



# GUIDE TO GOING GLOBAL EMPLOYMENT

*Poland*



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## INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

### GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

### EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

To learn more about DLA Piper's global Employment practice, visit [www.dlapiper.com](http://www.dlapiper.com) or contact:

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## POLAND



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### LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. The official currency is the Polish zloty (PLN). The official language is Polish.

### CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Entities based in the EU may engage employees in Poland without having to set up a local corporate presence, but they must set up payroll. Companies and individuals from outside the EU, as a rule, must set up a company in Poland in order to engage individuals in Poland under an employment contract (ie, a contract governed by the Polish Labor Code). However, a company from outside the EU may directly engage an independent contractor (ie, a person registered in the Polish CEIDG register as a self-employed person). Engagement without a local corporate presence is subject to permanent establishment tax exposure.

### PRE-HIRE CHECKS

#### Required

Immigration compliance: requirement to obtain a work permit for foreigners originating from non-EU and non-European Economic Area (EEA) countries. A statutory list of so-called regulated activities to be performed only by persons holding specific licenses or possessing certain types of education and professional experience. Initial medical examinations to confirm that there are no health reasons barring the person's employment in a certain position, although there are certain exceptions – for example, where a medical certificate was issued during a period of previous employment in the same position.

#### Permissible

Certain limited types of personal data may be requested from the candidate as specified by the Polish Labor Code and other applicable provisions. These include name and surname, date of birth, contact details, education, professional qualifications and work history. The employer may also request that a candidate provide personal data not listed in the Polish Labor Code; however, the processing of additional data requires the candidate's consent. The employer may collect and process sensitive data such as data revealing racial or ethnic origin,

political views, religious or ideological beliefs, trade union membership, genetic data, biometric data to uniquely identify a person and data on health, sexuality or sexual orientation only if a candidate provides this at their own initiative. Information on criminal convictions may be requested only if the obligation to provide this information is required by separate statutory provisions.

## IMMIGRATION

Free movement of employees from all countries of the EU and EEA as well as Switzerland. In general, citizens of other countries require a work permit and a work visa or other residence permit.

On January 29, 2022, an amendment to the Act on Foreigners and certain other acts came into force. The Act abolishes the obligation for a foreigner to have a place of residence in Poland and a stable and regular source of income. This second condition is replaced by a requirement for foreigners to receive remuneration that is not lower than the minimum wage, regardless of the working time and type of legal relationship constituting the basis for the foreigner's employment.

## HIRING OPTIONS

### Employee

Employment relationship under an open-ended employment contract, fixed-term employment contract and employment contract for a probationary period; part-time and full-time. It is unlawful to discriminate against employees on the basis of their working part time or working under a fixed-term contract.

### Independent contractor

A person engaged under civil law agreement is not an employee in the meaning of the Polish labor law. Nevertheless, a contractor is deemed an employee, irrespective of the formal name of the contract between parties, if an individual is engaged under the other party's supervision and subject to control of the place, hours of work and the manner of performance.

Entities concluding contracts for specific work (umowa o dzieło) are required to register them in the newly created register kept by the Social Insurance Institution (ZUS) within 7 days of the date of their conclusion. The registration obligation includes contracts concluded between persons that are not parties to an employment relationship.

### Agency worker

Temporary work is widely used for short periods of employment in order to cover the absence of permanent employees or to perform seasonal works. Over a period of 36 successive months, a single user-employer may use the services of an individual provided by a work agency for a total period not exceeding 18 months.

## EMPLOYMENT CONTRACTS & POLICIES

### Employment contracts

An employment contract must be concluded in writing; however, the validity of a contract of employment does not depend on the form.

Where a written form is required, it is possible to use an esignature instead of a wet signature. However, only a so-called "qualified electronic signature" (QES or *kwalifikowany podpis elektroniczny*) can have the same legal effect as a wet signature.

Once during a calendar year, an employee who has been employed for at least six months can request a change in the type of work or a change in the type of employment contract to an open-ended contract or a full-time contract. The employer can refuse the request, although the refusal has to be justified.

An employment contract must include basic employment information such as:

- The parties to the employment contract
- The type of employment contract
- The concluding date of the employment contract
- The conditions of work and pay, including in particular the type of work (ie, job position), the place where work is performed, remuneration, amount of working time and the date when work commences

Provisions of employment contracts cannot be less favorable to an employee than the provisions of the Polish labor law or else they are null and void.

The employer is obliged to provide the employee with information about the terms and conditions of employment within seven days of the date of the employee's starting work. The scope of information provided to newly hired employees includes, among other things, information on:

- the employee's breaks from work
- rules on overtime work
- rules on the termination of employment and
- the employee's right to training provided by the employer.

## Probationary periods

An employment contract for a probationary period is a separate employment contract which may precede other types of employment contracts. The permissible duration of a probationary period contract is dependent on the duration of the planned further employment:

- if the employer intends to conclude a fixed-term employment contract for a period of less than six months, the probationary period cannot exceed one month;
- if the employer intends to conclude a fixed-term employment contract for a period of between six and twelve months, the probationary period cannot exceed two months;



- if the employer intends to conclude a fixed-term employment contract for a period of longer than twelve months, the probationary period cannot exceed three months.

The aim of employment under this type of contract is to check the skills and qualifications of the employee and the possibility of employment for a specific type of work. As a rule, the employer may engage an employee for a trial period only once.

## Policies

Statutory requirement to adopt workplace and remuneration regulations by employers engaging at least 50 employees not covered by a CBA. If a trade union operates in the workplace, it may request that an employer adopts workplace and/or remuneration regulations, provided that the employer has between 20 and 49 employees. The content of the workplace and remuneration regulations must be agreed with the trade unions (if operating at the entity).

The Labor Code allows employers to carry out a sobriety test at the workplace without the assistance of qualified medical personnel, while using appropriate equipment. Employers that want to make use of the new entitlement will have to introduce relevant provisions into their workplace regulations or update their existing policies on sobriety checks. Employers that do not want to carry out their own sobriety checks on employees, will be able to carry out checks with the assistance of the relevant authorities, e.g. the police.

An employer who wishes to introduce remote working, in whatever form, should introduce remote working regulations or appropriate provisions in agreements with employees. The rules introduced in the remote working regulations must be consulted with employee representatives. The employer establishing the rules of remote working should take into account the obligations to cover the costs of remote working and the employees' compliance with the principles of health and safety at work and personal data protection.

## Third-party approval

No requirement to obtain a third party's approval.

## LANGUAGE REQUIREMENTS

Statutory requirement to draft employment-related documents in Polish in order for them to be binding. Possibility to prepare these documents in a bilingual (eg. Polish-English) version; however, in the case of any discrepancies, the Polish version will prevail.

## WORKING TIME, TIME OFF WORK & MINIMUM WAGE

### Employees entitled to minimum employment rights

All employees.

### Working hours

Standard (ie, basic) working time may not exceed 8 hours per day and an average of 40 hours over an average 5 day working week within the adopted settlement period not exceeding 4 months. It is also possible for an

employer to introduce a 12-month settlement period for each working time system it uses if this is justified by objective or technical reasons and the organization of working processes. Polish labor law additionally provides for other systems of working time where the daily and weekly standards are different from the basic working time system. The Polish Labor Code allows the introduction of "flexible working hours." An employer may specify different times for the working day to start or may allow the employee decide – within the confines of a period indicated by the employer – what time they begin work. An employee's weekly working time, together with overtime work, cannot exceed an average of 48 hours in a given settlement period. In general, an employee must be granted at least 11 hours of uninterrupted rest each day and 35 hours of uninterrupted rest per week. Work on Sundays and public holidays is permissible only in the cases enumerated in the Polish Labor Code.

## Overtime

Statutory restrictions on the permissible number of hours of overtime work. An employer cannot instruct some groups of employees to work overtime (eg, pregnant employees). In addition, a request to work overtime by an employee raising a child under 8 years of age is only possible with the employee's consent.

The overtime work may be compensated by paying an allowance – in addition to a standard remuneration – in the amount specified by the Polish Labor Code (ie, 50 percent or 100 percent of remuneration) or granting time off from work.

## Wages

Employees and some civil law contractors have the right to be paid no less than the statutory minimum wage. The amount of the minimum wage is established each year - for the first half of 2023 it is PLN3,490 (approx. EUR740) and PLN22.80 (approx. EUR4.8) per hour for individuals employed under a contract of mandate/a contract to provide services which are civil law agreements, and for the second half of 2023 these amounts are, respectively, PLN3,600 (approx. EUR760) and PLN23.50 (approx. EUR5) per hour. As a general rule, the minimum wage is increased every year.

## Vacation

Entitlement to 20 days of holiday leave. Entitlement to 26 days after 10 years of total years of service, which includes all previous employments and years of education, ending with graduation, specified under statutory law. Special rules apply to an employee beginning work for the first time. In addition, an employee is entitled to 13 public holidays.

## Sick leave & pay

In general, for a total period of incapacity to work due to illness of 33 days (14 days in case of employees over 50 years of age) in a calendar year, an employee is entitled to sick pay from their employer in the amount of 80 percent of remuneration. Starting from the 34th (15th for employees over 50 years of age) day of incapacity to work, an employee is entitled to sickness benefit paid by the Social Insurance Institution (ZUS). If an employer employs at least 21 insured individuals on November 30 of a given calendar year, in the next calendar year, the obligation to pay benefits rests with the employer. The sum of social insurance contributions to be paid is then reduced by the sum of the sickness benefits paid by the employer. In principle, sickness benefit amounts to 80 percent of the employee's remuneration.

## Maternity/parental leave & pay



Special protection against dismissal of pregnant employees and employees using maternity, paternity, parental or childcare leave.

Basic maternity leave for a female employee is 20 to 37 weeks, depending on the number of children born. An employee-father is entitled to 2 weeks of paternity leave, to be used before the child reaches 12 months. Employees may apply for 41 weeks' parental leave – or 43 weeks in the case of a multiple births. A non-transferable, nine-week part of this leave will be introduced for each parent. If one parent does not take the nine-week leave, it will be forfeited (it will not be transferable to the other parent). The remainder of the leave is transferable between parents. This leave may be used by both parents at the same time and can be divided into no more than 5 parts.

The list of individuals entitled to take maternity or parental leave was extended in September 2019. Aside from parents (ie, adoptive or foster parents), employees who are immediate family members, such as a grandmother, grandfather, sister or brother, are now entitled to benefit from this leave. However, such immediate family members may only take this leave in specific situations (eg, where the mother's maternity leave is disrupted by her being in hospital or where she is unable to take care of the child personally due to her own ill health). An employee engaged for at least 6 months is entitled to childcare leave of up to 36 months to be used before the child reaches 6 years of age. Each parent has the exclusive right to 1 month's childcare leave; this right cannot be transferred. Childcare leave may be combined with employment or training by the current or another employer; parents may use the childcare leave at the same time and/or divide the leave in 5 parts. Alternatively, an employee may file a request to reduce their working time to no less than 1/2 of the full amount of working time within the time during which they could have benefited from such leave.

For the period of the maternity leave (basic and additional), the paternity leave and the parental leave, an employee is entitled to a maternity benefit paid by ZUS. In general, no benefits or salary are granted to an employee using childcare leave.

## Other leave/time off work

Polish law specifies other situations in which an employee's absence from work is justified due to special events in their life such as marriage; birth of child; and death and funeral of a spouse, child, father, mother, step-father, or step-mother. Further, there are specific regulations on the employee's right to time off due to performing a given function (eg, for trade union leaders for time on the trade union's board or for the performance of ad hoc trade union activity which cannot be performed outside working hours, time attending court as a witness in proceedings).

Employees are entitled to a new type of leave (care leave) of five days per calendar year to provide care to a person who is a family member (son, daughter, mother, father or spouse) or a person living in the same household who requires care or support for serious medical reasons.

Employees are also entitled to force majeure leave for urgent family matters caused by illness or accident if an employee's immediate attendance is necessary. This leave is for two days or 16 hours; during this leave, the employee retain the right to 50% of his/her remuneration.

## DISCRIMINATION & HARASSMENT

Polish law expressly prohibits any kind of discrimination or harassment, guarantees basic equality in the workplace, and protects the health and dignity of employees. Provisions of employment contracts that infringe upon the principle of equal treatment are null and void, and the statutory provisions apply instead. Where there are no appropriate regulations, the infringing provisions should be replaced with appropriate provisions.

Polish law prohibits various types of discrimination and harassment, including direct and indirect discrimination; unfair treatment of an employee by an employer because of a particular action the employee has taken (eg, submitting a sexual harassment grievance); sexual harassment; harassment in the form of any unwanted conduct, the purpose or effect of which is to violate a person's dignity, particularly by the creation of an intimidating, hostile, degrading, humiliating, or offensive atmosphere at work; and bullying.

An anti-retaliatory provision applies to employees who exercise their rights when an employer infringes the principle of equal treatment in employment or to employees who have in any way supported another employee in exercising his or her rights where an employer has infringed the principle of equal treatment.

Polish law also guarantees the right to equal pay for equal work or work of equal value. However, there is no system of obligatory monitoring of pay levels (eg, for men and women).

## WHISTLEBLOWING

Poland has not yet implemented the EU Directive 2019/1937 regarding Whistleblowing, however, a bill has been drafted. This bill applies to all employees, including people performing work on the basis of civil law contracts, as well as former employees and applicants for employment. Anyone who reports or discloses information on a violation of the law obtained in a work-related context will be protected under this law.

Every employer with more than 50 employees will have to establish internal regulations on whistleblowing. The regulations will have to be agreed with the company's trade unions – or consulted with employee representatives if there are no trade unions in the company.

## BENEFITS & PENSIONS

The state social system provides for health insurance and pension coverage.

Moreover, employees may make their own individual pension arrangements (ie, the Individual Pension Account or IKE) with an investment fund, brokerage office, bank, insurance company or private pension fund as a voluntary, supplementary way to accumulate capital for their retirement.

Employers may also establish a private pension scheme for their employees. In contrast to the individual pension arrangements, the basic contribution to the private pension scheme is financed by the employer.

As part of the reform of the pension system, on January 1, 2019, the Polish government introduced a new form of saving into the Polish legal system: the Employee Capital Plan (PPK). PPKs allow the accumulation of additional funds for retirement, and participation is voluntary on an opt-out basis. Contributions to Employee Capital Plan are financed by the employer (ie, 1.5 percent of the remuneration) and by the employee (ie, 2 percent of the remuneration) with limited options to increase these amounts. The establishment of a PPK is associated with a number of additional obligations for the employer, including the necessity of selecting a financial institution to

manage the PPK in a given employing establishment. The 4th and final phase of introducing PPKs began on January 1, 2021, when all employers and entities from the public sector in Poland – regardless of their number of employees – became obliged to create a PPK.

There is a unified retirement age of 60 for women and 65 for men.

## DATA PRIVACY

An employer is obliged to respect its employees' dignity and other personal rights, including their privacy and the confidentiality of the content of employees' private correspondence. There are statutory rules which forbid the secret monitoring of employees, and there are specific rules to introduce camera monitoring and other forms of employee monitoring, including monitoring of software and the internet, among others.

The Polish Labor Code sets forth specific rules regarding collecting and processing personal data of the candidates and the employees and, in particular, lists the types of data that may be requested by the employer. In matters not regulated by the Labor Code, general rules on data protection provided for in the Act on the Protection of Personal Data and the General Data Protection Regulation (GDPR) apply.

## RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer of employees under the EU TUPE Directive and the Polish Labor Code. The transferor and the transferee are jointly and severally liable for the obligations resulting from the employment relationships that arose before the transfer of a part of an undertaking. They have certain information and consultation obligations towards the employees and the employees' representatives (ie, trade unions and works council). A transferred employee has the right to terminate their employment relationship within 2 months of the transfer date, without notice, providing 7 days' prior notice. Termination according to this procedure has the same legal effect as if the employment relationship were terminated with notice by an employer. Dismissal solely due to transfer is unlawful. The transferee is obliged to apply any CBA adopted by the transferor and applicable to the transferred employees for a period of 1 year after the transfer date, unless the transferee applies more favorable conditions than those resulting from the CBA.

## EMPLOYEE REPRESENTATION

### Trade unions

A single-establishment trade union can be formed either as:

- A unit of a nationwide trade union or as
- A new, separate trade union organization, upon a resolution on its establishment, passed by at least 10 persons entitled to establish trade unions.

All employees and other individuals performing work (eg, civil law contractors) are entitled to form and join trade unions. Nobody may be discriminated against for being or not being a member of a trade union. Trade unions represent all individuals irrespective of their membership. In individual matters, trade unions solely represent the rights and interests of their members or of unassociated individuals upon their request. Employers have multiple,

various obligations towards the trade unions operating at their entities. Trade unions are granted certain rights – in particular, trade union leaders enjoy special protection against dismissal.

## Works council

Employees' representative body, elected by the employees, may be established within a company that engages at least 50 employees, excluding state enterprises, mixed-capital entities engaging at least 50 employees and public institutions. The employer has an obligation to inform and consult with its works council in matters specified by law. Special protection against dismissal for works council members.

## TERMINATION

An employment contract may be terminated by mutual agreement of the parties, with notice, with immediate effect (for cause or without any employee's fault) or at the end of the period it has been concluded for (ie, fixed-term employment contracts and probationary period employment contracts).

Polish law sets forth detailed rules regarding the unilateral termination (with notice and with immediate effect) served by both an employer and an employee. These rules vary depending on the type of employment contract.

## Grounds

An employer that terminates the open-ended employment contract or fixed-term employment contract or terminates the employment with immediate effect must specify the reasons for termination, which must be concrete, justified and real. A termination letter must include all the reasons for termination as it is not possible to raise further grounds before the court. In case of termination with immediate effect, Polish law enumerates the reasons for termination (eg, the gross breach of basic employee obligations).

## Employees subject to termination laws

Polish law provides for general protection against dismissal, granted to all employees engaged under open-ended contracts and fixed-term contracts, and special protection against termination due to the employee's life situation or role they hold.

## Prohibited or restricted terminations

Statutory limitations of an employer's right to unilaterally terminate the employment relationship with some groups of employees due to their age (ie, employees who will reach retirement age in not more than 4 years), life situation (eg, pregnancy; when on maternity leave, paternity leave, parental leave, childcare leave, sick leave or holiday leave) or function they hold (eg, trade union leaders or works council members).

## Third-party approval for termination/termination documents

In case of protected employees, restriction on termination may require the employer to seek consent of certain bodies for the termination of employment (eg, trade union's consent for summary dismissal of a pregnant employee or terminating the employment relationship with a member of the trade union's board, or consent of the works council for the termination of employment of its member).

In case of termination of an open-ended employment contract with notice or fixed-term employment contract or termination with immediate effect with an employee represented by the trade union, as its member or upon their request, it is necessary to notify the trade union in writing on the intended termination and its grounds. The trade union's opinion is not binding for the employer.

## Mass layoff rules

Special procedure of termination in case of collective redundancies, applicable to employers engaging at least 20 employees terminating employment on grounds not related to individual employees. Collective redundancies cover the dismissal of at least:

- 10 employees in entities normally employing less than 100 employees
- 10 percent of the employees in entities normally employing at least 100, but fewer than 300 employees and
- 30 employees in entities normally employing at least 300 employees.

## Notice

The length of the notice period depends on the type of employment contract. In the case of an employment contract for a probationary period, it may be 3 days, 1 week or 2 weeks, depending on the length of the probationary period.

The length of notice period applicable to open-ended and fixed-term employment contracts is between 2 weeks and 3 months, depending on the length of service with a given employer.

Parties may agree on a notice period longer than the statutory one. No notice period must be observed by termination by mutual agreement or termination with immediate effect.

## Statutory right to pay in lieu of notice or garden leave

Pay in lieu of notice is inadmissible. Only if the termination of an open-ended employment contract is due to employer's bankruptcy or liquidation or other reasons not related to the employee, the 3 months' notice may be shortened up to 1 month, and the employee is entitled to compensation equal to salary for the outstanding notice period.

Garden leave is permissible for the period of notice, provided that an employee retains the right to their standard remuneration and benefits.

## Severance

In general, an employee is not entitled to severance pay unless the parties agree otherwise. Only in case of the collective redundancies or an individual termination of employment made exclusively due to reasons not related to the employee (only by employers engaging at least 20 employees), an affected employee is entitled to severance pay which is fixed on the basis of the period of employment by the employer. The amount of the statutory severance pay is equal to the employee's 1 to 3-months' salary and cannot exceed 15 times the minimum wage.

## POST-TERMINATION RESTRAINTS

Post-termination restraints – in particular, the confidentiality obligation – result from the statutory provisions or are imposed on the employee upon the separate agreement between the parties. Contractual post-termination covenants are relatively common in Poland in relation to employees who, during their employment, have access to particularly important information (eg, senior executives).

### Non-competes

Parties to an employment relationship may enter into a non-compete agreement which will be effective during the term of employment as well as after the employment relationship has ceased. A non-compete agreement must be concluded in writing in order to be valid. A non-compete agreement effective after the termination of employment must specify the period of prohibition of competition, the scope of the non-compete restriction and the amount of compensation due to the employee. The compensation must not be lower than 25 percent of the remuneration received by the employee prior to the termination of the employment relationship for a period corresponding to the period of validity of the prohibition of competition. Polish law allows such compensation to be paid in monthly installments.

### Customer non-solicits

Statutory prohibition to induce the employer's clients to terminate, not to fulfill or improperly fulfill their contractual duties with an aim for the inducing person to gain benefits for themselves or for a third party or to cause damage to the employer.

### Employee non-solicits

Statutory prohibition to induce the person performing work for the employer not to perform or improperly perform their contractual duties with the aim for the inducing person to gain benefits for themselves or for a third-party or to cause damage to the employer.

## WAIVERS

Waiver of the statutory rights is ineffective and is not enforceable in Poland.

## REMEDIES

### Discrimination

An employee or a candidate may claim compensation of at least the statutory minimum wage.

### Unfair dismissal

In case of unlawful or unjustified termination with or without notice, an employee may claim re-instatement to work on the previous conditions or compensation in the limited amount specified in the statutory regulations.

In case of re-instatement, an employee may also claim remuneration for the period of being out of work in the limited amount specified by the Polish law. In case of unjustified termination without notice served by the



employee due to the employer's fault, an employer may claim compensation in limited amount specified by law. In the case of the re-instatement of protected employees (ie, employees who will reach retirement age in not more than 4 years, pregnant employees, employees on maternity leave or trade union activists), they are entitled to compensation for the entire period of being out of work.

## Failure to inform & consult

Failure to inform or consult a works council or a trade union where such notification or consultation are required by law (eg, transfer of undertaking) is subject to criminal sanctions (fine or restriction of liberty).

## CRIMINAL SANCTIONS

An employer may be fined from PLN1,000 to PLN45,000 for committing offenses specified in the Polish Labor Code which relate to the employer's basic obligations.

### KEY CONTACTS



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