

## 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 to help you navigate the latest legislative developments in Poland, ensure compliance and mitigate employment risks.

#### Available Now

Click [here](#) and listen



#### Stay on Top of Employment Law Changes in Poland

Since the global pandemic began, we have experienced tremendous economic and social change in Poland, as reflected in the shifting Polish laws regarding employees.

#### HR Space Podcast Series

With our HR Space podcast series, our labour and employment lawyers in Warsaw aim to answer your key questions on employment law developments in Poland. We explore the challenges HR directors are facing in the current climate, helping businesses to navigate legislative developments in Poland so that they can ensure compliance and mitigate employment risks.

Our series consists of 10 episodes focusing on:

**Remote work**

**Transparency and predictability**

**Work-life balance**

Follow our series, with new episodes coming out weekly.

#### Featuring



**Małgorzata Grzelak**  
Partner,  
Labor and Employment  
Warsaw, Poland



**Zuzanna Rosner-Laskorzyńska**  
Senior Associate,  
Labor and Employment  
Warsaw, Poland

## Stay on Top of Polish Employment Law Changes

### Episode 7: Probationary Period & Additional Activity

#### Q&A

- Will I be able to repeat probationary period?
- Will the probationary period always be three months?
- Will I be able to forbid any additional activity?

#### Duration of Probationary Period

The maximum probationary period in Poland may last up to three months. In general, this will not be extended after new legislation (implementing EU Directive 2019/1152 on Transparent and Predictable Working Conditions) comes into force (subject to exception discussed below), even though the directive allows for six months' trial period. As it follows from the directive, a "substantial number of the Member States have established a general maximum duration of probation of between three and six months which should be considered to be reasonable". Among the EU member states having longer probationary periods are Italy, Germany, the Czech Republic and Sweden.

Under the directive and the new draft legislation, the extension of the probationary period will be allowed only exceptionally, i.e. when the employee is absent from work during this period (due to holiday or other justified reason) and thus the employer is unable to check whether the new hire is suitable for the work or not. A possibility of the above extension will have to be agreed in the probationary employment contract.

The current (three-month) probationary period will be shortened in some cases. This is because, pursuant to said directive, the member states should ensure that the length of a probationary period is adequate and proportionate to the expected duration of the contract (following the probationary period) and the nature of the work. Consequently, if the parties intend to conclude the next employment contract for a fixed term of less than six months, the maximum permitted probationary period will be one month. If the next contract is to be concluded for at least six months but less than twelve months, the maximum probationary period will be two months. The parties will be allowed to extend the above (one or two months') probationary period by one month (only once), if this is justified by the type of work.

This means that the employers will have to make more preparations and planning to determine which probationary period limit will apply (one, two or three months).

Some experts already predict difficulties. For example, what will happen when, after a three months' probationary period, it appears that the parties cannot conclude a fixed term contract for longer than six months, despite initial plans? Will this be permissible?

#### How Many Contracts?

Currently, it is permissible to repeat a probationary period in two situations. First, if the employee is to perform a different type of work. Second, if the employee is to perform the same type of work but their previous employment with the same employer ended at least three years ago.

In accordance with the new legislation, the second option will be deleted.

#### Justification

There will be one more novelty that may prove challenging for the employers. Specifically, if the employee requests this, the employer will have to provide reasons for which the probationary period was terminated. Currently, termination of probationary contract with notice does not require any justification, which makes it quite simple.

#### Undertaking Additional Work

Currently, the employer cannot require that the employee asks for its consent to undertake other non-competitive work (with a different entity). This was possible a long time ago; however, the statutory provision which requested the employee to obtain such a consent from the employer were deleted from the Polish Labour Code in 1989.

Since then, the courts usually underline that Article 65 of the Polish Constitution ensures freedom of choice of profession and choice of place of work. The exceptions to the above may only follow from statutory provisions, e.g. the Labour Code, which provides for the possibility of concluding a non-compete agreement for the term of employment, as well as after its termination. Consequently, if such an agreement includes not only a restriction on competitive activity, but also other types of activities, it will be rather null and void (although exceptionally possible as highlighted by the Supreme Court in 2018).

After the new legislation (implementing the above directive) comes into force, a possibility to introduce a ban on additional work (even in exceptional) will be no longer possible. It explicitly follows from the new draft law that "the employer cannot prohibit the employee from simultaneously having an employment or other legal relationship (constituting a basis for provision of work) with another entity" (the above does not apply to competitive activity).

The Polish draft legislation seems even more restrictive than the directive itself. Specifically, the directive allows the introduction of some restrictions on combining positions/roles, if this is justified by objective grounds such as health and safety, protection of business confidentiality, the integrity of public service, or the avoidance of conflicts of interests.

The practical implication of the above change is significant. Employers will have to review the templates of their employment contracts to check whether they do include restrictions inconsistent with the new laws. Also, the non-compete agreements will become even more significant.