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THE SCOPE OF THE OBLIGATION TO INTRODUCE REMUNERATION REGULATIONS AFTER THE AMENDMENT TO THE LABOR CODE OF THE YEAR 2016

INTRODUCTORY REMARKS

The Labor Code has contained the provisions of remuneration regulations since 1996[1]. The obligation to introduce regulations, provided for in the Code, initially concerned an employer with at least 5 employees not covered by a collective labor agreement. In 2002

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[1] See Art. 1 Point 71 of the Act of 02.02.1996 amending the Act - the Labor Code and amending certain laws (Journal of Laws no 24, section. 110). Earlier, remuneration regulations were normalized outside the Labor Code. See more G. Goździewicz, *Układy zbiorowe pracy*. *Regulamin wynagradzania. Regulamin pracy,* Bydgoszcz 1996, p. 195 and next.

this number was increased to 20 employees[2]. At the same time, it was assumed that an employer with fewer than 20 employees, with whom the remuneration regulations apply, has the possibility to withdraw from the act by introducing the conditions of remuneration for work provided for in it and granting other work-related benefits connected with employment contracts[3]. In turn, in 2016, the obligation to introduce remuneration regulations was limited to an employer with at least 50 employees not covered by a collective labor agreement or from 20 to 49 such employees if the enterprise trade union applies for the introduction of regulations[4]. This study is devoted to the latest amendment.

THE OBLIGATION TO INTRODUCE REMUNERATION REGULATIONS AFTER THE AMENDMENT TO THE LABOR CODE OF THE YEAR 2016

When considering the obligation of the employer to introduce remuneration regulations after the amendment to the Labor Code of 2016, it should first be noted that the criterion determining that obligation still means employing an appropriate – with every change bigger - number of employees not covered by a collective labor agreement determining the conditions of remuneration for work and granting other work-related benefits in the scope and manner making it possible to determine, on its basis, the individual conditions of employment contracts. This criterion is not uniformly understood. In the study of labor law the prevailing view – based on the literal and systemic interpretation of Article 77^2 of the Polish Labor Code – is that the obligation to introduce remuneration regulations rests not only on the employer without a collective labor agreement, but also on the employer with whom the agreement applies, but does not cover a defined number of employees[5]. However, another view is also expressed – as it seems right *de lege ferenda* - according to which the systemic interpretation and the related teleological interpretation of Article 77^2 and other provisions of the Labor Code speak for the obligation to introduce remuneration regulations only with a reference to an employer not covered by a collective labor agreement [6].

[2] This was due to the enactment of the Act of 26.07.2002 on the amendment to the Act - Labor Code and on the amendment of some other acts (Journal of Laws no 135, item 1146) This occurred as a result of the adoption of the Act of 26.07.2002 on the amendment to the Act - Labor Code and on the amendment of some other acts, hereinafter referred to as the Amending Act of 2002. By inserting in thisAct Art. 1 point 10, the postulatewas reported in the doctrine, amongothers by K. Rączka (*Sytuacja małych pracodawców w prawie pracy,* Work and Social Security (Polish Economic Publishing) 1999, no 9, p. 7) and Z. Hajna (*Regulacja pozycji prawnej pracownika i pracodawcy a funkcje prawa pracy,* Work and Social Security (Polish Economic Publishing) 2000, no 10, p. 9).

[3] See Art. 8 paragraph. 1 of the 2002 amendment act.

[4] See Art. 2 point 1 of the Act of 16.12.2016 on amending certain acts to improve the legal environment of entrepreneurs (Journal of Laws, item 2255).

[5] See e.g. B. Wagner, [in:] *Kodeks pracy. Komentarz,* ed. L. Florek, Warsaw 2011, p. 439 and K. Rączka, [in:] M. Gersdorf, K. Rączka, M. Raczkowski, *Kodeks pracy. Komentarz,* Warsaw 2014, p. 597.

[6] L. Florek, *Obowiązek wydania regulaminu wynagradzania*, PiZS 2015, no 3, p. 18 and next. See also J. Piątkowski, [in:] *Kodeks pracy. Komentarz,* ed. K.W. Baran, Warsaw 2016, p. 1341.

Since January 1, 2017, the boundary between the entitlement and the obligation to issue remuneration regulations is set by employing at least 50 employees not covered by a collective labor agreement or from 20 to 49 such employees if the enterprise trade union applies for the introduction of regulations. Thus, *de lege lata* one can distinguish an employer with up to 19 employees not covered by a collective labor agreement, an employer with at least 50 such employees and an employer employing from 20 to 49 employees not covered by the agreement.

An employer with up to 19 employees not covered by a collective labor agreement is released from the obligation to issue remuneration regulations. However, if he wants, he can introduce such regulations. The difference in comparison with the legal status which was in force by the end of 2016 lies in the fact that the currently indicated possibility results directly from the provision of Article 77^2 § 1^1 of the Polish Labor Code. It is worth noting because, before this provision came into force, some representatives of the doctrine raised objections as to whether remuneration regulations issued by the employer not obliged to introduce them, constitute a source of labor law if not based on the law[7]. *De lege lata* does not raise any doubt that such regulations are based on the law and thus – have a normative character.

As for the employer with at least 50 employees not covered by a collective labor agreement, his situation with respect to remuneration regulations remains unchanged. Like before, he has the obligation to issue this legal act.

From the perspective of the analyzed problem, an employer with between 20 and 49 employees not covered by a collective labor agreement constitutes a new category. While so far he was absolutely obliged to introduce remuneration regulations, his situation is more complex now. At present it is crucial whether there is an enterprise trade union acting on the premises of the employer and whether it applies to the introduction of remuneration regulations. If so, which is unlikely due to a negligible presence of trade unions at the enterprise level[8], the employer is obliged to introduce regulations. However, in the case of the absence of a trade union organization or the absence of an application for issuing regulations, the act may, but need not be determined.

Submitting an application for the introduction of remuneration regulations by the enterprise trade union is undoubtedly a manifestation of implementing the basic objective of this organization which is, in accordance with the Trade Union Law, the representation and defense of the rights and interests of employees[9]. Submitting an application gives rise to the obligation on the part of the employer to introduce

[7] See e.g. W. Uziak, *Akty zakładowe jako źródło ustaleń płacowych*, [in:] *Wolność i sprawiedliwość w zatrudnieniu. Księga pamiątkowa poświęcona Prezydentowi Rzeczypospolitej Polskiej Profesorowi Lechowi Kaczyńskiemu*, ed. M. Seweryński and J. Stelina, Gdańsk 2012, p. 363.

[8] It is estimated that trade unions operate at approx. 5% of employers. See J. Stelina, *Związki zawodowe w systemie zbiorowej reprezentacji zatrudnionych – stan obecny i kierunki zmian,* [in:] *Zbiorowe prawo pracy w XXI wieku*, ed. A. Wypych-Żywicka, M. Tomaszewska and J. Stelina, Gdańsk 2010, p. 149, footnote 1.

[9] See Art. 1 of the Act of 23.05.1991 on trade unions (Journal of Laws of 2015, item 1881).

regulations, and shaping the system of the conditions of remuneration for work in this act is certainly in the interests of employees. This will be discussed in the last part of this study.

However, failure to submit the above-mentioned application by the enterprise trade union should be assessed differently. The passive attitude of this organization, although legally permissible, is at least questionable from the point of view of the indicated purpose of trade union activity. It should be emphasized that if the enterprise trade union does not apply for the introduction of regulations, it deprives itself of the possibility to have a binding effect on the shape of the statutory conditions of remuneration for work and consequently leads to the fact that wage conditions are determined without the participation of employee representation. It is difficult to consider this to be beneficial to employees. The employer may then issue remuneration regulations anyway, but it can be assumed that he is not generally interested in it because – as indicated above – establishing regulations and introducing any possible changes in them would require making arrangements with the trade union organization, which means working out a common position with it regarding the content of the regulations. Instead, the employer may shape the conditions of remunerating individual employees in their employment contracts and, if necessary – modify those conditions by means of agreements or notices of amendment. He does not apply then to the trade union, but to individual employees, so his power to influence the shape of remuneration conditions is far greater.

It is worth noting that the code regulation concerning the application for the introduction of remuneration regulations does not refer to specific issues, which may give rise to questions of interpretation, which in turn may adversely affect the practice of introducing regulations. This concerns, for example, establishing who can oblige an employer to issue regulations if there is more than one trade union organization acting on the premises of the employer. To consider here is on the one hand the application by analogy legis of the provisions of Article 30 of the Trade Union Law and, consequently – the recognition of the requirement to apply for the introduction of regulations by all trade union organizations acting on the premises of the employer, on the other hand – the assumption that every trade union organization is entitled to submit this application. The lack of a clear regulation on this matter in Article 77^2 § 1^2 of the Polish Labor Code, combined with the principle according to which in collective cases trade unions represent all employees, regardless of their union membership (Article 7 paragraph 1 of the Trade Union Law), encourages to opt for the second of these options, notably because it promotes the autonomy of trade unions[10]. However, in order that this issue does not arise any doubt, it would be advisable to clearly indicate in Article 77^2 of the Polish Labor Code – on the

[10] This option is not supported by Art. 24124 of the Labor Code. Its application to regulations of remuneration by analogy legis is excluded due to the validity of Art.772 § 5 of the Labor Code.

model of the provision of Article 3 paragraph 1 of the Collective Dispute Resolution Act – that in a workplace where there is more than one trade union organization acting, each of them may apply for the introduction of regulations.

Code regulation would also require a supplement with regard to the effects which arise in reference to remuneration regulations due to the termination of the enterprise trade union which applied for the issue of this legal act. It is worth considering the introduction of the provision providing that the employer may, in such a situation, repeal remuneration regulations, unless the other enterprise trade union organization, informed about his intention, stands for the maintenance of the regulations in legal force.

CESSATION OF THE OBLIGATION TO ISSUE (HOLD) REMUNERATION REGULATIONS

Since the employer's obligation to issue remuneration regulations depends on employing an appropriate number of employees not covered by a collective labor agreement, it is obvious that concluding the agreement for these employees (or the additional protocol) causes the indicated obligation to cease. According to Article 77^2 of the Polish Labor Code it is however important that the agreement meets two requirements. In the first place, it is crucial that it determines the conditions of remuneration for work and granting other work-related benefits, in the scope and manner making it possible to determine the individual conditions of employment contracts on its basis. If the analysis of the content and the degree of detail of the agreement[11] shows that this is not the case, then the systemic conditions of remuneration for work need to be substantiated in remuneration regulations.

The second circumstance that *de lege lata* is not meaningless for the cessation of the obligation to issue remuneration regulations is the fact for whom the collective labor agreement is concluded. As indicated above, the agreement may not cover the entire crew. In such a case, the obligation to introduce remuneration regulations ceases only for those employees for whom the agreement has been concluded (if the agreement does not require clarification), but it is still to be fulfilled in respect of the employees not covered by the agreement, if there are at least 50 or from 20 to 49 employees, and the enterprise trade union has applied for the introduction of regulations[12]. One may have doubts about the relevance of this solution. It appears that the

[11] It is not entirely clear to whom it is necessary to analyze the provisions of the arrangement and assess whether individual terms of employment contracts can be determined on their basis. It seems that the employer is the authorized entity. Similarly, M. Włodarczyk, [in:] *Zarys systemu prawa pracy,* vol. I: *Część ogólna prawa pracy*, ed. K.W. Baran, Warsaw 2010, p. 449-450. The author critically refers to the fact that the employer makes the indicated analysis and assessment.

[12] See B. Rutkowska, *Stabilność regulaminowych warunków wynagradzania za pracę,* [in:] *Tendencje rozwojowe indywidualnego i zbiorowego prawa pracy. Księga Jubileuszowa Profesora Grzegorza Goździewicz*a, ed. M. Szabłowska-Juckiewicz, B. Rutkowska, A. Napiórkowska, Toruń 2017, p. 263.

autonomy of agreement and the nature of remuneration regulations as a substitute act for a collective labor agreement and occupying a lower position in the hierarchy of sources of labor law argue against the obligation to introduce regulations after the entry of the agreement into force – even if the agreement is not concluded for all employees of the employer concerned[13].

If remuneration regulations are already applied by the employer, they are replaced with the entering into force collective labor agreement. This is confirmed by Article 77^2 § 3 of the Polish Labor Code, according to which remuneration regulations are in force until employees are covered by a corporate or supra-institutional collective labor agreement. It is also important here, however, to state whether the agreement allows, on its basis, for the determination of the individual conditions of employment contracts and whether it covers the entire crew. The arrangements in this matter decide whether the existing so far remuneration regulations lose legal validity or are still in force, and if so, to what extent. It turns out that when the regulations are retained in force after the employees are covered by the agreement, the scope of their validity is generally changed[14].

It is worth noting that reducing the number of employees not covered by a collective labor agreement to the level causing the cessation of the obligation to issue (hold) remuneration regulations may result not only in the entry of the agreement into force (or the additional protocol), but also in the termination or expiry of the employment relationships for a specified group of employees. This is the case for example when the number of workers employed by an employer is reduced from at least 50 to fewer than 20. It is similar when the employment falls to the level from 20 to 49 employees, and there is no enterprise trade union on the premises of the employer or the acting organization is not in favor of the introduction (further validity) of remuneration regulations. The trade union organization may of course change its mind at any time and submit the above mentioned application. Then the employer, who was first obliged and then entitled to introduce remuneration regulations, again becomes obliged in this matter. His obligation to issue regulations ceases once again when the number of workers employed by him is reduced to a level lower than 20 people.

It seems that the same effect occurs when the enterprise trade union which has applied for the introduction of regulations is terminated unless it is not the only organization, acting at the premises of the employer, which is in favor of shaping the conditions of remuneration.

One may wonder, what if remuneration regulations are already applied by the employer being in one of the above mentioned situations[15]. In the new legal status,

[13] Numerous arguments for this position are given by L. Florek. See L. Florek, *Obowiązek…*, p. 18 and next.
[14] See B. Rutkowska, *Stabilność…*, p. 263.
[15] This issue was also analyzed by me in the study *Stabilność...*, p. 264-265.

the view expressed in the doctrine remains valid, according to which reducing the number of employees not covered by a collective labor agreement to the level lower than indicated in Article 77^2 of the Polish Labor Code does not cause the expiry of remuneration regulations[16]. Does that mean, however, that nothing changes then in relation to these regulations? Such a conclusion would not be appropriate. Since the employer ceases to be obliged to issue remuneration regulations in the above circumstances, he is not - as it seems - obliged to maintain the regulations in force in the case when he applies this act. Such an obligation would constitute a restriction on the freedom of economic activity and ownership and therefore would have to result directly from the law (see Articles 22 and 64 paragraph 3 of the Constitution[17]).

Thereby reducing the number of employees not covered by a collective labor agreement to the level lower than defined in Article 77^2 of the Polish Labor Code does not result in the expiry of this act. This fact should, however, allow the employer to repeal regulations. The same should be in the case of the termination of the enterprise trade union which has applied for the introduction of remuneration regulations unless there is no other enterprise trade union, acting on the premises of the employer, which stands for shaping the conditions of remuneration in the regulations. The problem is that when amending Article 77^2 of the Polish Labor Code, the provisions that would regulate the procedure for repealing remuneration regulations in the case of the discussed situations have not been provided. There is even no transitional provision that would apply - just like Article 8 paragraph 1 of the amending law of 2002, to a procedure of possible withdrawal from the regulations by the employer so far obliged and now entitled to introduce and hold this legal act[18].

It seems that the Labor Code should be supplemented with regard to the abovementioned procedure of repealing remuneration regulations. It would be at the same time advisable for legal regulations to provide that in the case of reducing the number of employees not covered by a collective labor agreement to the level lower than specified in Article 77^2 of the Polish Labor Code, depriving the regulations of legal power is permissible only after a certain period of time – e.g. a couple of months – since the cessation of the obligation to issue them (hold). This would limit the frequent cases of introducing and repealing remuneration regulations by an employer with around 50 employees (when there is no enterprise trade union acting on the premises of the employer or it does not submit appropriate applications regarding the regulations) or about 20 employees (when the present enterprise

[16] Z. Salwa, *Kodeks pracy po nowelizacji. Komentarz,* Bydgoszcz 1997, p. 156. Similarly, among others, B. Wagner, [in:] *Kodeks pracy…*, p. 439 and K. Rączka, [in:] M. Gersdorf, K. Rączka, M. Raczkowski, *Kodeks pracy…*, p. 597.

[17] Constitution of the Republic of Poland of 2.04.1997 (Journal of Laws No. 78, item 483, as amended).

[18] This refers to an employer with between 20 and 49 employees who are not covered by a collective labor agreement and who either does not have any trade union organization, or an active organization is not in favor of leaving the regulations in force.

trade union applies for the introduction of regulations).

It is not entirely clear how to *de lege lata* relate to the analyzed problem. It seems that one of the solutions that can be considered here is the application of the same procedure as when introducing regulations. This is obviously not an optimal solution. There are, for example, doubts as to whether the employer himself can repeal the regulations by informing employees two weeks in advance or whether he should first agree on this with the enterprise trade union if there is such an organization acting on his premises. Although the employer with fewer than 50 employees is not often included in the scope of the trade union activity, yet making him entitled in such a case to work out a common position with it on the repeal of the regulations would certainly mean depriving this act of legal power, which is extremely rare in practice.

ASSESSMENT OF THE SCOPE OF THE OBLIGATION TO INTRODUCE REMUNERATION REGULATIONS AFTER THE AMENDMENT OF THE LABOR CODE OF 2016

The conducted considerations allow for the assessment of the current provisions of the Labor Code defining the scope of the obligation to introduce remuneration regulations. Adopting in the first place as a criterion for this assessment the principles of legislative technique included in the regulation on the "Principles of legislative technique", it should be stated that the code provisions relating to remuneration regulations do not exhaustively regulate certain aspects of the obligation to introduce and hold this legal act[19]. This does not mean, of course, that the Labor Code should regulate all the issues related with it in detail. However, in accordance with § 2 of the Principles of legislative technique, the law should exhaustively regulate a given area of issues, leaving no significant sections of this field outside the scope of its regulation. Referring this requirement to the Labor Code in the section concerning remuneration regulations is equivalent to the obligation to regulate in this law any issues that significantly affect the practice of the introduction and application of the regulations. This concerns, for example, the procedure of repealing the regulations by the employer who ceases to be obliged to introduce (hold) this act.

In the meantime, it turns out that the amendment to the Labor Code of 2016 once again failed to take the opportunity to supplement the provisions on remuneration regulations. Moreover, the last amendment introduced a new solution which also seems not to be exhaustive and would therefore require supplementation. This refers to the above-mentioned right of the enterprise trade union to apply to the employer with between 20 and 49 employees not covered by a collective labor agreement for the introduction of remuneration regulations without concluding, at the same time,

[19] Regulation of the Prime Minister of 20.06.2002 regarding the "Principles of legislative technique" (Journal of Laws of 2016, item 283).

whoever can submit such an application when there is more than one trade union organization acting on the premises of the employer concerned, and what consequences in terms of the application of the regulations are caused by the termination of the organization that submitted this request. Failure to regulate these issues may contribute to the development of interpretative disputes and, consequently, adversely affect the practice of the introduction and application of remuneration regulations. It therefore seems necessary to supplement not only the existing arrangements on remuneration regulations but also those which entered into force on 1 January 2017.

The new provisions of the Labor Code regarding remuneration regulations need to be evaluated also from the point of view of the direction of changes. When analyzing this aspect of the amendment, it should first be noted that the introduction of the provisions of Articles 77^1 and 77^2 to the Code in 1996 was based on the overall assumption that pay conditions should result from the autonomous labor law, which together with the voluntary nature of the conclusion of collective labor agreements meant the need to extend the codebook of law sources shaping these conditions with remuneration regulations constituting a mandatory legal act issued in a wide range. In order to evaluate the direction of the changes made, it is also important that the Constitution, enacted in 1997, provides in Article 20 that the solidarity, dialogue and cooperation of the social partners are, in addition to the freedom of economic activity and private property, the principles on which the social market economy is based, which is the foundation of the economic system of the Republic of Poland. By exposing the dialogue of the social partners, the Constitution gives it a special meaning, which should be reflected in ordinary legislation by introducing such specific solutions that would create the right conditions for dialogue. Obviously, one of the most important areas in which such solutions should be applied is the systemic establishment of the conditions of remuneration for work. It seems therefore that pay conditions should be determined in the autonomous labor law, preferably created through the dialogue of the social partners.

There may be some doubt as to whether this is indeed the case, as the conclusion of collective labor agreements does not constitute a common practice, and yet the legislator, contrary to the assumption indicated above, once again limits the scope of the obligation to issue remuneration regulations. However, while an employer hiring from 20 to 49 employees not covered by a collective labor agreement has been so far obliged to issue and hold this legal act, after the amendment of the Labor Code of 2016, he is usually entitled in this regard. This is due to the fact that, in general, there is no enterprise trade union acting on the premises of the employer, and only that organization could, by means of submitting an appropriate application, oblige the employer to issue the regulations. Only the trade union organization itself is also entitled to make arrangements with the employer as to the content of the regulations.

Insufficient contractual practice, combined with the limitation of the scope of the obligation to issue remuneration regulations, as well as maintaining the trade

union monopoly in the sphere of participation in shaping the statutory pay conditions, mean that the conditions of remuneration are established in the autonomous labor law created through dialogue between the social partners in the case of fewer and fewer employees, and in relation to increasingly more employees exclusively in the employment contract. In the case of determining the pay conditions in the employment contract, employees act in their relationships with the employer on their own. Their position is then much weaker than those of a collective nature, so there is a risk of imbalance in employment relations in favor of the employer.

Meanwhile, the establishment of the conditions of remuneration for work in the autonomous labor law, preferably as a result of the social partners' dialogue, is extremely important for the protection of employee rights and interests in this area. This is of particular importance in the context of respecting the principle of equal treatment of employees in employment[20], because the application of the system of pay conditions by the employer reduces the risk of violating this principle and also facilitates the detection of such cases.

The existence of systemic solutions in terms of the conditions of remuneration for work restricts the emergence of conflicts on this background and, consequently, promotes the maintenance of social peace, thus having positive effects also for the employer. It seems that imposing an obligation on the employer to form such solutions in remuneration regulations does not necessarily constitute an excessive or unnecessary burden, even if he employs only a few employees[21]. Indeed, he has more direct contacts with them, which makes it easier to determine their conditions of remuneration for work individually, but this fact does not in itself justify the claim that the obligation to introduce remuneration regulations is a manifestation an excessive or unnecessary burden for the employer. However, the key fact here is the above-mentioned general assumption underlying the introduction of remuneration regulations to the codebook of law sources, according to which pay conditions should result from the autonomous labor law, as well as the recognition of the social partners' dialogue in the Constitution as one of the pillars of the social market economy which is the basis of the economic system of the Republic of Poland. Equally important is the fact that the employer decides or co-decides on the form of solutions adopted in the regulations, including the structure of remuneration for work and the level of benefits that he can guarantee to employees (of course maintaining the amount of at least the minimum remuneration for work and respecting the above-mentioned principle of equal treatment in employment). The problem arises, however, when the employer is unable to convince the enterprise trade union acting on his premises to his rights. *De lege lata* failure to agree on the content of the remuneration

[20] See J. Piątkowski, *Przedstawicielstwo związkowe jako podmiot zakładowego dialogu społecznego,* [in:] *Zakładowy dialog społeczny,* ed. J. Stelina, Warsaw 2014, p. 72.

[21] The designer of the amendment seems to have a different opinion in relation to an employer employing from 20 to 49 employees not covered by a collective labor agreement. See justification for the government bill amending certain acts to improve the entrepreneurs' legal environment, item 2.2.1. The project was submitted to the Parliament on 9 November 2016. (Form No. 994).

regulations with the trade union excludes the lawful introduction of this act, and if the regulations have already been introduced - makes it impossible to adjust the statutory pay conditions to the changes taking place on the market.

All the above-mentioned points lead to the conclusion that the amendment to the Labor Code provisions on the remuneration regulations of 2016 does not entirely deserve a positive assessment. This does not mean, of course, that the relevant provisions did not require changes. It would be advisable, however, that these changes are aimed at the introduction of such a regulation that would optimally balance the interests of employees and the employer. It is particularly important for employees that, in the absence of a collective labor agreement, the pay conditions are determined by the remuneration regulations resulting from the social dialogue. On the other hand, from the employer's point of view, it seems important to create the possibility of adjusting the systemic conditions of remuneration for work to the dynamically changing market situation as fast as possible. It seems that the code provisions concerning remuneration regulations should reflect both of these needs.

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Summary: The article deals with the amendment of the Labour Code of the year 2016 concerning the scope of the obligation to introduce remuneration regulations. An employer with fewer than 50 employees has been released from the obligation to issue remuneration regulations except when he employs at least 20 employees not covered by a collective labour agreement and the enterprise trade union requests the introduction of regulations. Article 77^2 of the Labour Code does not relate to specific issues concerning the trade union's request for remuneration regulations, which may give rise to questions of interpretation. It may affect the practice of issuing remuneration regulations. One may also wonder whether the direction of the above changes is correct – the changes restrict the role of remuneration regulations in determining the conditions of remuneration whereas the interpretation of Art. 77^1 and 77^2 of the Labour Code and Art. 20 of the Constitution leads to the conclusion that the conditions of remuneration should be determined in the autonomous labour law created through dialogue between social partners.

Keywords: remuneration regulations, employer's obligation to introduce remuneration regulations, conditions of remuneration for work, enterprise trade union, collective labour agreement

ZAKRES OBOWIĄZKU USTALENIA REGULAMINU WYNAGRADZANIA PO NOWELIZACJI KODEKSU PRACY Z 2016 R.

Streszczenie: Dotychczas obowiązek ustalenia regulaminu wynagradzania spoczywał na pracodawcy zatrudniającym co najmniej 20 pracowników nieobjętych układem zbiorowym pracy. Nowelizacja kodeksu pracy z 2016 r. ograniczyła zakres tego obowiązku do pracodawcy zatrudniającego co najmniej 50 pracowników nieobjętych układem lub od 20 do 49 takich pracowników, jeżeli działa u niego zakładowa organizacja związkowa i występuje z wnioskiem o wydanie regulaminu. Przepisy kodeksu pracy nie regulują kwestii szczegółowych dotyczących wskazanego wniosku, co może powodować wątpliwości interpretacyjne, a te z kolei mogą wpływać negatywnie na praktykę ustalania regulaminu. Oceniając kierunek przeprowadzonych zmian, należy zauważyć, że pomniejszają one znaczenie regulaminu wynagradzania, podczas gdy analiza przepisów art. 771 i 772 k.p. oraz art. 20 Konstytucji skłania do twierdzenia, iż warunki płacy powinny być ustalane w autonomicznym prawie pracy, najlepiej tworzonym w drodze dialogu partnerów społecznych.

Słowa kluczowe: regulamin wynagradzania, obowiązek pracodawcy wydania regulaminu wynagradzania, warunki wynagradzania za pracę, zakładowa organizacja związkowa, układ zbiorowy pracy