

The new law amending the Labour Code and other Polish employment legislation comes into force on **22 February**.

Main Objective of the New Regulations	Key Changes for Employers
<ul style="list-style-type: none"> • Curb the over-use of fixed-term contracts by employers. • Clarify the types of employment contracts available to employers. • Introduce uniformity, particularly with regard to the notice periods for indefinite (permanent) and fixed-term contracts. • Allow employers to release employees from their duty to perform work during the notice period. 	<ul style="list-style-type: none"> • Fixed-term contracts terminating on the completion of a specific task or project will no longer be allowed. Going forward, the permitted types of employment contract will be for: <ul style="list-style-type: none"> – a probationary period – a fixed term – an indefinite term • The use of repeated or long term fixed-term employment contracts will be restricted under the new “33/3” rule (see below). • Notice periods for fixed-term employment contracts will be the same as those for comparable indefinite employment contracts. • Subject to certain conditions, it will be possible to enter into a second probationary period with the same employee. • Employees can be placed on gardening leave during their notice periods.

Curbing the Use of Fixed-term Contracts – the New 33/3 Rule

- The total period of continuous employment under one or more fixed-term employment contracts between the same parties cannot exceed 33 months (an agreed probationary period is not included within this limit)
- The total number of fixed-term employment contracts cannot exceed three
- If the same parties enter into a fourth consecutive fixed-term contract or the total period of employment under fixed-term employment contracts exceeds 33 months, the contract between the parties will automatically become a contract for an indefinite term.

N.B. – there are a number of exceptions to the 33/3 rule.

Transitional Provisions

The current regulations will continue to apply to fixed-term employment contracts already in force on 22 February 2016 and entered into for:

- The completion of a specific task or project
- A fixed term but where notice of termination had been given prior to 22 February 2016
- A fixed term of up to six months
- A fixed term of more than six months but not a provision permitting interim termination with two weeks’ notice (the current statutory notice period for fixed-term employment contracts)

The new regulations apply to fixed-term employment contracts already in force on 22 February 2016 for a period of more than six months which do include a provision permitting termination with two weeks’ notice.

The new regulations then apply in relation to the total period of employment under the fixed-term contract(s). However, the period of employment calculation starts from 22 February 2016 and the fixed-term employment contract in force on that date is regarded as the first or second fixed-term contract for the purpose of the 33/3 rule, depending on the particular circumstances.

Notice Periods

Under the new regulations:

- The parties to each permitted type of employment contract (i.e. probationary period, fixed term or indefinite term) will be able to terminate the contract with notice.
- The right to terminate an employment contract will no longer depend on the contract's duration.
- It is not necessary any longer for a fixed-term employment contract to include express provisions enabling the parties to terminate the contract pre-expiry as this right is expressly provided for in the regulations.
- The length of notice periods will depend on the period of employment with a given employer and not on the type of contract as at present, so that the minimum notice periods for fixed-term and indefinite employment contracts are:
 - Two weeks for service of less than six months
 - One month for service of six months or more
 - Three months for service of three years or more
- In the event of termination due to the employer's bankruptcy or liquidation or for other reasons not related to the employee, the three-month period of notice for employees can be reduced to one month provided that the employee is paid compensation for the remaining period.
- When terminating a fixed-term employment contract, the employer is not obliged to give reasons for the termination.

Probationary Period Employment Contracts

Under Polish law, employers can enter into employment contracts for a probationary period not exceeding three months in order to verify an employee's qualifications and whether he/she can satisfactorily carry out the work assigned.

The new regulations will enable an employer to enter into a new probationary period contract for the same employee if:

- The type of work to be performed is not the same as under the first contract
- The type of work to be performed is the same as before but at least three years have lapsed from the date of termination or expiry of the previous employment contract.

Gardening Leave

From 22 February, employers will be able unilaterally to release employees from work during the notice period by placing them on gardening leave. The employees will retain the right to be paid during the gardening leave period.

Whilst placing employees on gardening leave has been common practice in Poland, there has previously been no clear legal basis for doing so.

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