

Helping You Navigate Challenges, Remain Compliant, and Mitigate Exposure to Risks in Poland

HR Space

Employment Law – Poland

Podcast Series

We are launching this series of employment podcasts that will help you navigate the newest legislative developments in Poland, ensure compliance and employment risk mitigation.

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Stay on Top of Polish Employment Law Changes

Workplace dynamic has always spearheaded legislative change. Since the global pandemic broke out, we have been witnessing tremendous economic and social changes, which may now make their way to the Polish Labour Code.

HR Space Podcast Series

We are launching this series of employment podcasts that will help you navigate the newest legislative developments in Poland, ensure compliance and employment risk mitigation.

Our series consists of 10 episodes focusing on:

Remote work

Transparency and predictability

Work-life balance

Follow our series – new episodes coming out weekly.

Featuring



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Episode 5: Alcohol and Drug Testing

Q&A

- Is this legislation a zero tolerance for alcohol?
- Can I conduct preventative testing?
- Will I be able to test only employees?

Can I Make a Toast at Work?

Yes, but only with a non-alcoholic beverage. Polish law is restrictive in this regard. It forbids selling, serving and consuming alcoholic beverages at the premises of the employing establishment or employee canteens. While this is an obvious rule for production facilities, it is sometimes disregarded by the services sector or office workers. The law also obliges the employer to prevent employees from working if they have consumed alcohol at work or if there is reason to suspect they have attended work after consuming alcohol. The employer may also impose a disciplinary penalty on an employee who attends work intoxicated, or consumed alcohol during working hours. The employer can also consider disciplinary dismissal (depending on the circumstances of a given case). This will not change after new legislation comes into force. All those who were hoping for a glass of wine during a lunch break at the employee canteen may feel disappointed. In turn, for most employers, the new legislation is a welcome regulation.

What is Permitted?

Currently, preventative, random alcohol testing is, in general, not permitted. Drug testing is not regulated. That causes lots of frustration among employers, as their fundamental obligation towards employees is to ensure healthy and hygienic work conditions.

The employer can ask an employee to take an alcohol test, but only if it suspects that the employee is working under the influence of alcohol. The testing may be conducted by the employer (upon the employee's consent).

What Will Change?

Pursuant to new draft legislation, preventative, random alcohol testing will be admissible, but only for specific purposes – namely, to ensure the protection of the life and health of employees or other persons, or the protection of property. Testing must be conducted in a manner that respects an employee's dignity and other personal privacy.

The employer will have legal grounds to process data relating to testing, in particular the date, exact time and result of testing. The employer will be permitted to store this data in the employee's personal file for up to one year. It will be possible to extend the above retention period if the employer imposes a disciplinary penalty on the employee or if the information is used as evidence in a court dispute.

The employer will not be allowed to use any laboratory tests. In practice, methods of testing will include a calibrated breathalyser. It will be up to the employer if they decide to use, for example, a mouthless breathalyser or a breathalyser gate.

If the employer prevents the employee from working (due to a test result, consumption of alcohol at work or reasonable suspicion that the employee has consumed alcohol or is drunk), both the employer and the employee may request that the test (not requiring laboratory methods) is conducted by a public authority, e.g. a police officer. Laboratory testing (conducted by a person with professional qualifications, e.g. a nurse) will be possible in certain circumstances (e.g. if the employee refuses to be tested by the police).

Required Paperwork

If the employer decides to introduce alcohol testing, it will be required to include rules of testing into a collective labour agreement or work regulation (internal policy) or the employer's announcement. The rules of testing must include the employee group(s) subject to testing, manner of testing (including type of device/tool used), time and frequency of testing (e.g. if the employer intends to conduct employee testing on a daily basis, if the testing is to be conducted before the commencement of work or also during working time, etc.).

No later than two weeks before commencement of the first testing, employees will have to be notified that testing will be introduced by the employer.

Additionally, if the employer hires an employee subject to testing, the employer will have to provide them with the above rules on testing (electronically or on paper).

Collaboration With Trade Unions or Employee Representatives

Each change of collective agreement or work regulation (internal policy) may require collaboration with the trade union. In turn, the employer will not have to collaborate with employee representatives.

Drug Testing

Similar rules will apply to drug testing, respectively. The Ministry will prepare a list of drugs (prohibited substances) that can be tested against.

Timeline and Preparations

The new legislation will come into force 14 days after it is published. This means that employers will not have much time to prepare.

Consequently, employers may already start working on changes to the collective agreement or work regulation, or start preparing the announcement and information for employees. It is a good time to consider which groups will be covered by testing and what tools/devices will be used.