

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



April 8, 2020

Details of Crisis Shield Act for Employers and Employees in Poland

On 31 March 2020 regulations implementing the so-called Crisis Shield Act came into force that introduce important provisions for employers and employees, some of which are outlined below.

SUPPLEMENTARY FUNDING OF EMPLOYEE REMUNERATION

Economic premises

Employers who, as a result of the Coronavirus Disease 2019 (COVID-19) emergency:

- 1) incurred the following drop in sales:
 - at least a 15% drop in aggregate sales during any two consecutive calendar months between 1 January 2020 and the day preceding the date of filing an application for aid, compared to aggregate sales in the corresponding two successive calendar months of the preceding year%, or
 - at least a 25% drop in sales during any calendar month between 1 January 2020 and the day preceding the date of filing an application for aid, compared to the sales during the preceding month;

and

- 2) whose employees have been hit by downtime or whose working hours were reduced

are entitled to benefits designed to protect jobs from the Guaranteed Employee Benefits Fund [*Fundusz Gwarantowanych Świadczeń Pracowniczych*] (**GEBF**) (both regarding employees and persons working under mandate agreements or agreements on the provision of services, if they are subject to mandatory social insurance in connection with these agreements).

Downtime

- employee's remuneration reduced by not more than 50%
- such remuneration may not be lower than the statutory minimum salary (taking into account the employee's full or part-time employment).
- GEBF supplementary funding: **50% of the minimum salary** (currently PLN 1,300 gross)
- GEBF funds for the payment of social security premiums due from the employer in respect of GEBF-funded benefits

Reduced working hours

- working hours decreased by 20%, to not less than half-time (with zero flexibility regarding the amount of reduction)
- such remuneration may not be lower than the statutory minimum salary.
- GEBF supplementary funding: up to one-half of the salary but not more than **40% of the average monthly pay from the preceding quarter** (currently: PLN 2,079.43 gross)
- GEBF funds for the payment of social security premiums due from the employer in respect of GEBF-funded benefits

No supplementary funding is granted to salaries of employees whose salary for the month preceding the month when the application is filed exceeded 300% of the average monthly salary in the preceding quarter of the year (currently: PLN 15,595.74).

The applications for supplementary funding were originally expected to be processed in the order in which they were received, but it has been decided that the relevant authority will itself determine the order in which it processes them.

Agreement with labor unions (or employee representatives)

Downtime or reduced working hours may be introduced subject to executing an agreement with labor unions or employee representatives. The agreement should specify:

- the groups of employees by trade hit by the downtime or reduced working hours;
- the reduced working hours for employees; and
- the term during which the restrictions will apply.

For enterprises in which no labor unions or employee representatives operate, the election of an employee representative should be carried out. In the event of problems with conducting elections of employee representatives due to COVID-19, in particular due to employee absence, downtime, or remote working by

some of the employees, the agreement may be signed with employee representatives elected previously for other purposes specified in labor legislation.

It may be possible to benefit simultaneously from downtime and reduced working hours in relation to certain trades.

Conditions applicable to employers

The following conditions must be met at the time of filing the application to receive supplementary funding:

- no arrears regarding taxes, social security contributions, health insurance premiums, GEBF, or the Solidarity Fund contributions until the end of 3rd quarter of 2019; and
- the absence of grounds for filing for bankruptcy (which, with regard to many entrepreneurs who need supplementary financing, may prove to be problematic).

In addition, during the period of receiving GEBF benefits and over the net three months the employee will not be authorized to terminate, for economic reasons, employment contracts with the employees for whom the benefits were awarded.

The application for supplementary funding will be processed by the directors of Province Labor Offices. Applications are to be examined within seven days of receipt and during that time the authority will apply for the assignment of a spending cap for the payment of the benefits. The relevant agreement with the employer must be signed within seven days of such cap being assigned. The maximum duration of such support is three months from the date of executing the support agreement, with the funds to be disbursed monthly in arrears. The regulations include the possibility of extending the time period for support by way of an ordinance of the Council of Ministers.

SUPPORT FOR EMPLOYERS WITH MICRO, SMALL OR MEDIUM-SIZED ENTERPRISE STATUS

Micro, small, and medium-sized enterprises will be entitled to seek supplementary funding for the costs of remuneration of employees and persons working under civil law contracts (if they are subject to obligatory social insurance as a result of such contracts and the social insurance contributions due on their remuneration) in the event of a drop in sales caused by COVID-19, distributed by the district (*powiat*) governor.

The drop in sales is measured by comparing aggregate sales over any two successive calendar months falling between 1 January 2020 and the date preceding the date of filing the application for such supplementary funding, compared to aggregate sales in the corresponding two successive calendar months in the preceding year.

In the event of a drop in sales by:

- **at least 30%** – supplementary funding may be awarded in an amount not exceeding the amount of 50% of the sum total of the pay of individual employees whom the supplementary funding application concerns, the social insurance contributions due on such pay included, but no more than 50% of the minimum salary increased by the social insurance contributions due from the employer in respect of each employee;

- **at least 50%** – supplementary funding may be awarded in an amount not exceeding the amount of 70% of the sum total of the pay of individual employees whom the supplementary funding application concerns, the social insurance contributions due on such pay included, but no more than 70% of the minimum salary increased by the social insurance contributions due from the employer in respect of each employee;
- **at least 80%** – the supplementary funding may be awarded in an amount not exceeding the amount of 90% of the sum total of the pay of individual employees whom the supplementary funding application concerns, the social insurance contributions due against such pay included, but not more than 90% of the minimum wage increased by the social insurance contributions due from the employer in respect of each employee.

In contrast to the GEBF supplementary funding, in this instance no agreement with labor unions or employee representatives is required. It will only be possible to file applications after the director of the district labor office announces the beginning of the process for submitting applications, for 14 days following such announcement.

An entrepreneur cannot receive supplementary funding to the extent which the same costs have been or will be financed out of other public funds (e.g., through GEBF funding).

FLEXTIME AND THE POSSIBILITY OF UNFAVORABLE CHANGE IN THE TERMS OF EMPLOYMENT

The changes concerning flexible working hours are limited and employers may not find them to be a significant improvement. No individual work time accounts have been introduced; the changes will continue to require the consent of the labor union or employee representatives, which may complicate or delay the implementation thereof.

Employers whose sales have dropped as a result of COVID-19 (to the extent described above in the segment dealing with supplementary funding by FGWP) are able to take advantage of the following options:

New Options related to COVID-19

- cutting the right to minimum uninterrupted rest to 8 hours per 24 hours and to 32 hours once a week;
- the introduction of a system of equivalent working time, in which an extension of the daily working time is permitted, but only up to 12 hours, over a reference period not exceeding 12 months, under an agreement with labor unions or employee representatives;
- the possibility of amending the terms of employment to less favorable ones without the need for a termination notice with changed terms offered - under an

Options resulting from the Labor Code

- the right to minimum uninterrupted rest of 11 hours during a 24-hour period and 35 hours once a week;
- so far the introduction of such settlement period was possible if warranted by objective or technical reasons or labor practices in the enterprise;
- so far this option was available to entrepreneurs where no collective bargaining agreement was signed or which

agreement with labor unions or employee representatives.

employ fewer than 20 persons, if warranted by the financial situation of the employer.

DOWNTIME BENEFITS FOR PERSONS WORKING ON CIVIL-LAW CONTRACTS AND THE SELF-EMPLOYED

Persons working on civil-law contracts (mandate agreements, specific work agreements, etc.) and self-employed persons are entitled to a one-time benefit from ZUS at 80% of the minimum wage or approx. **PLN 2,000 gross**. A downtime benefit is granted if, as a result of COVID-19, there has been a stoppage in the business activity of a person conducting business activity or by an entrepreneur with whom a civil-law contract has been executed.

The benefit is granted subject to the fulfilment of certain conditions, in particular, in the case of persons engaged under civil law contracts, only the persons whose contracts were executed before 1 February 2020 are entitled to receive the benefit.

Alternatively, self-employed persons will be able to benefit from co-financing of part of the costs of running their businesses on separate terms.

EXEMPTION FROM OR DEFERRAL OF PAYMENT OF ZUS CONTRIBUTIONS

Entities with fewer than 10 insured persons may benefit from an exemption from the duty to pay ZUS contributions due for the period from 1 March to 31 May 2020, shown in the declarations submitted for that period, provided they were reported as the remitter of the contributions before 1 February 2020. Such relief will also be available to self-employed persons if the revenue from their business activity earned in the first month for which the relief from contributions is sought does not exceed 300% of the projected gross monthly pay in the national economy in 2020 (currently at PLN 15,681).

Larger entrepreneurs are only able to take advantage of the possibility **to defer the payment deadline or spread ZUS contributions in instalments** without the need to pay a prolongation fee.

In order to benefit from the exemption, deferral of the payment deadline or to spread ZUS contributions in instalments, employers must file an application to ZUS.

FACILITATION OF MEDICAL EXAMINATIONS

The medical certificates issued following initial, periodic, and follow-up examinations whose validity expired after 7 March 2020 remain valid, but for no more than 60 days from the date when the state of epidemic hazard is lifted.

Periodic medical examinations will have to be performed no later than 60 days from the lifting of the state of epidemic emergency.

Initial or follow-up examinations may be carried out by another physician in the absence of a physician licensed to perform such examinations. Importantly, the physician will be able to carry out such examination and issue a medical certificate remotely (via ICT or communication systems). A medical certificate issued by another physician will cease to be valid 30 days from the cancellation of the state of epidemic emergency.

TEMPORARY AMENDMENT OF LAWS AND REGULATIONS GOVERNING TRADE ON SUNDAYS

During the period of the epidemic or 30 days after its cancellation, the application of the provisions concerning the ban on trade on Sundays will be limited in respect of activities consisting in unloading, receiving and displaying necessities and the assignment of duties to an employee or a person engaged thereto will be allowed.

** This GT Alert is limited to non-U.S. matters and law.*

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

Authors

This GT Alert was prepared by:

- [Anna Hałas-Krawczyk](#) | +48 22.690.6281 | halaskrawczyka@gtlaw.com
- [Natalia Wołkowycka](#) | +48 22.690.6108 | wolkowyckan@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.~ Houston. Las Vegas. London.* Los Angeles. Mexico City.+ Miami. Milan.* Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.* Warsaw.- Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¢Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2020 Greenberg Traurig, LLP. All rights reserved.*