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Employment Law

Types of employment contract

An employment contract can **be signed**

- for an indefinite term
- for a fixed term
- for the time it takes to complete a specific task
- to replace an employee - in the event of his or her justified absence from work; the employer can hire another worker under a fixed term employment contract for the period of his/her absence

All of these contracts can be preceded by an employment contract for a trial period of **no more than three months**.

Once **a third subsequent** fixed-term contract is signed, it is deemed to have become an indefinite term contract.

An employment contract is concluded **in writing** and should be signed no later than on the day the employee starts working. If no contract is signed, then the employee should be provided with written confirmation of the contract conditions on the day he starts work at the latest. Any **changes in employment contract conditions** should also be made in writing. The employer should **include additional written information** about certain engagement terms to the employment contract. Labour Code provisions set out the regulations that should be included in the employment contract and in the additional written information.

Ways of ending a work relationship

An employment contract can be **dissolved**

- with the agreement of the parties,
- by one of the parties giving notice (an employer or employee) with a notice period,
- by one of the parties giving notice without a notice period.

A contract concluded for a fixed term or for the time it takes to complete a specific task is dissolved at the end of the term or when the task is completed (although it can, in certain circumstances, be dissolved earlier).

Termination with the agreement of the parties

Any employment contract can be terminated with the agreement of the parties; at any time and on the initiative of either party; irrespective of the type of contract or possible special duration protection. If a contract is terminated in this manner at the employer's initiative, he may sometimes be obliged to **pay the employee severance pay** (particularly in the case of terminations for reasons for which the employee is not responsible).

Termination with notice

A contract is terminated with notice when either the employer or employee notifies the other party that he intends to terminate the work relationship with notice. The employment contract is then terminated at the end of a specified period, i.e. at the end of the notice period. An employment contract can only be terminated by the employer if the conditions set out in the Labour Code have been met. One of these is that the employer has to give specific, genuine reasons for termination.

Notice periods

The length of the notice period **depends on the type of contract** and the position held by the employee. During the notice period, the employee is entitled to **receive his normal salary**.

Employment contract notice periods:

- Employment contract for a trial period
  - Three working days, if the contract is concluded for not more than two weeks
  - One week, if the contract is concluded for more than two weeks but less than three months
  - Two weeks, if the trial period is three months
- Employment contract for an indefinite term
  - Two weeks, if the employee has worked for the employer for not more than six months

  - One month, if the employee has worked for the employer for at least six months but less than three years
  - Three months, if the employee has worked for the employer for at least three years
- Replacement contract - three working days
- Employment contract for a fixed term - two weeks, but on the condition that the contract was concluded for at least six months and the parties stated clearly in the contract that it could be terminated with notice

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Notice of changes

Notice of changes in work conditions or pay make it possible for the employer to **change** - under rules specified in the Labour Code - **engagement conditions** in the employment contract to conditions less favourable to the employee. Employment contract notice provisions apply to notices of changes to work conditions or pay. This means, among other things, that the employer should give reasons for the change. A notice of change can also lead to the termination of the employment contract should the employee not accept the proposed new conditions.

Termination without notice (forthwith)

The employer can terminate the employment contract without notice if the employee is at fault (dismissal) and also if the employee is not at fault. **A contract terminated** because of a fault on the **employee's side can be due to**:

- **serious breach** of basic employee duties (such as drinking alcohol at work, leaving the workplace without justifiable cause, refusing to carry out a task assigned)
- **committing a criminal act** during the term of the employment contract, if the crime is obvious or has been confirmed by an non-appealable court sentence
- **culpable loss of the rights** required to work in the position held

An employment contract can be terminated **without notice** and if there is no fault on the employee's part if he is unable to work due to:

- **incapacity to work** caused by an illness lasting for more than three months, if the employee has worked for the employer for less than six months;
- incapacity to work caused by an illness lasting for more than the total period for which he has received a salary, sickness benefit or rehabilitation allowance for the first three months in accordance with the rules set out in the Labour Code and other provisions, if the employee has worked for the employer for more than six months or if the incapacity to work is due to an accident at work or a work-related illness;
- **absence justified** on grounds other than those given above lasting for more than one month.

Protection against termination

Under labour law, employers are prohibited from giving notice to certain employees and, in some cases, they are also prohibited from terminating an employment contract without notice. This protection covers employees who find themselves in a specific situation or who belong to a specific group, among others:

- employees who are on vacation, maternity leave, or unpaid carer's leave
- employees who are on sick leave with a doctor's certificate
- employees approaching retirement age, i.e. who have less than four years before being entitled to a pension if the employment period allows them to attain this pension entitlement once they reach this age
- employees who are pregnant
- union activists

Working hours

Working hours **cannot exceed** eight hours in any 24 or an average of 40 hours in an average five-day working week in a reference period applied by the employer of not more than four months.
However, the Labour Code provides an **exception to this rule**, e.g. relating to work which, due to production technology, cannot be broken off (so-called 24-hour shift work); in this case, the number of working hours in any 24 can be extended. Overtime refers to hours which the employee works over and above normal working hours.

Overtime is permitted:

- if rescue action is required to protect human life or health, to safeguard property or the environment or to carry out emergency repair work
- if the employer has special needs

Overtime cannot exceed 150 hours in any one calendar year for each worker, unless a collective bargaining agreement, the employer's work regulations or the employment contract provide otherwise. Weekly **working hours plus overtime** cannot exceed an average of 48 hours in the reference to period applied by the employer.
For overtime hours worked, the employee is entitled, in addition to his normal salary, to a **supplement of**:

- 100% of pay for working nights, Sundays and bank holidays, which are not, under his work schedule, the employee's working days, or days off given to the employee in lieu of Sundays or bank holidays worked in accordance with his work schedule
- 50% of his salary for working overtime on any day other than those mentioned above
- 100% of his salary for every overtime hour worked above the average weekly norm in the reference period, unless the norm was exceeded as a result of overtime for which the employee is entitled to receive the supplements mentioned in the points above

Right to undisturbed rest - all employees are entitled to at least 11 hours undisturbed rest in every 24 and at least 35 rest hours each week.

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Night work covers the eight hours between 21:00 - 07:00. A night worker as defined by the Labour Code covers cases, among others, where an employee's working hours include at least three night hours in any 24. The working hours of a night worker cannot exceed eight hours in any 24 if his work is particularly hazardous or involves heavy physical or mental strain. Any employee working nights is entitled to a supplement to his salary of 20% of the minimum hourly wage for every hour worked.

Days free of work are Sundays and public holidays. Working on Sundays or public holidays is **permitted**, among other things:

- with respect to shift work
- with respect to work which is necessary in view of its value to society and the daily needs of mankind, e.g. in establishments that provide services to individuals, commercial centres

The rule is that employees who work on Sundays and public holidays are entitled to another day off in lieu.

Vacation

All employees are entitled to an annual **unbroken paid vacation**. An employee who is just starting his working life attains the right, in the calendar year in which he starts work, to vacation **with every month that passes of 1/12** of the total vacation to which he is entitled after one year of work. An employee gains the right to the next vacation in each subsequent calendar year.
Vacation entitlement is as follows:

- **20 days -** if the employee has been working for less than 10 years
- **26 days -** if the employee has been working for at least 10 years

The working period on which vacation entitlement depends includes time spent in education, depending on the type of school finished, e.g.:

- **basic vocational school -** length of course but not more than three years
- **secondary vocational school -** length of course

but not more than five years

- **secondary school of general education -** four years
- **vocational college -** six years
- **higher education institution -** eight years

The above periods cannot be added together.

Employee liability for damage caused to the employer

The rules of employee liability for damage caused to his employer depend on whether the employee **inflicted the damage knowingly or accidentally**. If the damage sustained by the employer is caused by the employee accidentally as a result of non-performance or undue performance of work duties, the employee's liability is limited. In this case, the employee will be liable for damage to the extent of the actual loss incurred by the employer; the amount of damages cannot be more than three months' salary. If the employee inflicts damage knowingly, he will be liable for the full amount of the damage.

Benefits due to the employee from the employer during a period of temporary incapacity to work

In the event of the employee's incapacity to work due to:

- illness or isolation with respect to an infectious disease - lasting in total up to 33 days in a calendar year - the employee is entitled to 80% of the salary paid to him by his employer; if the incapacity to work lasts for more than 33 days, the employee receives sickness benefits on the basis of rules set out in other provisions
- an accident on the way to or from work, or illness during pregnancy - lasting in total up to 33 days in a calendar year - the employee is entitled to 100% of the salary paid to him/her by his/her employer;
- medical examinations required for organ donors – lasting for a total of up to 33 days in a calendar year - the employee retains the right to receive full remuneration

If the incapacity to work referred to above lasts in total for more than 33 days in a calendar year, the employee receives sickness benefits on the basis of the rules set out in separate regulations.

Non-employment engagement relations

Work can sometimes be carried out on the basis of civil law contracts (freelance agreements, service agreements, specific task agreements or agency agreements). A person working under these types of contract does not have the employee rights set out in the Labour Code. In such contracts there is no element of the subordination that is typical in employment relations, thus the person carrying out the work under such a contract has the freedom to decide how the work should be performed.
Some of the features differentiating a civil law agreement from a specific task agreement are:

- that the person who contracts does not give the contractor/person accepting the order direct instructions
- the party carrying out the activity/task can be either an individual or an enterprise
- no statutory minimum wage for the contractor/person accepting the order
- no limitation on the number of subsequent civil law contracts concluded, no vacation, severance pay and the person who contracts is not obliged to pay the contractor's salary during illness

It is not admissible for an employment contract to be replaced with a civil law contract if the same Code conditions regulating the work relationship are retained.

Components of social security premiums paid by employer and employee

Type of insurance

% premium

Breakdown of premium

Employer

Employee

Retirement

19.52% of remuneration

9.76%

9.76%

Disability

6% of remuneration

4.5%

1.5%

Accident

0.67% to 3.60% of remuneration depending on the occupational risk in a given industry

0.67% - 3.60%

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Sickness

2.45% of remuneration

-

2.45%

Additional contributions:

Labour Fund

2.45% of remuneration

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2.45%

-

Guaranteed Employee Benefit Fund

0.10% of remuneration

0.10%

-

The employer is also obliged to pay a premium to the State Fund for the Disabled (PFRON). The duty to pay in to the premium to the Fund and the amount of the premium depends on the number of people employed, their average remuneration, and the total number of disabled employees.

The minimum gross wage in Poland is 1126 PLN as of 1 January 2008.
According to the Act of 10 October 2002 on the minimum wage for work, in the first year of work employees can be paid 80% of the minimum wage (i.e. PLN 900.80 gross). In other cases, the monthly wage of a full-time worker cannot be less than the minimum wage (i.e. PLN 1126 gross).