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COVID-19 pandemic, censorship and Labou protection in Poland – selected issues

LA PANDEMIA DE COVID-19, CENSURA Y PROTECCIÓN DE LA LEY LAB POLONIA - TEMAS SELECCIONADOS

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ABSTRACT

Covid-19 pandemic had a significant impact on many areas of human life, and above all, on the area of economic and professional activity. In particular, pandemic changed the labor market, not only in labor market mechanisms but also in fundamental labor laws. The global Covid-19 epidemic resulted in the Polish labor market - remote work, which was a response to the widespread closure of the country. Unfortunately, there also have been problems with the freedom of speech for employees during the coronavirus pandemic in Poland. The paper focuses on the topics mentioned above, stressing areas related to the security of employee rights that can be considered controversial.

KEYWORD

COVID-19 pa
Labour law p
Whistleblow
Employees
Remote wor
Protection a
Dismissal
Censorship

RESUMEN

La pandemia COVID-19 tuvo un impacto significativo en muchas áreas de la vida humana, y sobre todo, en el área de la actividad económica y profesional. En particular, la pandemia cambió el mercado laboral, no solo en los mecanismos del mercado laboral, sino también en las leyes laborales fundamentales. La epidemia global de COVID-19 resultó en el trabajo remoto del mercado laboral polaco, que fue una respuesta al cierre generalizado del país. Desafortunadamente, también ha habido problemas con la libertad de expresión para los empleados durante la pandemia de Coronavirus en Polonia. El documento se centra en los temas mencionados anteriormente, destacando las áreas relacionadas con la seguridad de los derechos de los empleados que pueden considerarse controvertidos.

PALABRAS

COVID-19 P
Protección d
Whistleblow
Empleados
Trabajo rem
Protección d
Despido
Censura

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I. INTRODUCTION

The global Covid-19 epidemic occurred in a significant breakdown
of the world countries in the areas of the most significant for labor la
the broadly understood work process. In Poland during the Pande
with the freedom of speech for health professionals was associated
nary dismissal of the midwife, which revealed information on the w
of the hospital workers. This event was of great importance in the sp
ensuring the medical sector's safe working conditions. At the same
day, both employers and a significant part of the employees have pas
with the use of distance communication, as on the one hand ensure
long-term reduction of business costs. On the other hand, howeve
brings many legal and organizational challenges, but it can also be su
Poland, in March 2020, many sectors of the economy have ceased to
ly, and in others, some activities have been drastically limited. This fac
many employees and employers. Legal provisions regulating the fo
counteracting, including employee rights, change in Poland very dyn
from the diagnosis of the first patient from COVID-19 on 2 March
legislator prepared guidelines on the proceedings, prevention, and c
VID-19, other infectious diseases, and unfavorable states caused by
The Act was published on 7 March 2020. However, in mid-April and
aid laws, known as Covid 2.0 and 3.0, and a week later, another proje
current Covid Act 6.0. A few of these regulations regarding COVID c
tection of labor and the actions and duties of employers. The curren
into two problems in our economic system: securing the work proces
speech. Remote work was introduced to statutory regulations in Po

reporting irregularities by employees of the medical sector. Therefor
tection of the interests of employers and employees, securing the
rests of employees in this correct freedom of expression has fundam
for the state's economy. Remote work in Poland - a field of abuse of

In March 2020, the Polish legislator introduced a state of epidem
and then on March 7, in connection with the spread of an infectiou
by the SARS-CoV-2 virus, the so-called anti-crisis act[1], which was
times. The legislator introduced many changes relating to various lav
cularly labor law, causing changes in the labor market. Finally, in Ma
red the so-called remote work, which informally replaced teleworki
Polish Labor Code (work outside the workplace with remote comm
the so-called "home office")[2]. There is a reasonable statement that
pandemic creation in Poland. Remote work has been presented a
performed outside permanent work during the pandemic. The ess
remote work was a reaction to the restriction of the activities of natio
tities in the current form and the opening of employers to new form
allowing for social distance and at the same time limiting the cost
running a business. The very provision regulating remote work in th
to a laconic statement about working remotely, without significant c
of June 2020, the share of people who worked remotely due to the e
in the total number of employees was 10.2%, which was 0.8 perce
than at the end of March 2020 during the second quarter, the num
providing remote work in the public and private sectors was simila
ying more than 49 people, approx. 11% of the employed worked rer
epidemic situation, while in units employing up to 9 people it was a
employed. In September 2020, the first signals appeared that remo
place telework because the former is more flexible and convenient f
the employment relationship[3]. Moreover, workers began to notice t
being instructed to work remotely by the employer, his duties towar
ended there, and this began to cause anxiety in the labor market[4].

II. REMOTE WORK AND EMPLOYEE RIGHTS

The situation caused by the COVID-19 pandemic introduced a dis
about remote work itself but also about employee rights related to

Enabling employees to work outside the workplace, and in particu
allow employers to be more flexible during the COVID-19 pandemic
time, employees can reconcile their private and professional lives.
flexible and atypical form of employment. The significant advantage
are that an employee only need to access the Internet and remote c
provide work for the employer. The "pandemic discovery" of remote
tory definition is broad and covers the performance of work using
of communication (identical to telework) and other types of work
performed outside the place of work. In Poland, it is currently assu
work is not the same as teleworking. Firstly, organizing remote work
a great organizational effort on the part of the employer, and the
yees in Poland working in remote work conditions are not able to
employee rights they are entitled to, even for example regarding th
computer equipment for remote work or return lump sum for the
perform the work. As a result, a Polish employee who works remot
ployment relationship may only be entitled to a specific entitlement
Code, which also applies to those employees who work at the emp
Therefore, let us follow the laconic provisions of the anti-crisis act,
the concept of remote work. According to Art. 3 of the Act, point 1 "
of an epidemic threat or an epidemic, announced due to COVID-19,
months after their cancellation, in order to counteract COVID-19, t
instruct the employee to perform, for a specified period, work specifi
ment contract , outside the place of its permanent performance (rem
same time, accordingly, point 3. "Remote work may be recommende
has the technical and local skills and capabilities to perform such wo
work allows it. (...) 4. the employer provides the tools and materials n
remote work and logistics support for remote work. However, and
provision "suspends" the employer's obligations to provide the em
for work. 5. "When performing remote work, the employee may use
not provided by the employer, provided that it allows for the respe
of confidential information and other legally protected secrets, inclu
crets or personal data, as well as information, the disclosure of wh
the employer to damage. The National Labor Inspectorate has creat
questions and answers on its official website, among which it answe
sively to the question about the costs related to remote work and th
employees[5].

Remote work is performed on the same working conditions and

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is not entitled to any other financial allowance due to remote work b
no regulations directly related to this issue. The employer may op
additional benefits in connection with remote work; it all depends
ments between the employer and the employee. If it is not regula
in the work regulations, the employer is not obliged to create oth
allowances for the time of remote work. Remote work is not only fina
also the issue of health and safety at work of a remote employee, an
or even working time records. On the other hand, there are initiat
remote work to the Labor Code[6]. It requires a comprehensive and a
lation, which may be difficult because it cannot resemble telework,
Labor Code comprehensively regulates. Opinions of both employer
support the maintenance of the availability of such a mode of work a
demic. In practice, however, there are still many problems concer
high standards of protection for employees to not lead to abuses in t
employees who work remotely have to deal with at present. On the
not want to overregulate remote work, but on the other hand, the hi
lity and the lack of provisions in this regard in the anti-crisis act lead
of the labor protective law function.

III. WHY NOT TELEWORK?

Teleworking, *i.e.*, working outside the workplace using remote comm
(the so-called "home office"), was not very popular in Poland. It was u
e.g., due to reasons relating to the employer resulting from the org
or for reasons attributable to the employee (personal conditions an
to work in this way). Telework has been introduced to chapter IIb o
On October 16, 2007, the provisions of the Act of August 24, 200
Act-Labor Code and certain other acts implementing the assumption
framework agreement on teleworking. Art. 67(5) §1 of the Labor Co
work may be performed: a) regularly outside the workplace, b) using
of communication within the meaning of the provisions on the prov
services (teleworking). Teleworking does not have to be done in the te
It also results indirectly from other provisions of Chapter IIb of the S
the Labor Code. In particular, the content of Art. 67 (14) and 67 (17)
specific regulations - if the work is performed at the teleworker's hom
tes the possibility of performing work in the form of telework outsid
home. In teleworking, the parties to the employment relationship

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and where teleworking will be performed (Article 67 § 1). The empl
may submit an initiative to work in the form of telework. Contrary t
leworking also allows flexibility in settlements between the employer
terms of equipment necessary for teleworking. Based on Article. 67
is obliged to:

1. provide the teleworker with the equipment necessary to per
   form of telework,
2. ensure the equipment,
3. cover the costs related to installation, service, operation, a
   hardware,
4. provide teleworker with technical assistance and necessary tr
   equipment handling - unless the employer and the teleworker

The employer also defines the rules for recording working time a
employee during the work of the employee, customs, *e.g.*, verificati
health and safety at work, but it is worth emphasizing - with the cons
yee (Art. 67 § 2 point 3)[7].

IV. REMOTE WORK AS A TEMPORARY SOLUTION IN P

During the COVID-19 pandemic, under the influence of imposed res
sibility of remote work for employees appeared in the Polish labor la
of the forms of employee protection, it became the subject of nume
among employees and employers. Undoubtedly, remote work is a
inevitable changes in the labor law meal. Special attention is paid t
supervision of employees, which leads to greater efficiency of empl
legislator, taking into account the challenges of labor law during the
mic and the new realities of working after the pandemic, decided to
work. On May 19, 2021, a draft act was prepared by the Ministry
Labor, and Technology to amend the Labor Code, the Act on Voca
Rehabilitation and Employment of Disabled Persons, and the Act on
motion and Labor Market Institutions appeared[8].

Remote work is to be part of the work codec in chapter II c. The d
te work became the key to the bill. The labor code is to include thre
work performance.

1. it will be work fully or partially performed, agreed by the em
employer (Art. 67 (18)),
2. at the employer's request, *i.e.* in exceptional situations, such a
of an emergency, epidemic threat or epidemic state and with
their cancellation, as well as due to the employer's inability to e
safety at work, e.g. as a result of a breakdown (Art. 67 (19) § 2
3. performed occasionally (maximum 12 days a year) (Art. 67 (33

An attractive solution is that the employer is obliged to take int
quest of the employee –spouse or employee– parent with complicat
or employees – parents of disabled children and an employee raisin
age of 4, for remote work, unless it is impossible to do so. Due to th
work or the type of work performed by the employee.

The employer will be obliged to:

1. provide the employee performing remote work with materia
necessary to perform remote work;
2. cover the costs related to the installation, service, operation
of work tools necessary to perform remote work, costs of elec
sary access to telecommunications links, as well as other cos
to the performance of remote work, if the reimbursement
been specified in the agreement or regulations;
3. provide the employee performing remote work with technical a
necessary training in using the work tools necessary to perfor

The employer will have the right to control the employee's perfor
ce of performing remote work and during the employee's working h
specified in the agreement or regulations. The method of carryin
must be adapted to performance and the nature of remote work. P
activities may not violate the privacy of the employee performing
other people or impede the use of homerooms in a manner consis
tended use. The employer will have the right to control the employ
at the place of performing remote work and during the employee's

tasks will be efficient and satisfy many Polish enterprises. One of the
enterprises face in fully accepting remote work is the inability to con
and their performance while working remotely.

IV. THE "RIGHT TO SILENCE" IN POLAND

Whistleblowers are one of the most effective ways of detecting and
ties and irregularities that threaten the public interest. Reporting ab
is of great importance in times of crises that may weaken econom
normal supervision over the decision-making process may be imp
are often the most reliable source of information about inappropriat
workplace. However, revealing them exposes themselves to several r
rassment, harassment, and even dismissal. Negative associations re
are remnants of communism in Poland. In Poland, labor law does no
te protection, among others, to employees, interns, apprentices, fo
and even people who perform atypical work[9]. The whistleblower's ro
revealing the irregularity, which is the fundamental element of the di
however, as the recent whistleblower's actions in Poland show - the
a crucial element in the recovery process of the institution where th
place. Consequently, whistleblowing is necessary for the fight for fai
blic interest, especially during the COVID-19 pandemic. The most p
acting in the broadly understood public interest is a midwife from a
Targ. An employee posted a photo on Facebook wearing a protective
disposable handkerchief. There was also a thread of a makeshift fac
paper towel. The midwife wanted to report how challenging the cond
sh hospitals. In response to the post on Facebook, the employer ha
a statement about the employment contract termination without no
violated essential employee obligations, ie, care for the workplace's
ve-mentioned facts confirm the problem, because it was not the only
leblower in Poland experienced retaliation for reporting irregularities

V. EUROPEAN UNION AND WHISTLEBLOWING LEGISL

On 7 October 2019, the Council of the European Union in the Comp
and Home Affairs finally approved the final version of the Directive
Parliament and the Council on protecting persons reporting infringe

provides for common minimum standards for the protection of sign
the result/result of a series of complex negotiations and comprom
rious entities and institutions, whose ultimate goal was to ensure a h
tection in various sectors subject to EU competences. In order to be
rectiveDirective provides for several measures to protect signalers a
and requires private and public entities and national authorities, the
channels enabling easy to report available and reliable. As will be an
subsequent chapters, the importance of signals worldwide is increas
light of financial and political scandals, which due to the cross-bor
the modern economy and interaction policy, also struck in the many
tes. In addition, the provisions on signal protection or only sector i
in all national legislation, which means that protection across the EU
fragmented and ineffective[12]. Several international entities, such as
ternational[13] and the Council of Europe[14], together with the social
European Parliament, have repeatedly asked the European Commis
legal instrument enabling the minimum harmonization of signaling r
the EU as a fundamental step towards strengthening the principles o
transparency Inside the Union. Directive Vera Jouranová, Commiss
Consumers and Gender Equality, presented as a "breakthrough". Ho
to V. ABAZI[15] - Commissioner exaggerated the importance of new re
gh they derive from best practices in many respects, including beca
a broad definition of who can be a signaler and cover a wide range o
public and private sectors. All forms of retaliation on signals are proh
of alleged retaliation, the burden of proof, and there was no retention

There is no doubt that every employee (for the broadcasting men
rectiveDirective) should benefit from complete protection against p
attempts for notification of irregularities and should use them in the
bor law must be a set of regulations to protect employee interests -
the employment relationship. At this point, it should be indicated that
ve of the Directive is to protect only broadly understood public intere
public interest), while slaughtering the essence of the protection of
yees. Protection of employees (mainly) consists primarily of protect
against exclusion from the workplace and, above all from society. F
exclusion should be seen as a fundamental operation or to ensure
the excellent majority, unless everything. Furthermore, ensuring e
quire assistance to all reporting irregularities without showing a lim

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rejection by the Directive aspects of signaling protection in the sc
improves the working environment to protect the health and safety
working conditions and would ensure the protection of employees a
of both national and EU law. Unfortunately, the Directive focuses o
the European public interest, while the derivative product is to pro
and social interests employed and the signaling themselves who h
by the Directive instrumentally. In general, the legislative initiative ha
indirect dimension and must be related to EU law or EU financial int

VI. THE RIGHT TO FREEDOM OF EXPRESSION AND EMPLOYEE CONSEQUENCES

Whistleblowing (literally: informing)[16] consists of disclosing an empl
irregularities in a workplace by informing people authorized to take
in an organization or prevent irregularities. It is assumed that emplo
reliable source of information about abuse in the workplace. By rev
expose themselves to various forms of retaliation, such as exemptio
rassment by the employer, or colleagues' exclusion. Due to the hist
leblowing's definition in Poland is marked with very negative compa

Notwithstanding, it can be argued that when the public is aware
conduct by an institution (whether it is a public or private sector i
disapproval increases, and thus the perception of the employee wh
closure changes. When society knows what irregularity was disclose
what retaliation was taken against signals, a sense of insufficient jus
Polish legal culture, reporting is still very controversial and criticize
provide adequate legal safeguards before retaliation. Anyone, i.e., a
nee, a student, a former employee, or employer's contractor, can be
Whistleblowing can act as a reporting mechanism for offenses, fraud
of illegal or unethical behaviors whose disclosure is an essential featu
tic system, especially in the difficult period of the Covid-19 Pandemic
Code does not contain any protective institutions of employees mal

16. See PWN Polish Dictionary, https://sjp.pwn.pl/szukaj/informator.html; Santoro, D.; Ku
to Power. A Theory of Whistleblowing, Springer 2018; Lamer, R. A.: "Whistleblowing and Empl
Business Ethics, 1992, 11 (2), s. 125-128; Latan, H.; Chiappetta Jabbour, Ch. J.; Lopes de Sousa
blowing Triangle, Famework and Empirical Evidence", *Journal of Business Ethics*, 2019, 160 (1), s
"Anonymity and Whistleblowing", *Journal of Business Ethics*, 1982 1 (3), s. 167-177; Ceva, E.; Bo

on the contrary, the Act regulates the so-called Disciplinary exemptio
of essential employee obligations, *i.e.,* art. 52 § 1 point 1 of the Labo

The Supreme Court in the judgment of May 10 2018, II PK 74/17 i
employee has the right to the permitted, public criticism of the sup
to whistleblowing, i.e. disclosure of irregularities in the functioning
consisting in various types of acts of dishonesty, dishonesty involv
or his representatives), if this does not lead to a breach of his em
particular taking care of the welfare of the workplace and keeping se
the disclosure of which could expose the employer to damage (loya
infringing the employer's interests - Article 100 § 1 point 4 of the Lal
as compliance with the company rules of social coexistence (Article
the Labor Code). In the opinion of the Court, an employee may not ra
justified only by subjective reasons, formulate negative opinions tov
yer or its representatives. «Permitted criticism" must be reliable, factu
to the specific factual circumstances and in an appropriate form. The
of permitted criticism is the employee's „good faith", i.e., his subjectiv
he bases the criticism on truthful facts (with due diligence in checkir
in the employer's legitimate interest. In the Supreme Court's opinio
welfare of the workplace" is an employee's obligation to refrain fro
at causing damage to the employer or even considered as actions t
disadvantage. In such situations, the employee's behavior should be
a way that the emphasis should be placed not so much on the culpa
legal (unlawful) nature of his behavior but on his loyalty to the emp
in a 2017 ruling, the Supreme Court indicated that the condition for
Art. 52 § 1 point 1 of the Labor Code (a whistleblower's disciplinary
refore the employee's mental attitude to the effects of his behavio
the will and possibility of foreseeing, *i.e.* awareness of the fundamen
breach of duty and the negative effects that this behavior may cause
The disciplinary dismissal of a midwife from Nowy Targ was based su
100. § 2 p. 4 of the Polish Labor Code, i.e., violation of primary emplo
ties. In this context, it should be pointed out that regardless of wheth
was or was not justified, legal consequences of the employer's will a

VII. CONCLUSIONS

Although two threads were raised in this paper, I am limited to the i

freedom of speech through the possibility of revealing irregularities
Unfortunately, the form of disciplining the employee is so-called Di
that refers to immediate effect. The only way to defend such an emp
to the court of work "Employer's decision". On the other hand, it is
ting out the Polish legislator's positive actions on the regulation of
securing the interests of remote workers. The current bill does n
detailed solutions leaving them by the employer's decision and regu
regulations of the workplace. We do not know if the legislator can
lated teleworking the Labor Code - remote work. Certainly, the rules
cannot be a repetition of the provisions on telework, and time will sh
benefits of remote work will be with us for longer.

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