Revue de droit comparé du travail et de la sécurité sociale

4 | 2018
English Electronic Edition

Poland

Mateusz Gajda

Electronic version

URL: <https://journals.openedition.org/rdctss/1840>

DOI: 10.4000/rdctss.1840

ISSN: 2262-9815

Publisher

Centre de droit comparé du travail et de la sécurité sociale

Printed version

Date of publication: 1 December 2018

Number of pages: 248-251

ISSN: 2117-4350

Electronic reference

Mateusz Gajda, "Poland", *Revue de droit comparé du travail et de la sécurité sociale* [Online], 4 | 2018, Online since 01 November 2021, connection on 15 November 2021. URL: <http://journals.openedition.org/rdctss/1840> ; DOI: <https://doi.org/10.4000/rdctss.1840>

Revue de droit comparé du travail et de la sécurité sociale est mise à disposition selon les termes de la Licence Creative Commons Attribution - Pas d'Utilisation Commerciale - Pas de Modification 4.0 International.

MATEUSZ GAJDA

UNIVERSITY OF LODZ

I - INTRODUCTION OF THE BAN ON SUNDAY TRADING

On 1 March 2018, the Act of 10 January 2018 on the limitation of trade in Sunday and bank holidays as well as some other days (Polish Journal of Laws of 2018, item 305) came into force.

The aim of the new regulations is to free employees involved in trade from the obligation to work on Sundays and public holidays, as well as on 24 December and on the Saturday following the first day of the Easter holidays. They also restrict the possibility of entrusting work to employees in commercial establishments after 14:00 on 24 December and on the Saturday immediately preceding the first day of Easter. It should be noted that employees retain the right to their remuneration for non-working time due to the reduction of their working hours on these two days.

The new law does not constitute the first restriction on working on Sundays and public holidays. According to the Polish Labour Code, Sundays and public holidays are, in principle, recognized as statutory days off. Work on these days is only allowed in a limited number of situations, e.g. when an employee's work involves protecting property or people or when it is necessary to perform a rescue operation to protect human life or health, property or the environment. In practice, employers often justify work on Sundays and public holidays because employees are working in shifts or providing services that are necessary due to their usefulness to society and the daily needs of the public, in particular in hotels, medical centers, petrol stations, etc.

The ban on Sunday trading is not complete - the new provisions include a number of exceptions. Trading is permitted on selected Sundays during the calendar year, including the two Sundays before the first day of Christmas, the Sunday before the first day of Easter, and last Sunday in January, April, June and August. The Act also contains transitional provisions that limit the ban during the first two years of its existence. In 2018, trading is permitted on the first and last Sunday of every month, while in 2019 it will be permitted only on one Sunday per month. From 2020, the ban will take full effect and trading will only be possible on the seven Sundays per year mentioned above (i.e. the two Sundays before the first day of Christmas, the Sunday before the first day of Easter, and the last Sunday in January, April, June and August).

The new law also includes a list of exemptions related to specific types of economic activity. In particular, the ban does not apply to the following: (i) petrol stations, (ii) pharmacies, (iii) online stores and internet platforms, (iv) funeral services, (v) commercial establishments where the predominant activity is floristry, (vi) retail outlets where the predominant activity consists in trading in souvenirs, (vii) post offices, (viii) commercial establishments where

the predominant activity consists in the trading of newspapers, public transport tickets, tobacco products, lottery tickets and (ix) commercial outlets in which trade is conducted in person by the owner of the business.

It is important to note that the new provisions apply not only to employees who are working under employment contracts, but also to civil law contractors who are working under contracts of mandate or contracts for performing a specified task. This solution is aimed at preventing employers from circumventing the new provisions by hiring individuals under civil law agreements instead of employment contracts. The fines for non-compliance with the new law range from PLN 1,000 (approx. EUR 250) to PLN 100,000 (approx. EUR 25,000) and a new type of crime has also been introduced into the Polish Criminal Code under which anyone who maliciously or persistently breaches the provisions may be subject to a fine or imprisonment.

While generally being favourable to employees, the trading ban raises many questions and doubts. In order to guarantee the continuity of their services, some companies are considering introducing an additional shift which would start at 00:00 on Monday, which in practice is not forbidden by the applicable provisions. The introduction of this new shift would be beneficial for the company's clients, but it would be connected with an increase in costs for the employer as well as the risk of employees resigning because they do not want to work on night shifts. The new provisions are also being questioned by inspectors from the Polish Labour Inspectorate, who - in order to verify whether companies are complying with the new legislation - will be obliged to carry out mass inspections on Saturdays and other public holidays. This itself is not compliant with the rules governing the working time of labour inspectors, according to which (Art. 58 point 3 of the Act of 13 April 2007 on the National Labour Inspectorate (Journal of Laws of 2017, item. 786), employees of the National Labour Inspectorate may be obliged to perform work on Saturdays and public holidays only in extraordinary situations. At the same time, it seems that introduction of the ban requires conducting mass controls at the companies which usually provide the services on Sundays and bank holidays before introduction of the new provisions which consequently requires making material changes to the conditions of employment of labour inspectors. In addition, there are serious concerns that the catalogue of exemptions to the ban is too extensive and will create room for interpretation in some cases, which may be settled to the benefit of the trading companies. Furthermore, it seems that the introduction of the new provisions will have a significant impact on the development of online shops, which are exempted from the ban, which in the future may limit the application of the ban.

II - NEW RULES REGARDING KEEPING OF PERSONNEL FILES

On 10 January 2018, the Sejm (the lower house of the Polish parliament) has adopted Act on changing certain legislation in connection with the shortage of the period of storage of personnel files of employees and their electronization (Journal of Laws of 2018, item 357). New provisions introduce two significant changes to the current provisions regulating keeping the personnel files of the employees which are mainly justified by the business needs of the employers.

First of all, employers will be entitled to keep personnel files in electronic form instead of paper form while as of today, employers are obliged to store employees' personnel files in paper form - electronic form is an optional/additional form of maintaining the documentation. Under the new legislation, electronic form will be one of permitted form of keeping personnel files, however at the same time it will not be permitted to combine both ways of keeping personnel files, i.e. some documents in electronic form and some in paper form.

Employers who wish to change the manner of keeping the employment-related documentation into the electronic one will be obliged to make a digital copy of the paper version of the personnel files and then certify its authenticity for example by qualified electronic signature. Changing the manner of keeping the employment related documentation will require informing the employees of such change as well as informing them about the possibility of receiving the previous form of the documentation within 30 days from the day of being providing with the information.

New provisions will also reduce the period of obligatory keeping the personnel files. As of today, the period in principle lasts 50 years after the termination of the employment relationship. The long duration of the period is justified mainly by the fact that the personnel files of the employees constitute the important evidence which helps Social Security Institution to determine the amount of the pension which will be received during retirement period. New provisions will reduce the 50 years period of keeping personnel files to 10 years after the termination of employment of a given individual. Importantly, reduction of the obligatory period of keeping the personnel files will be applicable only to employees employed after 1 January 2019. As regards the employees who are employed before 1 January 2019 the reduction of the obligatory period to 10 years will be possible in limited extent. The provisions distinct two situations:

- In case of employees hired between the 1 January 1999 to 31 December 2018 in order to reduce the obligatory period employer will be obliged to submit special report to the Social Security Institution which in particular will refer to the amount remuneration received by the employee during the period of employment. Submitting the report will reduce the obligatory period of 50 years to 10 years which will be counted from the end of calendar year when the employer submits the report,

- In case of the employees hired until 31 December 1998 the employer will be obliged to keep their personnel files under the current provisions i.e. during the period of 50 years after termination of their employment.

Importantly, new provisions introduce some exemptions to the general period of keeping the personnel files. In particular, employers will be obliged to keep the employment documentation for the longer period if the documentation constitutes the evidence in the proceedings. If the employer is a party of the proceedings, the employer will be obliged

to keep the documentation until its final ending. In case when the employer only receives the information about the initiation of the proceedings, the obligatory period of keeping employment-related documentation should be extended up t 12 months - after the lapse of the period, the employer will be obliged to notify the employee about the possibility of receipt the documentation within 30 days from the receipt of the notification (if the employee does not collect the documents, they will be destroyed).

New rules will come into force on 1 January 2019. It seems that Polish employers who will be willing to change the manner of keeping the personnel files as well as reduce the obligatory period of their keeping should start preparing the adequate measures aimed at introducing crucial developments in functioning of the workplace._