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# Coronavirus from the perspective of Polish labour law



## **CORONAVIRUS FROM THE PERSPECTIVE OF POLISH LABOUR LAW**

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The impact of the coronavirus epidemic reach far beyond medical issues, as businesses and entrepreneurs across all affected countries are facing challenges like never before. Most employees are concerned not only about the continuity of their activities, but also about the protection of their own employees and what steps can they take according to new regulations. Our experts answered 6 common questions companies are asking us these days regarding coronavirus and the Polish labour law, including information about business trips abroad, quarantines, working from home, saving costs, safety measures at the workplace and other legislative changes implemented because of the epidemic. However, due to the constantly changing situation, we advise to regularly check the information provided by local authorities to be sure about your actions.

## **1. In the current situation, may I send an employee on a business trip abroad? Is the employee entitled to refuse such business trips?**

Business trips as defined in the article 77(5) of the Labour Code allows the employer to assign employee to perform their duties outside of their usual place of work. The employer is obliged to obtain the consent of the employee only if the employee is pregnant or is a caregiver of a child up to 4 years old. In all other situations, the employee is obliged to follow the directives of the employer (article 100 of the Labour Code) if the directive

- i) regarding work,
- ii) does not contradict the employment agreement and agreed type of work,
- iii) does not contradict general rule of law.

In particular the directive of the employee may not force the employee to violate the health and safety regulations.

Therefore, the legality of the directive needs to be assessed on a case-by-case basis. Regarding the COVID-19 outbreak, the employee may be allowed to refuse a trip to risky areas or even to other areas if that would put their health at risk. The required assessment of the merits of any particular situation should cover all relevant circumstances, e.g. employee's age, health condition, use of airport hubs and high traffic areas.

However, it is not possible to conclude that an employee would be entitled to unconditional refusal of all business trips abroad during the COVID 19 outbreak. In case of unjustified refusal, the employee may be subject to the consequences - failure to comply with an employer's directive poses a particular threat to work order and discipline and can be grounds for immediate termination of the employment contract due the fault of the employee.

## **2. How should I treat a so-called “employee at risk”, i.e. an employee who has arrived from one of the areas considered as at risk? I do not want to lose productivity, but by no means am I interested in spreading the infection among my employees.**

The employer, according to article 15 of the Labour Code is obliged to provide safe and healthy work conditions. In the time of COVID 19 outbreak this duty may include also undertaking all the steps necessary to protect the employees from infection.

The employer is obliged to allow only employees whose state of health guarantees the safe performance of the entrusted work. Therefore, it is not allowed to let people with visible signs of physical or psychophysical indisposition to work, even if the employee does not report such indisposition and claims that they feel well and are fine.

On the other hand, please be advised that Polish regulations do not allow the employer to refer the employee to medical examination in case of contagious disease. The employer may also not order the employee to take sick leave. It is advised to convince the employee to undergo medical examination willingly, which would also allow them to receive the required treatment.

If the employee does not submit themselves to medical examination, the employer, in order to protect other employees from infection, may disallow the employee's access to workplace, but the employee would retain the right to remuneration.

Moreover, there is a general obligation to provide data and information required for epidemiological surveillance, prevention and control of contagious diseases. Therefore, the employer is allowed to provide personal information (including the information related to health and medical condition) to the Sanitary Inspectorate regarding the suspicion that the employee is infected. This may be an appropriate solution in case the employee shows symptoms of disease but refuses to voluntarily submit themselves to medical examination.

In extreme cases, persons who know they are infected with contagious disease and who endangers other people's health may be charged with criminal offense under article 161 para 2 of the Criminal Code.

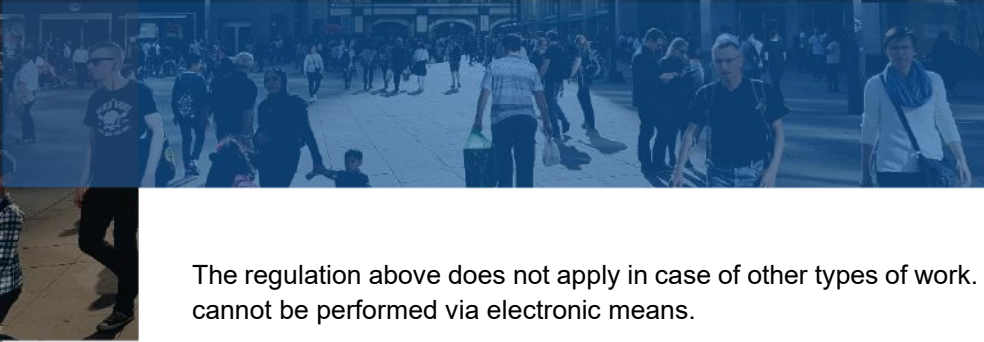
Please note that under the new COVID-19 regulations the employer may request the employee to remotely work from home. See details below at point 3.

### **3. If the employee stays at home, do I have to pay them even if they do not perform any work? Can I order them to work from home?**

If they stay at home because of the quarantine order, the right to remuneration is established based on the rules applicable for sick leave. Therefore, from the perspective of the employer it does not matter if the person is actually on sick leave or quarantined.

If the stay at home is ordered by the employer and to the individual employee, the employee is entitled to their usual remuneration under the rules discussed at point 4 below.

According to the new regulation (the Act of March 2, 2020 on Specific Arrangements for Preventing, Counteracting and Combating COVID-19, other Communicable Diseases and the Crises They Cause) introduced after the outbreak of COVID-19, the employer can order an employee to do their job as home office, for a specified period, but it has to be related to this particular epidemiological threat. This applies only to work that can be done via electronic means of communication. Please note that it is also possible for the employer to temporally assign the employee with other type of work than the type of work agreed in the employment contract.



The regulation above does not apply in case of other types of work. That is, the employer may not request remote work at home in case of work which cannot be performed via electronic means.

#### **4. Is there any possibility to save costs for employees unable to work as a result of the coronavirus?**

If the employer decides to temporarily shut down the workplace for technical or organizational reasons, e.g. in order to limit the risk of COVID-19 spreading among employees, it is obliged to pay remuneration to the employees even if they are unable to perform their work. In such case the employee is entitled to remuneration under their personal remuneration grade based on an hourly or monthly rate, and if this component of remuneration was not established when setting the remuneration conditions, then it is 60% of the employee's remuneration. The remuneration is due only if the employee is ready to provide work. For example, if the employee leaves town or gets another job, then the remuneration is not due (article 81 of the Labour Code).

#### **5. What workplace measures should I take in connection with the coronavirus?**

We recommend employers to define duties related to business trips, including, as necessary, limitation on destinations. Furthermore, we advise limiting contacts with business partners from high risk areas or from their representatives traveling to such places and replacing personal meeting with online contact if possible. Attendance to conferences and mass events should be limited to the necessary minimum. Such rules should be provided to employees as binding regulations.

Employers are also recommended to inform their employees about recommendations of the Ministry of Health and General Sanitary Inspectorate focused on the limitation of the spreading of the infection, especially preventive measures – increased hygiene, avoiding mass events etc. – and recommended steps in case of any suspicion of the infection.

We also recommend employers to prepare business continuity plans in the event of a dramatic worsening of the coronavirus epidemic. This would help not only to protect their business but also to ensure healthy and safe working conditions for their employees.

Please note that preventive measures are generally cheaper and more effective than reactive measures. Please also account for the fact that some solutions, e.g. remote work may require additional organizational measures that may prove impossible under forced quarantine.

## 6. What are some other legislative changes implemented due to the coronavirus?

Under the Act of March 2, 2020 on Specific Arrangements for Preventing, Counteracting and Combating COVID-19, other Communicable Diseases and the Crises They Cause, the Polish parliament has adopted several new regulations aimed at combating the outbreak and to relieve affected persons.

The key regulation from the perspective of labour law is the provision that allows employers to order remote work (see point 3 above).

The act has also introduced provisions that provide additional benefits to the employees. If the insured employee is relieved of his employee's duties due to the necessity to take personal care of his child in connection with the closure of crèches, children's clubs, kindergartens and schools, they shall be entitled to an additional care allowance paid by ZUS (Social Security Institution) for a period not exceeding 14 days. This allowance is to compensate the loss of potential earnings lost during this period.

The Act also excludes to a certain extent the application of construction and public procurement law. In order to counteract COVID-19 it is possible to procure goods or services necessary to combat the virus without applying the provisions of the Public Procurement Law if there is a high probability of rapid and uncontrolled spread of the disease. The provisions of the Construction Law will be excluded analogously in the event of the need to take construction measures to combat the virus.

Special provision applies to entrepreneurs of tourist services. Their potential financial losses due to the tourists' withdrawal from the contract are to be compensated by reimbursement of payments transferred to the Tourist Guarantee Fund. This applies if the reason for the termination of the contract was a justified fear of the disease. The Public Health Authority issued the regulation introducing an obligatory quarantine or isolation that addresses every person returning from the blacklisted countries and having a permanent residence in Slovakia, employment relationship in Slovakia or any person residing in Slovakia for more than 90 days for the period of fourteen days following the day such person returns from the blacklisted country. Many public, cultural or sports events are cancelled, some universities, schools and kindergartens are closed etc.

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