obligated to calculate the amount of the contribution to the Social Insurance Agency and deduct it from the employee's income. The employer is also responsible for the punctual transfer of the contributions to the Social Insurance Agency.

## 2. HEALTHCARE AND INSURANCES

From the contributions made to the social insurance, an employee has a right to sickness benefits, maternity benefits, an attendance allowance, compensation benefits and a funeral allowance, as well as damages in the event of bodily injury caused by an on-the-job accident. Employees are entitled under health insurance to benefit from public health care centres.

## 3. REQUIRED LEAVE

### A. HOLIDAYS AND ANNUAL LEAVE

An employee is entitled to annual, uninterrupted, paid holiday leave, the duration of which,

depending on the number of years worked, is 20 or 26 days. Holiday leave is granted on days which, for the employee, are working days. Upon the employee's application, the holiday leave may be divided into parts. In such a case, however, at least one such part of the holiday leave should last no less than 14 consecutive calendar days. The employee is entitled to the remuneration for the holiday leave, which he/she would have received had he/she been working. Apart from the holiday leave, the employee is entitled to time off from work on Sundays and public holidays. At present, there are 13 public holidays in a calendar year.

### B. MATERNITY AND PATERNITY LEAVE

The right to maternity leave is connected with giving birth to a child during employment, regardless of the employee's length of service with the employer. Maternity leave is a right which can be exercised only in kind.

A female employee has a right to maternity leave of 20 weeks upon giving birth to one child. This leave is extended proportionately in the event of giving birth to more than one child. The female employee can use no more than 6 weeks of the maternity leave before the anticipated date of the birth. An additional 32-week-long parental leave (resulting in a total of a 52-week leave related to childbirth) may be granted to any of the parents. As a general rule, the parent on childbirth-related leave will receive 100% of his or her basic remuneration for the first half of the leave, and 60% for the second half.

Having used up at least 14 weeks of maternity leave after the delivery, the female employee can renounce the right to the remaining part of the maternity leave. In such a case, the remaining, unused time of the maternity leave is awarded to the employee - the father who is raising the child upon his written request. Additionally, the employee - the father who is raising the child - is entitled to a paternity leave of 2 weeks.

## C. SICKNESS LEAVE

While an employee is unable to work due to an illness or isolation caused by a contagious disease, lasting in total up to 33 days in a calendar year, and in the case of an employee who has reached 50 years of age, lasting in total up to 14 days in a calendar year, the employee retains the right to 80% of his/ her remuneration. In case of an illness during pregnancy - within the period specified above - an employee retains the right to 100% of her remuneration. If the period of incapacity to work should last longer, the employee is entitled to sickness benefits paid by the Social Insurance Agency.

## D. DISABILITY LEAVE

A person classified with a severe or moderate degree of disability is entitled to an additional holiday leave of 10 working days in a calendar year. The right is acquired by the person after working one year and after being classified in one of the above degrees of disability.

## E. ANY OTHER REQUIRED OR TYPICALLY PROVIDED LEAVE(S)

The employer is obliged to release an employee from work for a period of:

- 2 days - in the case of the employee's wedding, birth of a child, or death and funeral of his/her spouse or child, father, mother, stepfather or stepmother;
- 1 day - in the case of the employee's child's wedding or death and funeral of the employee's sister, brother, mother-in-law, father-in-law, grandmother, grandfather and other individuals maintained by the employee or under his/her direct care.

There are other special-case leaves as well, such as leave in order to donate blood or plasma, or leave for persons summoned to appear before a court or administrative body.

## 4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

The current pension system in Poland consists of three segments, generally referred to as the pillars. In the first pillar, the Social Insurance Agency manages the funds. The means are not invested, although they are recorded on the insured person's individual account and are subject to valorisation. The second pillar is based on the operations of Open Pension Funds whose task is to trade and multiply the fund. The third pillar consists of the Employee Pension Schemes and Individual Retirement Accounts. The first and the second are mandatory, whereas participation in the third one is voluntary.

Pension under the first pillar is calculated on the basis of the sum of valorised contributions recorded on an individual account of the insured at the Social Insurance Agency, the valorised initial capital and an average lifespan for women and men. The amount of the pension under the second and the third pillar depends on the investment effectiveness of the funds.

At present, the retirement age is 60 years for women and 65 years for men. Only after reaching this age, may one apply for the retirement pension. The exceptions are bridge retirement pensions for those working under special conditions or performing work of a special character. Such persons have a right to pension benefits at the age of 55 for women and 60 years of age for men.

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# SOBCZYK & PARTNERS LAW FIRM

## POLAND

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*This memorandum has been provided by:*

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