

COVID-19

CERTAIN LABOUR LAW ISSUES

A. Basic overview of current measures

- Temporary closure of all schools, infant schools, universities and leisure centres, currently at least until 27 March 2020;
- Temporary closure of all ski and wellness operations, aqua parks and swimming pools, fitness centres, amusement parks, kids' corners, bars, discotheques, cinemas, casinos, cafés;
- Temporary closure of all three international airports and suspension of operation of international bus and train passenger transportation;
- Mandatory use of personal protective equipment means by professional truck drivers;
- Temporary closure of all retail stores, except for pharmacies and medical supply stores, petrol stations, grocery stores, drugstores, newsagents, pet-food stores and veterinary clinics, telecommunications operator stores, public catering operations (restaurants, fast foods), postal, bank and insurance services operations, e-shop operations and delivery services, funeral services, motor-car and tire repair shops and vehicle rescue services, taxi services, but only for the transport of goods and other items, laundries and dry cleaners;
- Limitation on the opening hours of restaurants and fast food establishments (from 6 a.m. to 8 p.m.) and a ban on entering or presence of the public in restaurants and fast food establishments (only takeaways and food deliveries remain possible);
- Mandatory 14-day home quarantine for all individuals who have returned to the Slovak Republic from abroad, includes all individuals within their households (exceptions include, e.g., professional truck drivers);
- Closure of state borders for all individuals except for those holding valid Slovak passports or other proof of temporary or permanent residence in Slovakia, or Slovaks and Hungarians (residing within 30 km from the border) with employment relationships in Slovakia.

B. Home Office

If allowed by the type of work that the employee performs under the employment contract, allowing employees to take *Home Office*¹ to perform work is a good solution. The introduction of this extraordinary working regime requires an agreement between the employer and the employee (unilateral instruction by the employer is not possible). We recommend an agreement with the employee at least in the form of an email, an implied agreement is also likely to suffice (i.e. the employee actually stays at home and performs work).

¹ Work performed from home or at a place other than the usual place of work not on a regular basis, but occasionally, in exceptional circumstances.

C. Obstacles to work on the side of the employer

Current circumstances can lead to obstacles to work on the side of employers for which they will be unable to assign work to their employees. These can include, in particular, (i) **stand time** – a temporary deficiency caused by a machine defect, in the supply of raw materials or power, faulty employer’s background documentation or other similar operational causes; or (ii) **serious operational reasons** – e.g. decrease in orders, lack of funds for full activity of the employer, etc., however, provided only that such reasons are defined in a written agreement with the employee representatives, if any.

In case of stand time, if an employee is not reassigned to another job with his/her consent, he/she is entitled to wage compensation equal to his/her average earnings.

In the event it is impossible to assign work to employees for serious operational reasons, they are entitled to wage compensation in an amount determined in the agreement between the employer and the employee representatives, but no less than 60 percent of the employee’s average earnings. The agreement between the employer and the employee representatives cannot be replaced by a unilateral decision of the employer or individual agreements with employees. Therefore, if there are no employee representatives at the employer, a decrease in wage costs in this way is impossible.

Finally, in the current situation it remains unclear whether the threat of coronavirus could be potentially considered as an obstacle to work on the side of the employer **due to adverse weather effects**. In this case, the employee would be entitled to wage compensation of at least 50 percent of his/her average earnings.

D. Obstacles to work on the side of the employee

The measures taken also lead to obstacles to work on the side of employees, in particular due to (i) the **employee’s personal quarantine** under the relevant quarantine measure (positive travel history, confirmed coronavirus infection), or (ii) **treatment of a sick family member** and while **caring for a child** under 10 years of age who, for serious reasons, cannot be in the care of a childcare facility or school where the child would be otherwise cared for, or if the person who otherwise cares for the child has got ill or is under quarantine. In such cases, the employer is required to excuse the employee’s absence from work.

In the event of a personal quarantine (confirmed by a doctor) the employee is entitled to:

- (i) **salary compensation** payable by the employer in the amount of:
 - 25 percent of the employee’s applicable daily assessment base (“**DAB**”) for the first three days of quarantine,
 - 55 percent of the DAB from the fourth to tenth day of the quarantine, and consequently
- (ii) the **sickness benefit** (subject to meeting applicable requirements under relevant social security regulations) payable through Social Security in the amount of 55 percent of the DAB from the eleventh day of the quarantine

In the event the employee must care for his/her child in connection with the closing of schools and school facilities, the employee is not entitled to any wage or income compensation payable by the employer but may claim a social security **caring benefit** payable through Social Security amounting to 55 percent of the DAB. The entitlement to this benefit normally applies to employees caring for a child under 10 years of age, for up to 10 consecutive days; however, due to the current situation concerning the coronavirus, the relevant authorities have permitted extending provision of the caring benefit as necessary; even for caring for children over the age of 10. In addition, the procedures for claiming the sickness benefit have been simplified.

E. Other possibilities

The employee and employer may agree that the employee will take **holiday**. The employer is also entitled to order an employee to take holiday, but the employee must be notified at least 14 days in advance.

Upon meeting the statutory requirements, employers may **reassign an employee to another job**. For example, if it is necessary according to a medical opinion or a decision of a public health authority in order to protect the health of others from communicable diseases (i.e. because of a quarantine measure). Theoretically, it is also possible to consider reassigning employees to another job because of the need to avoid an extraordinary incident or to mitigate its immediate consequences. In case of an assignment to another job, the employer is required to (i) consult with the employee in advance the reasons for the assignment and its duration, and (ii) if the reassignment leads to a change in the employment contract, to give to the employee a written notification about the reason for the reassignment to another job and its duration (except where necessary to avert an extraordinary incident or to mitigate its immediate consequences, where relevant).

It is important to note that the reassignment of an employee by a unilateral decision of the employer is only possible within the type of work (job) agreed in the employment contract. Reassignment to work of a different type than agreed in the employment contract is possible only upon agreement with the employee.

F. Employee health protection measures

We recommend that employers take appropriate (complementary) measures to protect the health of employees who are currently continuing to work on the employer's premises.

The employer is obliged to take and implement measures that are necessary to ensure health and safety at work. We recommend that employers provide appropriate protective equipment to their employees, including **personal protective equipment**.

The employer is obliged to provide personal protective equipment to the employee if the danger to the life or health of the employee cannot be excluded or limited by technical means, means of collective protection or methods and forms of work organization. Viruses are also considered to be hazardous, namely as a biohazard, and personal protective equipment for respiratory organs in this context also includes protective masks and respirators.

At the same time, when the factors of work and the working environment or health risk change significantly, or if there are changes in the health status of several employees which can be linked to working conditions, the employer may be obliged to ensure that **special preventive medical examinations** are performed in relation to work, even in relation to employees or job positions where they are generally not required.

G. Responsibility of the employee to observe quarantine

If the employee has been quarantined by the competent authority, he/she is obliged to observe it. Otherwise, it is an offense related to the public health sector and runs the risk of a fine. Finally, violations of domestic quarantine can also have criminal consequences for the employee.

Should you have any questions, do not hesitate to contact us using the contact details stated in the letterhead or contact directly the Bratislava office partner, Peter Oravec (email: peter.oravec@prkpartners.com, tel.: +421 903 235 530).

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