Employment conditions of workers performing work in the territory of the Republic of Poland in the framework of temporary posting by an employer with the seat in another Member State of the European Union
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Introduction

Employment conditions of workers posted from another Member State of the EU to work in the territory of the Republic of Poland are laid out in Art. 67\(^1\) and 67\(^2\) of the Act of 26 June 1974 Labour Code (Journal of Laws of 2014, item 1502, consolidated text, as last amended).

Note!

Provisions of the Art. 67\(^1\) and 67\(^2\) of the Labour Code apply accordingly to work performed by workers posted to work in the territory of the Republic of Poland by an employer with a seat in a non-Member State of the European Union (Art. 67\(^3\) of the Labour Code).

Minimum employment conditions applicable in the territory of the Republic of Poland

In case a worker performs work in the territory of the Republic of Poland because he was posted for a definite period of time by an employer with the seat in another EU Member State:

- in connection with the implementation of a contract concluded by the employer with a foreign entity,
- to work in a foreign branch (subsidiary) of the employer,
- operating as a temporary work agency,

the employer shall ensure that employment conditions of the worker posted to work in the territory of the Republic of Poland are no less favourable than those applicable under the Labour Code and other provisions regulating worker rights and duties (Art. 67\(^1\) § 2 of the Labour Code).

Minimum employment conditions which should be granted to a worker posted to work in the territory of the Republic of Poland concern the following:

1) the standards and length of working time, as well as daily and weekly rest periods,
2) the length of annual leave,
3) minimum remuneration for work determined on the basis of separate provisions,
4) the amount of supplement for overtime work,
5) occupational safety and hygiene,
6) parental rights of workers,
7) employment of young workers and performance of work or other paid activities by a child,
8) prohibition of discrimination in employment,

9) performance of work in line with provisions on the employment of temporary workers.

As provided for in Art. 67\textsuperscript{2} § 2 of the Labour Code the provisions on minimum employment conditions concerning:

- the length of annual leave,
- minimum remuneration for work,
- the amount of supplement for overtime work,

do not apply to workers posted to work in the territory of the Republic of Poland if, due to their qualifications, they work for up to 8 days a year in a particular position, starting from the day of commencing work – performing preliminary assembly work or installation work outside of construction sector, as provided for in the contract concluded by the employer with a foreign entity, whose performance is necessary for the use of supplied products.

The provisions concerning employment conditions of workers posted to work in the territory of the Republic of Poland do not apply to merchant marine companies with regard to merchant vessel crews if the employer has a seat in a Member State of the European Union or a Member State of the European Free Trade Association (EFTA) - a party to the agreement on the European Economic Area (Art. 67\textsuperscript{4} of the Labour Code).
I. Standards and length of working time, as well as daily and weekly rest periods.

1. Working time definition (Art. 128 of the Labour Code)

Working time is the time when the employee remains at the disposal of the employer in a work establishment, or in any other place designated as the place of performing work. The period of employee’s remaining at the disposal of the employer starts from the moment of employee’s arrival at a specified time in a work establishment or any other place where work is to be performed and ends as the working time ends or later, if the employee has been obligated to work overtime. The time of employee’s commuting to work from his/her place of residence and back is not to be considered as working time.

2. Standards and length of working time (Art. 129 § 1 of the Labour Code)

Working time may not exceed 8 hours in a 24-hour period and an average of 40 hours in an average five-day working week in an applicable settlement period not exceeding four months.

In every working time system, if it is due to objective or technical or work-organization related reasons, the settlement period may be prolonged up to 12 months while observing the general standards of protecting employees’ safety and hygiene.


A) Systems of work organization enabling prolongation of working time beyond 8 hours a day (Art. 135 – 138 and 143 – 144 of the Labour Code)

- balanced working time – the possibility of extending the length of working time up to 12 hours a day within a settlement period not exceeding 1 month or, in particularly justified cases, 3 months and for work dependent on the season or on weather conditions – 4 months (Art. 135 of the Labour Code);
- in jobs consisting in monitoring equipment or connected with a partial on-call duty – there is a limited possibility of extending the length of daily working time up to 16 hours within a settlement period not exceeding 1 month, in which case the employee has the right to rest
for a period of time at least equivalent to the number of hours worked, regardless of the weekly rest period (Art. 136 of the Labour Code);

- under the balanced working time in guarding property or protecting people as well as in case of employees of enterprise fire brigades and enterprise rescue teams – the length of daily working time may be increased up to 24 hours in a settlement period not exceeding 1 month with the possibility of prolonging it – in particularly justified cases up to 3 months, and also up to 4 months – for works dependent on the season or on weather conditions. In this system a worker is entitled to rest for a period of time at least equivalent to the number of hours worked, regardless of the weekly rest period (Art. 137 of the Labour Code);

- for work in continuous activities (which due to production technology or the necessity of continuous catering for the needs of the community cannot be discontinued) – the possibility of prolongation of the length of daily working time on one day within certain weeks up to 12 hours in case of, on average, a 43-hour weekly working time standard within an applicable settlement period not longer than 4 weeks (Art. 138 of the Labour Code).

- shortened working week system – on the written request of an employee, a shortened working week system may be applied in his case which allows the employee to work for fewer than five days per week while at the same time extending the daily working time but not more than up to 12 hours, within a settlement period not exceeding 1 month (Art. 143 of the Labour Code)

- system of weekend work – on the written request of an employee, a working time system may be used where work is performed only on Fridays, Saturdays, Sundays and on public holidays. That system allows for the daily working time to be extended up to 12 hours within the settlement period not exceeding 1 month (Art. 144 of the Labour Code).

B) Interrupted working time (Art. 139 of the Labour Code)

The system can be applied if it is justified by the type of work or its organization. The working time plan within this system should be pre-determined providing for no more than one break at work in a 24-hour period. The break is not counted in the working time, but, for the period of the break, the employee is entitled to half of the remuneration due for a work stoppage. The break should not be longer than 5 hours.

C) Task-based working time (Art. 140 of the Labour Code)
If justified by the type of work or its organization or by the place of performing work, this system of work may be introduced. In this system the employer, after consulting the employee, assigns certain tasks to the employee, considering the working time resulting from the 8-hour daily working time standard and a 40-hour weekly standard in an average 5-day working week.

4. **Overtime work** (Art. 131 and 151 of the Labour Code)

The weekly working time including hours of overtime work must not exceed on average 48 hours in the applicable settlement period. The aforesaid restriction does not apply to employees managing the work establishment on behalf of the employer.

Work performed in excess of the standard working time binding an employee, as well as work performed in excess of an extended daily working time resulting from the system and schedule of working time binding an employee, is overtime work.

Overtime work is allowed in the following cases:

1) where it is necessary to perform a rescue operation in order to protect human life or health, to protect property or the environment, or to repair a breakdown,

2) to meet the special needs of an employer.

In case of employees employed in job positions where the maximum admissible concentration and intensity of factors harmful to human health have been exceeded, overtime work due to the special needs of the employer is not admissible.

Making up for the time off work granted to an employee on his written request for settling private matters is not overtime work. Making up for the time off work must not breach the employee’s right to the daily and weekly rest periods.

The number of overtime hours worked in connection with the special needs of the employer cannot exceed **150 hours in a calendar year** per employee.

It is possible to set out a different number of overtime hours in a calendar year than the one specified above, in a collective labour agreement or in work regulations, or in an employment
contract if the employer is not covered by a collective labour agreement or is not obliged to set out work regulations.

For an employee working part time, the parties set out in the employment contract the admissible number of working hours above the working time specified in the employment contract, which, if exceeded, entitles the employee – in addition to the regular remuneration, to the remuneration supplement for overtime work.

5. **Nighttime work** (Art. 151\(^7\) of the Labour Code)

Nighttime is any 8 hours between 9 pm and 7 am. An employee whose schedule of working time includes at least 3 night time hours of work in each 24-hour period or where at least one quarter of his working time in a settlement period falls at night, is considered to be a night employee.

The working time of a night employee cannot exceed 8 hours in a 24-hour period if he holds a job that is particularly dangerous or involves a considerable physical or intellectual effort. Exceptions to this rule comprise:

1) employees managing the work establishment on behalf of the employer,

2) instances where it is necessary to perform a rescue operation to protect human life or health, to protect property or the environment, or to repair a breakdown.

The list of particularly dangerous jobs or jobs involving a considerable physical or intellectual effort is set out by an employer in agreement with an enterprise trade union and if there is no enterprise trade union active at the employer – with the representatives of employees chosen according to the standard method adopted at a given employer, and after consultation with the doctor responsible for the preventative healthcare of employees, taking into account the necessity of ensuring work safety and the protection of the employees' health.

6. **The right to a break at work** (Art. 134 of the Labour Code)

If the employee’s working time in a 24-hour period amounts to at least 6 hours, the employee has the right to a break at work lasting at least 15 minutes; such break is counted into the working time.

The employer is entitled to introduce one break at work which is not counted into the working
time, not longer than 60 minutes, for having a meal or settling private matters. The aforesaid break at work is introduced in a collective labour agreement or work regulations, or in an employment contract if the employer is not covered by a collective labour agreement or is not obliged to set out work regulations.

7. Periods of daily and weekly rest (Art. 132 and 133 of the Labour Code)

Employees are entitled to at least 11 hours of uninterrupted rest in each 24-hour period. The aforesaid provision does not apply to:

1) employees managing the work establishment on behalf of the employer,
2) cases consisting in performing a rescue operation to protect human life or health, to protect property or the environment, or to repair a breakdown.

In the aforesaid cases, the employee is entitled to an equivalent period of rest, within the settlement period.

Employees are entitled to at least 35 hours of uninterrupted rest every week, including at least 11 hours of uninterrupted rest in a 24-hour period.

In the following cases:

1) employees managing the work establishment on behalf of the employer,
2) the need to perform a rescue operation to protect human life or health, to protect property or the environment, or to repair a breakdown,
3) in the event of a change of the time during a day when an employee is performing work, following the employee's transfer to another shift, in accordance with the applicable working time system,

the weekly uninterrupted rest may include fewer hours, but may not be shorter than 24 hours.

Uninterrupted rest in a given week should fall on Sunday. When work on Sunday is allowed, the rest period may fall on a day other than Sunday.

List of instances in which work on Sunday is allowed (Art. 151\textsuperscript{10} of the Labour Code):

1) when it is necessary to perform a rescue operation to protect human life or health, to protect property or the environment, or to repair a breakdown,
2) in the case of activities involving continuity,
3) in the case of shiftwork,
4) at necessary maintenance repairs,
5) in the public transport and communication sectors,
6) for company firefighting and rescue services,
7) when guarding property or protecting people,
8) in agriculture and breeding of animals,
9) to provide services that are necessary due to their usefulness to society and everyday needs of the public, in particular in:
   a) retail outlets (Art. 151a § 3 of the Labour Code),
   b) companies providing public services,
   c) catering companies,
   d) hotels,
   e) municipal sector entities,
   f) health care entities and other medical units designed for people whose health condition makes it necessary for them to be given 24-hour or all-day medical service,
   g) social help organizational units as well as family support and foster care system organizational units providing 24-hour care,
   h) culture, education, tourism and leisure institutions,
10) in relation to employees employed in a working time system in which work is performed exclusively on Fridays, Saturdays, Sundays and public holidays,
11) when performing work:
   a) which consists in providing services with the use of electronic means of communication within the meaning of provisions on providing services electronically or with the use of telecommunication devices, within the meaning of the telecommunications law, that are received outside the territory of the Republic of Poland, if in accordance with the provisions applicable to the recipient of such services, Sundays and holidays stipulated in the provisions on the days off work are working days for the recipient,
   b) to ensure the possibility of providing the above mentioned services.
II. The length of annual leave (Art. 153 and 154 of the Labour Code)

The first annual leave:
In the calendar year in which an employee takes up work for the first time, he acquires the right to leave after each month of work amounting to 1/12 of the leave he is entitled to after one year of work.

Subsequent leave:
An employee acquires the right to subsequent leave in each successive calendar year.

The length of leave amounts to:
1) 20 days – if an employee has been employed for fewer than 10 years,
2) 26 days – if an employee has been employed for at least 10 years.

The length of leave for a part-time employee is proportionate to the working time of this employee, taking the length of leave determined above as a basis; a part of a day of leave shall be rounded up to a full day.
III. Minimum remuneration for work (Art. 172 of the Labour Code)

From 1 January 2015 the minimum remuneration for work shall be 1750,00 PLN
(Regulation of the Cabinet of 11 September 2014 on the amount of minimum remuneration for work in 2015 issued on the basis of the Act of 10 October 2002 on minimum remuneration for work; Journal of Laws No. 200, item 1679 as last amended).

In the previous years minimum remuneration for work was as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount of minimum remuneration (in PLN)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>1680,00</td>
</tr>
<tr>
<td>2013</td>
<td>1600,00</td>
</tr>
<tr>
<td>2012</td>
<td>1500,00</td>
</tr>
</tbody>
</table>

When calculating the amount of remuneration of an employee one takes account of components of remuneration granted to the employee, as well as other benefits resulting from an employment relationship, included in personal remuneration, in line with the rules of employment and remuneration statistics as specified by the Central Statistical Office.

The following are not taken into account when calculating the amount of remuneration of an employee:
1) anniversary reward,
2) severance payment granted to the employee when he retires or leaves a job due to permanent incapacity to work,
3) remuneration for overtime work.

Benefits due to the employee in connection with a business trip, including allowances, are not a part of personal remuneration according to the Central Statistical Office.

An employee performing full time work may not receive remuneration that is lower than the minimum remuneration. An exception to this rule is the remuneration received in the first year of his employment, which may not be lower than 80% of the minimum remuneration for work. In case of employees employed part time in a monthly working time system, the amount of minimum remuneration is calculated proportionately to the number of employee’s
working hours in a given month, with the basis being the amount of minimum remuneration
determined in accordance with the *Act on minimum remuneration*. 
IV. The amount of supplement for overtime work (Art. 151 of the Labour Code)

For overtime work, in addition to regular remuneration a supplement is paid in the amount of:

1) **100% of remuneration** - for overtime work:
   a) at nighttime,
   b) on Sundays and holidays which are days off work according to the employee’s working time schedule,
   c) on a day off work granted to the employee in exchange for work on Sunday or a holiday according to the employee’s working time schedule,

2) **50% of remuneration** - for overtime work on any other day than the ones listed above.

A supplement in the amount of **100% of remuneration** is also granted for every hour of overtime work due to exceeding the average weekly working time standard in the adopted settlement period, unless the excess of the standard was due to overtime work for which the employee is entitled to a supplement for overtime work due to exceeding a daily working time standard.

The basis for calculating the supplement is the employee’s remuneration resulting from his personal grade as expressed by the hourly or monthly rate, and if such a component of remuneration has not been separated, the basis of the supplement is 60% of the employee’s remuneration.

In relation to employees who regularly perform work outside their workplace, the remuneration along with the supplements may be replaced by a lump sum in the amount corresponding to the expected time of overtime work.
V. Occupational safety and hygiene (Section 10 of the Labour Code)

1. Employee’s right to refrain from performing work (Art. 210 of the Labour Code)

If conditions of work do not meet the occupational safety and hygiene regulations posing direct danger to health or life of an employee, or when the work performed by an employee poses such danger to others, the employee shall have the right to refrain from work and bring it immediately to the superior’s attention.

If refraining from work does not remove the danger, the employee shall have the right to leave the area of danger and bring it immediately to the superior’s attention.

The employee shall preserve the right to remuneration for the time of refraining from work or leaving the area of danger in the aforementioned cases.

The employee shall have the right to refrain from performing work that requires special psychophysical efficiency, subject to prior notification of the superior, if his or her psychophysical condition cannot ensure safe performance of work and poses threat to other persons.

The right to refrain from work and to leave the area of danger does not apply to an employee whose duties involve rescuing human life or property.

2. Preventive health protection

Information on occupational risk (Art. 226 of the Labour Code)

The employer shall assess and document occupational risk connected with the performed work, and apply necessary means of prevention to mitigate the risk. The employer shall advise his employees of the occupational risk which is connected with the performed work, and of the rules of protection against hazards.

Occupational risk is defined as a probability that undesirable events will occur in connection with the performed work causing loss, in particular, by causing unfavourable health effects in workers being the consequence of occupational hazards in the working environment or the manner in which work is performed (§ 2 point 7 of the Regulation of the Minister of
Preventive medical examinations (Art. 229 of the Labour Code)

The initial medical examination is required for:

1) Newly recruited persons;
2) Young workers transferred to other workstations and other employees transferred to workstations where they are subject to the influence of agents harmful to health or arduous conditions.

The initial medical examination is not required in case of persons:

1) who are re-employed by a given employer in the same position or in a position with the same conditions of work, under a subsequent contract of employment concluded within 30 days after the termination or expiry of the previous contract of employment with that employer;
2) who are employed by another employer in a specific position within 30 days after termination or expiry of the previous contract of employment, if they submit the employer with a valid medical certificate stating lack of contraindications for work in conditions specified in the referral to the medical examination, and the employer decides that said conditions are equivalent to the conditions in a specific position, with the exception of persons employed for performance of particularly hazardous work.

The above rule applies accordingly in case of employing a person who has an employment relationship with another employer at the same time.

Additionally, the employee shall be subject to periodic medical examination. In the event of incapacity to work for more than 30 days due to illness, the employee shall be subject to a medical health check to determine his capacity to perform work in the current position.

Periodic and follow-up medical examinations shall be carried out, as far as possible, during working hours. The employee shall preserve the right to remuneration for the time of being out of work in connection with the medical examination, and, if the employee has to travel to another locality in order to have such assessment carried out, he or she shall be entitled to the
reimbursement of travel costs, pursuant to the provisions on the business trips.

The employer shall not employ an employee without a valid medical certificate attesting the absence of contraindications to work in a specific position. Initial, periodic and follow-up medical examinations are conducted following a referral issued by the employer.

The employer employing employees in conditions of exposure to influence of carcinogenic substances and agents or dust causing fibrosis shall also ensure periodic medical examination for the following employees:

1) after they stop working in contact with such substances, agents or dust;
2) after termination of employment relationship, if the interested person requests such examination.

The initial, periodic and follow-up medical examinations are carried out at the cost of the employer. In addition, the employer shall bear other costs of preventive health care over those employees necessary because of the conditions of work.

The employer shall keep certificates issued on the basis of medical examinations.

**Transfer of employees to other work owing to symptoms of occupational disease** (Art. 230 of the Labour Code)

If it is recognized that an employee shows symptoms indicating an occupational disease, the employer is obliged to transfer the employee to other work which will not subject him to the influence of the factor which has caused the above symptoms on the basis of a medical certificate, within the time and for the duration specified in the certificate. Should the transfer to other work cause the lowering of the employee’s remuneration, the employee shall be entitled to a compensatory supplement for the period not exceeding 6 months.

**3. Accidents at work and occupational diseases** (Art. 234 of the Labour Code)

In the event of an accident at work, the employer shall take necessary steps to eliminate or limit the hazard, to provide first aid to the injured and to establish, in accordance with the applicable procedure, the circumstances and causes of the accident, and to apply appropriate measures to
prevent similar accidents.

The definition of a workplace accident was specified in the Act of 30 October 2002 on social insurance for workplace accidents and occupational illnesses (Journal of Laws of 2009 No. 167, item 1322, consolidated text as last amended), which sets out, among others, the types of benefits for workplace accidents and occupational diseases as well as conditions of granting the right to these benefits.

A workplace accident is considered to be a sudden event triggered by an external cause which results in injury or death and which occurred in connection with the performed work:
- during or in connection with performance by an employee of regular work activities or instructions from supervisors;
- during or in connection with performance by an employee of work activities for the benefit of the employer, even without an instruction;
- when the employee remains at the employer’s disposal on the way between the employer’s seat and the place of performing the duty which results from an employment relationship.

An accident is treated equally with a workplace accident if it occurred to a worker:
- during a business trip in circumstances other than the ones listed above, unless the accident was caused by the employee's behaviour which does not bear any relation to the execution of tasks entrusted to him;
- during training on common self-defence;
- during execution of tasks entrusted to an employee by trade union organizations operating at the employer’s.

The types of workplace accidents:
- fatal – an accident as a result of which death ensued within the period of up to 6 months from the day of the accident,
- serious – an accident as a result of which heavy bodily injury occurred, such as: loss of eyesight, hearing, speech, reproductive capacities, or any other bodily injury as well as health disorder impeding basic functions of the organism, as well as incurable illness or a life threatening illness, permanent mental illness, complete or partial incapacity for work in the profession or a permanent, substantial mutilation or disfigurement of the body,
- minor – any other accident which does not bear the characteristics of a fatal or serious
accident,
- collective – an accident which occurred to at least two people as a result of the same event.

The employer shall immediately notify the relevant district labour inspector and prosecutor of a fatal, serious or collective accident at work and of any other accident that caused similar effects in connection with work, if it may be considered a workplace accident.

The employer shall keep a register of accidents at work.

The employer shall keep a report on establishing the circumstances and causes of a work-related accident and any other related documents for a 10-year period.

The costs associated with the establishment of circumstances and causes of accidents at work shall be borne by the employer.


The employee must not be allowed to perform work if he or she does not possess the necessary qualifications or skills, or if his knowledge of the provisions and rules of occupational safety and hygiene is inadequate.

The employer shall provide occupational safety and hygiene training to the employee before allowing him or her to work, and shall hold periodic training sessions on that subject. The training of the employee before allowing him or her to work is not required if the employee takes up work in the same position that he occupied with a given employer directly before entering into a subsequent contract of employment with that employer. The training shall be held during working hours at the expense of the employer.

The employer is obliged to familiarize employees with the provisions and rules of occupational safety and hygiene in relation to work activities they perform and to issue detailed instructions and guidelines regarding occupational safety and hygiene at workstations.

The employee shall confirm in writing that he is familiar with the provisions and rules of
occupational safety and hygiene.

Detailed rules of training in occupational safety and hygiene were provided for in the Regulation of the Minister of Economy and Labour of 27 July 2004 concerning training in occupational safety and hygiene (Official Journal of 2004 No 180, item 1860 as last amended).

The provisions of the above regulation stipulate two types of training in occupational safety and hygiene:

a) initial training – carried out before admitting an employee to work in a specific position. This type of training covers:
   - general instruction – allowing employees to become familiar with the basic OSH provisions laid out in the Labour Code, collective agreements and work regulations, with the provisions and rules of occupational safety and hygiene existing in a given workplace, and with the rules of first aid provision in case of an accident,
   - workstation specific instruction – enabling employees to become familiar with the working environment factors which exist at their workstations and with occupational risk related to their work as well as measures of protection against hazards which may be induced by these factors and methods of safe work performance at these workstations,
   - periodic training – whose aim is to update and internalize the knowledge and skills in the area of occupational safety and hygiene and to familiarize the training participants with new technical and organizational solutions in this regard.

The employer and other persons managing employees, in particular managers, masters and foremen, should receive their first periodic training within the first 6 months following their commencement of work in these positions. Other workers should undergo the first periodic training within the first 12 months following their commencement of work in a given position.

Periodic training should be carried out at the following intervals:
- once a year – employees engaged in labourer positions where particularly dangerous work tasks are executed,
- every 3 years – other employees engaged in labourer positions;
- every 5 years – employers and other persons managing employees, in particular managers, masters and foremen; engineering and technical employees, including designers, constructor of machinery and other technical devices, technologists and
production managers, employees of OSH services and other persons executing the tasks of such services; employees whose nature of work is connected with exposition to factors harmful to health, arduous or dangerous as well as employees whose work is connected with responsibilities in the OSH area,
- every 6 years – administration and office employees and other employees not listed above.

5. Occupational safety and hygiene services (Art. 237\textsuperscript{11} of the Labour Code)

The employer who employs more than 100 employees shall establish occupational safety and hygiene services to perform advisory and inspection functions with regard to occupational safety and hygiene issues. The employer who has completed the required OSH training may execute the tasks of these services by himself, if:

1) he employs no more than 10 employees, or
2) he employs no more than 20 employees and conducts business activity classified in a group of activities that has received a third category risk-rating under the provisions of social insurance in relation to accidents at work and occupational diseases.

The employer who employs up to 100 employees, may entrust the provision of OSH services to specialists from outside the workplace or to a worker performing other work. A competent labour inspector may order that OSH service be established by an employer who engages up to 100, should this be substantiated by the identified occupational hazards.

6. Occupational Safety and Hygiene Commission (237\textsuperscript{12} and 237\textsuperscript{13} of the Labour Code)

The employer engaging more than 250 employees shall appoint an occupational safety and hygiene commission as his advisory and opinion-giving body. The OSH commission shall be composed of an equal number of the employer's representatives, including employees of OSH service and the physician responsible for preventive health care of the employees, as well as employees’ representatives, including a social labour inspector.

The responsibility of the OSH commission is to review conditions of work, evaluate periodically the status of occupational safety and hygiene, provide opinions on the measures adopted by the
employer to prevent accidents at work and occupational diseases, formulate recommendations for improvement of conditions of work and cooperate with the employer in the fulfilment of his or her occupational safety and hygiene responsibilities.

OSH commission meetings shall be held during working hours, not less frequently than once every three months. The employees shall retain the right to remuneration for the time of being out of work due to the participation in OSH commission meetings. In the fulfilment of its duties the OSH commission shall seek expert appraisals and opinions of specialists from outside the workplace – in situations agreed upon with the employer and at the employer’s cost.

List of substantial implementing acts in the area of occupational safety and hygiene

1) Regulation of the Minister of Labour and Social Policy of 26 September 1997 concerning general provisions on occupational safety and hygiene (Journal of Laws of 2003 No. 169, item 1650 as last amended);
2) Regulation of the Minister of Health and Social Affairs of 30 May 1996 concerning the performance of medical examinations of employees, the scope of preventive health care of employees and medical certificates issued for the purposes provided for in the Labour Code (Journal of Laws No. 69, item 332 as last amended);
3) Regulation of the Cabinet of Ministers of 1 July 2009 concerning the determination of circumstances and causes of workplace accidents (Journal of Laws No. 105, item 870);
4) Regulation of the Cabinet of Ministers of 30 June 2009 concerning occupational illnesses (Journal of Laws of 2013, item 1367 consolidated text);
5) Regulation of the Minister of Health of 1 August 2002 concerning the manner of documenting occupational illnesses and the effects of these illnesses (Journal of Laws of 2013, item 1379 consolidated text);
6) Regulation of the Minister of Economy and Labour of 27 July 2004 concerning occupational safety and hygiene training (Journal of Laws No. 180, item 1860 as last amended);
7) Regulation of the Cabinet of Ministers of 2 September 1997 concerning occupational safety and hygiene services (Journal of Laws No. 109, item 704 as last amended);
8) Regulation of the Minister of Labour and Social Policy of 6 June 2014 concerning the highest permissible concentration and intensity of agents harmful to health in the working environment (Journal of Laws 2014.817);
9) Regulation of the Minister of Health of 2 February 2011 concerning examinations and measurements of factors harmful to health in the working environment (Journal of Laws No. 33, item 166).
VI. Rights of employees relating to parenthood (Section 8 of the Labour Code)

1) Protection of pregnant women:

1) An employer may not serve a termination notice to a female employee or terminate her employment contract during her pregnancy or maternity leave or additional maternity leave, unless there are reasons which justify termination of the contract without a notice period through the employee's own fault, and the trade union active in the workplace, which represents the employee concerned, has consented to termination of the contract. The above rule shall not apply to a female employee during a trial period which is not longer than one month.

2) An employment contract concluded for a fixed-term period or for the time to perform particular work, or for a trial period longer than one month which would expire after the end of the third month of pregnancy, shall be extended until the day of the childbirth. The above does not apply to an employment contract for a fixed-term period concluded with a view to ensuring replacement for an employee during that employee's justified absence from work.

3) During pregnancy or maternity leave, an employment contract may be terminated with a notice period by an employer only if bankruptcy or liquidation of the employer is declared. The employer shall agree the date of termination of the contract with the trade union active in the workplace which represents the female employee.

4) Provisions concerning protection of women from being served a termination notice and termination of their employment relationships during maternity leave are also applicable (as relevant) to an employee who is a father raising a child in the period when he is on “maternity” leave, additional “maternity” leave or paternal leave and to employees who are on leave on such terms as those of maternity leave or on additional leave on such terms as those of maternity leave, or on parental leave.

5) A pregnant woman may not be employed to do overtime work or night work. A pregnant woman may not be posted to work outside her usual workplace without her consent nor be
employed in a system of interrupted working time.

6) When an employer employs a pregnant female employee or the one who is breast-feeding a child to do a job which is particularly arduous or harmful to health – specified in the Regulation of the Council of Ministers of 10 September 1996 on the list of jobs which are particularly arduous or harmful to women’s health (Journal of Laws No. 114, item 545 as last amended) – which is forbidden to that employee irrespective of the level of exposure to factors harmful to health or dangerous, that employer is obliged to transfer the employee to a different job, and if this is impossible, to relieve her, for as long as necessary, from the duty to perform work.

7) When an employer employs a pregnant female employee or the one who is breast-feeding a child to do other jobs forbidden to such women on the basis of the above-mentioned Regulation, that employer is obliged to adjust the conditions of work to the requirements stipulated in provisions or limit the working time in order to eliminate hazards to health or safety of the female employee. If it is impossible or impracticable to adapt the conditions of work at her current workstation or to shorten the working time, the employer shall transfer the employee to a different job and if it is not possible the employer shall relieve her, for as long as necessary, from the duty to perform work. The same rules apply in cases when health counter-indications for performing the current job result from a medical certificate presented by a pregnant female employee or the one breast-feeding a child.

8) If a change of working conditions in the currently held position, shortening of working time or transfer of the employee to a different job results in the lowering of her salary, the employee is entitled to a compensatory payment. During the time when she is relieved from the obligation to perform work, the female employee shall continue to be entitled to the current remuneration.

9) Once the reasons justifying the transfer of a female employee to a different job, shortening her working time or relieving her from the obligation to perform work, are no longer valid, the employer shall employ the employee to do the same job and have the same length of working time as specified in the employment contract.

10) Pregnancy shall be confirmed by a medical certificate.
11) An employer shall release a female employee from work to undergo medical check-ups related to her pregnancy, as recommended by a doctor, if such check-ups cannot be carried out outside working hours. The female employee shall retain the right to remuneration for the time of absence from work for that reason.

2. Rules of granting maternity leave

1) A female employee shall be entitled to maternity leave of:
   a) 20 weeks when she gave birth to one child at one childbirth,
   b) 31 weeks when she gave birth to two children at one childbirth,
   c) 33 weeks when she gave birth to three children at one childbirth,
   d) 35 weeks when she gave birth to four children at one childbirth,
   e) 37 weeks when she gave birth to five and more children at one childbirth.

2) No more than 6 weeks of maternity leave may fall before the expected date of childbirth.

3) After the childbirth an employee shall be entitled to maternity leave not used before the childbirth until she takes the whole period of leave stipulated in point 1).

4) Having used at least 14 weeks of the maternity leave after the childbirth, a female employee may give up the remaining part of the leave; in this case the unused part of the maternity leave shall be granted to the employee-father who raises the child, upon his written request.

5) A female employee shall submit a written request to her employer concerning her resignation from a part of the maternity leave, no later than 7 days before she intends to begin work; the request shall be accompanied by a certificate issued by the employer who employs the employee-father raising a child, confirming the date on which the employee-father will begin the maternity leave stipulated in his request for such leave to be granted, and the said date shall fall immediately after the date on which the female employee gives up a part of the maternity leave.

6) When a female employee after the childbirth has used 8 weeks of maternity leave, the
employee-father raising the child is entitled to a part of the maternity leave in the period when the female employee entitled to the leave needs hospital treatment due to her health condition which prevents her from taking care of the child. In that case, the maternity leave of the female employee is discontinued for the period when it is used by the employee-father raising the child. The overall duration of maternity leave taken by the mother and the father in the circumstances as stated above may not exceed the length specified in point 1).

7) When a female employee dies during maternity leave, an employee-father raising the child shall be entitled to take the unused part of the leave.

8) In the case of stillbirth or the death of a child under the age of 8 weeks, a female employee shall be entitled to maternity leave of 8 weeks after the childbirth – not shorter, however, than for 7 days after the child’s death.

When a child over the age of 8 weeks dies, a female employee shall remain entitled to maternity leave for 7 days after the child’s death.

A female employee who gave birth to more than one child at one childbirth shall, in such cases, be entitled to maternity leave of duration adequate to the number of children who remained alive.

9) If a new-born child requires hospital care, a female employee who used 8 weeks of the maternity leave after the childbirth may take the remaining part of the leave at a later date, after the child has been released from hospital.

10) When a mother chooses not to raise a child and gives the child away to a small children’s home or to another person for adoption, she shall not be entitled to the part of maternity leave which falls after the child has been given away. However, the maternity leave after the birth shall not be shorter than 8 weeks.

11) An employee shall be entitled to additional maternity leave of the duration of:
   – up to 6 weeks when she gave birth to one child at one childbirth,
   – up to 8 weeks when she gave birth to more than one child at one childbirth.

12) Additional maternity leave is granted one time or in two subsequent parts immediately after maternity leave and its duration shall be one or more weeks. Additional maternity leave is
granted on the employee’s written request, which shall be submitted no later than 14 days prior to the starting day of the planned leave. The employer is obliged to comply with the employee’s request.

13) An employee who is entitled to additional maternity leave can simultaneously be on leave and perform work for the employer who granted the leave, yet the number of working hours should not exceed the number of hours which corresponds to half-time employment. In such cases, additional maternity leave is granted for the remaining number of daily working time. Taking up a job during additional maternity leave shall take place on the employee’s written request, submitted no later than 14 days prior to the commencement of work. The request should specify the number of daily hours of work and the period during which she intends to combine being on additional maternity leave and performing work. The employer shall comply with the employee’s request unless it is impossible due to organization of work or the type of work performed by the employee. An employer shall inform the employee in writing of the reason for rejecting the request.

14) Immediately after additional maternity leave in the duration mentioned in point 11, an employee is entitled to parental leave of up to 26 weeks – irrespective of the number children born at the same time. Parental leave is granted one time or in maximum three subsequent parts, each lasting minimum 8 weeks, in full weeks. Parental leave may be used by both parents at the same time. In such case, the overall duration of the leave may not exceed 26 weeks. Parental leave is granted at the written request of an employee which shall be submitted at least 14 days prior to the commencement of that leave; the employer shall accept the request of the employee. The request for parental leave shall specify the end date of additional maternity leave, and if the request refers to a subsequent part of the parental leave – the end date of the previous part of the leave and the length of the leave which has already been used. The employee submitting the request shall attach a written statement of the other parent about his/her not intending to take leave during the period of time specified in the request, or about the period of time for which the other parent plans to take leave during the period of time specified in the request.

15) An employee who has taken a child in order to raise the child and has applied to a custody court for adoption proceedings to be commenced in relation to the child or an employee raising a child as a foster family, with the exception of a professional foster family, shall be
entitled to leave on such terms as those of maternity leave, of the duration of:

a) **20 weeks** after taking one child,
b) **31 weeks** after taking two children at the same time,
c) **33 weeks** after taking three children at the same time,
d) **35 weeks** after taking four children at the same time,
e) **37 weeks** after taking five and more children at the same time,

- no longer, however, than until the date on which the child reaches the age of 7 years, and in the case of a child in relation to whom a decision was taken to postpone his/her schooling duty, no longer than until the date on which the child reaches the age of 10 years.

16) The employee mentioned in point 15 is entitled to additional leave on such terms as those of maternity leave of the following duration:

- up to **6 weeks** when she/he takes one child,
- up to **8 weeks** when she/he takes more than one child.

17) If an employee has taken a child under 7 years of age, and in the case of a child in relation to whom a decision was taken to postpone his/her schooling duty – under 10 years of age, in order to raise the child, the employee is entitled to 9 weeks of leave on such terms as those of maternity leave.

18) The employee mentioned in point 17 is entitled to additional leave on such terms as those of maternity leave of up to 3 weeks.

19) The rules of granting additional leave on such terms as those of maternity leave, as mentioned in points 16 and 18, and the rules of taking up a job during such leave are the same as in the case of additional maternity leave and they are laid out in points 12 and 13.

20) An employee mentioned in point 15 is entitled to parental leave granted in accordance with rules laid out in point 14.

21) An employee-father who raises a child is entitled to paternity leave of **2 weeks**, no longer, however, than until the date on which the child reaches the age of 12 months or until after 12 months following the date of validation of a custody court ruling on adoption of the child,
no longer, however, than until the child reaches the age of 7 and if there has been a decision to postpone the child’s schooling duty than until the child reaches the age of 10. Paternity leave is granted on a written request of the employee-father who raises a child. The request has to be submitted at least 7 days before commencement of the leave. The employer is obliged to comply with the employee’s request.

22) An employer is obliged to allow an employee after the end of maternity leave, additional maternity leave, leave on such terms as those of maternity leave, additional leave on such terms as those of maternity leave, paternity leave or parental leave to perform work in the previous position, and if it is impossible, in the position equal to the one held before the leave or in another position adequate to the employee’s professional qualifications, with remuneration which the employee would have received if she/he had not been on leave.

3. Breaks for breast-feeding a child

1) A female employee breast-feeding a child is entitled to two half-hour breaks at work included in the working time. A female employee who is breast-feeding more than one child shall be entitled to two breaks at work, of 45 minutes each. Breaks for breast-feeding a child may be granted at one time, if so requested by the employee.

2) A female employee employed for a time shorter than 4 hours per day shall not be entitled to any break for breast-feeding. If the working time of a female employee does not exceed 6 hours per day, she shall be entitled to one break for breast-feeding.

4. Two days off work to take care of a child below 14 years of age

1) An employee who is raising at least one child at the age of up to 14 shall be entitled to take two days off work in a year while retaining the right to remuneration. An employee has the right to such days off work starting from the day of taking up a job, regardless of the month in which he/she began to work and the standard working time.

2) A natural father/mother of a child under 14 years of age as well as an employee raising a fostered child or his/her spouse’s child can take advantage of days off.
3) The fact that an employee’s wife takes care of a child while being unemployed or being on a leave to raise the child shall not limit the employee’s right to take days off on the basis of Art. 188 of the Labour Code. Only in the situation when both parents or both guardians are employed, the right to days off work to take care of a child can be exercised only by one of them.

4) It is permissible to share this right in the manner that each of the parents (guardians) shall take one day off work to take care of a child. This right shall not apply only to employees who are deprived of parental power over a child.

5. The right to annual leave immediately after maternity leave (Articles 163 § 3, 182\(^1\) § 6, 182\(^{1a}\) § 6, 182\(^2\), 182\(^3\) § 3, 183 § 1 & 4 of the Labour Code)

1) On a female employee’s request, she shall be granted annual leave immediately after maternity leave or additional maternity leave. The same refers to an employee-father who raises a child if he was on maternity leave, additional maternity leave or paternity leave, and to employees who were on leave on such terms as those of maternity leave or on additional leave on such terms as those of maternity leave and on parental leave.

2) In cases mentioned in point 1, the parties do not have to observe the rule that annual leave is granted as specified in the plan of leaves; neither can the employer postpone the starting day of leave due to his/her special needs.

3) An employer shall grant the whole due annual leave (e.g. 26 days) to an employee (female or male) irrespective of whether the employee is going on upbringing leave afterwards.

6. Upbringing leave

1) An employee employed for at least 6 months is entitled to upbringing leave in order to take care of her/his child personally. All previous periods of employment are included in the 6-month period of employment.

2) The duration of upbringing leave is up to 36 months. The leave shall be granted for the
period ending on the day when the child is 5 years of age.

3) In addition to the leave mentioned in point 2), an employee may take an upbringing leave lasting up to 36 months, yet only until the day when the child is 18 years of age, if the child needs personal care of the employee due to the health condition confirmed by a medical statement on disability or certain degree of disability.

4) Each parent or guardian of a child has an exclusive right to one month of upbringing leave during the period specified in points 2 and 3 above. This right might not be transferred to the other parent or guardian.
   Taking upbringing leave for the period of at least one month means that the parent or guardian of the child has used that leave.

5) Parents or guardians of a child can be on upbringing leave at the same time for a period not exceeding 4 months.

6) Upbringing leave is granted on the employee’s request. Such leave can be taken in separate parts, maximum 5.

7) An employer may not serve a termination notice or terminate a contract of employment starting from the day on which the employee submitted a request for granting upbringing leave up to the final day of that leave. Termination of the employment contract by the employer in the said period is permissible only in the case when bankruptcy or liquidation of the employer has been declared, and also when there are reasons which justify termination of the contract without observing notice period through the employee's own fault.

8) An employer is obliged to allow an employee after the end of upbringing leave to perform work in the previous position, and if it is impossible, in the position equal to the one held before the leave or in another position corresponding to the employee’s professional qualifications, with remuneration not lower than remuneration for work due to an employee on the day when the employee took up a job in the position held before the said leave.

9) An employee entitled to take upbringing leave, but not taking such leave, may submit a request to the employer asking to reduce the duration of his/her normal working time not
more than by half in the period in which the employee would have been on upbringing leave. The employer is obliged to fulfil the employee’s request.

10) An employer may not serve a termination notice or terminate a contract of employment starting from the day on which an employee, entitled to upbringing leave, submitted a request for reducing the duration of working time up to the day on which the employee returns to unreduced duration of working time, no longer, however, than throughout 12 months in total. Termination of the employment contract by the employer in the said period is permissible only when bankruptcy or liquidation of the employer has been declared, and also when there are reasons which justify termination of the contract without observing notice period through the employee’s own fault.
VII. Employment of young workers (Section 9 of the Labour Code) and performance of work or other paid activities by children (Art. 304\(^5\) of the Labour Code)

1. Employment of young workers – general rules

1) A young worker, within the meaning of the Labour Code, is a person who has reached the age of 16, but is not yet 18 years old. Employment of persons below 16 years of age is prohibited.

2) Only such young workers may be employed who:
   a) have completed at least lower secondary school;
   b) present a medical certificate stating that work of a given type does not present a hazard to their health.

3) A young worker without vocational qualifications may only be employed in order to receive vocational training.

4) An employer shall keep a register of young workers.

2. Conclusion and termination of employment contracts for vocational training

1) Conclusion and termination of employment contracts with young workers in order to give them vocational training shall be governed by the Labour Code provisions on employment contracts for an indefinite period, with the exception of Art. 195 and 196 of the Labour Code. The contract of employment in order to provide vocational training shall stipulate, in particular:
   a) the type of vocational training (training for a particular vocation or training to do a particular job);
   b) the duration and place of vocational training;
   c) the manner in which theoretical upgrading training will be offered;
   d) the amount of remuneration.

2) An employment contract for vocational training may be terminated with notice only if:
   a) the young worker fails to fulfil his/her obligations under the employment contract or the obligation to receive upgrading training, despite corrective measures being applied to
that young worker;
b) bankruptcy or liquidation of the employer is declared;
c) the enterprise is being reorganized in a way which renders it impossible to continue the vocational training;
d) it is determined that the young worker is unsuitable to perform the work at which he/she is receiving the vocational training.

3. Duty to supplement education
1) A young worker shall supplement his/her education until he/she reaches 18 years of age. In particular, a young worker shall:
   a) supplement his/her education by learning in a primary school and a post-primary school (a lower secondary school) if he/she has not completed such schools;
   b) supplement his/her education by learning in a secondary school or do so outside of the school system.

2) An employer shall release a young worker from work for the time he/she needs in order to take part in school classes in connection with supplementing his/her education.

4. Employing young workers for other purposes than vocational training (at light work activities)

1) A young worker may be employed under an employment contract to do light work.
2) Light work must not involve risk to life, health and psychological and physical development of a young worker and it cannot make it difficult for a young worker to fulfil his/her schooling obligation.
3) A list of light work activities shall be determined by an employer after receiving a consent of a doctor who discharges the task of occupational medicine service. The list shall be subject to approval by a competent labour inspector. The list of activities representing light work shall not include work which is prohibited for young workers, specified in detailed regulations (Regulation of the Council of Ministers concerning the list of work forbidden to young workers and conditions of engaging them to do some types of such work – Journal of Laws No. 200, item 2047 as last amended). A list of light work activities shall be determined by an employer as part of work regulations. An employer who is not obliged to issue work regulations shall determine the list of light work activities in a
separate document.

4) An employer shall bring the list of activities representing light work to the attention of a young worker before he/she begins work.

5) An employer shall determine the length and schedule of working time of a young worker employed to do light work, giving due consideration to the weekly number of hours of schooling under the curriculum and the schedule of classes the young worker is supposed to attend.

6) The weekly working time of a young worker engaged to do light work during his/her schooling periods shall not exceed 12 hours. On the day when he/she takes classes, the working time of a young worker shall not exceed 2 hours.

7) The working time of a young worker during school holidays shall not exceed 7 hours in a 24-hour period and 35 hours per week. The working time of a young worker under 16 years of age, however, shall not be longer than 6 hours in a 24-hour period.

8) The working time specified above shall also apply when a young worker is employed by more than one employer concurrently. Prior to entering into an employment relationship an employer shall solicit a statement from the young worker as to whether he/she is or he/she is not employed by another employer.

5. Special protection of health of a young worker

1) A young worker shall have a medical examination prior to being admitted to work, as well as periodic examinations and checks during employment.

2) If a doctor determines that a given job poses a risk to the young worker's health, the employer shall change that person's job; if no such possibility exists, he/she shall immediately terminate the employment contract and pay compensation equal to the remuneration for the period of notice.

3) An employer shall present information on occupational risks involved in the work performed by a young worker and on the rules for protection against the risks, also to the statutory representative of a young worker.

6. Working time of a young worker

1) The working time of a young worker of fewer than 16 years of age shall not be longer than 6 hours in a 24-hour period.
2) The working time of a young worker over the age of 16 shall not be longer than 8 hours in a 24-hour period.

3) The schooling time of a young worker, resulting from the timetable of obligatory school classes, irrespective of whether it falls during working hours, shall be included in the working time of a young worker.

4) When the working time of a young worker during a 24-hour period is longer than 4.5 hours, the employer shall introduce a break at work of 30 consecutive minutes, included in the working time.

5) A young worker shall not be employed to do overtime work or night-time work.

6) For a young worker, night time shall fall between 22.00 hours and 6.00 hours.

7) A break at work for a young worker which includes night-time shall be uninterrupted and last for no fewer than 14 hours.

8) Every week, a young worker shall be entitled to no fewer than 48 hours of uninterrupted rest which should include Sunday.

7. Annual leave

1) A young worker shall become entitled to leave of 12 working days at the end of 6 months from the date on which the young worker started his/her first job.

2) At the end of 1 year at work, a young worker shall become entitled to leave of 26 working days. However, in the calendar year in which he/she reaches the age of 18, he/she shall be entitled to leave of 20 working days if he/she acquired the right to leave before he/she reached the age of 18.

3) A young worker attending school should be given leave during school holidays. The employer may, at the request of a young worker who has not yet become entitled to the leave, grant him/her advance leave during school holidays.

4) An employer shall, at the request of a young worker being a student of a school for working persons, grant him/her unpaid leave during school holidays for a period which together with annual leave does not exceed 2 months. The unpaid leave shall be included in the period of work which determines employee rights.
Performance of work or other paid activities by a child (Art. 304 of the Labour Code)

1. Performance of work or other paid activities by a child under 16 years of age is only permitted for an entity engaged in cultural, artistic, sports or advertising activity, subject to prior consent of the statutory representative or guardian of the child, and subject to a permit of the competent labour inspector.

2. The competent labour inspector shall issue the permit at the request of the entity which runs the activity specified in point 1.

3. The competent labour inspector shall refuse to issue the permit if performance of work or other paid activities by a child would:
   1) pose a hazard to the child’s life, health and psychophysical development;
   2) interfere with the child’s school duty.

4. The entity which runs cultural, artistic, sports or advertising activity shall enclose the following with the permit application:
   1) a written consent of the child’s statutory representative or guardian to performance of work or other paid activities by the child;
   2) an opinion of a psychological-pedagogical counselling centre on the absence of counter-indications to performance of work or other paid activities by the child;
   3) a medical certificate confirming the absence of counter-indications to performance of work or other paid activities by the child;
   4) if the child is subject to school duty, an opinion of the headmaster of the school which the child attends on the ability of the child to comply with the school duty while performing work or other paid activities.

5. The permit of the competent labour inspector should include:
   1) personal details of the child and his or her statutory representative or guardian;
   2) name and other details of the entity engaged in cultural, artistic, sports or advertising activity;
   3) specification of the type of work or other paid activities which the child may perform;
   4) specification of the permitted period during which the child may perform work or other paid activities;
5) specification of the permitted daily working time for performance of work or other paid activities;
6) other necessary agreed terms required in consideration of the child’s welfare, or the type, nature and conditions of work or other paid activities performed by the child.

6. At the request of the statutory representative or guardian of a child the competent labour inspector shall withdraw the permit.

**Note!**
The competent labour inspector shall, ex officio, withdraw an issued permit if he/she finds that the conditions of child’s work do not correspond to the terms set out in the permit issued.
VIII. Ban on discrimination in employment (Art. 11\textsuperscript{3} of the Labour Code, chapter IIa, section one, and Art. 94\textsuperscript{3} of the Labour Code)

Any discrimination in employment, direct or indirect, in particular on grounds of gender, age, disability, race, religion, nationality, political views, trade union membership, ethnic origin, belief, sexual orientation, as well as employment for a fixed or indefinite time period, full or part time work – is not admissible (Art. 11\textsuperscript{3} of the Labour Code).

1. Equal treatment in employment

Employees should be treated equally in labour relations in terms of:

1) concluding and terminating an employment relationship,
2) terms of employment,
3) promotion,
4) access to training to improve professional qualifications.

Criteria which an employer cannot use in order to differentiate the situation of employees (discriminatory criteria):

1) gender,
2) age,
3) disability,
4) race,
5) religion,
6) nationality,
7) political views,
8) trade union membership,
9) ethnic origin,
10) denomination,
11) sexual orientation,
12) employment for a fixed or indefinite time period, full or part time work.
Note!

*Equal treatment* - means that no one is discriminated against in whatever way, directly or indirectly, on above grounds, referred to as discriminatory criteria.

*Direct discrimination* - occurs when due to one or more of the above-mentioned grounds an employee is or could be treated in a comparable situation less favourably than other employees.

*Indirect discrimination* - occurs when, as a result of an outwardly neutral decision, criterion applied, or action undertaken, there are or there may be disadvantageous disproportions or particularly disadvantageous situation in concluding and terminating employment relationships, terms of employment, promotion and access to training in order to improve professional qualifications in relation to all or a substantial number of employees belonging to a group singled out on the basis of one or several discriminatory criteria listed above, unless the decision, criterion or action is objectively justified by a lawful objective which is to be reached, while the measures which will serve to reach the objective are proper and necessary.

Direct or indirect discrimination also comprises:

1) actions which consist in *encouraging* or *ordering* any other person to violate the principle of equal treatment in employment,

2) *bullying*, which means undesirable conduct with the purpose or effect of violating the dignity of an employee and creating an atmosphere which is frightening, hostile, degrading, humiliating or insulting for the employee.

*Sexual harassment* is a type of discrimination based on gender, meaning any undesirable behaviour of sexual nature or referring to an employee's gender, with the purpose or effect of violating the employee's dignity, in particular creating an atmosphere which is intimidating, hostile, degrading, humiliating or offensive to the employee; such behaviour may consist of physical, verbal or non-verbal elements.

Employee’s surrendering to bullying or sexual harassment, or employee’s actions against bullying or sexual harassment should not result in any negative consequences for the employee.

Unless an employer can prove that he took account of objective reasons, it is considered a
breach of the principle of equal treatment in employment when the employer differentiates the situation of an employee on one or several grounds, defined above as discriminatory criteria, and such differentiation has the following consequences:

1) refusal to conclude an employment relationship or termination of an employment relationship,
2) unfavourable terms of remuneration for work or other terms of employment or omission of an employee in promotion or granting other work-related benefits,
3) the omission of an employee in the selection of participants for training to improve professional qualifications.

2. **Actions which do not constitute discrimination**

The rules of equal treatment in employment are not infringed upon by actions which are proportionate to achieving a lawful differentiation of the employee's situation and which consist in:

1) not employing an employee on one or several grounds, defined above as discriminatory criteria, if the type of work or conditions in which it is to be performed are a reason why the said ground or grounds are a real and decisive professional requirement for the employee,
2) terminating the terms of employment connected with the duration of working time, if it is justified by reasons which do not concern employees and without referring to any other ground or grounds which belong to the above-mentioned discriminatory criteria,
3) applying measures which differentiate the legal position of an employee due to the employee's age, disability or the protection of parenthood,
4) applying the criterion of the length of employment while specifying the terms of engaging and dismissing employees, terms of remuneration and promotion, as well as access to training to improve professional qualifications, which justifies different treatment of employees due to their age.

It shall not be a breach of the principle of equal treatment in employment to take measures during a specified period of time, aimed at compensating for unequal opportunities of all or a significant number of employees singled out for one or several grounds defined as discriminatory criteria, by reducing any actual inequalities for the benefit of these employees, which are related to concluding and terminating employment relationships,
terms of employment, promotion, granting other work-related benefits, and access to training to improve professional qualifications.

Moreover, restriction of access to employment by churches and other religious associations and organizations whose ethics is based on religion, denomination or view, due to religion, denomination or view, shall not be a breach of the principle of equal treatment, when the type or character of the activity performed by churches and other religious associations and organizations make religion, denomination or view a real and decisive professional requirement towards an employee, proportionate to achieving a lawful objective of differentiating the situation of a given person; this also refers to the requirement towards the employed to act in good faith and remain loyal to the ethics of the church, other religious association and organization whose ethics is based on religion, denomination or view.

3. **Right to equal remuneration**

Employees have the right to equal remuneration for the same work or for work of the same value.

The remuneration shall include all components of the remuneration, irrespective of what they are called and of what nature they are, as well as other work-related benefits, granted to the employee in the form of money or in any other form.

Work of the same value shall be work which requires comparable professional qualifications, certified by documents specified in separate provisions, or practice and professional experience, and also comparable responsibility and effort.

4. **Employee’s claims due to breaches of the equal treatment principle**

A person who is a victim of a breach by an employer of the principle of equal treatment in employment **shall be entitled to compensation in the amount not lower than the minimum remuneration for work.**

**Note!**

The fact that an employee took advantage of the rights to which he or she is entitled in connection with a breach of the principle of equal treatment in employment by the employer shall not constitute grounds for unfavourable treatment of the employee,
and it shall not cause any negative consequences for the employee, especially it shall not be the reason justifying termination, by the employer, of the employment relationship with notice or termination of such relationship without notice.

The aforesaid is respectively applicable to an employee who offers his/her support in any form to an employee enjoying the rights on account of the breach of the principle of equal treatment in employment.

5. **Bullying** (Art. 94\textsuperscript{3} of the Labour Code)

An employer is obliged to counteract bullying. Bullying shall mean any actions or practices related to an employee or conducted against an employee, which consist in persistent and long-lasting harassment or intimidation of the employee and which result in lowering the employee’s assessment of his/her professional usefulness, which cause or are to cause humiliation or ridiculing of the employee, isolation or elimination of the employee from the team of co-workers.

An employee who suffers from ill-health caused by bullying can claim an appropriate amount of money from the employer as compensation for the harm suffered.

An employee who terminated the contract of employment because of bullying has the right to claim compensation from the employer in the amount not lower than the minimum remuneration for work, specified on the basis of separate provisions. The employee’s statement about termination of the employment contract should be made in writing and it should mention bullying practices as the reason justifying termination of the contract.
IX. Performance of work in line with the provisions on the employment of temporary workers

The Act of 9 July 2003 on the employment of temporary workers (Journal of Laws No. 166, item 1608 as last amended) regulates the rules of employment of temporary workers by the employer being a temporary employment agency and the rules of sending such employees to perform temporary work for the benefit of the employer user.

Employer user - an employer or an entity not being an employer within the meaning of the Labour Code entrusting the temporary worker directed by the temporary work agency with tasks and supervising their performance.

Temporary worker - a worker employed by a temporary work agency exclusively for the purposes of performing temporary work for and under the management of the employer user;

Temporary work - performance of the following tasks for a given employer user for a term that is not longer than specified in the Act:

a) seasonal, periodic, or ad hoc tasks; or
b) tasks whose timely execution by the workers of the employer user would not be possible; or
c) tasks whose execution falls within the scope of responsibilities of an absent worker employed by the employer user.

1. Restrictions in using temporary work

1. A temporary worker may not be entrusted the performance of the following types of work for the benefit of the employer user:
   1) particularly dangerous work within the meaning of legal provisions issued on the basis of Art. 237\textsuperscript{15} of the Labour Code;
   2) in the post where the worker of the employer user is employed, while that worker is on strike;
   3) in the post at which the worker of the employer user was employed in the period of the last three months preceding the foreseeable date of the commencement of temporary work.

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work by a temporary worker and his contract of employment was terminated for reasons unrelated to the worker.

2. In the period spanning 36 successive months, the duration of work performed for one employer user may not exceed 18 months.

3. When a temporary worker performs work in a continuous manner for the benefit of a given employer user, and the work comprises tasks whose execution falls within the scope of responsibilities of an absent worker employed by that employer user, the duration of temporary work performance may not exceed 36 months.

If such be the case, following the period of performance of temporary work for the benefit of a given employer user, the temporary worker may be sent to perform temporary work for the same employer user not sooner than after the passage of 36 months.

2. Arrangements between the employer user and a temporary work agency

1. In order to conclude a temporary work contract between a temporary work agency and a temporary worker, the employer user agrees the following, in writing, with the agency in question:
   1) the type of work which is to be entrusted to a temporary worker;
   2) qualifications required to perform the type of work which is to be entrusted to a temporary worker;
   3) provisional period of performance of the temporary work in question;
   4) length of working time of a temporary worker;
   5) the place where temporary work is to be performed.

2. The employer user advises the temporary employment agency of the following in writing:
   1) remuneration for work which is to be entrusted to a temporary worker as laid out in regulations on remuneration which are binding for the employer user;
   2) the conditions of performing temporary work in relation to occupational safety and hygiene.

3. The employer user provides a temporary worker with working clothes, footwear and personal protective equipment and he also provides supportive drinks and meals, organizes training on occupational safety and hygiene, determines the circumstances and causes of
workplace accidents, conducts occupational risk assessment and informs the worker on the existing risk.

4. Prior to conclusion of a contract between a temporary employment agency and a worker, the temporary employment agency and the employer user agree the following in writing:
   1) the scope of information regarding the course of the temporary work which affects the amount of remuneration for work of a temporary worker and the manner and time of conveying the information to the temporary employment agency so that accurate calculation can be made of the worker’s remuneration for work:
   2) the scope of delegating the duties of an employer from the temporary employment agency to the employer user with regard to occupational safety and hygiene as well as other duties specified in point 3 (as the duties referred to in this point are the employer user’s statutory liability);
   3) the scope of delegating the employer’s duty to the employer user with regard to the payment of due amounts to cover the costs of a business trip.

5. A temporary employment agency and employer user may decide whether a temporary worker shall use due leave in whole or in part during performance of temporary work for the employer user and also determine the mode in which the leave shall be granted.

6. If the period of performing temporary work for a given employer user lasts 6 months or more, the employer user is obliged to allow the temporary worker use his/her leave during that period and grant them with time off work at the dates agreed with the worker and in the amount corresponding to the amount of leave that the worker in question is entitled to.

7. The arrangement made between the temporary work agency and the employer user that the latter may not employ his temporary workers after completion of temporary work shall be considered invalid.

3. Employment of temporary workers by a temporary employment agency

1. A temporary work agency employs temporary workers on the basis of fixed-term employment contracts or contracts for the performance of specified work.

2. The employment contract concluded between a temporary work agency and a temporary worker should specify the parties to the contract, the type of the contract, the date of its conclusion plus it should also specify the employer user and the period for which temporary work will be performed for him as well as the employment terms of a
temporary worker during performance of work for the employer user, in particular:
1) the type of work, length of working time, and the place of work;
2) remuneration for work and the date and manner of its payment by a temporary work agency.

3. The employment contract is concluded in writing. If the employment contract was not concluded in writing a temporary work agency shall provide a temporary worker with a written confirmation of the type of the concluded employment contract and its terms not later than on the second day of performing the work in question.

4. A fixed-term employment contract may specify the possibility to terminate the contract by any of the parties:
1) with a three-day notice period, if the employment contract was concluded for the period not exceeding two weeks;
2) with one-week notice period if the employment contract was concluded for the period exceeding two weeks.

5. The temporary worker shall be entitled to 2 days of leave for each month of remaining at the disposal of one employer user or more than one employer user; the worker shall not be entitled to leave for the period for which he used the leave he was entitled to under special provisions while with the former employer.

The temporary worker shall be granted leave on the days that would normally be working days for that worker if he did not use such leave. In the event that the temporary worker has not used his leave entitlement during the period in which he performs temporary work, the temporary work agency shall pay the temporary worker a cash equivalent in lieu of such leave or any unused part thereof.

Remuneration or a cash equivalent for 1 day of leave shall be determined by dividing the remuneration earned by the temporary worker during the period of temporary work by the number of days worked to earn the remuneration.

6. The temporary work agency issues the temporary worker with a certificate of employment concerning the total finished employment period in this agency, included in successive employment contracts concluded during the period not longer than 12 successive months.
Certificate of employment is issued on the day of expiration of the term mentioned above. Nevertheless, if the termination or expiration of the employment contract concluded by the end of twelve successive months falls after the expiration of this term, the certificate of employment is issued on the day of termination or expiration of such employment contract.

If issuing of the certificate of employment within the period mentioned above is not possible, the temporary work agency, not later than within the next seven days, sends or delivers the certificate of employment to the temporary worker or to a person authorized by them in writing to collect the certificate of employment.

The temporary worker may at any time request issuing of the certificate of employment by the temporary work agency due to the termination or expiration of employment relationship. A certificate of employment concerns the employment period based on each successive employment contract or total employment period included in successive employment contracts.

A certificate of employment is issued within seven days from the day of request and if its issuing is not possible within this period, the temporary work agency, not later than within next seven days, sends or delivers the certificate of employment to the temporary worker or to a person authorized by them in writing to collect the certificate of employment.

4. The rights and duties of the employer user

1. The employer user shall perform the duties and enjoy the rights of an employer to the extent necessary to organise work with the participation of the temporary worker.

The employer user shall:
1) be obliged to provide the temporary worker with safe and healthy working conditions at the place assigned for the performance of temporary work;
2) keep records of the temporary worker’s working time to the extent and on the terms applicable to his own workers;
3) not apply to the temporary worker the provision of Art. 42, paragraph 4 of the Labour Code (the possibility to entrust a worker, where justified by the needs of the employer, with work other
than the one specified in the employment contract, for a period of up to 3 months within a calendar year) or entrust him with work for and under the management of another entity.

2. During performance of temporary work for the employer user, a temporary worker may not be treated less favourably in terms of working conditions and other terms of employment than employees of the employer user engaged at the same or similar position.
In terms of training opportunities provided by an employer user with a view to upgrading professional qualifications the above rule does not apply to a worker who performs work for the employer user for fewer than six weeks.

3. A temporary worker with respect to whom the employer user has violated the principle of equal treatment regarding the conditions specified in point 2 shall be entitled to seek compensation from the temporary work agency in the amount stipulated by the provisions of the Labour Code (i.e. in the amount not smaller than the minimum remuneration) on damages due to the worker from the employer for the violation of the principle of equal treatment of workers in an employment relationship.

The temporary work agency shall have the right to seek reimbursement by the employer user for the equivalent of the damages paid to the temporary worker.

4. An employment contract concluded with the temporary worker shall be terminated upon the expiry of the period of temporary work for a given employer user.
The employer user who intends to terminate the performance of work by the temporary worker before the expiry of the term of temporary work as agreed with the temporary work agency shall notify the temporary work agency in writing of the expected date of termination in advance, if possible, observing the period of notice that is binding upon the parties under the contract of employment.
In the event of the actual cessation of the performance of temporary work by the temporary worker for the employer user due to the worker's failure to report to work without providing the reasons for his absence or the worker's refusal to continue to perform temporary work for the employer user, the employer user shall immediately notify the temporary work agency about the date and the circumstances of the cessation of work by the temporary worker.
5. During the period of temporary work for the employer user, the temporary worker shall have the right to use the social facilities of the employer user on the terms applicable to workers employed by the employer user.