

I work legally

EMPLOYMENT CONTRACT VS. CIVIL LAW CONTRACTS



Work and hire legally



ZAKŁAD
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GENERAL INFORMATION

Legal bases of work provision may be divided into two groups, i.e. employment-based jobs relying on labour law provisions and the so-called non-employment jobs based on the civil law provisions.

The following types of employment-based jobs may be distinguished:

- employment contract,
- appointment,
- nomination,
- election,
- cooperative work contract.

The Polish Labour Code lists the following types of employment contracts:

- trial period contract,
- fixed-term contract,
- indefinite-term contract.

Within the realm of civil law contracts, work is performed most frequently on the basis of a mandate contract and a specific work contract.

The differences between an employment contract and civil law contracts refer to, among others:

- nature of the performed work,
- subordination,
- necessity of personal performance of work,
- remuneration for work,
- risk within the scope of work performance,
- possibility of contract termination,
- guarantee of remuneration,
- social insurance premiums.

ATTENTION!

Conclusion of a civil law contract does not prejudice the nature of the contract, if the performed work in reality bears the characteristics of work performed on the basis of an employment contract.

EMPLOYMENT CONTRACT

Employment-based jobs consist in performance of work based on an employment relationship. Such employment is governed by the provisions of the Polish Labour Code and other labour law regulations.

EMPLOYMENT RELATIONSHIP

By establishing an employment relationship, the employee becomes liable for performing specific type of work for the employer's benefit and under the employer's management, in a place and at a time designated by the employer, against remuneration.

The employment relationship pertains to two entities – employer and employee.

An employer is an organisational unit, even without legal personality, as well as a natural person, provided they hire employees.

An employee is a natural person who is employed on the basis of an employment contract, appointment, nomination, election or a cooperative work contract.

Therefore, employees are not persons performing:

- work on the basis of civil law contracts,
- conducting business activity,
- performing home-based work.

Characteristics of employment relationship:

- subordination of an employee to the employer's management,
- payment for the performed work,
- work performed personally by the employee,
- recurrence of activities in specific time intervals,
- the employer bears the risk related to the conducted activity,
- work performed in a place and at a time designated by the employer.

EMPLOYMENT CONTRACT

The employer's management means fulfilment of the employer's instructions by the employee on the condition that they are not contradictory with the contract and the law.

The employee is entitled to remuneration for the performed work. The employee may renounce the right to the remuneration or transfer the right to another person. The obligation of personal performance of work means that the employee cannot entrust performance of activities resulting from the employment contract to third parties.

The employer incurs:

- **technical risk:** consequences of failure to provide work by the employee due to technical causes, e.g. stoppage,
- **personal risk:** consequences of errors made by the employee,
- **economic risk:** related to bad economic standing of the company,
- **social risk:** consisting in the employer's incurring certain social burdens (Company Social Benefits' Fund, disbursement of holiday allowance).

ATTENTION!

During employment on the basis of an employment contract, the employee is completely subordinate to the employer with respect to the manner, time and place of work performance.

MINIMUM REMUNERATION GUARANTEE

An employee working under an employment contract has a minimum remuneration guaranteed; in 2019, such minimum remuneration was determined in the amount of PLN 2,250.00 gross. The minimum remuneration may include various components due to the employee, e.g. basic pay, statutory bonus, seniority bonus.

EMPLOYMENT CONTRACT

Such remuneration cannot include:

- 1) a jubilee prize,
- 2) severance pay due to the employee in relation to retirement or transfer to a disability pension,
- 3) pay for overtime work,
- 4) extra pay for work at night.

The employer is required to pay the remuneration on a fixed pre-determined date, not later than within the first 10 days of the next calendar month (Art. 85 § 1 and 2 of the Polish Labour Code).

TERMINATION OF EMPLOYMENT CONTRACT

The employment contract is terminated:

- pursuant to the agreement of parties,
- via a declaration of one of the parties observing a notice period (termination of employment contract via a notice),
- via a declaration of one of the parties without observing a notice period (termination of employment contract without a notice),
- after the lapse of the period of time for which it was concluded,
- via expiry of the contract (employee's death, employer's death, temporary arrest of the employee).
Not every arrest of the employee causes expiry of the employment relationship, but only the arrest that results in the employee's absence for 3 months (Art. 66 § 1 of the Polish Labour Code).

ATTENTION!

The employer's declaration about termination of an employment contract concluded for a fixed term or termination of an employment contract without a notice period has to include a cause justifying termination of the contract.

EMPLOYMENT CONTRACT

DEDUCTIONS

Principles of making deductions from the employee's remuneration are regulated in the provisions from Art. 87 to 91 of the Polish Labour Code. The employer may make deductions from the employee's remuneration without the employee's approval solely towards clearly specified receivables, i.e.:

- sums enforced under enforcement titles to satisfy alimonies,
- sums enforced under enforcement titles to cover receivables other than alimonies,
- advance payments in cash granted to the employee,
- pecuniary penalties stipulated in Art. 108 of the Polish Labour Code.

The provisions of the Polish Labour Code also specify the limits of permissible deductions, e.g.:

- to satisfy alimonies: up to 3/5 of the remuneration,
- in case of enforcement of other receivables or deduction of advance payments in a cash form: up to a half of the remuneration.

The legislator has also guaranteed an amount free from deductions to the employee:

- the minimum remuneration for work with respect to deduction of sums enforced pursuant to enforcement titles to cover receivables other than alimonies,
- 75% of the minimum remuneration: with respect to deduction of advancement payments in a cash form granted to the employee,
- 90% of the minimum remuneration: during deduction of pecuniary penalties foreseen in Art. 108 of the Polish Labour Code.

EMPLOYMENT CONTRACT

The employee's rights related to the employment contract:

- annual paid holiday leave (20 or 26 days),
- leave from work (so-called special leave),
- protection provisions pertaining to work time (right to a break during work time, right to daily and weekly rest),
- limit of overtime work and mandatory compensation for such work in the form of free time or extra payment,
- protection from termination of employment relationship, e.g.:
 - pregnant employees and employees using maternity, parental, child care or paternity leave,
 - employees during a period of 4 years before reaching the retirement age,
 - employees who are on their holiday leave or on a sickness leave,
- guarantee of minimum remuneration for work,
- protection provisions related to parenthood, including:
 - right to maternal, parental leave, child care and paternal leave,
 - extension of the contract until the date of child-birth,
- the employer pays the social insurance premiums (pension, disability pension, sickness and accident) and health insurance and on account of this, free medical care is available,
- control and supervision over the observance of provisions related to the employment relationship is performed by the State Labour Inspection and labour courts settle disputes resulting from the employment relationship.

MANDATE CONTRACT

It is not regulated by the Polish Labour Code provisions, but by the provisions of the Polish Civil Code. The mandate contract is concluded by a mandator and a mandatee.

DEFINITION OF MANDATE CONTRACT

By means of a mandate contract, the mandatee becomes liable for performing a certain legal activity for the mandator. The mandate contract is described as a contract of due diligence, similarly to an employment contract.

The mandate contract is not a result-based contract. The mandatee is required to act carefully and exercise due diligence in performance of activities which form the subject matter of the mandate.

Examples of mandate contract: cleaning of premises, distribution of leaflets.

POSSIBILITY OF REPLACEMENT

The mandatee may entrust performance of the mandate to a third party only when this results from the contract, is customary or when he/ she is forced to do it on account of circumstances. In such case, the mandatee shall immediately notify the mandator about the person and the place of residence of his/ her replacement and, in case of notification, the mandatee shall only be responsible for lack of due diligence in selecting the replacement.

In case the mandatee entrusted performance of the mandate to another person without being authorised to do so, and an item that belongs to the mandator was lost or damaged during the performance of the mandate, the mandatee shall also be liable for the accidental loss or damage, unless one or the other would have also taken place if the mandatee was performing the mandate personally.

WORK UNDER MANDATE CONTRACT

REMUNERATION UNDER MANDATE CONTRACT

Work under the mandate contract is, in principle, paid for. If it does not follow from the contract or from the circumstances accompanying its conclusion that the mandatee became liable for performing it without remuneration, remuneration is due for performance of a mandate.

ATTENTION!

As of 1 January 2017, a minimum hourly rate is applicable with respect to the mandatee, determined in the amount of PLN 14.70 gross for 2019.

The mandatee is a natural person:

- conducting business activity registered in the Republic of Poland or a country which is not a member state of the EU or a member state of the European Economic Area, not hiring employees and not concluding contracts with contractors, or
- not conducting business activity who accepts a mandate for the benefit of the entrepreneur within the meaning of the provisions of the Act on Freedom of Business Activity or for the benefit of another organisational unit, as part of activity conducted by such entities.

Payment of remuneration in an amount resulting from the minimum hourly rate is made in a cash form. In case of contracts concluded for a period of time exceeding 1 month, payment of the remuneration in an amount resulting from the minimum hourly rate is made at least once a month.

The applicable regulations do not exclude deduction of fees or penalties from the mandatees' remuneration, unless such action of the mandator is aimed at circumventing the provisions of the law or is in contrast to the principles of social co-existence.

WORK UNDER MANDATE CONTRACT

Rights under a mandate contract:

- A mandate contract is subject to deduction of social insurance premiums, yet the social insurance (ZUS) premiums are deducted in various manners, depending on the fact whether and with which other titles to insurance the mandatee is vested. All the cases are described on the ZUS website in a guidebook entitled "Principles of coverage by social insurance and health insurance and determination of the basis of premiums for persons performing work on the basis of civil-law agreements".
- The period of insurance coverage is included in contributory periods, i.e. it is included in the years of service affecting the right to retirement pension.
- The mandator deducts premiums for health insurance, therefore free medical care is applicable.
- Sickness insurance is voluntary. If the mandatee decides to be covered by such insurance, the mandatee may use paid sick leave.
- There is no subordination to the mandator.
- Right to transfer performance of the task to a third party (when this results from the contract).

DRAWBACKS OF MANDATE CONTRACT

The mandatee is not entitled to:

- holiday leave, maternity leave, parental leave, child care leave, paternity leave,
- compensation for overtime work,
- retirement and disability pension severance pay.

The mandatee has no protection with respect to termination of the contract (the contract may be terminated also in case of pregnancy).

WORK UNDER SPECIFIC WORK CONTRACT

Under a specific work contract, the contractor becomes liable for performing specific work, whereas the contracting party becomes liable for paying the remuneration. The specific work contract is a contract resulting in accomplishment of a specific verifiable result. As part of such contract, the contractor becomes liable for preparing a work in compliance with the contracting party's requirements.

Such type of contract assumes freedom and independence in performance of work and simultaneously impermanence of the legal relationship due to the fact that performance of the work is a one-time activity and is enclosed within the deadline for completion. Therefore, it is assumed that the result agreed by the parties has to be defined in advance, has to exist independently and has to be objectively attainable and certain - judgement of the Court of Appeals in Białystok of 1 October 2013 (file ref. No. III AUa 330/13). **The parties to the specific work contract are the contracting party and the contractor.**

REMUNERATION UNDER SPECIFIC WORK CONTRACT

A specific work contract is a paid contract. Nevertheless, the legislator has not guaranteed any minimum remuneration and has left significant freedom to the parties within the scope of determining its value.

The amount of remuneration for a specific work may be specified by indicating bases for its determination. However, if the parties did not determine the amount of the remuneration and did not indicate the bases for its determination, it is assumed - in case of doubts - that the parties had ordinary remuneration for specific work of this type in mind. If the amount of remuneration cannot be determined in this manner, remuneration that corresponds to the justified outlay of work and other outlays made by the contractor is due.

Examples of specific work contracts: designing a fitted wardrobe, making a painting.

WORK UNDER SPECIFIC WORK CONTRACT

TERMINATION OF SPECIFIC WORK CONTRACT

Regulations contained in the Polish Civil Code pertaining to the specific work contract do not specify the notice period. The contracting party may withdraw from the concluded agreement only when:

- there is a need of "(...) significant increase in the estimated remuneration" - in such case, the contracting party should pay the contractor "(...) an adequate portion of the agreed remuneration" (Art. 631 of the Polish Civil Code);
- the contractor is late with commencement or completion of the work and will probably be unable to complete it within the designated deadline (Art. 635 of the Polish Civil Code);
- the contractor performs a given work "(...) in a defective manner or in violation of the contract" (Art. 636 § 1 of the Polish Civil Code).

SPECIFIC WORK CONTRACT AND SOCIAL INSURANCE

A person who performs work under a specific work contract is not covered by social insurance. No retirement, disability pension, accident or sickness premiums are deducted from such contract.

Exception!

When an employment relationship already exists between the parties to the specific work contract, or when the employee concludes a contract with another entity, but performs the specific work for the employer's benefit, then the contract is subject to the social insurance premiums. In such case, premiums for retirement, disability pension, accident and sickness insurance are to be paid both from the employment contract and the specific work contract.

ASSISTANCE CONTRACT DURING HARVEST

The assistance contract during harvest is concluded by a farmer (running an agricultural farm) with a person assisting during harvest (farmer's assistant). Such contract is concluded in writing before the start of provision of assistance during the harvest of **hops, fruit, vegetables, tobacco, herbs and herbal plants**.

Assistance during the harvest of the aforementioned plants encompasses the following activities:

- 1) collection of hops, fruit, vegetables, tobacco, herbs or herbal plants;
- 2) removal of unnecessary parts of plants;
- 3) classification or sorting of picked or collected plants listed above, or performance of other activities aimed at preparation of plants for transport, storage or sale or related to the care and improvement of the quality of crops.

The total time for provision of assistance during harvest by one farmer's assistant cannot exceed 180 days in a calendar year.

The farmer's assistant, prior to contract conclusion, files a declaration on the number of days in a given calendar year during which he/ she provided assistance during harvest based on contracts concluded with other farmers.

Every party to the contract has a right to terminate it. The contract is terminated as of the day of termination, unless the parties to the contract decided otherwise.

Provision of assistance during harvest is a paid service. An assistant working on the basis of an assistance contract during harvest does not have minimum remuneration guaranteed or a minimum hourly rate; however, such person is covered by sickness, maternity and accident insurance.

ATTENTION! Performance of work on the basis of an assistance contract during harvest does not constitute employment within the meaning of the Polish Labour Code.

MAJOR DIFFERENCES

Subordination to the management offering work

Obligation to perform work personally

Right to compensation for overtime work in the form of free time

Right to compensation for overtime work in the form of payment of allowance

Right to paid holiday leave

Right to special leave

Use of the Company Social Benefits' Fund (ZFSS)

Protection from termination of employment contract

Obligation to extend the contract with a pregnant employee

Minimum remuneration guarantee

Free medical care

Paid sick leave

Potential claims are sought by the State Labour Inspection or a labour court

Potential claims are sought in a civil court

After the completed work, the unemployment benefit is due

- 1 replacement is possible upon the approval of the contracting party
- 2 when the employer established the fund
- 3 with the exception specified in Art. 4 of the Act on Cash Benefits Under Social Insurance in Case of Sickness or Maternity

MAJOR DIFFERENCES

Employment contract	Mandate contract	Specific work contract
YES	NO	NO
YES	YES ¹	NO
YES	NO	NO
YES	NO	NO
YES	NO	NO
YES	NO	NO
YES ²	NO	NO
YES	NO	NO
YES	NO	NO
YES	YES	NO
YES	YES	NO
YES ³	YES ⁴	NO
YES	YES ⁵	NO
NO	YES	YES
YES ⁶	YES ⁶	NO

⁴ on the condition of joining the voluntary insurance

⁵ within the scope of minimum hourly rate

⁶ after fulfilment of statutory requirements

LEGAL BASES

REMEMBER!

Employment relationship and civil law contracts are the legally permissible forms of work performance.

The parties decide about the type of concluded contract which is the basis for the performed work. However, if work is to be performed in conditions characteristic for an employment relationship, conclusion of a civil law contract instead of an employment contract is in violation of the applicable provisions.

Employment relationship is not determined by the name of the contract concluded between the parties, but by the conditions in which the work is actually performed.

Legal bases:

- 1) Labour Code Act of 26 June 1974 (Polish Journal of Laws [Dz.U.] of 2018, item 917 as amended).
- 2) Civil Code Act of 23 April 1964 (Polish Journal of Laws [Dz.U.] of 2018, item 1025 as amended).
- 3) Minimum Remuneration for Work Act of 10 October 2002 (Polish Journal of Laws [Dz.U.] of 2018, item 2177).
- 4) Social Insurance System Act of 13 October 1998 (Polish Journal of Laws [Dz.U.] of 2019, item 300 as amended).
- 5) Social Insurance of Farmers Act of 20 December 1990 (Polish Journal of Laws [Dz.U.] of 2019, item 299 as amended).
- 6) http://www.zus.pl/documents/10182/167567/Poradnik_umowy_cywilnoprawne/542ecb21-490d-4877-a27f-8524116f08fe.

If you need any assistance, go to

www.prawawpracy.pl