

To Whom It May Concern,

Please find below the information on selected and, in our opinion, the most significant **amendments to the Labor Code which become effective on April 26th, 2023.**

We hope that you will find the information useful.

The Mac Auditor Team

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1. Information on terms and conditions of employment

The amendment to the Labor Code introduces significant changes in the information on employment conditions. The employer will be obliged to inform the employee in paper or electronic form no later than within **7 days from the date of admission of the employee to work** about:

1. about the daily and weekly working time standard applicable to the employee;
2. about the employee's daily and weekly working time;
3. the employee's work breaks;
4. the employee's daily and weekly rest period;
5. overtime, i.e.:
 - rules for taking time off for overtime work,
 - financial compensation for overtime work;
6. rules of moving between places of work (in the case of work in more than one place);
7. additional components of remuneration not specified in the employment contract and additional cash or material benefits;
8. interims of the amount of paid leave to which the employee is entitled;
9. on the binding rules for termination of employment;
10. right of employee to trainings;
11. the collective agreement or other collective agreement to which the employee is subject;
12. social security institution – no later than within 30 days of the employee's admission to work.

The employer will be able to provide information on the terms and conditions of employment in electronic form but only on condition that the employee will be able to print and store it, and the employer keeps proof of its transfer or receipt by the employee.

IMPORTANT!

Information about the terms of employment will be **personalized for each employee**. The employer will be obliged to include records regarding the rights of a particular employee.

The employer shall inform the employee in paper or electronic form of **any change in the terms** and conditions of employment, immediately, but no later than on the day on which such change applies to the employee.

In addition, the employer is obliged to inform the employee about **the change of its registered office** on paper or electronic form within no more than 7 days from the date of change of address.

2. Probationary contracts

The amendment to the Code introduces fundamental changes to probationary contracts. **The length of the contract will depend on the will of the parties and the intention to continue employing the employee.**

The contract for the trial period can be concluded:

- for a period not exceeding 1 month - if both parties after the probationary period intend to conclude a fixed-term employment contract for a period of less than 6 months;
- for a period not exceeding 2 months - if both parties after the probationary period intend to conclude a fixed-term employment contract of at least 6 months, but less than 12 months;
- for a period not exceeding 3 months - if both parties after the probationary period intend to conclude a fixed-term employment contract of at least 12 months or for an indefinite period.

IMPORTANT!

The parties will be able to extend the contract for a trial period of 1 and 2 months **if it is justified by the type of work**. Such an extension can be made **only once** during the term of the contract for a trial period – **no more than 1 month**.

It will be possible **to extend the employment contract for a probationary period by the time of absence**, such as holidays, sick leaves, other excused absence. Extension of the contract will be possible **only on the basis of such a provision in the contract**. The employer will be able to assess whether he wants to continue cooperation with this employee on the basis of actually worked time or on the basis of the originally assumed duration of the contract for a trial period.

If no further contract is concluded after the probationary period, the **employer is not obliged to give a reason for not extending the employment**. However, the employee has the right, within 7 days of obtaining information about the non-renewal of the

contract, to **apply to the employer for justification** for what reasons the contract will not be extended. The employer has 7 days to respond.

Re-concluding an employment contract for a trial period with the same employee will be possible only when the employee will be hire **to perform another type of work.**

3. Reasons for termination in fixed-term contracts

The amendment to the Labor Code imposes on employers the obligation to provide **the reason for terminating a fixed-term employment contract.** Until now, such an obligation was only in the case of contracts concluded for an indefinite period. It should be remembered that the cause must be true, objective and justified.

In addition, the employer must notify in writing the company's trade union organization (if it exists) that represents the employee about the intention and reasons for termination. A dismissed employee, if he considers that the dismissal is unjustified, may apply before the labor court for compensation or reinstatement.

4. Maternity and parental leave

The legislator introduces two significant changes in the scope of maternity and parental leave:

1. Changing the length of parental leave and granting an additional 9 weeks of parental leave only to the other parent.

The length of maternity leave remains unchanged and ranges from 20 to 37 weeks, depending on the number of children born. There is still an obligation for the child's mother to use only the first 14 weeks of maternity leave.

The length of parental leave shall be changed and will be:

- **41 weeks** in the case of the birth of one child at one birth,
- **43 weeks** in the case of the birth of two children and more at one birth,

At least **9 weeks** out of 41 or 43 weeks will **only** be granted to **the other parent.** This right cannot be transferred to the other employee - the child's parents. The second parent will be able to use the additional 9 weeks in parallel with the time the first parent takes maternity/parental leave.

Until now, the father's parental leave depended on whether the child's mother was entitled to maternity leave on the day of delivery. After the change in the regulations, the child's father will have the right to take parental leave even if the child's mother was not covered by health insurance on the day of delivery.

For parents of a child diagnosed with a severe and irreversible disability or an incurable life-threatening illness in the prenatal period or at birth, the possibility of an additional extension of parental leave has been introduced. Thanks to the provisions of the so-called "For Life" Act, the length of leave will be:

- **65 weeks** – in the case of birth or adoption of one child,
- **67 weeks** – in the case of the birth or adoption of two or more children.

The employer has the right to request a medical certificate from the parent about diseases arising during the prenatal period of the child's development or during childbirth.

2. Changing the way parental leave is taken.

Parents will be able to take parental leave until the end of the calendar year in which the child reaches the age of 6. Parental leave can be divided into a maximum of 5 parts and it will not be necessary to use it in multiples of a week.

3. Change in the amount of maternity and parental allowance.

The amount of benefits will change and will be:

- **100%** of the basic amount for the period of maternity leave and **70%** for the period of parental leave, **or**
- **81.5%** of the basis of assessment for the period of maternity and parental leave.

After the change in the regulations, the employee will be obliged to determine only the amount of maternity allowance within 21 days after giving birth, whether it is to be 100% or 81.5%. If she does not submit an application within this period, the amount of maternity allowance will be 100%, and parental allowance 70%.

There is no obligation to submit a request for parental leave together with the application for maternity leave. Of course, it will still be possible to apply for maternity leave and parental leave straight away.

21 days before the end of maternity leave, the employee must specify whether or not she will take parental leave. If he does not use it and the amount of the allowance was 81.5%, the employer will be obliged to make an equalization of up to 100%.

The allowance for 9 weeks of parental leave for the other parent will be paid at 70% of the basis of assessment.

Transitional provisions

An employee who on the date of entry into force of the new regulations, i.e. 26 April 2023. :

- is on maternity leave, within 21 days from the date of entry into force of the regulations, i.e. until May 17, 2023. , can apply for an allowance of 81.5%. The employer is obliged to calculate the allowance in this amount.
- has applied for parental leave but has not yet started is entitled to parental benefit of 81.5%. Therefore, the employer is obliged to immediately return the submitted application to the employee and the employee should resubmit a new application within 7 days. If he does not do this, the benefit will be paid under the current conditions;
- is already on parental leave and has applied for payment of 80% benefit, this can also apply for an increase in the allowance. The maximum period for submitting such a request is 21 days from the date of entry into force of the regulations and expires on 17 May 2023. In this case, the employer is not obliged to inform the employee of this possibility.

The increase in benefits will be made from 26 April 2023.

In each of the cases mentioned above, the other parent will be entitled to 9 weeks of additional leave.

5. Paternity leave

The length of paternity leave will not change, it will still be 2 weeks. The period until which the father can take paternity leave will change.

A father who has a child born after the entry into force of the amendment will be entitled to paternity leave of up to 2 months, but not longer than until **the child reaches the age of 12 months**.

On the other hand, an employee – a father who has a child born before the date of entry into force of this Act has the right to paternity leave on the terms set out in the previous regulations, but no longer than until the **child reaches the age of 24 months**.

6. Leave on grounds of force majeure

The Labor Code provides for the possibility of dismissal from work due to force majeure **in the amount of 2 days or 16 hours in a calendar year**.

The employee is entitled to leave from work **in the case of urgent family matters caused by illness or accident**. The holiday will be **paid at the rate of 50% of the salary**.

The manner of using the leave from work in a given calendar year is decided by the employee in the first application for such exemption submitted in a given calendar year.

The employer is obliged to grant leave from work, at the request submitted by the employee at the latest on the day of using this exemption.

Leave on grounds of force majeure for a part-time employee shall be granted on an hourly basis and shall be determined in proportion to the working time of that worker. An incomplete hour of leave from work shall be rounded up to the nearest hour.

7. Additional unpaid care leave

Additional care leave **of 5 days per calendar year** will be granted to provide personal care or support to a person who is a family member or another person in the same household who requires significant care or support for serious medical reasons. A son, daughter, mother, father, spouse is considered a family member.

For the time of additional carers' leave, the **employee does not retain the right to remuneration**.

Leave is granted on days that are working days for the employee, in accordance with the working time schedule applicable.

The employee's application should be submitted in paper or electronic form no less than 1 day before the start of taking this leave. The application shall indicate the name of the person who requires care or support for serious medical reasons, the reason why the employee needs to provide personal care or support and, in the case of a family member, the degree of kinship with the employee or, in the case of a non-family member, the address of residence of that person.

The period of carers' leave is included in the period of employment on which employee entitlements depend.

8. New template of employment certificate

The introduction of additional leave from 26 April 2023 made it necessary to make changes to the employment certificate. In the new model certificate, the employer will additionally provide:

- the number of days of occasional remote work in the calendar year in which the employment relationship ended. This will allow the next employer to determine the correct remaining dimension of occasional remote work;
- the number of days or hours that the employee used the time off due to force majeure (applies to an additional 2 days/16 hours);
- the number of days that the employee used the carers' leave to provide personal care for a family member who requires such care for medical reasons (applies to an additional 5 days).

9. Application for a change in the type of employment contract or working conditions

An employee employed by a given employer for **at least 6 months** may once in a **calendar year** apply to the employer, submitted in paper or electronic form, to **change the type of employment contract to an employment contract for an indefinite period or for more predictable and safe working conditions**, including a change in the type of work or full-time employment.

This does not apply to an employee employed under a probationary employment contract.

The employer should, as far as possible, grant the employee's request. The employer shall provide the employee with a paper or electronic response to the request, taking into account the needs of the employer and the employee, no later than within 1 month from the date of receipt of the request. If the request is rejected, the employer shall inform the employee of the reason for the refusal.

10. Flexible working arrangements

Flexible working arrangements consist in the possibility for an employee to submit a request to adapt the organization of his work to individual needs through remote work, flexible working time, flexible individual working time, part-time work, weekend work or a shortened or interrupted working time system.

An employee raising a child, up to the age of 8, can apply for flexible working arrangements. The application shall be submitted in paper or electronic form no less than 21 days before the planned start of using this form of work.

In the application, the employee shall indicate:

- the child's name and date of birth;
- the reason for the need for flexible working arrangements;
- the start and end date of the use of flexible working arrangements;
- the type of flexible working arrangements that the employee plans to use.

Within 7 days from the date of receipt of the application, the employer informs the employee in paper or electronic form about the acceptance of the application or about the refusal to accept it, while indicating the reason for the refusal. It may also offer the employee a different date in which flexible working arrangements can be applied.

A worker using flexible working arrangements may at any time request, in paper or electronic form, to return to the previous working arrangement before the deadline specified in the application for its completion.

11. Work breaks

Another change is two **additional breaks included in the working time**. Thus, if the daily working time of the employee:

- 1) is at least 6 hours – the employee has the right to a break in work lasting at least 15 minutes;
- 2) **is longer than 9 hours** – the employee has the right to an additional break in work of at least 15 minutes;

3) **is longer than 16 hours** – the employee has the right to another break in work lasting at least 15 minutes.

Breaks are included in working time.

12. Information obligation of the Employer

The employer is obliged to inform employees in the manner adopted by the employer about:

- 1) full-time or part-time employment opportunities;
- 2) promotion opportunities;
- 3) vacancies.

13. Trainings

The employee has the right to **free trainings**, which are necessary to perform a specific type of work or in a specific position. Trainings will be **counted as working time** and will take place as far as possible during working hours. Training time outside the employee's normal working hours shall be included in working time.

Training will be the cost of the employer if the obligation to conduct it results from the provisions of a collective bargaining agreement or other collective agreement, or from the regulations, or legal provisions or an employment contract and in the case of training carried out by an employee on the basis of a supervisor's order.

14. Employment with another employer

The employer will not be able to prohibit an employee from simultaneously remaining in an employment relationship with another employer or at the same time remaining in a legal relationship that is the basis for performing work other than an employment relationship.

An exception is when the parties conclude a non-competition agreement during the employment relationship.

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Legal basis

On 4 April 2023, an amendment to the Labor Code related to the implementation of two EU directives was published in the Journal of Laws (item 641): *Work-Life Balance Directive* and *Transparency Directive*. The Act will enter into force 21 days after its publication in the Journal of Laws, i.e. on 26 April 2023.

The Act amending the Labor Code aims to implement into the Polish legal system:

- Directive (EU) 2019/1152 of the European Parliament and of the Council of 20.06.2019 on transparent and predictable working conditions in the European Union (OJ 2019). UE L 186, 11.07.2019, p. 105) and
- Directive (EU) 2019/1158 of the European Parliament and of the Council of 20.06.2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ 2019). UE L 188 of 12. 07.2019, p.79).

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Legal notice

This material was drawn up in April 2023 by Mac Auditor Sp. z o.o. Some significant changes concerning the above information could have taken place since that time, including changes in the law, changes to interpretations or changes resulting from court rulings. The information presented in this material is general and simplified. Numerous detailed issues were omitted. This material serves information purposes only and in particular it should not be used as the only basis for making tax-related decisions. Such decisions should always take into account the complete legal status, interpretations and case-law. Mac Auditor Sp. z o.o. may not be held liable if any information presented in this document is used for any purposes whatsoever. This material is copyrighted and its distribution requires prior written consent of Mac Auditor Sp. z o.o.

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