

ALERT: Work in the time of corona



The rapid spread of the SARS-CoV-2 virus, also in Poland, is triggering new attempts at countermeasures. The situation on the ground is a highly atypical one for all those concerned – also for employers. On the one hand, they have a clear duty to ensure the safety of their employees and to comply with the current government guidelines. On the other, many employers are now finding themselves in the midst of a perfect storm, with a precipitous decline in business coinciding with the need to not only meet payroll, but also to finance emergency safety and preventative measures. In a situation such as this, thinking on one's feet is called for. GESSEL is closely observing the developments and stands ready to implement appropriate solutions. In this connection, we were among the first Polish entities to, even before the special Covid-19 Act was promulgated by the government, to posit home office solutions on a large scale as a public health measure. We are happy that this solution is now being implemented on a nationwide scale, and we offer the following comments in hopes that they may be of assistance.

Childcare in the context of school and kindergarten closures

The rising epidemiological risk level has moved the Polish government to shutter educational and child care establishments. In the event of closure of a nursery school, pre-school, or school to which an employee sends his child aged less than 8, such

employee's absence from work dictated by the need to care for the child is justified (although this need must be a legitimate one – the employee must have no alternative, e.g. entrusting the child to the care of another family member).

An employee staying home to care for a child below the age of 8 is entitled – for the duration of his absence from work – to a care benefit corresponding to 80% of his remuneration. Such a benefit may be paid out for up to 60 days in a year, and the emergency Act implemented to counter the coronavirus crisis extends this period by another 14 days. In this connection, it should be noted that caring for a child constitutes perfectly legitimate grounds for absence, and the employer may not lawfully object.

An alternative to this, as it were, classic solution long envisaged by Polish employment law and predating the proliferation of modern information and communications technologies is presented in telecommuting, or the home office regime. Under such a remote work arrangement, the employee can stay at home with his child while continuing to work and to draw a full pay cheque, and his employer does not need to worry about unmanned stations.

Teleworking

Until recently, the very concept of remote work / home office was an alien one as far as Polish employment laws were concerned. This did not preclude regular resort to home office solutions in practice, more often than not at the request of employees who found such a proposition convenient. This status quo has now been rearranged by the emergency coronavirus laws. An employer may now order an employee to work on a remote basis, and the employee is bound to comply as with other official instructions issued within the employment relationship. The employer, however, must specify how long he expects to keep the home office arrangements in place.

NB: When implementing home office arrangements, the following aspects may merit consideration:

- Use of equipment (the employees own vs. employer-issued);
- Connecting to the employer's ICT infrastructure;
- Working hours;
- Confidentiality, data protection.

Employers who have not used home office solutions to date may, despite the challenges entailed, take the coronavirus situation as an opportunity to try them out and, where warranted by the nature of their operations, to consider more flexible work organisation models for the future.

Standstill

Some sectors (such as tourism and transport) may be affected by stoppages caused by the coronavirus crisis. The Polish Labour Code provides that, where an employee was ready to work but was prevented from doing so by reasons for which he is not culpable, he shall be entitled to the wages for his position defined as an hourly rate or as a monthly salary or, where no such remuneration component has been defined for the given employee, to 60% of his remuneration. In no event may the employee be left earning less than the minimum statutory remuneration. The net effect is that the main burden of the situation is shifted onto the employers.

Fortunately, as at the date of this alert, the Polish government is at work on regulations intended to improve the outlook for employers. We look forward to keeping you posted; for the moment being, we would draw your attention to the possibilities already offered by the legislative Act regarding special solutions associated with job protection. In the event that business turnover drops by more than 15%, and provided that arrangements are made with the workforce, it is possible to apply to the national authorities (at regional level) for **a subsidy towards the remuneration for employees afflicted by a standstill or by reduced working times.**

Recreational leave, travel

An employer may not refuse an employee's application for a vacation citing the employee's destination. That said, in the interests of the workforce as a whole, it may be advisable to ask employees returning from localities at risk from the coronavirus to work from home.

Contact:



Adam Kraszewski

Head of Employment Law and Life Sciences / IP
managing associate
radca prawny

a.kraszewski@gessel.pl



Aleksandra Głuszek

associate

a.gluszek@gessel.pl