

## POLISH SPECIAL ACT CONCERNING THE CORONAVIRUS EMPLOYMENT ISSUES

The amendment to the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and the resulting crisis (the so-called Anti-crisis Act) came into force on 31 March 2020. It introduces a number of regulations, the aim of which is to simplify the functioning of enterprises during the pandemic. The below concentrates on solutions concerning employee issues, in particular those concerning financial support as regards the costs of labour. It is worth stressing that the countermeasures that have been included in the Act, as finally adopted, will not be easily available to undertakings, especially those in which trade unions exist. The rules for being released from and for deferment of payment of social insurance (ZUS) contributions also seem to be disappointing.

### SUPPORT FOR EMPLOYERS

#### Economic downtime or reduced working time

Employers affected by the spreading of the Coronavirus will be able to take advantage of two main instruments as regards the work management process: economic downtime and reduced working time.

First and foremost, an employer will be able to reduce the remuneration of an employee subject to economic downtime (i.e. an employee released from the obligation to provide work for reasons not attributable to the employee) by not more than 50%, however by not less than to the amount of the minimum wage.

Moreover, an employer will be able to reduce the working time of employees by 20%, but not less than to 0.5 of full-time. The remuneration of employees will be reduced proportionally, but it cannot, however, be lower than the minimum wage taking into consideration the working time.

However, only those employers who meet the following conditions will be able to take advantage from the reduction of the working time:

- are affected by a fall in turnover due to the COVID-19 epidemic, understood as a fall in the sale of goods or services, in simplified terms (i) by not less than 15% within any two consecutive calendar months (or 60 calendar days) chosen at the employer's discretion, falling after 1 January

2020, in comparison to the corresponding two months (60 days) of the 2 previous year; or (ii) by not less than 25% of the turnover from any calendar month (or 30 calendar days) indicated at the employer's discretion, falling after 1 January 2020, in comparison to the turnover generated in the preceding month (or 30 days);

- are not in arrears with the payment of tax obligations, social insurance contributions, health insurance contributions, Guaranteed Employee Benefits Fund (FGŚP) and Labour Fund contributions for the period until the end of the third quarter of 2019;
- they do not satisfy the conditions to be declared bankrupt.

From the literal wording of the Act it follows, however, that the above conditions do not have to be satisfied in order to reduce the remuneration of employees due to economic downtime. It cannot be excluded that this was not the intention of the legislator and that this wording is incorrect. In any case, there is no doubt that these conditions must be fulfilled in order to acquire the right to the additional allowances described below.

#### **Additional financial of remuneration from public funds**

In the case of economic downtime, the reduced remuneration will be additionally financed from the funds of the FGŚP in the amount of 50% of the minimum remuneration for work (i.e. PLN 1,300).

The remuneration of employees with a reduced working time will also be financed by the FGŚP, up to one-half of the above-mentioned remuneration, however not more than 40% of the average monthly remuneration in the preceding quarter (i.e. PLN 2,079).

The FGŚP will also refund the costs of contributions to the Social Insurance Institution (ZUS) due on the additionally financed part of the remuneration. Both types of additional financing are to be available for a period of 3 months, whereas this period of time may be extended by the Council of Ministers.

The provision adopts a broad definition of an employee, in view of which it will be possible to obtain the additional financing with respect to the remuneration of persons employed based on an employment contract, but also for work under contract or based on a mandate agreement or other agreement for the performance of services, to which the provisions of law regarding a mandate apply. Nevertheless, neither the additional financing of the first or second kind will be available with respect to the remuneration of employees whose remuneration in the month preceding the month in which the application for additional financing was submitted was higher than 300% of the average monthly remuneration in the preceding quarter. Moreover, entrepreneurs who receive the additional financing will be obliged to keep the employees, with respect to whose remuneration the additional financing is received, employed during the term of the additional financing and after the end thereof for a period equal to the period for which the additional financing was received, under penalty of returning the funds received.

#### **Procedure for the introduction of economic downtime and reduction of working time**

It needs to be stressed that the manner and conditions of performing work during the period of economic downtime or reduced working time, including the professional groups covered by these solutions, must be agreed by the employer in an agreement concluded with the trade union organisation or,

in the event of the absence thereof, employee representatives. If the appointment of a representative is difficult due to current working conditions (e.g. remote work), this function can be performed by a representative appointed earlier for a different purpose. Therefore, in practice it is not possible to benefit from the above solutions, including the reduction of the costs of labour, without obtaining the approval of the relevant employee representation.

### **Aid granted by the heads of poviats**

Furthermore, heads of poviats (starosta) have acquired the right, after the conclusion of an agreement, to grant additional financing to entrepreneurs to cover part of the costs of the remuneration of employees in the case of a drop of the entrepreneur's turnover as a consequence of the COVID-19 epidemic.

Depending of the degree of the fall in turnover, the additional financing may be awarded in an amount not exceeding the sum constituting from 50% to 90% of the remuneration of the individual employees covered by the application, but not more, however, than from 50% to 90%, respectively, of the minimum remuneration for work with respect to each employee. Such additional financing may be granted to microentrepreneurs, small and medium-sized enterprises for a period not longer than 3 months. Entrepreneurs who receive the additional financing will be obliged to keep the employees covered by the agreement employed during the term of the additional financing and after the end thereof for a period equal to the period for which the additional financing was received, under penalty of returning the funds received.

## **ADDITIONAL INSTRUMENTS FOR EMPLOYERS**

The new Anti-crisis Act introduces a number of additional instruments that apply during the state of epidemic and state of epidemiological threat, which may make it easier for employers to operate in this difficult time. They include the following mechanisms:

### **Change of the system of work or working time, overtime work – critical infrastructure**

An employer may change the system of work or the working time of employees or instruct employees to provide work during overtime hours, in the scope necessary to ensure the continuity of the operation of the enterprise. This solution may be applied primarily by entrepreneurs conducting activity consisting in ensuring the operation of critical infrastructure systems and facilities as well as those whose activity is crucial to maintaining the continuity of the operation of the critical infrastructure.

### **Application of less favourable conditions – other employers**

Furthermore, employers may additionally: (i) limit an employee's daily rest period to 8 hours; (ii) introduce an equivalent working time system, with an extension of the settlement period to 12 months (which enables decreasing or increasing the working time to 12 hours in the coming months, compensating them with an increased/reduced number of working hours in subsequent months); or (iii) apply less favourable terms of employment in another scope, in each case if they meet a number of conditions, which to a great extent are identical to those envisaged for financial support (see above), including enter into an appropriate agreement with the trade unions or employee representatives, experience a drop in turnover and are not in arrears payment of the relevant public-law charges.

### **Release from the obligation to undergo medical examinations**

The Act releases employers from the obligation to instruct employees to undergo periodic medical examinations. At the same time, the Anti-crisis Act introduces the possibility of preliminary or follow-up examinations (which are conducted after an employee's absence due to illness lasting at least 30 days) being performed by medical doctors other than occupational physicians.

After the state of epidemic is called off, the outstanding medical examinations should be taken within 60 days. A medical certificate issued by a medical doctor other than an occupational physician ceases to be valid 30 days from the date on which the state of epidemic is called off.

### **Order to work remotely**

Already the first version of the Anti-crisis Act introduced the possibility of ordering employees to work remotely. Remote work is introduced in the form of an ordinary unilateral official order on the part of the employer, without the necessity to amend the employment contract or obtain the employee's consent. The amendment to the Anti-crisis Act does not introduce any additional limitations, including regarding any time limitations with respect to instructions to work remotely (apart from the period during which the Anti-crisis Act remains in force).

### **Deferment of the implementation of Employee Capital Plans**

In relation to employer's in the case of whom the deadline for the implementation of an Employee Capital Plan expired at the end of March 2020 (i.e. employer's employing from 50 to 250 people as at 30 June 2019), this deadline has been deferred to the end of September 2020.

### **Additional childcare allowance period**

In the situation where a childcare facility, such as a nursery or pre-school, is closed and also when it is not possible to organise care for a child by a person other than the child's parent, an insured person who is released from performing work due to the necessity of personally caring for a child is entitled to an additional childcare allowance in the amount of 14 days. Of course, parents can also use the childcare allowances regulated by the existing provisions of law, in the amount of 60 days in a calendar year.

The list of cases in which parents are entitled to such childcare allowance has been slightly expanded. However, the postulates of parents that the allowance be expanded to include persons caring for children above the age of 8 have not been taken into consideration – the allowance, both in the basis scope resulting from the existing provisions of law, as well as in the expanded scope resulting from the Anti-crisis Act, is only available for parents caring for children below eight years of age.

### **Deferment of ZUS contributions**

In this respect the only modification in relation to the existing regulations, which provide for a deferment of the payment of contributions to the Social Insurance Institution (ZUS) or their spreading into installments, is such that that in the case where the payer's application relates to contributions due for the period from 1 January 2020 and is submitted during the period of the state of epidemic or state of epidemiological threat remains in effect or within 30 days after such state is called off, a prolongation fee will not be charged.

As regards the criteria for submitting an application and its being granted, the existing provisions, pursuant to which payments of contributions may be deferred or spread into instalments on the request of the payer due to economic or other justifiable reasons, will apply. Moreover, when evaluating the application, ZUS will take into consideration the payer's ability to pay and the state of social insurance finances. Though it would seem that economic difficulties caused by the COVID-19 epidemic will qualify as such a justified reason, it should be noted that ZUS, even when it is determined that such a prerequisite has been fulfilled, is not obliged but merely may grant the payer's application.

Only entrepreneurs employing not more than 9 employees will be fully released from the obligation to pay any ZUS contributions for a period of 3 months.

## **SUPPORT FOR SOLE TRADERS**

Although the so-called sole traders, i.e. persons conducting business activity personally, without employing employees, are formally not employees, it is nevertheless worth taking a look at the measures introduced to make things easier also for this group, taking into account that from the business point of view the status of such persons in Poland is often similar to that of employees.

### **Downtime benefit**

Persons conducting non-agricultural economic activity as well as persons performing an agency agreement, mandate agreement or other agreement for the performance of services to which the provisions of law regarding a mandate apply or performing an agreement for the performance of a specific task, are to be entitled to the so-called downtime benefit if, in consequence of the COVID-19 epidemic, downtime in the conducting of activity by such person occurs and that person satisfies a number of other conditions, e.g. has no other title to social insurance (e.g. is not in an employment relationship) or, in the case of sole traders – demonstrates a fall in revenue by at least 15% in the month preceding the month in which the application is submitted in relation to the previous month.

As a rule, the amount of the downtime benefit is 80% of the minimum wage. At the present moment this is a one-time benefit, but the Council of Ministers may decide about the possibility of further payments being made.

Both as regards persons conducting non-agricultural economic activity as well as persons who have entered into civil-law agreements, the downtime benefit will not be payable if their revenue in the month preceding the month in which the application has been filed was higher than 300% of the average remuneration from the preceding quarter.

### **Aid granted by the heads of poviats**

Based on the Anti-crisis Act, heads of poviats (starosta) will have the right, after concluding an agreement, to grant additional financing for part of the costs of conducting business activity to entrepreneurs who are natural persons, who do not have employees, in the case of a relevant the case of a drop of the entrepreneur's economic turnover as a consequence of the COVID-19 epidemic. Depending on the degree of the fall in turnover, the additional financing will be awarded in an amount from 50% to 90% of the minimum wage monthly, for a period not longer than 3 months.

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