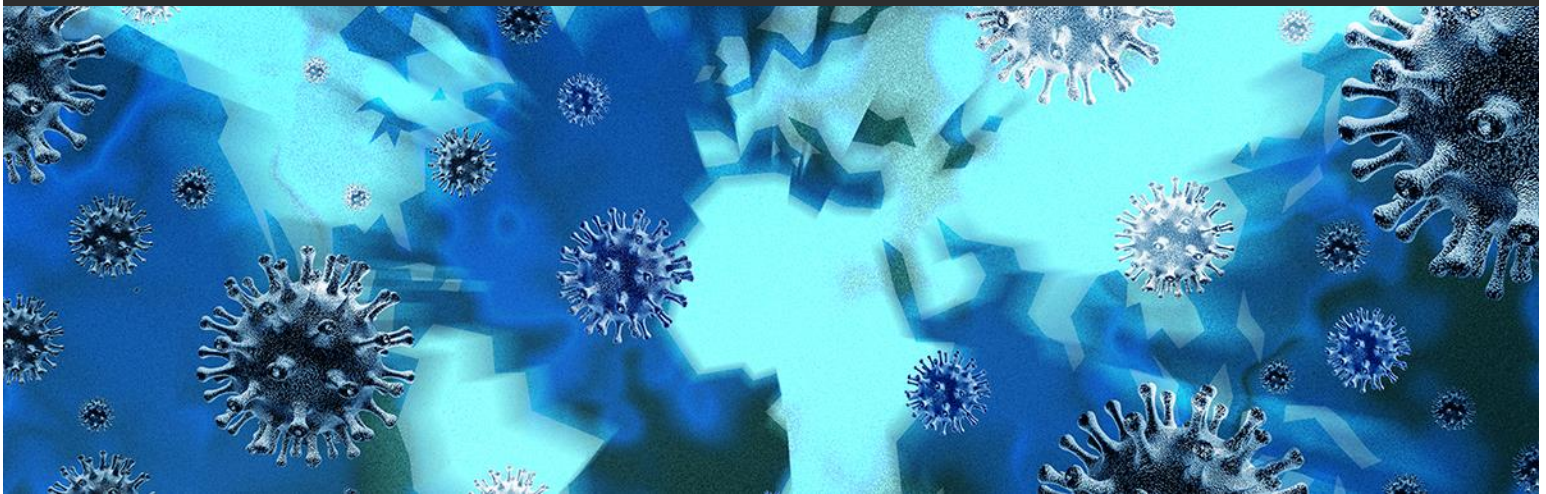


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



17 March 2020

Coronavirus Disease (COVID-19) - Considerations for Employers in Poland

The number of Coronavirus 2019 (COVID-19) infections is growing and employers may be considering taking actions in an effort to mitigate the risk of spreading the disease among their employees so as to maintain business continuity. As the circumstances change rapidly, they need to be closely monitored and employers will want to be ready to take action. This GT Alert aims to address what actions may be appropriate, understanding that that the situation is a developing one and each employer has their own set of specific circumstances that should be considered.

When can I instruct an employee to work from home?

The Act of 2 March 2020 on extraordinary measures aimed at preventing, counteracting, and combating COVID-19, other infectious diseases and the crisis situations caused by them, (the Crisis Act) allows employers to order any employee employed to perform his/her work determined in the employment contract remotely. The employee's consent is not required.

According to the National Labor Inspectorate, an order to work from home can be given in any form, also verbally. However, employers may wish to confirm an order to work from home in writing or in an official email or, in the absence of other possibilities, by text message.

Under the Crisis Act, remote work must be assigned for a specific period of time, although the regulations do not set either the minimum or maximum time. The length of time should be commensurate with the

intended purpose, which is to prevent the spread of COVID-19. According to the latest position announced by the National Labor Inspectorate, the period of remote work can be shortened or extended, so the employer is free to adjust it to the existing situation.

The regulations concerning the assignment of remote work will remain in force for 180 days from the effective day of the Crisis Act, i.e., from 8 March 2020.

What if work cannot be done remotely?

Naturally, not all kinds of work can be done remotely. For example, for work on a production line or in the field, technical constraints, e.g., where the employer cannot equip all employees with the tools necessary to work and employees do not own adequate tools, may preclude remote work.

According to the latest position announced by the National Labor Inspectorate, if the employer is unable to order its employees to work remotely, the stoppage regulations will apply (Article 81 § 1 of the Labor Code).

Can I order an employee to take vacation leave?

According to the regulations, an employer cannot unilaterally order an employee to take current vacation leave because the dates of such leave must be agreed upon with the employee.

However, an employer may grant an employee any overdue vacation leave without the employee's consent. The employer may do so until 30 September of the year following the year for which the vacation leave is due at the latest, i.e., starting from 1 January of the given calendar year.

Can the employer order body temperature measurements before entering the workplace?

Contactless measurement of body temperature constitutes the processing of an employee's personal data concerning their health. This data falls into a special category of personal data which has more restrictive regulations.

According to the Labor Code, in such instances the data can be processed upon an employee's consent only if it is the employee's initiative to provide such data (Article 22(1b) § 1 of the Labor Code). As such, under the regulations, an employee's consent will only be sufficient for measuring body temperature if they are given absolute freedom of choice in consenting to the measurement offered by the employer.

In the absence of the employees' volunteering the temperature measurement, the Polish regulations potentially give another basis for such data processing in case of an outbreak. According to Article 9 Section 2 letter b of the GDPR, processing of data concerning health is permitted if, among other things, it is necessary for the purposes of carrying out the obligations and exercising the specific rights of the controller or of the data subject in the field of employment as long as it is authorized by a Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject. The above mentioned authorization can be derived from the Labor Code, which obliges the employer to protect the health and life of its employees by ensuring safe and hygienic working conditions.

Irrespective of the above, if temperature measurements are performed using thermal vision cameras, it would require additional compliance with the Labor Code regulations concerning monitoring, and would need to be added to the workplace regulations.

The President of the Personal Data Protection Office has not yet expressed his opinion on this matter. In the position issued on 12 March 2020, he only indicated that special regulations, in particular the Crisis Act, give employers certain tools to take actions recommended by the Chief Sanitary Inspector and the Chairman of the Council of Ministers. All this means that employers still have no clear guidelines as to whether they are permitted to measure body temperature. The competent regulatory bodies in other Member States take different positions: some of them claim that a mandatory body temperature measurement by the employer is prohibited, others choose a more liberal approach.

Can new obligations be imposed on employers to prevent the spread of COVID-19?

On 12 March 2020, the Minister of Health declared an epidemic outbreak in Poland. This means that currently, temporary limitations can be imposed by way of ordinances (regulations) on the functioning of certain institutions and employment establishments.

Also, pursuant to the Crisis Act, the Chief Sanitary Inspector or the Province Sanitary Inspector may issue administrative decisions compelling employers to implement specific preventive or monitoring measures, and demand feedback in this respect. They may also issue orders and guidelines to employers specifying the modus operandi for the imposed duties.

The Crisis Act also authorizes the Chairman of the Council of Ministers to issue orders to individual entrepreneurs in the form of administrative decisions.

What remuneration are employees eligible to if their employment establishment is closed or they cannot be assigned remote work?

If the employment establishment is closed (whether as a result of the employer's decision or a decision of governmental authorities), or if an employee cannot be given work to perform remotely, the remuneration of the employees are governed by the Labor Code provisions concerning stoppages (Article 81 § 1 of the Labor Code).

Where an employee is eligible for remuneration corresponding to his/her personal pay grade, determined as an base hourly or base monthly rate, and if such a remuneration component has not been specified when determining the remuneration terms – the employee is entitled to 60% of the remuneration. Such remuneration cannot, however, be lower than the statutory minimum salary.

This means that if an employee's remuneration is determined as a fixed monthly rate (monthly base salary) or hourly rate, the employee will only be eligible to receive the base remuneration, not lower than the minimum statutory salary (currently PLN 2,600 gross). In such case the principles applicable to determining remuneration for vacation leave will not apply, and no other components of the remuneration (e.g., bonuses) are taken into account.

Is the government planning to offer any solutions for employers in relation to COVID-19?

The Ministry of Development is currently working on an aid package for entrepreneurs. Its draft should be passed to the Sejm on 25 March and the assumed effective date would be 1 April 2020.

One of the proposed solutions is to amend the Act of 11 October 2013 on special solutions related to the protection of the workplace. According to this Act, in the event of an economic downturn an employer can determine the terms and method of performing work for the period of the economic downturn or a lower time basis in a collective bargaining agreement, in consultation with the trade unions or, in the absence of

trade union organizations, in consultation with representatives of the employees appointed in a manner adopted at that employer's facility.

According to the Ministry of Development, the criteria for employers to qualify for aid may include a decrease in turnover in the last three months, instead of six months.

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