

# Remote working

On January 16, 2023, an act amending the Labor Code, which introduces remote working into the Code, was referred to the President of Poland for signature. Regulations on remote work are scheduled to take effect on March 1, 2023.

## Remote working

As defined in the Act, **remote working will be work performed wholly or partially at a place designated by the employee and agreed with the employer each time, including at the employee's home address, in particular using means of direct communication at a distance.**

The parties will agree on the performance of remote work either at the time of entering an employment contract or during the course of employment.  
*(Article 6718 of Labor Code)*

### Rules for performing remote work

The act introduces the obligation to determine the rules for performing remote work in:

- the agreement between the employer and the company trade union organization(s),
- the regulations established by the employer – if no agreement is reached with the company's trade union organization, and in case there is no such organization at the workplace (then the regulations would be established after consultation with employee representatives).

In the event that the employer does have the agreement or regulations for remote work in effect – it can be implemented at the request of an interested employee.

The agreement or regulations will specify, in particular:

- the group or groups of employees who may be subject to the remote working system;
- the rules for covering the costs by the employer;
- the rules for determining the cash equivalent or lump sum;
- the rules of communication between the employer and the remote worker, including how the remote worker confirms his or her presence at the workplace;
- the rules for controlling the performance of an employee performing remote work;
- the rules of control with respect to occupational health and safety;
- the rules for monitoring compliance with information security and protection requirements, including procedures for the protection of personal data;
- the rules for installing, inventorying, maintaining, updating software and servicing the work tools entrusted to the employee, including technical equipment.

*(Article 6720 of Labor Code)*

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## Refusal of remote work

In principle, the employer will have to agree to a request for remote work in the case of the following:

- a pregnant employee,
- an employee raising a child up to the age of 4,
- an employee caring for another member of the immediate family or another person in the same household with a disability certificate or a certificate of significant disability,
- an employee being a parent of a child with a certificate of a complicated pregnancy and in situations of obstetric failures,
- an employee being a parent of a child with a disability certificate, or a moderate or severe disability certificate as defined in the regulations on vocational and social rehabilitation and the employment of disabled persons (even after the child turns 18),
- an employee being a parent of a child with an opinion on the need for early support of child development, a certificate on the need for special education or a certificate on the need for rehabilitation and education classes (even after the child has reached the age of 18).

**Such a request may be denied only if it is not possible to perform work remotely due to the organization of work or the type of work performed by the employee.**

The refusal will have to be motivated on paper or electronically within 7 working days of the employee's request.

*(Article 6719 of Labor Code)*

## Remote working on demand

Each employee gains the right to 24 days of remote work per calendar year.

*(Article 6733 of Labor Code)*

## Employer's obligations towards an employee performing remote work. Compensation. Lump sum.

The amendment to the Labor Code imposes a number of obligations on the employer towards an employee who performs remote work. The employer will be obliged to:

- provide the employee performing remote work with work materials and tools;
- provide installation, service, maintenance of work tools, including technical equipment, necessary for the performance of remote work or cover the necessary costs thereof;
- cover the cost of electricity and telecommunications services;
- cover other costs directly related to the performance of remote work;
- provide the employee with training and technical assistance necessary to perform remote work;
- determine the amount of cash compensation for the use of, e.g., the employee's private laptop and other materials not provided by the employer.

When determining the amount of the compensation or lump sum, the employer will have to take into account: the standards for wear of materials and work tools, including technical equipment, the standards for consumption of electricity, the cost of telecommunications services. It should be emphasized that **the compensation will not constitute income for the employee.**

*(Articles 6724 – 6725 of Labor Code)*

## Application

The regulations on remote work will also apply to employment relationships established on a basis other than an employment contract.

*(Article 6734 of Labor Code)*



# Work-life Balance

On January 12, 2023, an Act to amend the Labor Code and certain other laws, implementing the provisions of the EU work-life balance directive (more precisely, Directive 2019/1158 of the European Parliament and the Council of the European Union of June 20, 2019), was referred to the Sejm for the first reading.

The key changes affect six areas of the Labor Code; for employees, **this means greater flexibility in the hours and manner of work, as well as salary modifications during parental leave.**

## 1. Protection of employees

The Act provides for the protection of employees from any unfavorable treatment by the employer or negative consequences due to the employee's exercise of his or her rights.

*(Article 1, item 2 of the draft act)*

A ban is to be established on preparing to dismiss employees during pregnancy and during maternity leave, paternity leave, parental leave, as well as due to the request for flexible work arrangements until the day of termination of work under flexible work arrangements.

*(Article 1, item 21 of the draft act)*

## 2. Carer's leave – a new type of leave

The employee will be entitled to a carer's leave of 5 days per calendar year. He or she will be able to use it to provide personal care or support to a relative (e.g., son, daughter, mother, father, spouse) or a person in the same household who requires substantial care or substantial support for serious medical reasons. Leave shall be granted on days that are working days for the employee, according to the employee's work schedule.

*(Article 1, item 20 of the draft act)*

## 3. Parental leave

The draft provides for an extension of parental leave by 9 weeks, i.e., from 32 weeks to 41 weeks – in the case of the birth of one child, and from 34 weeks to 43 weeks – in the case of multiple births. However, this additional 9 weeks of parental leave will not be transferable to the other parent.

*(Article 1, item 25 of the draft act)*

The amount of maternity allowance for the period of parental leave will also be changed as follows:

- Maternity allowance for the entire period of parental leave will be 70% of the allowance base,
- If the employee applies for a parental leave no later than 21 days after childbirth, the amount of maternity allowance for the period of maternity and parental leave will be 81.5% of the allowance base,
- In any case, the employee will be entitled to an allowance of 70% of the allowance base for the period of the non-transferable 9-week portion of parental leave.

*(Article 11, item 4 of the draft act)*

## 4. Exemption from work

An exemption from work due to force majeure will also be introduced into the Labor Code. An employee will be entitled to time off from work, either 2 days or 16 hours per calendar year, due to force majeure, for urgent family matters caused by illness or accident, if the employee's immediate presence is necessary. For the time off, the employee will retain the right to 50% of his salary.

*(Article 1, item 19 of the draft act)*

## 5. Paternity leave

Another change is the reduction of paternity leave to 12 months from the date of the child's birth. Currently, an employee can take this leave within 24 months from the date of birth of the child.

*(Article 1, item 31 of the draft act)*

## 6. Terms of employment upon return

The employer will be obliged to allow the employee, at the end of maternity leave, leave on terms of maternity leave, parental leave, paternity leave, child care leave, to work in his or her current position or, if this is not possible, in a position equivalent to the one occupied before the start of the leave on terms and conditions no less favorable than those that would have applied if the employee had not taken the leave. *(Article 1, item 36 of the draft act)*

## 7. Flexible work arrangements

An employee raising a child up to the age of 8, may submit a request, on paper or electronically, for flexible work arrangements to be applied to him or her no less than 21 days before the planned start of the use of flexible work arrangements.

The lawmakers intend to implement this by allowing employees to apply for flexible work arrangements involving the use of:

- interrupted working time system
- reduced working week system
- weekend working system
- variable working hours
- flexible work schedule
- reduced working time.

*(Article 1, item 40 of the draft act)*

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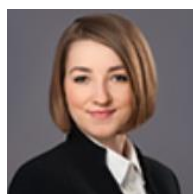
Please contact our experts should you have any questions regarding the amendments to the Labor Code.



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