

WARSAW, NOVEMBER 2009

THE LATEST CHANGES IN POLISH LAW
NEWSLETTER

EMPLOYMENT AND LABOUR LAW

The Regulation of the Minister of Labour and Social Policy of 8 October 2009, changing the Regulation on the detailed rules of granting holiday leave, the establishment and payment of remuneration for the period of holiday leave and financial equivalent for unused holiday leave, came into force on 3 November 2009.

New legislation introduces the following changes:

- extension of the catalogue of exclusions applicable when taking into account remuneration and other benefits due under the employment relationship in the process of establishing remuneration for the period of holiday leave. At present, when establishing the remuneration due for the period of holiday leave, the amount of supplement topping up remuneration to the statutory minimum salary is not taken into consideration,
- introduction of the rule, according to which the elements of remuneration, due to an employee for periods not exceeding 1 month, that are paid in the period of 3 months directly preceding the month when the right to the equivalent is acquired, are taken into consideration when establishing the equivalent, in their average amounts due for that period of time,
- introduction of the rule, according to which the equivalent for every day of unused holiday leave, calculated by dividing the sum of monthly salaries by the factor mentioned in § 19 of the said Regulation, is divided by the number corresponding to the applicable standard of the employee's daily working hours,
- establishment that the value of the factor applicable to determining the equivalent for one day of unused holiday leave, with regard to part-time employees, is reduced proportionally to the working hours of such employees.

TAX LAW

New Regulation of the Council of Ministers of 15 October 2009 on granting selected exemptions in payment of taxes, being public aid for the purpose of employment of the individuals finding themselves in particularly unfavourable situation and for the employment of disabled persons came into force on 17 November 2009.

The Regulation introduces the following changes:

- possibility for small, medium and large businesses of applying for the exemptions in payment of tax obligations. Those exemptions constitute public aid for the purpose of employment of the individuals finding themselves in particularly unfavourable situation and for the employment of disabled persons,
- the said Regulation does not apply to the businesses carrying out business activity in the carbon sector, in the production of basic farm products, included in the Regulation of the European Commission

No. 1857/2006, as well as in the processing and introducing farm products into the market in the determined circumstances.

CONSTITUTIONAL TRIBUNAL's JUDGEMENTS

On 10 September 2009 the Constitutional Tribunal issued the judgment (file No. P 88/08), in which it stated, that art. 28 section 1 of the Act of 28 February 2003 - Bankruptcy and Reorganisation Law, with regard to the debtor acting without professional help of an advocate or an attorney-at-law, is in conflict with art. 45 section 1, as well as with art. 32 section 1 of the Polish Constitution.

The Constitutional Tribunal emphasized that unconditional return of an incomplete application, constitutes a sanction, which is disproportionate to the assumed effects, if the situation applies to the debtor who does not use professional help. Such severity is unacceptable with respect to a party acting on its own, without the help of a professional representative.

SUPREME COURT's JUDGEMENTS

On 2 September 2009 the Supreme Court issued its resolution, in which it stated, on the basis of art. 8 section 2a of the Act of 13 October 1988 on the Social Insurance System (hereinafter referred as the "SIS Act"), that an employer, whose employee performs work on his account, under a task-specific contract concluded with any third party, is a payer of pension insurance, disability pension insurance, sickness insurance and accident insurance on the grounds of this agreement (file No. II UZP 6/09).

The Supreme Court recognized that the duties of a payer shall encumber the party, on whose account the work under a civil law agreement is actually performed. The Court indicated, that on the basis of the provisions of SIS Act it can be stated, that an employer is the payer, and that the income generated from the civil law agreement should only be "included" in the basis for calculation social security premiums under an employment relationship.

If you have any questions or doubts, please do not hesitate to contact me.

Yours sincerely,

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