Methods for labor costs reduction

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The current economic situation in Poland, specifically the high level of unemployment and massive layoffs, make jobs a highly prized commodity and employers a valuable component of the economy. However, the Polish Labor Code, even with amendments designed to conform Polish workplaces with a modern market economy, still failed to address many of the interests and needs of employers. The Code offered little flexibility or discretion to employers in their dealings with employees, especially with respect to the termination of employment relationships and decisions regarding the manner and timeframe in which employees perform their work for the employer.

However, the recent Labor Code amendments[1], supported by organizations of employers, introduce several provisions designed to offer more flexibility to employers and to reduce labor costs and bureaucracy. The amendments cover not only the Labor Code but also regulatory acts related thereto (e.g., rules for termination of employment for employer-related reasons, the trade unions act, the employee welfare fund act and the natural persons' income tax act).

The amendments, most of which take effect on November 29, 2002[2], by making an employer's duties easier, are expected to encourage people to establish workplaces and therefore to reduce unemployment. Some of the amendments will directly or indirectly reduce labor costs; for example, it is now possible for an employer with financial difficulties to temporarily suspend the application of certain labor law regulations (excluding the Labor Code and certain other executory provisions), limit the duration of sick leaves paid by the employer, and reduce overtime work allowances. Further, the amendments provide that the "Group Lay-offs Act" shall apply only to "large" employers (those with 20 or more employees), and that severance

[1] Act of July 26, 2002 amending the Labor Code Act and other acts (Journal of Laws No. 135, item 1146).

[2] The amendments concerning sick leaves, overtime work allowances, vacation leaves, and employee welfare funds will take effect on January 1, 2003 and the amendments to the group lay-offs act on July 1, 2003.

payments will depend upon the length of an employee's tenure with the company.

Employers complain about costs, which do not arise from the provisions of the Labor Code and which they must bear in connection with employing employees, such as mandatory contributions to social insurance, health insurance, the Labor Fund, the National Fund for Rehabilitation of the Disabled, the Guaranteed Employee Benefit Fund, and an employee welfare fund. These requirements unfortunately have not been amended, except for an exclusion for employers with less than 20 full-time employees from the obligation to establish an employee welfare fund.

However, there are certain solutions not forbidden by labor law, which influence the reduction of labor costs borne by employers to a certain extent. Employers can use such solutions on the basis of the existing regulations, but also after amending thereof. We have specified below a few examples of such actions.

Redundancies

Dismissals of employees are the most radical method of labor cost reduction. However, firing employees for economic reasons carries with it an obligation to make severance payments to the fired employees under the "Group Lay-offs Act." The new amendment reduces the amount of severance payments, scaling them to the length of time the employee worked with the company.

"Amendment or terminations"

An "amendment or termination" situation occurs when an employer requests an amendment to the employee's work contract to change his/her work conditions (e.g. working hours) and remuneration. If the employee refuses to accept the offered amendment, the employer may terminate their employment relationship after the lapse of a termination period (but must make severance payments if the termination is due to economic reasons). If the employee accepts the proposed amendment the new terms become effective after the lapse

of a defined period. The "amendment or termination" must be consulted with trade unions.

If the employer has internal remuneration rules, reduction of remuneration by way of an "amendment or termination" must be preceded by the amendment of such rules. Further, if employees are covered by a collective bargaining agreement, the introduction of less advantageous terms of work may require prior amendment of the collective bargaining agreement.

Conclusion of a service contract or a specific task contract

Polish law allows parties to provide in the contracts whatever terms they desire unless it violates the law. The Labor Code does not prohibit work relationships pursuant to civil law contracts (e.g., service contract, specific task contract), and work pursuant to a civil law contract carries much lower associated costs for an employer than does a regular employment contract. Under civil law relationships, for instance, an employer does not pay remuneration for vacation leave, sick leave, or unused vacation.

While still not prohibiting civil law contracts for work relationships, the new amendments explicitly prohibit replacing an employment contract with a civil law contract while retaining terms that are characteristic of traditional employment relationships. Such terms include the performance of delineated tasks in a subordinate manner for the employer, the requirement of doing the work at a specific time and place and in a particular manner of performance, and a specific remuneration. If a civil law relationship exhibits all of the substantial features of an employment relationship, it will be deemed one despite being nominally a civil law contract. A party to a nominal civil law relationship may ask the Labor Court for a ruling on whether the contract is really one of employment. A labor inspector is also entitled to request such a ruling.

However, if a contract possesses features characteristic of both civil law and employment law relationships, and does not exhibit all of the elements of an employment relationship, it may be regarded as different from an employment contract.

Temporary Job Agencies (Employee Leasing)

Another method to reduce labor costs is the use of temporary job agencies. A temporary job agency is a new institution in Polish labor law, having existed only since January 1, 2002. Such agencies provide individuals to employers who are seeking someone to do a short-term job or fill a short-term opening. Temporary agency employees are especially useful in filling positions recently vacated but not re-filled yet, seasonal tasks, assisting with extra or overtime work that is not permanent, filling in for employees on vacation, sick leave or pregnancy leave, or doing jobs requiring specific expertise or professional knowledge.

The labor costs of a temporary agency employee are lower than the costs of "regular" employees, as the temporary agency pays the social insurance contributions (ZUS) and income tax for such employees, and the employer does not have to pay remuneration for sick leave, vacation or termination periods.

The Labor Code provides that an employer seeking to hire temporary agency employees must provide the agency with information on the type of work to be entrusted to such employee, required qualifications, and the terms of performing such work (hours, place, etc.). The employermust guarantee safety and hygiene conditions to such employees.

Please note that amendments to the temporary agency employee regulations are currently being prepared in order to limit the benefits that temporary workers are entitled to receive from temporary agencies.

Outsourcing

Outsourcing, or the long-term hiring of outside entities to perform specific tasks, activities, or functions for a company, is another tactic in reducing labor costs. By assigning certain activities to an outside company, an employer avoids many obligations stipulated by labor law (such as those regarding vacations, termination periods, and labor relationship protection) and financial burdens associated with employees (social and health insurance contributions, advance

income tax payments, severance pays, remuneration for vacation, equivalent for unused vacation, payments on account of sick leaves). A company hiring an outsourcing firm is not bound by an employment relationship with either the firm or persons performing the tasks for the outsourcing company. Outsourcing is most often used for legal services, accounting, human resources, payroll services, IT, and logistics.[3]

Telecommuting

The Labor Code has not yet regulated the provision of remunerated work outside the employer's offices or location by means of modern information technology devices (computer, modem, telephone, fax, etc.). However, this does not mean that such "telecommuting" is not permitted under Polish law, as the Labor Code does allow for work to be performed in places other than the employer's locale. Telecommuters may, and in most cases do, work pursuant to a written employment contract. Due to the absence of any specific provisions on telecommuting, the employer must treat telecommuters the same as regular workers who are performing work at the office.

Telecommuting has many advantages. It is documented to increase work effectiveness and efficiency, it reduces the costs of office space maintenance, it facilitates the employment of persons with limited opportunities to perform remunerated work (e.g., disabled persons, women raising children, etc.) Telecommuting is also a practical solution for freelancers, whose work does not require the direct supervision of the employer.

Additionally, if telecommuting is not directly supervised by the employer, or if other characteristics exist which do not indicate the existence of an employment relationship, then it is possible that a civil law contract in the form of a service agreement or specific task contract would be allowable, thereby adding the employer advantages discussed above for civil law contracts.

[3] The use of temporary agency employees (discussed above) is a type of outsourcing.

Part-time work

Part-time employment offers an employer excellent opportunities to reduce labor costs normally due to required overtime payments. Pursuant to the Labor Code, overtime work is work performed in excess of the time standard established in accordance with the Civil Code[4]. The relevant regulations (Article 129, section 2 of the Labor Code) provide that "normal" (non-overtime) work does not exceed 8 hours per day or 41 hours per week within a calculation period.

Because the labor law does not provide precisely when the work performed by part-time employees becomes "overtime work," one should refer to judicial decisions of the Supreme Court interpreting Article 129, section 2 of the Labor Code. Such decisions state that if an part-time employee works up to the statutorily defined "full-time" (i.e., 8 hours per day or 41 hours per week), he is not performing overtime. Thus, even if a part-time employee who is supposed to work 6 hours per day and 30 hours per week in fact works 8 hours per day and 41 hours per week, the extra time is not considered overtime, and the employee will be compensated at his normal rate for the extra hours. Only when the employee works more than 8 hours per day or 41 hours per week does the employer become obliged to pay overtime allowance. It seems that in some cases employing part-time employees can reduce costs borne for employees in connection with their overtime work, if the employer organizes the work and specifies tasks in a manner which allows the employee to perform it within the working time standards.

Change of type of employment contract during employment relationship

When an employee and an employer agree to continue their employment contract but change it from one for an indefinite period into one for a definite period, it is not necessary to terminate the existing contract and enter into a new one. Instead, the contract can be changed with an annex/amendment. Please note, however, that

[4] Pursuant to the Civil Code, daily or weekly working time standards are set forth in the Labor Code or collective bargaining agreements and internal employer regulations.

changing the type of employment contract cannot be effected by way of an "amendment or termination", which form pertains only to changing the terms of work and/or remuneration, rather than the definite or indefinite term of the contract. It appears that a change from indefinite to definite period of an employment contract without termination of employment contract does not trigger the employer's obligation to issue an employment certificate or to pay for unused vacation.

Vacation leave during termination period

The existing law does not regulate the granting of vacation leave during a termination period. This means that the employer's own internal vacation schedule rules. If the pre-termination vacation schedule has already noted the terminated employee's vacation during the termination period, the employee must use the vacation and cannot cancel it in exchange for cash payment for unused vacation. Until the recent amendment, however, if the schedule did not already include the employee's vacation during the termination period, then the employer could request, but not require, the employee to take a vacation leave during that period; if the employee refused, then the employer had to pay the employee the cash equivalent for the unused vacation.

The recent amendment has changed this policy. Now, an employee must use his accumulated vacation time during his termination period upon the employer's request.

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The framework of this article does not allow exhaustive discussion of all methods of labor cost reductions under the existing and new Labor Code.[5]

We hope that the above discussion will encourage employers to consult legal counsel to form specific strategies to reduce labor costs.

[5] For example, another method of reducing an employer's costs is to obtain the status of a protected workplace for the disabled, thereby reducing costs related to ZUS contributions (social insurance) and taxes. There are many other such strategies that are beyond the scope of this article.

Suspension of the provisions of an employment contract and remuneration rules

In cases justified by the financial situation of an employer, (who is not covered by a collective bargaining agreement and who employees less than 20 employees), an agreement can be concluded with the employees concerning the application of less advantageous terms of employment than those arising from employment contracts and remuneration rules – within a scope and for a period specified in such agreement, however, not longer than for three years.

Remuneration rules/Work regulations

Employers employing at least 20 employees are obliged to establish remuneration rules and work regulations.

Replacement contract

If it is necessary to replace an employee during his/her justified absence from work (e.g. illness, maternity leave, extended maternity leave), the employer has the right to employ a new employee, however, only for a period of absence of the employee being replaced.

Limiting the protection of pregnant women

A pregnant employee shall not be protected if she is employed on the basis of a fixed-term employment contract, which was concluded to replace an employee whose absence at work is justified. In such case, the employment contract shall not be automatically extended during the period leading up to the birth.

First day of sick leave

An employee taking up to 6 days sick leave shall not be remunerated for the first day of such leave. If on sick leave for longer than 6 days, he/she shall receive remuneration for the entire period of sick leave.

Sickness benefit

The period for which the employee receives remuneration for sick leave has been reduced. The employer shall be obliged to pay sickness benefit for 33 days per year, and not 35 days as was previously applied.

Overtime allowance

An employee shall receive a 50% allowance for overtime work on business days, and for work on Sundays and holidays, which constitute his/her days off.

Vacation

An employee shall be obliged to use his/her vacation during a termination notice period, if required by the employer.

Cash equivalent for unused vacation

An employer shall not be obliged to pay an employee cash equivalent for unused vacation, if the parties agree that the employee uses his/her vacation during the term of a subsequent employment contract concluded with the same employer directly after the termination or expiry of a former employment contract.

Employee welfare fund

Employers, who as of January 1 of any given year employ at least 20 employees, shall be obliged to establish an employee welfare fund. Such obligation does not apply to employers employing less than 20 full-time employees.

Initial medical examinations

Employees re-employed directly after the termination of a former employment contract, by the same employer and on the same terms, shall not be subject to initial medical examinations (financed by the company).

Work Safety and Hygiene (BHP) Training

If an employee is employed at the same position that he/she occupied before entering into a new employment contract, then such employee shall not need to undergo BHP training before commencement of such new contract.

BHP Service

An employer who employs more than 100 employees shall be obliged to establish a BHP service, and a BHP commission if employing more than 250 employees.

Redundancy pay on account of group lay-offs

The amount of redundancy payable to an employee dismissed for employer-related reasons has been made conditional upon the period worked for a specific employer. Such payment shall be as follows:

- monthly remuneration – if an employee has been employed with a specific employer for less than two years;
- two-months remuneration - if an employee has been employed with a specific employer for at least two years, but no more than 8 years;
- three-months remuneration - if an employee has been employed with a specific employer for more than 8 years.

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