

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.

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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



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Episode 9: Termination of Employment Contracts

Q&A

- Will I have to justify termination notice of a fixed-term employment contract?
- Will I have to provide a probationary employee with reasons for termination notice of their contract?
- Will I have to cooperate with a trade union if I plan to terminate a fixed-term contract with notice?

Justification of Termination

Currently, employers are required to justify notice of termination of a permanent employment contract. Additionally, employers must specify grounds for disciplinary dismissal (i.e. employment termination without notice), irrespective of the type of employment contract being terminated. The EU Directive 2019/1152 on transparent and predictable working conditions and new legislation implementing the above directive into Polish law provide for new rules in this respect. Specifically, once the new legislation comes into force (expected at the beginning of 2023), the employer will be obliged to include justification of employment termination into its statement on terminating fixed-term employment contracts. This will change the rules of play for many Polish employers when it comes to dismissal.

In general, justification must be specific, real and understandable for the employee. In practice, it is often the most challenging part of the termination process.

Additional Requirements Regarding Justification

Once the new legislation comes into force, it will be explicitly inadmissible to terminate employment for certain reasons or to apply equivalent detriment.

“Equivalent detriment” means a situation in which the employer had not entered into a subsequent employment contract (despite its earlier suggestions that the employment would continue), because the employee exercised its rights provided for in Directive 2019/1152 and the new legislation.

There will be few “forbidden” reasons (i.e. grounds for termination or equivalent detriment), e.g. the fact that the employee requested a change of their employment contract to a permanent one and/or more predictable and safe working conditions consisting of a change of their type of work (position) or a change to employment on a full-time basis.

If the employee initiates a court dispute claiming that they suffered employment termination or equivalent detriment because of the above “inadmissible” grounds, the burden of proof will be reversed. Specifically, it will be the responsibility of the employer (not the employee) to prove that the termination or equivalent detriment occurred for other (admissible) reasons, such as underperformance.

Termination of Probationary Period Contract

There will be one more significant aspect relating to employees working under a probationary period employment contract. In particular, if they believe that they were dismissed with notice or suffered equivalent detriment because of the above “inadmissible” grounds (subject to some exceptions), they will be able to request the employer to provide reasons for dismissal or equivalent detriment. The employee will be able to submit such request within seven days and the employer will be obliged to respond within subsequent seven days.

Employee’s Claims

New legislation provides fixed-term employees with a right to raise a new type of claim, namely, reinstatement to work, if the court declares the termination with notice unjustified and/or in breach of labour law regulations. Currently, this claim is available only to employees under permanent employment contracts whose employment was terminated with notice or those dismissed without notice.

However, in practice, this type of claim may be irrelevant. According to the new legislation, if, prior to the date of the court’s ruling, the expiration date of the fixed-term contract is reached or when reinstatement would be inadvisable due to the short period of time that remains before the end of the term of the contract, the employee will be entitled solely to compensation. Considering the duration of proceedings in Polish courts (usually two to three years) and the maximum admissible period for which fixed-term employment contracts may be concluded (33 months), reinstatement of a fixed-term employee will be hardly ever awarded by the courts.

Consultation With the Trade Union

Once the new legislation enters into force, the employer will be obliged to consult with the trade union as to the reasons for terminating the fixed-term employment contract before notifying the employee. This will apply if the employee is a member of the trade union or their rights are represented by it. At present, this obligation is applicable only to termination with notice of the permanent employment contract, termination without notice and some other cases provided by the labour laws.