

Newsletter HR

June 2021 | www.skslegal.pl

EMPLOYER ENTITLED TO CONTROL SOBRIETY OF EMPLOYEES

The Government Legislation Center has published on its website the long-awaited draft legislative amendments enabling the employer to subject an employee to alcohol and "other substances having a similar effect" testing. The bill has been referred for public consultations, and its adoption by the Council of Ministers is planned for the third quarter of 2021.

Main assumptions of the bill:

1. The employer will be able to control sobriety of employees, both in terms of alcohol consumption and of other substances having a similar effect (the bill does not define the substances).
2. The employer will be entitled to conduct a sobriety check using methods that do not require laboratory testing. However, the bill permits blood or urine testing if it is impossible to perform such a test with non-laboratory methods. In such a case the blood sample is taken by a properly qualified professional.
3. The information collected during the test is processed by the employer only for the purposes for which it was collected, for a period not exceeding 6 months from the date of its collection, as a rule. If an employee was subjected to a disciplinary penalty, this information is stored in the employee's personal files until the penalty is deemed void, in accordance with the provisions of the Labor Code. Additionally, if this information may constitute evidence in the proceedings to which the employer is a party (or when the employer has learned about the filing of an action or initiation of proceedings), the period of storage is extended until the final termination of the proceedings.
4. The procedure of conducting tests, method and groups of employees subject to testing must be previously specified in the collective labor agreement, the work regulations or in a notice.
5. The employer shall not admit an employee to work if the sobriety check shows the presence of alcohol (or other substances) or when there is a reasonable suspicion that the employee consumed alcohol (or other substances) during work. In such a situation, both the employer and the employee have the right to have the test results verified by an authorized body (e.g. police).
6. The period when the employee was not admitted to work due to sobriety check is considered the period of justified absence from work, for which the employee receives remuneration only if the test result is negative.
7. The established rules of employee sobriety testing would apply accordingly to persons employed in the work establishment on a basis different than an employment contract.

NEW RIGHTS CONFERRED ON THE NATIONAL LABOR INSPECTORATE

Legislative works are underway on the bill amending the Act on the National Labor Inspectorate and the Code of Civil Procedure. The amendment to the provisions is aimed at extending the powers granted to labor inspectors who, by means of a decision, will be able to identify the existence of an employment relationship.

The planned legislative amendments are aimed at reducing the practice of replacing employment contracts with civil law contracts. Determination if the parties are actually bound by the employment relationship (despite conclusion of civil law contract) will be a result of a written decision issued by the regional labor inspector. The decision is to be immediately enforceable. The employer will have the right to appeal against the decision to the district court, however, lodging of an appeal will not stay enforcement of the decision. The appeal will be lodged through the labor inspector, within a strict deadline not exceeding two weeks from the delivery date of a decision.

In the current legal environment, the National Labor Inspectorate, having found that the provisions of the Labor Code have been breached by hiring an employee under a civil law contract, may bring an action to establish the existence of an employment relationship. In the opinion of the legislators, this right is insufficient due to the long duration of hearing cases before labor courts.

WILL THE PERIOD OF RUNNING A BUSINESS BE INCLUDED IN THE EMPLOYMENT PERIOD?

Legislative work is underway on the MP's bill amending the Labor Code. The bill assumes that the employer will be obliged to count the finished periods of non-agricultural activity (in the meaning of provisions on social insurance system) or cooperation in carrying out this activity towards the employment period on which employee benefits or rights

are based, on a condition that social insurance contributions were paid for these periods. In practice this rule would apply to periods of running a business activity.

The introduction of such a solution would mean that employees, previously self-employed, would be entitled, inter alia, to a longer annual leave, longer notice periods, but also benefits introduced internally by an employer, e.g. jubilee award in higher amounts.

It is worth noting that the amendment is to apply only to persons running a non-agricultural activity or cooperating in carrying out this activity, while persons hired on the basis of a mandate contract or a specific work contract will still not be able to include these periods in their seniority.

EXTENSION OF THE PERIOD OF ADDITIONAL CARE ALLOWANCE

The period for granting additional care allowance has been extended until 25 June 2021 (Friday). The additional allowance is granted to parents of children up to 8 years old, and older children with an awarded disability certificate, if they have to take care of their child personally, because a nursery, children's club, kindergarten, school or other institution attended by the child is closed.

Contact us



Michał Hady

Senior Associate, attorney-at-law

☎ +48 882 435 666

✉ michal.hady@skslegal.pl



Magdalena Krupska-Kacprzyk

Junior Associate

☎ +48 882 784 717

✉ magdalena.krupska-kacprzyk@skslegal.pl

