

EXPERT Labor market

FIXING LOOPHOLES



By **Małgorzata Perchel-Ducka**,
Associate
at *Łaszczuk & Partners*

The Polish Deal: A chance to counteract illegal employment?

The Polish Deal is associated primarily with changes in taxes and social health insurance, which will have the strongest impact on the financial and legal situation of employees. In particular, it focuses on health insurance and new tax credits. But some of the changes under the Polish Deal are aimed primarily at combatting illegal employment.

PROTECTING LABOR MARKET

The new mechanisms introduced to tax and social health insurance acts by the Polish Deal provides a number of regulations to protect the labor market from illegal employment. The first is that the value of work of an illegally employed person is recognized as income from economic activity. It is set for each month in which illegal employment took place, in an amount equal to the minimum wage in the given month. Such income is also assessed when an illegally employed person is actually paid for the work.

In accordance with the new regulation, the employee's income from illegal employment is free from income tax in the part which the employer did not disclose to the competent state authorities.

EMPLOYERS IN CHARGE

Furthermore, in the event of finding illegal employment or lowering the calculation base for employee contributions, the contributions for retirement, disability and sick-

ness insurance on pay for illegal employment, and for the portion of undisclosed remuneration, are not charged to the insured but paid entirely by the remitter of contributions out of its own funds. The liability for non-payment of contributions and taxes is thus entirely shifted to the employers. According to the position of the Ministry of Finance, before the Polish Deal entered into force, the tax system was not favorable to employees who agreed to work illegally. Previously, if such work was detected by the tax office or the labor inspectorate, the employee was obliged to pay the unpaid tax, and was also liable to penalties for failure to declare the tax. The aim of the reform, according to the government, was to reverse this situation and guarantee legal protection for the employee and not the employer. According to the Ministry of Finance, the lack of the need to pay the tax by an unlawful employee and the exclusion of his or her criminal liability will minimize the phenomenon of illegal employment. According to that position, this phenomenon will also be counteracted by requiring the employer to pay tax along with default interest, an additional sanction in the form of a tax on the minimum wage for each month in which it employed an employee illegally, and exclusion of the tax and sanctions from the employer's tax-deductible expenses.

NEW DILEMMA

These solutions, although certainly moti-

vated by a desire to counteract the socially negative phenomenon of undeclared work, are based on the erroneous assumption that employees are not interested in working off the books, and the decision to hire workers illegally is solely dictated by employers. On the part of employees, there may often be an expectation that they will receive only the minimum wage in accordance with applicable legal provisions, while the rest of their salary will be paid informally, to avoid tax burdens. The new provisions may lead to a situation in which employees first exploit the provisions in accordance with the letter of the law, but contrary to its spirit, do obtain additional benefits from an employer with whom they subsequently terminate their employment. The best solution would be to introduce changes discouraging both employees and employers from working and hiring illegally, and imposing negative consequences on both of these groups.

The new provisions may lead to a situation in which employees first exploit the provisions in accordance with the letter of the law, but contrary to its spirit, do obtain additional benefits from an employer with whom they subsequently terminate their employment.