

## COVID-19

### CERTAIN LABOUR LAW ISSUES - UPDATE

#### A. First Aid for Employers

In connection to the project on supporting employment during the current situation concerning the Covid-19 pandemic, the Ministry of Labour, Social Affairs and Family of the Slovak Republic (*Ministry*) introduced "*first aid for decreasing impacts of the corona virus*" which is meant particularly for the employers who:

- (i) Had to close or limit their operations according to the decision of the Office for Public Health of the Slovak Republic (*OPH*); and
- (ii) Are not subject to the obligation to interrupt or limit their operation during the declared extraordinary situation according to the OPH measure, but registered decrease in turnover of at least 20% and who despite this will keep the respective jobs.

Employers according to (i) may request for contribution for salary compensation of the employee to whom the employer cannot assign work due to obstacles on the side of the employer (Section 142 of the Labour Code), in the amount of 80% of his/her average earnings, **but no more than in the amount of EUR 1,100**. The condition is to keep the job even after end of the crisis period.

Employers according to (ii) should be able to request contribution for salary compensation of the employee, in the amount which shall depend on decrease in turnover, **but no more than EUR 540 in case of decrease in turnover for more than 80% (in April 2020)**. The condition should be also to keep the job even after end of the crisis period.

The contribution shall be provided from 13 March 2020 (that is from the day of the OPH decision on closure of operations) until the calendar month in which the OPH decision will be cancelled. The application for contribution shall be always submitted until the end of the calendar month following the month for which the contribution is applied for (i.e. the application for contribution for March 2020 must be submitted until end of April 2020). The contribution should be thus payed out on a monthly basis, however, the deadline for its provision is not determined and will depend on the current administrative workload of the Ministry.

The application for contribution may be filed only electronically via [www.pomahameludom.sk](http://www.pomahameludom.sk) website where you can find more detailed information.

The application for contribution for employers according to (ii) above should be accessible after 13.04.2020. According to the Ministry information the application should be made accessible so these employers are able to file the applications for contributions for March 2020.

The maximum amount of contribution for one entitled applicant according to (ii) should be EUR 200,000 a month and the maximum amount of contribution for one applicant should be EUR 800,000 for the period of the project.

#### B. Permanent Novelizations

The current situation resulted in adoption of some permanent changes in the regulation. The following changes seem to be the most important from the perspective of employment:

## Labour Code

Novelization of the Labour Code results in special rules applicable during the extraordinary situation, emergency situation or exceptional situation (*crisis situation*) and during two months following their end, which entail the following:

During effectiveness of the measure for preventing existence and spread of transmittable diseases or measure taken in case of public health endangerment imposed by the competent body:

- a) The employer is entitled to order home office provided it is possible in case of agreed work;
- b) The employee has right to work from home provided it is possible in case of agreed work and there are not important operation reasons on the side of the employer which would make home office impossible.

In comparison: Under normal circumstances, such home office is allowed provided it is possible in case of agreed work, but requires agreement between the employer and the employee (cannot be ordered by instruction from the employer). Alternatively, such regime may be initiated by the employee, but must be approved by the employer.

Worktime distribution must be notified by the employer to the employee **at least 2 days ahead**, provided the employer does not agree with the employee on a shorter period, and such distribution **must be valid for at least a week**.

In comparison: Under normal circumstances, the employer must notify to the employee the worktime distribution at least one week ahead, and such distribution must be valid for at least a week.

The employer must order the employee to spend holiday at least 7 days ahead, and in case of unspent holiday carried from the previous year, at least 2 days ahead. This period may be shortened with employee consent.

In comparison: Under normal circumstances, the employer must notify to the employee his/her order to spend holiday at least 14 days ahead (provided in exceptional cases this period is not shortened with the employee consent).

The employee who has an important personal obstacle to work due to (i) quarantine measure; (ii) isolation; (iii) personal and full-day treatment of sick family member according to special regulation or personal and full-day care for individual according to special regulation, **is for the purposes of the provisions on prohibition of job termination by notice (Section 64 of the Labour Code) considered as employee who is recognized as temporarily incapable to work**. In other words, it is not possible to terminate their job by notice in a similar way as in case of employees who are temporarily incapable to work (however, it is not excluded for example to terminate their job for breach of work discipline).

The employee who will return to work after end of (i) isolation; or (ii) sick family member treatment, **is considered in a similar way as employee who returns to work after end of his/her temporary incapability to work. The employer is thus obliged to assign such employee to original work and workplace**. Provided it is not possible, the employer must assign him/her to other work which corresponds with the employment contract.

In comparison: Under normal circumstances, the Labour Code explicitly does not regulate prohibition of termination of job by notice towards employees in quarantine, isolation or treating sick family member, and also does not regulate duty to assign the employee to original work after his/her return to work after end of isolation or sick family member treatment.

In case the employee cannot carry out work fully or partly due to stopping or limiting of employer operations according to the decision of the competent body or as a result of declaration of crisis situation, it constitutes obstacle in work on the side of the employer. In such case the employee is entitled to salary compensation in the amount of 80% of his/her average earnings, however, not less than in the amount of minimal wages. This does not concern cases where there is agreement with employees' representatives which considers important operation reasons as obstacle to work on the side of the employer, in which case the employees are entitled to salary compensation in the amount agreed with the employees' representatives, but no less than in the amount of 60% of their average earnings.

In comparison: Under normal circumstances, the Labour Code does not recognize such obstacle on the side of the employer. The novelization will thus enable the employers to decrease their wage costs.

In addition, there were some minor changes in important personal obstacles to work on the side of the employee (which were specified more accurately via links to relevant regulations) which must be excused by the employer (particularly in case of sick family member treatment or caring for kid).

### **Act on Social Insurance**

The novelization of Act No. 461/2003 Coll. on Social Insurance as amended introduced particularly the following changes which may be important mainly for employees:

Sickness pay shall belong also to the employee who is subject to **isolation order**.

In comparison: Until now, the sickness pay belonged only to employee who was recognized as temporarily not able to work due to sickness or injury or to employee to whom the quarantine measure was ordered.

Claim for **care benefit** was extended to cases where the insured (**employee**) **personally cares on a full-day basis for a child under 11 years of age** (or under 18 years of age in case of kids with long-term negative health state), even if the kid was **ordered an isolation** or the isolation was ordered to an individual who otherwise cares for the child.

In comparison: Except for care for sick child, the care benefit until now in general belonged only to employee caring for a child under 10 years of age, whereas the act did not recognize isolation of the kid or individual otherwise caring for the child, as reason for such care.

### **Act on Employment Services**

As part of active labour market measures, the Act No. 5/2004 Coll. on Employment Services as amended introduced a simplified procedure for applying for a contribution **to support the maintenance of jobs** (including jobs where self-employment is carried out or operated) **and to support the retention of employees in the context of declared crisis situation and eliminating its impacts**, which is approved by the Ministry or the Central Office of Labour, Social Affairs and Family after approval of their conditions by the Government of the SR and which is subsequently implemented by the Central Office or the Office of Labour, Social Affairs and Family (*Office*). As part of the simplified procedure, **affidavit or statement by the applicant is sufficient to show that the conditions for the contribution are met**. However, a refund of the contribution may be claimed if the Office subsequently finds that the applicant did not meet the conditions at the date of application.

The Act on Employment Services during the transitional period until 31 December 2020 also automatically presumes the fulfilment of the obligation to register in the registry of partners of public sector for those entities to which this requirement applies.

## **C. Temporary Changes in connection to current Covid-19 Pandemic**

In the context of the currently declared crisis situation to prevent the spread of Covid-19, a number of temporary measures (applicable during the currently declared crisis situation) have been adopted and are currently in effect. Below is a brief summary of selected measures which seem to be important to employment (without specifying detailed legal conditions):

- Employee entitlement to **sickness benefits amounting to 55% of the daily assessment base from the first day of temporary incapacity for work of an employee who was recognized as temporarily incapable for work** during the period of crisis declared in connection with Covid-19 (*crisis situation*) because of a quarantine measure or isolation (in general, employees are entitled to sickness benefits only from the 11th day of temporary incapacity for work and during the first 10 days the income compensation is provided to them by the employer).
- Entitlement to **care benefit from the 1st day of need for personal and all-day treatment or care and expiration on the day when the need for personal and all-day treatment or care ceases to exist**, provided that the statutory conditions are met (in general, the employee's entitlement to care benefit is terminated at the latest by the expiry of the 10th day of treatment).
- **Extension of the unemployment support period by 1 month** provided the support period would expire during the crisis situation.
- **Cancellation of cash payments** to the Social Insurance Agency during the crisis situation.

- **Non-application of default interest in case of amounts which were approved to be paid in instalments** to the Social Insurance Agency during the crisis situation.
- **Postponing the maturity of social insurance premium for March 2020 until 31 July 2020** in respect of the premiums payable (inter alia) by employers showing a **decrease in net turnover or decrease in business income for 40%** or more, even if at the time the premium is paid, the premium payer is no longer an employer.
- **Postponing the maturity of advance payment on the public health insurance for March 2020 until 31 July 2020** in respect of the employer's public health advance payment on insurance who as a result of the crisis situation shows a year-on-year **decline in net turnover or income from business and other activities for 40% or more**.
- **Deferment of advance payment on income tax in case of decline in net turnover for more than 40%** which the taxpayer (any entrepreneur regardless of the number of employees or income level) will be obliged to settle **in the tax declaration for 2020, i.e. until end of March 2021**.
- **The employer is not obliged to notify to the employee the relevant regulations in the field of health and safety at workplace** if he/she is recruited, transferred to another workplace, assigned or transferred to another job, or if the introduction of new technology, new work procedure or new work equipment (when the notification is normally required), occurred during the crisis situation and if this obligation cannot be objectively fulfilled; failure to comply with this obligation, however, must not directly and seriously endanger life and health, and the employer is obliged to notify to the employee the applicable regulations as soon as possible, at the latest within one month from the day of end of the crisis situation.

#### **D. Conditions for Termination of Employment**

The emergency situation which was declared with aim to prevent spread of Covid-19 corona virus in general by itself does not constitute an obstacle in the option to fire employees due to specified reasons, typically for redundancy as a result of decrease in demand for employer services or products.

Such obstacle may, however, constitute some of the measures established during the crisis situation. In this connection, the scope of employees who cannot be fired by notice given by the employer under the same circumstances as employees during their incapability to work, is extended (simply speaking) for employees who:

- Are in quarantine and isolation;
- Personally treat a sick family members on a full-day basis;
- Personally care for an individual on a full-day basis.

This does not apply for example in relation to notice given for breach of work discipline.

At the same time, note that in case the employer applied for the so called "first aid for decreasing impacts of the corona virus," the condition of provision of such state aid is to keep the job even after the end of the crisis period.

#### **E. Contact Details**

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

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