Forms of employment in Poland

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Introduction

If you carry out business activity, you are required to make numerous important decisions: from choosing a legal form of business to determining matters related to hiring employees. When you begin to cooperate with new people, you need to select a legal form of your cooperation.

In Poland parties to a contract have discretion in determining their contractual relationship, which means that they have the right to decide about a legal relationship on condition that its terms and purpose are not at odds with the nature of a legal relationship, relevant legislation and the principles of community life.

Employment contract

The basic form of employment is an employment relationship. This form is very convenient for employees and, at the same time, the most expensive for employers. An employee who is hired under an employment contract enjoys various guarantees and rights while an employer is subject to numerous limitations.
An employment contract should be concluded in writing. If the parties have not concluded a contract in the written form, the employer is obliged to provide the employee with a written confirmation regarding the type of employment contract which has been concluded and its provisions. Such a confirmation must be delivered to the employee no later than on the first day of work. An employment contract which has been concluded orally is valid but it should be confirmed in writing.

Important characteristics which distinguish an employment contract from other civil law contracts are as follows:

(1) an employee is subordinated to an employer,
(2) an employee performs their work in a set place and time,
(3) an employment contract always requires remuneration which is payable on a monthly basis,
(4) an employee must perform work in person and their performance of work is supervised by an employer,
(5) an employee's duties may be amended in the course of employment,
(6) an employee is covered by compulsory social insurance.

1. Apprenticeship contract

The purpose of this type of contract is, on the one hand, to enable the employer to check whether the employee and their work is useful to the company. On the other hand, such a contract is supposed to give the employee a chance to make sure that the employer offers suitable working conditions.

An apprenticeship contract can be concluded for no longer than 3 months. It is prohibited to conclude the second apprenticeship contract immediately after the first one has expired if the second contract is supposed to give the same position to the same employee. It is, however, possible to conclude another apprenticeship contract with the same employee if the employee is awarded a different position or if the continuity of employment with the same employer has been broken.

An apprenticeship contract may be terminated by notice of:

(1) three days (three working days) when the trial period does not exceed two weeks,
(2) one week when the trial period exceeds two weeks,
(3) two weeks when the trial period is three months.

2. Employment contract for a specified task

This form of employment is most common for seasonal work. The crucial characteristic of an employment contract for a specified task is the fact that it defines its termination date by specifying the work which is to be performed. This kind of contract is terminated at the moment when the employee completes assigned work. After an employment contract for a specified task has been terminated, it is possible to conclude subsequent contracts of the same nature. The law does not prohibit such a practice.

Additionally, an employment relationship which arises from this type of contract expires when the employee has performed all the activities which were supposed to produce a specified result but the result has not been achieved. In such a case the employee is entitled to remuneration that corresponds to the amount and quality of the work they performed. If the employee performed work which has not produced the result, their right to remuneration is not revoked.

3. Fixed-term employment contract

A fixed-term employment contract is the most common limited duration contract. The term of such a contract is defined by specifying: the period for which a contract is concluded, conditions of contract termination or a future event of which occurrence will trigger the expiration of an employment relationship. The law does not define the period for which a contract shall be concluded and, therefore, parties to a contract can choose this period at their own discretion. One should remember, however, that it is a contract for an indefinite period that is a standard form of employment in Poland. Consequently, an employment contract with a two weeks' notice which is concluded for the period of many years may be regarded as an attempt to circumvent the law. According to the rule expressed in Article 25 of the Labour Code, the third consecutive contract for a fixed period with the same employee is classified as a contract for an indefinite period if the two previous contracts were concluded for fixed periods and if the break between the termination of the former contract for a fixed

period and the conclusion of the latter contract of the same nature has not exceeded one month. This rule does not apply to other limited duration contracts i.e. a replacement employment contract or an employment contract for a specified task.

A fixed-term employment contract can be terminated by notice before a specified date of contract expiration only when a contract has been concluded for more than six months and includes a relevant provision concerning the possibility of such termination.

An employment contract concluded for less than six months cannot be terminated by notice. An employment contract concluded for more than six months which does not include a relevant provision cannot be terminated by notice. It is terminated only when the term for which it has been concluded expires.

4. Replacement employment contract

A replacement employment contract is a separate type of limited duration contract which is concluded in the situation in which an employee must be replaced during their excused absence. The period for which a contract is concluded can be specified by e.g. providing an exact date or indicating a future event which is bound to take place e.g. expiry of a female employee's maternity leave. According to the Labour Code, absence of an employee who is replaced must be excused.

The essence of this form of employment is the fact that a replacement employment contract shall concern the same type of work which has been defined in the contract of the replaced employee. The law does not require, however, that the replacement employee's remuneration or amount of working time be the same as they are for the replaced employee. It is legal to hire the replacement employee who works part-time or for a lower remuneration irrespective of working conditions of the replaced employee.

5. Employment contract for an indefinite period

An employment contract for an indefinite period is this form of employment which is most beneficial to employees because it guarantees stability of employment as well as protection from contract termination. It also has advantages for an employer, who can build lasting relationships with valuable employees.

An employment contract for an indefinite period can be terminated by notice. A notice period depends on the term of the employee's employment with the employer and amounts to:

(1) two weeks when the term of employment is shorter than six months,
(2) one month when the term of employment is six months or more,
(3) three months when the employee has been employed by the employer for three years or more.

Termination of an employment contract

An employment contract can be terminated by mutual agreement of the parties or by notice. A mutual agreement of the parties is the most basic contractual form of terminating every employment contract. The employer and the employee reach such an agreement by making an unanimous declaration of will regarding termination of the employment relationship at the time defined by the parties. The parties are not bound by notice periods which are defined by the labour law, i.e. they can choose a notice period at their own discretion. Their agreement should be made in writing.

A notice to terminate employment should be made in writing as well, irrespective of the type of contract which was concluded between the employer and the employee. A notice does not need to have a written form to be effective but it is recommended to choose this form for evidence purposes.

The employer who gives a notice is required to disclose actual reasons which justify termination of the employment contract. If no reason is given or the reason given is too general or false, the employee can file a claim in a court of law and demand: a decision that the notice is ineffective, reinstatement or compensation.

The employee who has given notice can withdraw it if they make a relevant statement to the employer and the statement reaches the employer before or at the same time as their notice. If the employee fails to withdraw their notice on time, the employer's consent is required for withdrawal.

The employer does not have to disclose reasons for termination by notice in the case of apprenticeship contracts and those fixed-term employment contracts in which the parties allowed for termination by notice.

Amount of working time and remuneration

The amount of working time includes not only the time when actual work is performed for the employer but also the time when the employee remains at the employer's disposal in the workplace. The basic limit of working time defined in provisions of the Labour Code is the limit of eight hours a day and forty hours during an average five-day working week in a given accounting period which cannot exceed four months.

In the case of an unexcused absence of the employee, the amount of working time is not reduced and the employer can demand that the employee make up for the time of their absence before the end of the accounting period. Making up for that time, however, cannot violate the regulations on the employee's daily and weekly rest periods.

In the case of an excused absence of the employee, the employee does not retain the right to remuneration; however, if they make up for the time of their absence, they retain the right to remuneration.

Remuneration for work is payable at least once a month at the same time, which has been defined in advance. As a matter of principle, remuneration should be monetary but, on some conditions, it is possible to pay a part

of remuneration in kind. The minimum wage in 2012 amounts to PLN 1500 gross while in 2013 it will be PLN 1600 gross.

Overtime

The law does not allow to determine an amount of working time that is longer than the one stipulated in labour law provisions. The employer cannot oblige the employee to work overtime in an employment contract. It does not mean that overtime is excluded. Overtime includes all hours worked by the employee in excess of the limitations related to the employee's daily and weekly rest periods which result from the employee's system and schedule of work. The employee can work overtime only upon the expressed order of the employer or without their order but with their knowledge and consent.
Overtime is recommended in the situations in which it is particularly needed by the employer. The employee can refuse to work overtime but, thus, subjects themselves to disapproval of the employer, who can regard such a refusal as a sufficient reason for terminating the contract with the employee.
In addition to standard remuneration the employee is entitled to extra overtime pay amounting to:

(1) 100% of remuneration for working overtime:
    - at night, on Sundays and holidays (which are not the employee's working days according to the valid work schedule),
    - on days-off given to the employee in exchange for their work on Sundays or holidays (according to the valid work schedule),
(2) 50% of remuneration for working overtime on any other days than those mentioned above.

Compulsory contributions

Between the start date and the end date of an employment relationship every employee, irrespective of the type of employment contract, is covered by several kinds of compulsory insurance including: old-age pension, disability pension, work accident, sickness and health insurance. An employer is obliged to transfer compulsory insurance contributions on behalf of their employees. The contribution assessment base is a gross pay of an employee. Some compulsory contributions are financed by an employee and some by an employer.

Compulsory contributions financed by an employer in 2013 include:

(1) Old-age pension insurance – 9.76% of gross salary/declared income
(2) Disability pension insurance – 6.50% of gross salary/declared income
(3) Sickness insurance – 2.45% of gross salary/declared income

(4) Work accident insurance – from 0.67% to 3.60% of gross salary/declared income (depending on the industry, according to the Ministry of Labour and Social Policy regulation)

Additionally, an employer pays contributions for:

(1) Labour Fund - 2.45% of gross salary/declared income
(2) Guaranteed Employee Benefits Fund – 0.10% of gross salary/declared income

Compulsory contributions financed by an employee in 2013 include:

(1) Old-age pension insurance– 9.76% of gross salary/declared income
(2) Disability pension insurance – 1.50% of gross salary/declared income
(3) Sickness insurance – 2.45% of gross salary/declared income
(4) Health insurance – 9% of gross salary/declared income

Civil law contracts

Work can be performed under civil law contracts, which are often called „alternative" forms of employment. In practice, alternative forms of employment include contracts to perform a specified task, order contracts or cooperation with self-employed persons. These forms do not provide protection defined in labour law provisions and this is why their application is limited by the law even though they are very common.

According to Article 22.1 of the Labour Code, it is prohibited to replace an employment contract with a civil law contract if work is supposed to be performed on conditions defined in labour law provisions i.e. specified duties are to be performed for remuneration for the benefit of and under the supervision of an employer, in the time and place which an employer specified. If a civil law contract includes conditions which are characteristic of an employment contract, it can be deemed to be an employment contract.

This is the reason why you need to remember to conclude civil law contracts only in relevant situations. You cannot try to replace an employment relationship with a civil law relationship.

1. Order contract (provision of services)

The most common form of performing services under a civil law contract is an order contract ("umowa zlecenia"), which is also called a due diligence contract ("umowa starannego działania"). The purpose of a contract is the performance of specified activities by the party who accepts an order (an agent) for the benefit of the party who orders an order (a principal). The essence of a contract is that the predicted result of performed activities is only probable and the risk of contract performance is assumed by a principal. The regulations applicable to an order contract apply mutatis mutandis to a a contract for the provision of services.

The form of an order contract is not defined and, therefore, an order does not have to be made in writing. Any natural or legal persons can be parties to an order contract. An order contract may or may not provide for remuneration.

If the contract does not include provisions on remuneration and circumstances of the case do not indicate that the agent has undertaken to perform the order for free, it is assumed that the agent is entitled to remuneration. The amount of remuneration should correspond to the work performed by the agent. If performance of the order entails preliminary expenses, the principal should provide the agent with a sufficient cash advance upon the request of the latter. As a matter of principle, remuneration for performance of the order shall be paid after the order has been completed.

An order contract can also include the principal's instructions for the agent, which are binding for the latter even though a relationship between the parties lacks dependence or subordination, which are characteristic of an employment relationship. The agent can refrain from performing the order in the manner specified by the principal if they are not able to obtain the principal's permission but they assume that the principal would agree to implement changes. The agent can also order other parties to perform the order unless it is expressly forbidden in the order contract.

According to Article 750 of the Civil Code, the regulations applicable to an order contract apply mutatis mutandis to a contract for the provision of services. Thus, if you intend to conclude a contract for the provision of services, you should first check if the Civil Code regulates similar contracts. If there is no similar contract in the Civil Code, you should follow the regulations on an order contract while drawing up a contract for the provision of services.

Contributions

If the agent's only entitlement to social insurance is an order contract, they are covered by compulsory old-age pension and disability pension insurance but their health insurance is voluntary.

If the agent is covered by compulsory old-age pension and disability pension insurance but they have not signed the order contract with their employer, they are also covered by compulsory work accident insurance and health insurance. Their employer is also obliged to pay contributions to the Labour Fund and to the Guaranteed Employee Benefits Fund. However, their health insurance remains voluntary.

If the agent has concluded the order contract with their employer, they must be covered by all types of insurance irrespective of whether or not they have another entitlement to insurance. The only employees who are exempt from this rule are those on parental leave or maternity leave for whom sickness insurance is voluntary.

It is worth remembering that the agent who can join the old-age pension insurance and disability pension insurance programs on a voluntary basis cannot join the health insurance program on such a basis. The agent can be covered by voluntary health insurance only when they are covered by compulsory old-age pension and disability pension insurance.

If the agent who has the right to join the old-age pension insurance and disability pension insurance programs on a voluntary basis does not exercise their right, they are covered only by compulsory health insurance.

If the agent is a student aged under 26, they are not covered by ZUS (Social Insurance Institution) insurance on the basis of the order contract. When the student turns 26, they become covered by compulsory old-age pension and disability pension insurance if the order contract is their only entitlement to insurance.

2. Contract to perform a specified task

It is a civil law contract under which a commissioned party undertakes to perform a specified task while a principal covenants to pay remuneration which has been agreed upon. A contract to perform a specified task ("umowa o dzieło") is also called a contract of a result ("umowa rezultatu"). It does not have to be concluded in writing to be valid i.e. parties can decide about the form of a contract at their own discretion and can conclude it orally or even impliedly. A contract is not limited by a date.
The specified task can be performed by a third party unless the commissioned party has been obliged to perform it by themselves in a relevant provision of the contract.

Contributions

A contract to perform a specified task itself does not entitle to social insurance. In the case of such a contract there are no compulsory contributions paid to the social insurance and health insurance programs. The only exceptions to this rule are the situations in which a contract to perform a specified task is concluded by the employer with their own employee or a task is performed for the benefit of the employer. In such cases, the employer is obliged to transfer all health insurance and social insurance contributions on behalf of the employee.

In all other cases contributions are not compulsory, i.e. when a contract is not concluded with the employer; a task is not performed for the benefit of the employer; a contract is the only source of income for the commissioned party.

Sole proprietorship (self-employment)

There are more and more employees who change the way of performing their work duties and start to provide services as self-employed natural persons. Self-employment becomes increasingly popular because of high labour costs.

Self-employment is characterized by a unique relationship between an employee and an employer. This relationship includes entrepreneurs who are equal partners, at least in theory. An employee is not subordinate while an employer does not specify the time and place in which work is to be performed even though a contract concluded between entrepreneurs may include detailed provisions on the method and time in which services are to be performed.

A self-employed person can often organize their work at their own discretion. A third party can be entrusted with the work which is supposed to be performed by the self-employed person unless the parties have forbidden that in a relevant provision of the contract. An indisputable advantage of self-employment is the possibility to perform services for more than one entity but the parties can exclude such a possibility in their contract.

Remuneration of a self-employed person is not subject to the regulation on the minimum wage and an employer is not obliged to pay remuneration on a monthly basis. Remuneration is usually paid in arrears after a service has been performed. It is, however, possible to pay it on a monthly basis.

Provisions of a contract concluded between a self-employed person and an employer are not protected analogously to provisions of an employment contract. In the case of such a contract, labour law provisions on notice periods and a necessity to justify termination of a contract are not applicable. Entrepreneurs can define conditions of terminating their cooperation at their own discretion.

An employer who hires a self-employed person is not obliged to pay them overtime or to cover costs of their business trips. In addition to that, such an employer is not limited by regulations on stability and protection of an employment relationship and does not have to respect rights arising from an employee's parenthood. A self-employed person is not entitled to paid holidays, bonuses or benefits.

Contributions

A self-employed person pays their own insurance contributions, transfers an advance income tax payment and incurs other costs of running a business, which relieves an employer of costs. A self-employed person has to pay contributions irrespective of whether or not their business yields profit or loss. Amounts of contributions are unrelated to their income as well.

Natural persons who start a business are granted a limited privilege during 24 months from the day when they began to operate a business. In this period their social insurance contributions are calculated on the basis

of the lower contribution assessment basis which amounts to 30% of the minimum wage (the minimum wage in 2012 is PLN 1500 while in 2013 it will be PLN 1600). Preferential principles of paying social contributions are also applicable to the self-employed persons who:

(1) did not operate a non-agricultural business during last 60 calendar days before the business start date;
(2) do not perform, as a part of their business, business activities for the benefit of the previous employer which are identical with the activities they performed for this employer in the employment relationship before they began to operate a business, in the current or previous calendar year.

A self-employed person is covered by compulsory old-age pension, disability pension, accident and health insurance while sickness insurance is voluntary. The contribution assessment basis in the case of health insurance is identical for all self-employed persons.

Another reason why an employer benefits from hiring self-employed persons is the fact that such persons are usually VAT payers and they invoice an employer for services which they have performed. In such a situation, the amount of an employer's due tax can be reduced by the amount of the VAT tax which has been added by a self-employed person.

Order contracts with self-employed persons

It is common to conclude order contracts with self-employed persons. In such situations, it is necessary to examine which insurance contributions are supposed to be paid on order contracts.

Contributions are not paid on the order contract if: the contract has been concluded as a part of the business run by the self-employed person, the subject of the order contract is in line with the type of business activity and, for tax purposes, the income from the contract is classified as business income. In such a case, contributions should be paid only on the business run by the self-employed person.

If the subject of the order contract is not in line with the type of business activity performed by the self-employed person, contributions should be paid separately on the business and the order contract as they are separate sources of income.

Selected advantages and disadvantages of particular forms of employment from the perspective of an employer are as follows:

Form of employment	Advantages	Disadvantages
Employment contract	1. Permanent character of a relationship: possibility of creating long-term work plans including employees (a due diligence contract). 2. Employee's subordination in terms of the place, time and method in which work is to be performed.	1. Very developed system of rights, guarantees and privileges which an employee is entitled to (e.g. minimum wage, paid holiday, working hours regulations, regulations related to maternity, particular procedures of terminating a contract). 2. Little flexibility. 3. Highest labour costs (compulsory old-age pension, disability pension, health, work accident, sickness insurance contributions).
Order contract (provision of services)	1. Due diligence contract. 2. Discretion in deciding about the character of a legal relationship. 3. Flexibility. 4. Labour costs are lower than in the case of an employment contract.	1. No subordination relationship. 2. Compulsory old-age pension, disability pension, health insurance contributions. 3. No or limited liability for the result which has been ordered in a contract.
Contract for a specified task	1. Contract of a result. 2. Discretion in deciding about the character of a legal relationship. 3. Risk of achieving the result is assumed by a commissioned party. 4. Low labour costs – no compulsory contributions unless an employer concludes a contract for a specified task with their own employee. 5. Flexibility.	1. No subordination relationship.
Sole proprietorship	1. Lowest labour costs. 2. Discretion in deciding about the character of a legal relationship. 3. Flexibility. 4. Possibility of deducting the VAT.	1. No subordination relationship.

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