LEGAL UPDATE

CORONAVIRUS

QUESTIONS AND MEASURES IN LABOUR-LAW MATTERS

ČECHOVÁ & PARTNERS

In connection with the Coronavirus pandemic the Government of the Slovak Republic declared the state of the extraordinary situation in the Slovak Republic with effects from 12 March 2020 at 6.00 a.m. Further, several protective measures have been adopted by governmental organizations and are being updated or extended on a daily basis, including:

- closure of all educational facilities (including schools, universities, kindergartens etc.) in Slovakia from 16 March 2020 until 27 March 2020;
- mandatory home quarantine applicable to all individuals returning from abroad (regardless of the country) after 13 March 2020 7.00 a.m. having a residency permit in Slovakia and living in Slovakia more than 90 days. The quarantine applies also to the persons living together with them in their household;
- closure of all international airports;
- ban of entry of persons to Slovakia who do not have a residence in Slovakia (exceptions apply in respect of persons involved in supplies transportation, e.g. truck drivers);
- closure of almost all retail operations and operations providing services, save for a limited list of operations such as groceries, drugstores, petrol stations, postal services etc.

All employers in Slovakia need to deal with this extraordinary situation. On one hand, they aim to protect the health and safety at work of their employees. On the other hand, they try to mitigate damages (due to the struggling business and low work demand), e.g. to reduce personnel costs.

Below is a list of situations frequently dealt with in labour-law relations, and of selected measures that the employers can adopt in this field.

HEALTH AND SAFETY AT WORK

Each employer must continuously ensure health and safety at work, and for that purpose the employer shall adopt necessary measures including providing for precaution, required means/tools, and a suitable system to manage the work protection. The employer is obliged to improve the level of work protection in all activities and to adapt the level of work protection to facts (circumstances) that change.

In order to comply with this basic obligation of the employer, the employer shall hence adapt its operation and the rules in the field of H&S to the current situation – the Coronavirus pandemic. These would include the already well-known recommendations such as regular disinfection, cleaning, washing of hands, wearing of protective masks and other gear, limitation of personal meetings, limitation of travelling, etc. Also, these could include:

1. Measuring of Temperature of Employees and Requesting Information on Infectious Disease

Whilst we are aware of certain contradictory opinions, in our view, the employer can measure the temperature of its employees as a precaution measure. We do not regard the temperature measuring as a medical check (for which strict and more formal conditions apply), rather as a precaution measure where the obligations and justified interests of the employer in the field of H&S at work prevail over the interests of the employees to their privacy. When doing so, the employer shall, however, comply with the relevant data protection regulations. The employer shall also involve the employees' representatives (trade unions, work council or employees' confidant) if they operate at the employer, the employees' representative for H&S, and – ideally – also the occupational health services, if possible.

Similar regime in our view applies to requesting and collecting of information on any employee being diagnosed with an infectious disease caused by the Coronavirus or being under a medical examination due to a suspicion of the same.

2. Paid Time-Off

The employer can require that, during the current extraordinary situation, the employee does not work and stays at home. Unless otherwise agreed with the employee, the employee shall in this case be entitled to compensation of his/her salary in the amount of 100% of his/her average earnings during the absence at work.

Where employees' representatives operate, the employer can agree with them in a written agreement that if due to serious operation reasons the employer does not assign work to the employees, the employees shall be compensated only 60% of their average earnings during the absence at work. If there are no employees' representatives at the employer, the employer cannot unilaterally decide on this regime.

If employees agree, the employer can agree with them on temporary adjustments to their salaries.

HEALTH AND SAFETY AT WORK & COST SAVING

3. Home Office

If the nature of the work agreed with an employee allows the employee to perform the work at home, an employer can agree with the employee that for a temporary time the employee shall work from home. Usually employers providing the benefit of the home office have the respective home office internal policies in place, which regulate details of the home office regime. Whilst it is not an absolute necessity to have such policy in place, it is recommended to issue at least a very brief instruction to the employees outlining the basic rules when working from home. It is not required, however, to amend employment

contracts just due to the implementation of the home office regime. This general principle should be, however, reconsidered, if the need for the home office shall last for a longer time period. In that case there might arise a need for a change of the statute of the employees to "home workers" or "tele-workers", via a relevant amendment to the employment contract.

The employer, under prevailing interpretations of the Labour Code, cannot unliterally order the home office if the employee does not want to work from home.

Even in the case of the home office regime, the employer continues to be liable and responsible for ensuring health and protection of work and of a safe workplace. Hence, it is recommended to have this in mind when determining the rules for the home office.

4. Vacation

The employer can determine the dates of the vacation after a consultation with the respective employee (the consent of the employee is not needed but the employee must be consulted). The employer should do so based on a "vacation plan". In practice, the employers (mainly small or middle-sized businesses) often do not have any "vacation plan", which is not a big issue if vacations are agreed with the employees and there are no disputes. If there are no employees' representatives (trade unions, work council or employees' confidant) operating at the employer, the employer can issue the vacation plan without having consulted it with the employees; otherwise, the employer needs to agree on the vacation plan with the employees' representatives.

When determining the particular dates of the vacation, the employer must take into consideration its own tasks, on one hand, and justified interests of the employee, on the other hand.

It may be disputable whether, if the employer decides that the employee must take vacation in these times where there apply several restrictions concerning relaxation areas and leisure activities, the justified interests of the employee are still taken into consideration – this is a bit grey area allowing for more interpretations. However, the Slovak Labour Code explicitly permits that the employer may order a mass vacation (in general, maximum of two weeks) if it is necessary due to operation reasons. In our opinion, a situation where the employer has no work to assign to the employees would justify the need for the mass vacation. If there are employees' representatives operating at the employer, the mass vacation would have to be agreed with them.

The vacation must be announced by the employer at least 14 days in advance. If the employee agrees, this time period can be shortened.

During the vacation the employees are entitled to compensation of their salary.

COST SAVING

5. Work Time-off Instead of Overtime Surcharge

In general, the employee shall be entitled to a salary surcharge in case of overtime work. However, if so agreed with the employee, the employee can be provided with the work time-off instead of the salary surcharge.

Hence, in cases where the employees work(ed) overtime, the employers could agree with the employees that they would now take time-off from work. However, the employer cannot impose this upon the employee unilaterally.

6. Flexible Working Time Account

If there are employees' representatives operating at the employer, the employer can agree with them in a collective agreement or another written agreement on an uneven working time scheduling in form of a "working time account". This enables the employer to adapt the working time schedule to the current demand on work. In general, the agreed (standard) weekly working time could be balanced during 30 months.

This option is not available to employers where there are no employees' representatives (trade unions, work council, employees' confidant).

7. Allowance to Maintain Job Positions

Under certain conditions, the employer can apply with the labour, social affairs and family office for an allowance to maintain job positions. This is possible only if the employer agrees in writing with the employees' representatives on serious operation reasons (such as reasons resulting from the current extraordinary situation and the Coronavirus pandemic) allowing the employer to limit its operations and to limit the work assigned to the employees, and maintains during three months the relevant job positions (i.e. does not terminate the employments).

The current government of the Slovak Republic (and expected representatives of the new government of the Slovak Republic expected to be appointed in next days) announced that they plan to simply the conditions for the eligibility for this allowance. We will update the information on this issue once there are any relevant news.

OTHER ABSENCES AT WORK

8. Taking Care of Child Due to Closure of Schools

As currently the schools, kindergartens and other similar facilities are closed, the parents need to take care of their children at home. In practice, often the absence at work due to "taking care of a child" pursuant to the Labour Code is confused and mixed up with "taking

care of a child" under the regulations on public social insurance. These regimes are, however, two different (although similar) matters:

Absence at Work

The employer must excuse the absence at work of an employee who needs to take care of a (i) sick child or a (ii) child (even if the child is healthy) younger than 10 years,

a) who cannot be, due to the official closure of the educations facilities at school or another facility that the child otherwise usually attends; or
b) if a person who usually takes care of the child (e.g. the mother), becomes sick, is in a quarantine, or is in a medical check or medical treatment that could not be made outside the employee's working time.

This time period is not limited by law. During this time the employer does not pay any salary or similar compensation to the employee.

Social Care Allowance *(ošetrovné)*

In general, where the employee personally and during the whole day nurses a sick child, the employee may be entitled (if all other conditions are met) to the social care allowance (payable by the Social Insurance company). As regards taking care of a (healthy) child who cannot attend the school, kindergarten or similar facilities due to the closure of these facilities based on the relevant decisions of administrative authorities or based on a quarantine ordered in them, the employee may be entitled (if all other conditions are met) to the social care allowance if the child is up to 10 years old.

However, pursuant to the official information published by the Social Insurance company, in this extraordinary situation, the Social Insurance company, with the aim to simply the procedure, will now (beyond the scope required by law) grant the social care allowance also to individuals taking care of a

a) child up to up to 11 years of age; and
b) in certain cases even above 11 years of age.

This does not, however, match with the legal regulation under the Labour Code, that remains unchanged, and that obliges the employer to excuse the absence at work only if the employee takes care of a child younger than 10 years of age.

In addition, compared to a standard length of granting the social care allowance (10 days), the Social Insurance company announced that it shall grant the allowance for 14 days (and a later further approach will be decided yet).

Hence, it is upon the employer to decide whether the employer shall mirror the approach of the Social Insurance company and excuse also absences at work – unpaid – in case of taking care of children older than 10 years.

9. Quarantine

If an employee must be in a quarantine (e.g. because the employee returned from a foreign country), the employer must excuse the employee's absence at work. The employee shall be compensated for the employee's salary in the same way as if the employee was sick and on an a sick-leave *(PN)*. Also, the payment of the social allowance during the quarantine is the same as if the employee was sick and on an a sick-leave *(PN)*.

***

This legal summary was prepared on 17 March 2020 exclusively for the purpose of providing general information and should not be viewed as legal advice. If you have any questions regarding topics addressed herein, please contact Lenka Šubeníková or Tomáš Rybár or your contact person at Čechová & Partners.