

Obligation to employ workers

On 22 August 2023, the Act of 28 July 2023 amending the Bridge Pensions Act and certain other acts was published in the Journal of Laws.

The provisions of the Act introduced very important changes to the provisions of the Code of Civil Procedure for employers.

The provision of Article 2 of the Act will enter into force on 22 September 2023.

I. Obligation to grant the employee's request for continued employment pending the conclusion of the proceedings

Pursuant to Section 2 point 1 of the Act, Article 477² § 2 of the Code of Civil Procedure reads as follows:

"When declaring the termination of the employment contract ineffective or reinstating the employee to work, the court, at the employee's request, shall, in its judgment, impose an obligation on the employer to continue employing the employee until the proceedings have become final".

The change is that, prior to the amendment, **the labour court was not obliged** to apply the measure of temporarily reinstating the employee (or ordering further employment of the employee), as the provision clearly provided for a power and not an obligation "the court, at the employee's request, may, in its judgment, impose an obligation on the employer (...)".

This meant that the labour court had to consider additional circumstances, with it being pointed out that these were circumstances other than those which the court takes into account when assessing the impossibility or inexpediency of reinstatement (Article 45 § 2 of the Labour Code).

These, in fact, constitute an obstacle to the reinstatement of the employee and in their place the court awards compensation. It has been signalled in the doctrine that the circumstances in question are those related to the employee's personal and social situation, in particular the lack of employment or the grossly inferior conditions of the work the employee undertook after being dismissed by the previous employer.

In the current state of the law, if the employee applies for an obligation on the employer to continue to employ him, **the labour court is obliged to grant such an application.** The employer will have to **employ the employee, throughout the proceedings** between the instances and throughout the proceedings before the court of second instance, until the conclusion of the proceedings.



Baker Tilly Legal Poland is one of the top law firms in The Legal 500 ranking - awarded in the Real Estate category

II. Obligation to continue to employ protected employees - at any stage of the proceedings

Pursuant to Article 2 point 2 of the Act, Article 755⁵ of the Code of Civil Procedure was added, according to which:

„In labour law cases in which an employee subject to special protection against termination of the employment relationship with or without notice of termination is pursuing a claim for declaring the termination of the employment relationship ineffective or for reinstatement, the court shall, at the request of the entitled party, at any stage of the proceedings, grant security by ordering further employment of the employee by the employer until the proceedings have become final ”.

The basis for granting security is only the probability of **the existence of the claim**. The court may refuse to grant security only if the claim is manifestly unfounded.

The employer may request the annulment of a final order granting security only if he demonstrates that, after the security was granted, the prerequisites referred to in Article 52 § 1 of the Labour Code, such as a serious breach of fundamental duties of the employee; the commission of a crime by the employee during the term of the employment contract, which makes further employment impossible; the culpable loss of entitlements necessary to perform work in the occupied position.

A variation of the order granting security is not allowed.

The provisions introduced regarding employees subject to special protection against termination of employment not only **introduce mandatory security by ordering the employer to continue employment**, but additionally indicate that such an application may be made at any stage of the proceedings. The above means that, despite the termination of the employment relationship by the employer, if the employee files an application for security, **the employer will have to employ the employee throughout the proceedings**, until their conclusion.

CONTACT

We encourage you to contact our expert for any questions on labour law.



Joanna Jędrzejewska
Senior Associate | Attorney-at-law
joanna.jedrzejewska@bakertilly.pl

ABOUT US

Baker Tilly Legal Poland is a law firm focused on **servicing entrepreneurs in all key areas of their business**.

We have been present on the market since 2018.

As a member of Baker Tilly International and the TPA Group, we combine the advantages of an integrated „one-stop shop” service with the extensive experience of a traditional law firm and the reach of an international advisory group.

Our team consists of renowned experts with many years of experience on the Polish and international market, providing legal advice to representatives from all economic sectors.

Baker Tilly Legal Poland
Młyńska 12
61-730 Poznań, Poland
tel.: +48 61 630 05 00

Warsaw Office
Przyokopowa 33
01-208 Warsaw, Poland
tel.: +48 22 647 99 00

email: legal@bakertilly.pl