

I'M GOING HOME!



SQUIRE PATTON BOGGS'S **MALGORZATA GRZELAK**, PARTNER, AND **ZUZANNA ROSNER-LASKORZYŃSKA**, SENIOR ASSOCIATE, WRITE ABOUT NEW LABOR LAW REGULATIONS GOVERNING REMOTE WORK.

Workplace dynamic has always spearheaded legislative change. Since the global pandemic broke out, we have been witnessing tremendous economic and social changes, which will now make their way to the Polish Labor Code.

Currently remote work is covered by the anti-COVID-19 law. Come March, when the amendments to the Labor Law enter into force, employers will not be able to instruct their employees to work remotely. This will be only possible under special circumstances, such as during a state of emergency, state of epidemic threat or state of epidemic, and only for a period of three months after the end of the "emergency states".

However, employers will be able to send their people home to work when it is temporarily impossible to ensure safe and hygienic working conditions at the current workplace due to *force majeure*.

All other cases, namely full-time remote work and hybrid work, as well as occasional remote work, will require, depending on a situation, a request from the employee accompanied by an approval from the employer, or an agreement between the parties initiated at either party's request.

TRADE UNIONS AND EMPLOYEE REPRESENTATIVES

Neither trade unions nor other employee representatives will have the power to effectively

force the employer to introduce remote work. However, the employer may need to collaborate with them to launch full-time remote work and hybrid work schemes.

For certain categories of employees, employers will, in general, be obliged to agree to remote work, unless it is impossible because of the type and/or organization of work. Reasons justifying a refusal will have to be provided to the employee within seven working days. It will be subject to a court's verification. Special categories will include employees who are in difficult parental situations (e.g. parents of children with disabilities); pregnant; raising a child up to four years old; or taking care of another family member or other person with a disability certificate, residing in a common household with the employee.

In practice, the above mentioned conditions may trigger doubts. Employers have already voiced concerns as to how this will work. It will definitely require keeping a balance between ensuring proper work organization and employees' legitimate interest. Groundless denial in the case of special category employees may lead to successful discrimination claims.

CHANGE OF MIND

If remote work is introduced during the term of employment, both the employee and the employer may effectively request to cease the remote work. In such

a case, the parties agree when the previous conditions of work will be restored no later than within 30 days from the day of remote work cessation agreement.

PAPERWORK AND COLLABORATION

Except for occasional remote work which can not be more than 24 days per calendar year, remote work will usually require some paperwork and collaboration with trade unions or other employee rep-

necessary if there is no trade union present at the company. However, in such a case, it will additionally require consultation with employee representatives. Alternatively, the employee and employer may enter into an individual agreement. Agreements and internal policies will have to include several detailed clauses specified in the new law. For remote work introduced in the above-discussed exceptional circumstances, the employer will be obliged



Remote work will require agreements on paper or in electronic form.

representatives. In particular, full-time remote work and hybrid work will require either an agreement with the company trade unions or, if the parties fail to reach an agreement within 30 days, the introduction of internal policy. Internal policy may also be

to issue detailed instructions. The new law is often criticized as too formalistic and complicated, and very similar to telework, which, for the same reasons, was rarely adopted by Polish employers.