



The Labour Code amendment

Major changes in 2023

This year's amendments to the Labour Code have resulted in the greatest changes to labour law for years. Let us provide a practical summary of these.

In April 2023, two revolutionary amendments to the Labour Code come into force. The first one concerns remote working and the possibility to control the sobriety of employees, the second one implements two crucial EU directives: pro-employee and pro-parent. The new regulations are beneficial for employees, but at the same time they are a major organisational challenge for employers.

What are the changes to labour law in 2023?



regulation of remote working



option to check the employee's sobriety



new contents of personal files



2 new types of leave



extension of parental leave



additional work breaks



changes to probationary and fixed-term contracts

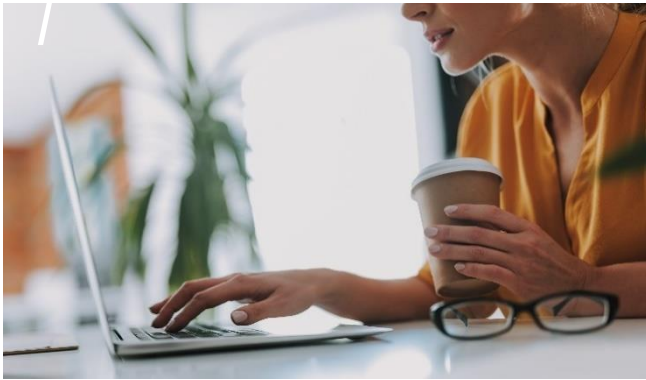


flexible work organisation for parents and carers



Key deadlines

Date of entry into force	Scope of legislation
21 February 2023	the option to test the employees for sobriety or for substances having a similar effect to alcohol
21 March 2023	changes to employees' personal files
5 April 2023	time to adapt to the new rules for keeping documents collected before the Regulation entered into force
7 April 2023	remote working: definition, terms of implementation, rights and obligations of employees and employers
26 April 2023	implementation of EU pro-parent and pro-worker directives



Remote working

Regulations on remote working came into force on April 7, 2023. It is defined by the legislator as the fulfilment of work duties in whole or in part at a place indicated by an employee and agreed with his/her employer in each case.

Remote working under the Labour Code

- is allowed at the employee's request
- shall be specified in the regulations or in agreement with the trade unions
- cannot be refused in certain cases, e.g. to a pregnant woman or a parent of a child under 4 years of age (except when justified by the character of the employee's work)
- 24 days a year of occasional remote working can be used (upon request)
- employer can control an employee at the place of remote work

Remote working control

An employer has the right to check:

1. performance of remote work by an employee
2. the health and safety of the workplace
3. the compliance with security and information protection requirements

If an employer finds breaches of the rules and regulations, the employer is allowed to revoke the permission for the controlled employee to work remotely.

What are the employer's obligations towards an employee working remotely?

- drawing up a risk assessment for a remote employee
- informing an employee of the risks
- providing employees with work equipment and materials
- covering the costs of electricity and telecommunications services
- providing installation, service, maintenance of work tools necessary for remote working or covering the costs thereof
- determining the cash equivalent for using the materials not provided by an employer
- covering of other costs directly arising from remote working
- providing employees with the training and support necessary to work remotely

When calculating the lump sum, employers consider consumption standards for materials, work tools and electricity, as well as the cost of telecommunication services.

Before being allowed to work remotely, an employee shall confirm in a paper or electronic declaration that he/she has read and understood the following documents prepared by his/her employer:

- occupational risk assessment
- health and safety rules for remote working

Employee sobriety testing

An amendment to the Labour Code introduced the option to test an employee for sobriety or for the presence of substances having a similar effect to alcohol. The provisions came into force on February 21, 2023.

There are two ways for an employer to check the sobriety of employees:

- preventive sobriety checks or checks upon employees for the presence in their bodies of alcohol and substances acting similarly to alcohol,
- checks if an employer has reasonable suspicion.

Employee sobriety checks should be addressed either by work regulations or a collective agreement. If these documents do not exist in the organisation, an employer needs to prepare a special announcement.

How do you carry out a sobriety check?

Sobriety testing under the new legislation is to be carried out by means of:

- a device with a valid document confirming its calibration or standardisation.

At the request of an employer or an employee not admitted to work, a test regarding the employee's sobriety shall be carried out by a competent authority appointed for the protection of public order, by means of:

- methods not requiring laboratory testing,
- laboratory methods (blood test) - e.g. if an employee refuses a test by a non-laboratory method or disputes the result.

Results of sobriety tests

If, as a result of an employee sobriety test, the test reveals the presence of alcohol above 0.2 per mille, an employer shall not give such an employee permission to work. The employer shall also communicate such information to such employee.

If the result is less than 0.2 per mille, an employee may perform his or her official duties.



Extent of changes to personal files

Since March 21, 2023, new regulations for personnel files have been in force.

Changes introduced:

B

Extension of Part B to include the following information:

- documents relating to remote working (information on occupational risks and OSH rules)
- documents relating to the rules and methods for conducting employee sobriety tests

E

Adding Part E related to employee sobriety tests to include information on:

- testing time
- test result
- testing method

New leaves as from 26 April 2023

	Carer's leave	Leave due to force majeure
Length of leave	5 days per year	2 days or 16 hours per year
Payment for leave	unpaid leave	50% paid leave
Reason	serious medical reasons affecting selected family members/other persons living in the same household	force majeure
Aim	providing support or care to the above-mentioned persons	employee's immediate need to be absent due to an event arising from urgent family matters caused by illness or accident

Parental leave as from 26 April 2023

- Extension to **41 weeks** (single birth) or **43 weeks** (multiple births)
- There are **9 additional weeks** of parental leave in this pool, to which each employee-parent of a child is entitled. The additional weeks **shall not be transferred** from parent to parent
- The leave may be taken simultaneously by both parents of a child who are employees
- Leave may be taken **in one go** or in no more than **5 parts**. It may be taken no later than by the end of the calendar year in which the child reaches the age of 6.
- The maternity allowance for the period of parental leave, including nine weeks of parental leave granted exclusively to the child's other parent, is **70% of the allowance calculation base**.
- The mother of the child may, no later than 21 days after the birth, **request an increase** of the allowance **to 81.5%** of the allowance calculation base for the period of maternity and parental leave, excluding the non-transferable nine weeks of such leave to which the father of the child is entitled.



Additional breaks at work

The amendment to the Labour Code introduces two additional breaks included in working time:

- a **second break** of at least 15 minutes if an employee's daily working time is **longer than 9 hours**
- a **third break** of at least 15 minutes if an employee's daily working time is **longer than 16 hours**

Multi-job regulation

Under the new legislation, an employer cannot prohibit an employee from working for more than one entity. The employee will therefore be allowed to remain simultaneously:

- in an employment relationship with another employer or
- in a legal relationship giving basis to the provision of work other than an employment relationship.

Exception:

The prohibition to work for another employer shall only apply if the employee signed a noncompetition agreement with the employer.

Changes to probationary contracts

The length of the probationary contract will depend on what kind of contract an employer intends to conclude with an employee after the trial period. Thus, it will be possible to conclude a contract for a period not exceeding:

- **1 month** - for a fixed-term contract of less than 6 months (possible extension by up to 1 month)
- **2 months** - for a fixed-term contract of no less than 6 months and less than 12 months (possible extension by up to 1 month)
- **3 months** - in other cases (e.g. with a contract of indefinite duration)

Important:

In a probationary contract, employers and employees will be able to agree to extend the duration of the contract by the employee's leave and/or other excused absence from work.



Termination of fixed term contracts

As from 26 April 2023, employers will be required to justify the termination of fixed-term contracts. If an employee is a member of a trade union, the termination of such a contract will have to be consulted with the union. An employee will be able to challenge the reason given in the termination notice.

An employee who appeals against dismissal in court will not only be able to claim damages, but also reemployment.

Option to request a change in the terms and conditions of employment

An employee with **at least six months** of employment will have the right to **request** once a year **to change the type of contract** to a fixed-term contract or for more stable and secure working conditions.

An employee may also ask his/her employer for a written response to this request with justification within 1 month of receiving it. The employer shall, as far as possible, accept the request. If he/she rejects it, the employer is obliged to indicate the reason.



Employer's information obligation

The employer is obliged to inform in writing, within 7 days after allowing an employee to work, of the terms and conditions of employment and of any change thereto.

Failure to inform an employee within the deadline of the terms and conditions of employment is an offence against the employee's rights.



An employer shall provide information on at least:

- daily and weekly standards of working time
- daily and weekly working hours
- breaks at work
- daily and weekly rest
- rules on work overtime and compensation for such work
- other remuneration elements and cash benefits other than those agreed upon in the employment contract and benefits in cash or non-cash
- the length of the paid leave to which an employee is entitled or the rules for determining and granting it
- the rules on employment termination
- the right to trainings and training policies if an employer provides them
- whether a collective agreement exists
- for shift work, rules for changing from shift to shift
- for several places of work, rules for traveling between those places

Important!

Failure to provide a timely response to a request to amend the terms and conditions of employment or failure to provide a reason for refusing to grant the request shall result in **a fine of up to PLN 30 000.**

Privileges for employees raising children up to 8 years of age

Thanks to the new EU "work-life balance" directive, employees raising children under the age of eight have gained a number of new privileges.

Extra protection

Such an employee without his or her consent will not be able to:

- work overtime
- work during night-time
- work on an intermittent basis
- be posted outside the usual place of work

Protection from dismissal for parents of toddlers

Employees raising toddlers will be protected from dismissal both during the period of maternity or parental leave and as soon as they request time off for childcare. A request for flexible working arrangements will also not be able to be a reason for dismissal.



Flexible working time arrangements

The amendment also opens up opportunities for flexible working time arrangements for employees who raise children, i.e.:

- remote work
- reduction in working hours
- reduction in working week
- intermittent working hours
- weekend working scheme
- flexible working time
- individual working time schedule

An employer shall review the request, considering the needs of an employee, including the period of time and the reason for the need to take advantage of flexible working arrangements, and the employer's needs and capacities, including the need to ensure the regular workflow, the organisation of work or the type of work performed by an employee.

Important:

An employee's request to work remotely cannot constitute a reason for termination of the employment contract or the employer's termination of the contract.

A breach by an employer of the provisions on flexible working arrangements is subject to a fine of up to PLN 30 000.

Changes to the Labour Code 2023 - how can we help?

Scope of support

Tailoring internal documentation (work regulations, agreement, policies and procedures) to current legislation on:

- Remote working
- Employee sobriety testing
- Flexible working arrangements

Drafting document templates:

Remote working

- Ordering remote working
- Individual agreement to work remotely
- Request for occasional remote working
- Employee declarations of reading and understanding of risk assessments
- Employee declaration that he/she has read the information setting out the rules on safe and health remote working and undertakes to follow them
- Employee declaration that he/she has read and understood the data protection procedure

Sobriety testing

- documents relating to the rules and manner of conducting employee sobriety tests

Flexible working arrangements

- reviewing and updating the working regulations to the new provisions regarding the implementation of the work-life balance Directive,
- reviewing employment contracts and information on terms and conditions of employment as well as tailoring their contents to the new requirements.

Legal advisory on labour law

- Audit of compliance of HR procedures and employee documentation with the new regulations
- Fulfilment of the obligation to provide information

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