INFORMATION:

EMPLOYMENT LAW IN POLAND

SOURCES OF REGULATION

The Labour Code (LC) of 26 June 1974, recently amended on 7 May 2009 (legally standing as of 05 August 2009), is the main source of law which regulates termination of employment relationships in Poland. Supplementary legal provisions are found in the Act of 13 March 2003 on "Special Principles for Terminating Employment with Employees Due to Reasons not Attributable to Employees" (hereinafter referred to as the Act of 13 March 2003).

In addition, the Constitution of 2 April 1997 is an important source of law, since some of the fundamental precepts of labour protection are therein enshrined. The Constitution is, therefore, the underlying force and legislative basis of Polish labour law.

The Constitution prohibits discrimination on the grounds of race, creed, religion, or gender. This non-discrimination principle, which also applies to termination of employment, is reflected in the Labour Code, which prohibits discrimination on the grounds of age, disability, nationality, political views, and trade union membership, and additionally provides for equality in employment for both men and women.

SCOPE OF LEGISLATION

The Labour Code (LC) regulates the rights and duties of employees and employers, as well as conditions of employment for workers in both the public and the private sector. It covers all persons employed on the basis of "a contract of employment, appointment, nomination, election, or a cooperative contract of employment". These different forms of employment are all defined in the Code, along with the definitions of 'employer' and 'employee'.

The Act of 13 March 2003 applies in the event of the termination of an employment relationship due to reasons not attributable to employees, provided that the employer employs at least 20 employees. The Act, which replaced the previous Act on Termination of Contracts of 28 December 1989, together with recent numerous amendments to the Labour Code, are designed to address the very difficult current situation in the labour market in Poland, most specifically the very high unemployment rate.

Special legal provisions connected with international financial crisis and its consequences for the labour market were introduced in Act of 1 July 2009 on Appeasement of economic crisis effects for employees and entrepreneurs (legally standing as of 22 August 2009).

CONTRACTS OF EMPLOYMENT

Contracts of employment may be concluded for an indefinite period, for a fixed period, or for the time to complete a specific task. Article 25 §2 LC provides the possibility to introduce trial periods not exceeding three months. Entering into a subsequent employment contract for a fixed period has a legal effect identical to that of

entering into an employment contract for an indefinite period, provided that the parties have previously entered into an employment contract for a fixed period twice (for two sequential periods), and the gap between the termination of one employment contract and entry into the subsequent one was not longer than one month.

TERMINATION OF EMPLOYMENT

Under Article 30 §1 LC a contract of employment can be terminated in several ways:

- by mutual agreement of the parties;
- by statement of will to terminate the contract made in writing by one of the parties within the prescribed time period (with notice);
- by statement of will to terminate the contract made in writing by one of the parties without following the prescribed time period for termination of the contract (without notice);
- by expiration of the specific time period for which the contract was concluded; and
- on the day of completion of the task for which the contract was concluded.

Paragraph 2 of the above Article specifies the terms for termination of a contract concluded for a trial period. Such a contract terminates upon expiration of its fixed-time or by a statement of will made by one of the parties within the prescribed time period (with notice).

DISMISSAL

The Polish Labour Code provides broad protection against unjustified termination of employment by the employer. This protection includes an absolute prohibition against the dismissal of certain groups of workers. In addition, the Labour Code requires all dismissals to be in writing and for a valid reason, and the Code itself enumerates several grounds for lawful and unlawful dismissal.

In the case of alleged unlawfulness of the termination of an employment contract, the employee has the right to appeal to the competent labour court.

Reasons considered to be valid will generally fall within the categories of serious or repeated misconduct, incapacity of the employee, or operational requirements of the enterprise. Instances of serious or repeated misconduct entitle the employer to dismiss summarily, without notice, and include cases where the worker commits a serious violation of his or her basic duties as a worker, for example where he or she disturbs the order and peace of the workplace, is absent without justification, is drunk at the workplace or commits other abuses. The worker may also be summarily dismissed if he or she is convicted of a criminal offence which makes further employment impossible, or where the worker ceases, through their own fault, to have the necessary qualifications for the job. "Serious violation of basic duties" has been judicially defined as an instance of blatant carelessness and not instances of lesser fault, while the term "basic duties" refers first and foremost to those obligations outlined under Article 100 §2 of the Labour Code.

An employer may also terminate the employment relationship when the worker is incapacitated by disease and said incapacity lasts for

longer than the prescribed time limits enumerated in Article 53 §1(1) LC. A worker who has been absent from work for a reason other than for illness, although the absence was justified, for more than one month, may also be lawfully dismissed.

An employee may also be lawfully dismissed for refusing to accept a proposed change in conditions of employment or remuneration. However, such a proposed change may not be arbitrary and must be justified by an adequate reason, or by the introduction of a new remuneration policy or working conditions applicable to all (or a certain group of) employees within a given enterprise, or a change in the type of duties.

Certain categories of workers are deemed to have special protection from dismissal and such workers may only be dismissed for reasons of serious misconduct, or in some instances, when the employer declares bankruptcy or is placed in liquidation.

Workers may not be dismissed for reasons of trade union membership or participation, or for undergoing obligatory military service. Female employees during their pregnancy or maternity leave are protected in a similar way. Also, a worker may not be dismissed without notice if he or she has been absent to care for a child or has been placed in isolation because of a contagious disease.

Furthermore, employees who are less than four years away from retirement age also enjoy special protection from dismissal.

Specific rules relating to dismissals for economic reasons, operational requirements of the enterprise or due to structural, technological or production changes are set forth in the Act of 13 March 2003 on Special Principles of Terminating Employment with Employees Due to Reasons Not Attributable to Employees.

This Statute applies to enterprises with at least 20 employees which contemplate terminating employment relationships (within the period of up to 30 days) with:

- 10 employees, provided that the employer employs fewer than 100 employees;
- 10 per cent of employees if the employer employs at least 100 but fewer than 300 employees; and
- 30 employees if the employer employs at least 300 employees.
- Such collective redundancies are referred under the Act as 'group lay-offs'.

NOTICE AND PRIOR PROCEDURAL SAFEGUARDS

Notice is required with regard to termination of an indefinite period contract or a trial period contract, except for well-defined situations of serious misconduct of an employee which entitle the employer to terminate the contract without notice, i.e. summary dismissal.

The length of the notice period for a contract of employment concluded for an indefinite period depends on the length of the period of employment with the given employer, as follows :

- for periods of employment of less than six months, the length of notice is two weeks;
- for periods of employment for at least six months, one month;
- for periods of employment of at least three years, three months.

Under Article 36 § 1 of the LC the notice period of three months may be reduced to a maximum period of one month in a case of the employer's bankruptcy or liquidation, or for other reasons not attributable to the employee. However, for the remaining period of notice, an indemnity shall be awarded in lieu of notice.

The length of notice for a contract of employment concluded for a trial period also depends on the length of the trial period, and is as follows:

- three working days, if the trial period does not exceed two weeks;
- one week, if the trial period is longer than two weeks; and
- two weeks, if the trial period is three months.

When a contract of employment has been concluded for a fixed term longer than six months, the parties to the contract may provide for an "early termination" notice period of two weeks.

The employer is required to give his or her reasons in writing for any proposed termination of employment to the employee with the exception of fixed-time contracts.

Termination with notice of an indefinite period contract is subject to trade union control. The employer must give notice in writing to the relevant union concerning the proposed dismissal. The union is given the opportunity to issue an objection to the proposed dismissal within five days. Although the opinion expressed by the trade union is non-binding, it is of great influence in the final decision on dismissal made by the director of the enterprise. It is also an important factor in any dispute about the "justifiability" of the dismissal. Failure to inform the union about a proposed dismissal is sufficient ground for an employee to claim that his or her dismissal was unlawful.

Under the Act of 13 March 2003, strict procedural guidelines are laid down for collective redundancies. First, management must give notice to trade unions about the proposed termination and inform them of the number of employees concerned and the reasons for the terminations. Similar information shall be also forwarded to the competent district labour office. Said notice must be given within a reasonable period preceding the proposed redundancies, providing trade unions with an opportunity to contest the redundancies and to submit counter-proposals. They are expected to reach an agreement with management about the procedure for redundancies and termination of employment and pay conditions. In the event of a failure to conclude an agreement, the relevant provisions of the Labour Code shall apply to giving notice and termination of contracts.

SEVERANCE PAY

In a case of collective redundancies due to the termination of employment under the 'group lay-offs' programme, special provisions are made for severance payments or compensatory allowances under the 2003 Act.

Article 8 of the Act provides that severance payments must be equal to one, two or three months' remuneration for workers who have been employed with a given employer for a total period of less than two years, for 2-8 years, or for more than eight years, respectively. Severance pay shall be determined based on the rules governing the

calculation of unused holiday pay. Moreover, the amount of the severance pay must not exceed the amount of 15 times the minimum wage, as determined under relevant legislation.

Compensatory allowances shall be paid for a period of up to six months when the dismissed worker has been moved to a job with a lower wage.

For dismissals other than collective redundancies, Poland has an extensive unemployment benefits scheme regulated under the Employment Promotion and Labour Market Institutions Act of 20 April 2004 (recently amended on 1 September 2009). A worker who is dismissed for serious misconduct or who resigns is not entitled to unemployment benefits.

AVENUES FOR REDRESS

Unjustified termination of employment, with or without notice, or violation of any of the procedural rules governing termination with notice, and dismissal of a worker covered by special protection, give the employee the right to institute legal proceedings in a competent labour court. This includes employees who have been dismissed for reasons of their employer's bankruptcy or liquidation or other economic reasons, and those dismissed under the collective dismissal programme. In addition, an employee can apply to the Commission for Arbitration before taking recourse to legal proceedings before the labour courts.

When dismissal is effected before the expiry of the period of notice or without notice, the dismissal is declared null and void: the employment relationship continues without interruption and the worker suffers no loss in remuneration.

If the employment relationship was already terminated, the labour court may rule on the employee's reinstatement or award damages (equivalent to two weeks' to three months' remuneration, but not less than the remuneration for the prescribed period of notice), in accordance with the employee's request.

If, in the court's opinion, the reinstatement is regarded to be impossible or purposeless, the court solely awards the employee with damages.

In the case of reinstatement after effective termination of an employment relationship, the employee is entitled to compensation (equivalent to payment of wages) for the time of being unemployed but for no more than two months, or for one month when the period of notice was three months.

Under Article 50 LC, in a case of violations of the rules governing termination of an employment contract concluded for a trial period, the employee is entitled solely to damages and cannot be reinstated.