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EXPERT:

Vistra Poland's Agnieszka Polańska-Kanka writes about the legal implications of working from home as viewed by the Labor Code.

EVER SINCE ITS INCEPTION 30 YEARS AGO, ONE OF THE MOST FUNDAMENTAL FUNCTIONS OF AMCHAM HAS BEEN TO MAINTAIN PLATFORMS FOR SHARING PROFESSIONAL KNOWLEDGE AND EXPERIENCE BETWEEN ITS MEMBERS. THERE ARE SEVERAL SUCH PLATFORMS, INCLUDING AMCHAM MONTHLY MEETINGS, THE AMCHAM COMMITTEES, AND THE EXPERT SECTION OF THE CHAMBER'S MAGAZINE. IN THIS DISPATCH, **AGNIESZKA POLAŃSKA-KANKA, DIRECTOR, CLIENT SERVICES, HR & PAYROLL AT VISTRA POLAND,** EXPLAINS WHY IT IS IN THE BEST INTEREST OF EMPLOYERS AND EMPLOYEES TO REGULATE WORKING FROM HOME IN DETAIL IN THE LABOR CODE.

EXPERT Labor Code

IT'S TIME TO GET REAL

Working from home during the pandemic

The rapid spread of the coronavirus has led employers to implement remote work for all or some employees.

However, the labor law's current provisions provide for only one form of remote work—teleworking. This is defined in Article 67(5) et seq. of the Polish Labor Code as the regular provision of work outside of the employer's headquarters via electronic communication. Until recently, remote work was seen as an employee benefit. It was considered the occasional provision of work at a location different from that specified in the employment contract, requested by the employee, and requiring approval by the employer or superior.

NEW SOLUTIONS

The widespread quarantine during the coronavirus pandemic has forced new solutions for how work is performed outside the company's headquarters. Given that telework was not an ideal solution for employers wanting to introduce flexible home office options, it became necessary to regulate remote work. The provisions of the government program, the Anti-Crisis Shield, were created to support employers, offering them tools for more-flexible team management and workplace organization. Article 3 of the Anti-Crisis Shield Act provides a special regulation through which employers may instruct employees to carry out the work specified in their contract of employment in a location other than where it is usually carried out (remote work) for a specified period. In light of the new provisions,

remote work is ordered at the employer's discretion, which may be only preventive, and is binding upon the employee. Employees are required to follow the employer's instructions in accordance with the Polish Labor Code as long as the instructions are not contrary to the law or their employment contract. Refusal to follow the employer's instructions may result in the employee being fined, warned, or reprimanded for not complying with agreed organization, order at work, as well as with occupational health and safety rules.

THE CONDITIONS

Remote work may be ordered if the employee has the skills and technical and accommodation capacity to perform such work, and the type of the employee's responsibilities allows for this. Remote work may be performed in jobs using direct remote communication, or even in those making manufacturing components or material services, for example. The employer provides the work equipment, materials needed to perform the remote work, as well as logistics support. It is worth noting that the provisions of the special act do not refer to the employee's housing or family conditions in relation to being instructed to work remotely. Thus, if the employee reports that they are unable to work from home, the employer should designate another location for the remote work. The new provisions do not clarify the maximum period for which remote work may be performed. This is at the employer's discretion and can be a



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set period justified by the Covid-19 pandemic. However, it should be noted that Article 3 of the act will expire 180 days from when it entered into force on March 8. Therefore, it can be assumed that the duration for which the employer may instruct an employee to work remotely may not exceed this period. In addition, the special act does not include any information on shortening or extending the period of remote work. It should be assumed that shortening or extending the duration of remote work due to the pandemic is permissible, but only within the period mentioned above unless the special act is updated to amend the period of validity of the provisions.

THE IMPLEMENTATION

The Anti-Crisis Shield Act does not specify how remote work should be ordered, nor does it propose any rules for how it should be performed. In the interest of both the employer and employee, remote work should be assigned in an official e-mail or letter, as an example. The employer should ensure safe and hygienic working conditions for employees before remote work can be implemented. This is the employer's responsibility in accordance with Article 15 of the Polish Labor Code, and the application of the provisions of the special act does not release it from this obligation. As a personal data controller, the employer should also take all necessary measures to ensure the safety of data exchanged between the employee who works from home and the company. All available technical and organizational safeguards should be employed to prevent potential breaches. Remote work is only a temporary change of the place in

which work is performed, and this is why all other provisions of employment contracts and internal regulations remain in force. The employer should include all the above aspects in their special-purpose regulations for remote work. Such regulations should outline the rules for organizing remote work: how it is ordered and how the result is received, control of work, confirmation of commencing and ending work, recording working hours, where the remote work is performed, ways of communicating with superiors, and tools required for the performance of such work, among others.

CONCLUSIONS

Until recently, many Polish employers only agreed to occasional remote work. Currently, the wide application of such a work mechanism continues to allow many companies to carry on their operations and keep jobs. According to a study run by Devire, 67 percent of companies surveyed which had not offered the option of remote work until recently decided to take this step after the pandemic started. Given that the pandemic has not yet subsided in Poland, it can be assumed that the special act's provisions will be extended. Perhaps this form of work will soon become permanent and regulated in more detail in the Polish Labor Code. Employer organizations, including the American Chamber of Commerce, Business Centre Club, and Lewiatan Confederation, have recently issued an appeal to clarify legislative solutions related to remote work, including in relation to occupational health and safety, and proposing more realistic solutions.