

The Sejm has adopted provisions on the minimum hourly rate

The President signed on 5 August 2016 the Act of 22 July 2016 Amending the Act on the Minimum Remuneration for Work and Certain Other Acts (the "**Act on Minimum Remuneration**"). The amendment introduces, first of all, a minimum hourly rate of remuneration of PLN 13 for contractors or persons providing services, which is to be applied from 1 January 2017, and new obligations associated with the documenting of services provided by such persons, regardless of how much they earn. There is also a procedure in place to allow entities providing services, the costs of which are affected by the increase of remunerations, to renegotiate such arrangements, or terminate them, if renegotiations fail.

Scope of application of the minimum hourly rate

At present, a large number of people in the Polish labour market are engaged to provide services not on the basis of employment agreements but on the basis of civil-law contracts e.g. for the provision of certain services. These arrangements enable a whole range of rights and benefits applying to an employment relationship to be sidestepped. These include the right to a minimum monthly wage, which currently is guaranteed only to employees. The government's policy is to discourage the use of these types of arrangements and the amendment to the Act on Minimum Remuneration is a step taken in pursuance of this policy.

As a result the amendment, the following persons will become entitled to be paid the minimum hourly rate: (i) natural persons who do not conduct business activity and (ii) self-employed persons (i.e. natural persons conducting business activity but not employing other persons), who accept mandates or provide services on the basis of a mandate agreement or an agreement to provide services, respectively, for an entrepreneur or other organizational entities ("**Service Providers**").

The minimum hourly rate will not apply to Service Providers who individually determine where and when they fulfil their tasks, if they are entitled to remuneration in the form of a commission i.e. which depends on the results of the Service Provider's actions or the results of the activity of the entrepreneur to whom the service is provided (for example certain salespersons). Nor will it apply to certain agreements the subject of which is 24-hour-a-day care, e.g. agreements concluded for the running of family care homes or caring for group of persons during excursions.

Hourly rate

Originally, it was planned that a minimum hourly rate of PLN 12 would apply in 2016, but ultimately it was agreed that a rate of PLN 13 gross would be introduced in 2017, i.e. 8.1% higher than PLN 12. This is the same as the percentage increase in the minimum monthly remuneration which for 2016 was PLN 1,850 and is to increase to PLN 2,000 in 2017. The minimum hourly rate will also be automatically adjusted in subsequent years by the

percentage increase in the minimum monthly remuneration for the following year.

Protection of remuneration

Under the amendment, an agreement concluded with a Service Provider should specify the amount of remuneration in such a way that the hourly rate for carrying out the mandate or providing the service is not lower than the minimum hourly rate. This does not mean that remuneration should be determined solely based on hourly rates (that are no lower than the minimum hourly rate). It is still permissible to specify fixed remuneration paid in a lump sum for a relevant period, whereby the remuneration in each case must be paid to the Service Provider at least once a month. However, if the agreement provides for a fixed payment, e.g. for a month, if that remuneration is divided by the number of hours during which services were actually provided in the month and it gives an amount that is lower than the minimum hourly rate, the Service Provider will be entitled to appropriate compensation.

Payment of remuneration up to an amount guaranteeing the minimum hourly rate may only be made in monetary form and the Service Provider will not be able to waive it or transfer the right to it to another person. If several persons accept a mandate or undertake to provide services jointly, each of them will be to be entitled to the minimum rate.

Record of hours worked

To ensure the right to the minimum hourly rate is complied with and properly settled, entities employing Service Providers will be obliged to keep documentation confirming the number of hours worked for at least three years. Unless the agreement provides for another mechanism, a Service Provider will be obliged to prepare the documentation (in written, electronic or documentary form) and provide it to the entity employing him/her before the deadline for payment of remuneration. An exception to this will be temporary employees – in their case the record of the number of hours they work will be kept by the employer.

Extending the powers of the Chief Labour Inspectorate

The Inspectorate is to be able to conduct inspections of payment of the minimum hourly rate. If any irregularities are detected, the Inspectorate will be able to issue instructions

to pay out the appropriate amount of remuneration. Furthermore, an entrepreneur or a person acting on its behalf who pays out remuneration for each hour of work or provision of services that is lower than the minimum remuneration in force will be committing a petty offence and will be liable to a fine between PLN 1,000 and PLN 30,000.

After the amendment comes into force, inspectors will be able to conduct inspections at any time of the day or night without giving notice.

Changes in the regulations regarding the minimum remuneration for work

At the moment, during an employee's first year of work the rate of pay can be reduced to as low as 80% of the minimum remuneration. This exception will be repealed, and all employees will be entitled to at least 100% of the minimum level of remuneration (in 2017, this will be PLN 2,000). Moreover, when the level of remuneration is calculated for the purpose of determining whether it is lower than the minimum remuneration, any additional allowance for working at night will not be taken into account. At present, basic remuneration could be lower than the minimum remuneration if, after adding an allowance for working at night to which the employee was entitled, the threshold set for the minimum remuneration level was reached.

Deadlines for terminating agreements the costs of performance of which will increase as of 1 January 2017

Pursuant to the amended law, in the period between 1 September and 31 December 2016, a party to: (i) an agreement concluded before 1 September 2016, or (ii) an agreement concluded under the public procurement procedure which was initiated before 1 September 2016, may submit an application to negotiate an increase in the remuneration for the performance of the agreement, which is substantiated by a documented increase in the costs of performing the procurement (costs or remuneration of personnel) resulting from the introduction, as of 1 January 2017, of the minimum hourly rate for Service Providers or changes to the rules on determining the minimum monthly remuneration for work. If no arrangement on the increase in costs is concluded within 30 days of the date such an application is made, the Service Provider will have the right

to terminate the agreement upon two months' notice. The Act does not provide for an additional deadline in which such right maybe exercised, therefore it might be assumed that the notice should be given no later than 30 days after the application is submitted.

Entry into force of the Act

The new rules are to come into force on 1 January 2017. However, certain adjustment provisions will come into force as of 1 September 2016, in particular those concerning the negotiation of an increase in remuneration for the performance of procurements.

Comment

The introduction of a minimum hourly rate for persons employed on the basis of civil-law contracts may contribute to an increase in the staffing costs of many entrepreneurs who use this form of employment, in particular those conducting activity in rural areas [in which Service Providers currently often receive a lower pay than the hourly rate in many industries]. An increase in the costs of goods and services in those industries that extensively use civil-law contracts is also expected. Alternatively, if the increased costs cannot be passed on, this may lead to increasing unemployment and/or an increase in the grey market.

In certain sectors, such as security services, catering and cleaning, civil-law contracts are widely used with payment under such contracts being as low as half the new minimum rate. Clearly, the new law will have a major impact on the situation of these businesses.

Assuming that Service Providers provide services for a number of hours corresponding to the standard number of working hours under an employment contract, their monthly remuneration in 2017 will be approximately PLN 2,170 gross, or more than 8% higher than the minimum monthly remuneration applicable to employment contracts in 2017 (PLN 2,000). This is the effect of the Government's

deliberate action to encourage a movement from civil-law contracts towards using employment contracts. In addition, the government is also working on changes to tax and social security legislation to harmonise the provisions applying to employment contracts with those applying to civil-law contracts. These will reduce the tax and social security exemptions applicable to civil-law contracts and further reduce their attractiveness.

The fact that the obligations related to the documenting of the number of hours in which services are provided formally apply to all Service Providers, i.e. including those whose fixed monthly remuneration is very high, should be viewed negatively. This means that, even if the sum paid is so high that the minimum hourly rate would clearly be exceeded, the recipient will have to keep a record of the number of hours worked. However, the amendment does not envisage any sanction for a breach of these obligations. It seems, therefore, that waiving this obligation with respect to Service Providers who earn more than approx. PLN 9,000 would not be in conflict with the purpose of introducing that obligation and would not entail a significant practical risk.

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