

ZUS can reclassify a contract for a specific work as a contract for services

I. Ministry of Labor has responded to inquiry on the classification of contracts

In response to parliamentary inquiry number 39214 directed to the minister of family and social policy with regard to contracts for a specific work relating to copyrighted content, further to an increase in ZUS audits at entities from the marketing industry, on 10 March 2023 Stanislaw Szwed, secretary of state at the Ministry of Family and Social Policy explained the rules based on which ZUS can examine the nature of contracts in the context of classifying them as either contracts for services or for a specific work.

II. Guide on contracts for services and contracts for a specific work available on ZUS website

The minister stated that ZUS has prepared information for premium remitters on contracts for a specific work, which may be found on its website. The information lists the criteria arising out of binding regulations, which should be applied in determining the validity of submitting to social insurance those who perform civil law contracts, as well as the differences between contracts for a specific work and contracts for services. The guide contains examples of court rulings in cases where the dispute related to contracts for a specific work. In the ministry's opinion, the same rules should be applied in assessing the nature and terms of contracts for a specific work for, for example, production of short videos, photos, or social media posts.

III. Clear criteria for assessing whether a contract is for services or for a specific work

The minister stated that based on binding regulations the criteria applied by ZUS in determining whether a given contract should give title to coverage with mandatory social insurance are clearly identifiable. This is because the legal nature of a contract is not only defined by its name, but above all by its contents, as well as the terms and circumstances of its performance. The hallmarks of a contract for a specific work, which distinguish it from a contract for services, may be identified based on the provisions of the Civil Code and court rulings.

The Social Insurance Office (ZUS), which determines if one is subject to social insurance, can – irrespective of the contract's name and its provisions indicating the nature of the legal relationship the parties intended to enter into – determine its true nature and existing title to insurance.





IV. A work requires the achievement of a specific individual outcome

In response to the inquiry the minister stated that the subject of a contract for a specific work is an obligation to perform a specific work defined as the achievement of a specific, individual outcome in tangible or intangible form. The performance of a work usually takes the form of producing a good, but may also consist of changing an existing good, fixing it, modifying, upgrading or expanding it, combining it with other goods, adding components or appurtenances. It is assumed that the result the parties agree to should have an intrinsic, objectively achievable and certain existence. Something that is in no way different from other outcomes available on the market should not be considered a work, as it would then lose its individual nature of a work. A work should be an expression of creativity and skill. First and foremost it is therefore the obligation of the performer of the work to not just perform an activity, but to produce a specific work as a result of such activity. Whereas in the case of contracts for services, the subject is the performance of specific activities (many recurring activities) irrespective of what result they bring, which is a hallmark of contracts for services.

V. Contractor responsible for creation of the work

The minister stressed that in a contract for a specific work - the contractor is responsible for achieving, or failure to achieve the agreed outcome, irrespective of whether he exercised due care in its performance. The risk is borne by the contractor. In a contract for services - the contractor is responsible for failure to exercise due care while performing activities, not for their outcome. In a contract for services, the risk of failure to achieve is borne by the client. The contractor is not responsible for failure to achieve the result that the activities he performed were to bring, as long as he cannot be found to have failed to exercise due care. In a contract for a specific work the outcome the contractor undertakes to achieve should be objectively certain if specific conditions are met. In a contract for services - there is no certainty that the activities the contractor undertook to perform will lead to the intended outcome.

VI. Repetitive, imitative tasks only under contract for services

The minister stressed that the performance of repetitive, imitative tasks, or the performance of such tasks in a continuous or collaborative manner, is characteristic of contracts for services. Whereas in the case of contracts for a specific work, it is possible to subject the agreed outcome to a test for physical deficiencies. In consequence, where the agreed contract has all or most of the hallmarks of a contract for a specific work, the person who performs it is not subject to mandatory social insurance under that contract. An exception is a situation where such a contract is concluded with the person's employer, or is performed for the employer. In such cases, the income from the contract should be added to the employee's premium calculation base.

VII. ZUS has a right to verify the nature of concluded contracts

The ministry added that in accordance with the Social Insurance System Act, ZUS is competent to verify the nature of a contract in order to determine the existence of a title to mandatory social insurance. This is also confirmed in Supreme Court rulings, which state that “the Social Insurance Office, which determines if one is subject to social insurance, can - irrespective of the contract’s name and its provisions indicating the nature of the legal relationship the parties intended to enter into - determine its true nature and existing title to insurance. Determination that the parties to a contract for a specific work have a relationship consisting of the paid performance of services corresponding to nominate contracts defined in Article 734 and Article 758 of the Civil Code, or the relevant agreements that - under Article 750 of the Civil Code - are subject to provisions on contracts for services, dictates the issue of a decision based on Article 83 par. 1 points 1 and 3 with the application of Article 6 par. 1 point 4, Article 13 point 2 of the Social Insurance System Act”.

VIII. ZUS can investigate all premium related matters

According to the response, ZUS is required to undertake all steps to determine correct information when it comes to submission to insurance, calculation of premiums and eligibility for social insurance benefits. To this end, ZUS can also audit the premium remitter on matters related to insurance coverage of the premium remitter’s employees and the remitter’s ZUS obligations. In accordance with the Social Insurance System Act, an audit may in particular include submissions to social insurance, the accuracy and validity of calculations, deductions and payment of premiums and other contributions and payments ZUS is required to collect, determinations of eligibility for benefits and payment of such benefits, and the related settlements.



IX. ZUS audits based on Business Operators Act

The ministry also reiterated that while performing an audit of a business, ZUS is required to apply the provisions of the Business Operators Act, under which audits are planned and performed after an analysis of the likelihood of a violation of the law in business operations. Such analysis includes identification of subjective and objective areas where the risk of a violation is the highest. For this reason, audits are performed at premium remitters where the risk of a violation of the law is the highest.



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X. Equal treatment of those insured necessary

ZUS classifies contracts concluded by premium remitters as “contracts for a specific work” as contracts for the provision of services in accordance with binding regulations and with respect for the rights of those insured and premium remitters. The principle of equal treatment of all insureds expressed in the provisions of the Social Insurance System Act applies in particular to the terms of inclusion in the social insurance system. As a result, it is the responsibility of ZUS to cover a given person with social insurance if the contract that person has concluded with a premium remitter gives rise to a title to mandatory coverage with social insurance. Failure to mandate that a person who concluded such a contract be covered with social insurance would not only breach the provisions of the cited law, but would also violate the rights of those who would be excluded from insurance protection.

The information presented herein does not constitute comprehensive information or opinion. Consult your adviser before making any decisions.

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