

Employment and Data Protection Recommendations in respect of the COVID-19 emergency in Hungary

update of March 30, 2020

The coronavirus emergency is generating a series of significant management problems for companies in Hungary. To help employers deal with these challenging issues, we believe it is useful to illustrate the current regulatory framework by providing practical suggestions on navigating this health emergency.

Please note that the information contained herein is valid as of March 30, 2020 and changes may be applicable in view of subsequent government measures, steps taken by public authorities or official guidelines or recommendations issued.

Providing conditions for a safe and healthy working environment

Employers are required to provide conditions for a safe and healthy working environment under the laws of Hungary, which places them under an obligation to take actions aimed at mitigating the risks associated with COVID-19 and limiting the exposure of their employees to infection, including – for example – the following:

- directing special attention to cleanliness of work spaces by disinfecting restrooms, checking ventilation systems, providing hand sanitizers and encouraging employees to pay special attention to their personal hygiene;
- re-evaluating whether any previously arranged meetings, workshops, business travel or other planned events are necessary and justified in view of the COVID-19 emergency and issuing cancellations or opting for videoconferencing or other forms of remote access if possible and informing prospective participants/organizers accordingly;
- putting in place special provisions regarding handling hard copy correspondence and deliveries in order to limit exposure of employees to direct and indirect contact with potentially infected persons (e.g. by segregating received parcels and opening them only after a certain time – typically 24 hours – has elapsed); and
- reviewing rules and practices applicable to access of company premises, in order to limit unnecessary person-to-person contact and placing/sending notices accordingly.

Keeping employees informed

Employers should keep their employees informed of developments as new information becomes available and governments or public authorities issue new recommendations or introduce rules applicable to the workplace or the employer, which information should optimally include the following:

- general information on COVID-19, including the associated symptoms (fever, tiredness, dry cough, muscle pain, shortness of breath, sore throat, nasal congestion);
- employee obligations in the event of detecting symptoms, including when symptoms are detected on employees themselves or on their friends and family;
- recommended course of action in terms of seeking medical help; and
- information on processing of employee data in relation to the emergency (see below for further details).

Preparing a Pandemic Business Continuity Plan

Employers are advised to adopt pandemic business continuity plans, i.e.: preventive steps designed to reduce exposure to the virus; counter-measures to be taken in face of potential infection; preliminary assessment of data protection aspects of the applied measures; the allocation of tasks and responsibilities within the organization in face of viral emergency; creating effective emergency communication channels.

In addition to the regulation of the above mentioned issues (informing employees, attention to cleanliness of work spaces, cancelling events or organizing them remotely, reviewing access to premises), such Action Plans should also allocate pertinent responsibilities within the organization and specify the procedure followed by the employer in the case of employees returning from abroad and infected or potentially infected employees. As part of the pandemic business continuity plan, it is recommended to establish an enhanced third party monitoring regime for clients and visitors entering an organization's direct area of operations and the concomitant restrictions. It is also recommended to regulate measures to be enforced (for example, partial, selective or complete prohibitions of entry onto an organization's premises).

Employers should also elaborate any special employee obligations arising in connection with the provisions of a Pandemic Business Continuity Plan, which may include – among others – those outlined below:

- employees may be required to report to HR (or a designated person) in the event of detecting symptoms associated with COVID-19 in themselves, their friends and family or co-workers;
- employees should be encouraged to seek medical attention if detecting symptoms or having been exposed to a threat of infection, check-up of such employees conducted by an occupational physician may also be mandated;
- employees may also be required to inform the employer if they have been abroad, especially if they have visited formerly designated high risk areas¹ or have plans to visit such areas (even if such previous or planned visit took place during their leave and was of private nature) – we note in connection with this that though requesting information on past and planned private trips is permissible, employers should be careful in terms of *banning* private travels to affected areas as the legality of such bans may be brought into question if the risk to the health and safety of the rest of the labor force is not deemed to be significant. Additionally, such bans may entail reimbursement obligations towards employees who have already incurred costs in connection with a planned trip;
- employers may encourage employees to work remotely (from their homes) or introduce mandatory work from home schemes on a temporary basis as a precautionary measure if the nature of the work performed by affected employees allows it (such mandatory work from home schemes may apply across the board or be limited to certain groups of employees);² and
- employers intending to introduce questionnaires or body temperature checks designated to survey their company's exposure to the risk of infections within their labor force should pay special attention to data protection concerns related to the processing of employee healthcare data (see below for further details).

Addressing Absence from Work Based on Employee Status

• Employees diagnosed with Coronavirus infection

Infected employees will be placed under government mandated quarantine (in Hungarian: *"járványügyi zárlat"*) in a designated healthcare facility. Leave of absence of such workers from work does not have to be remunerated by employers, as affected employees will be entitled to sick pay provided by social security.

¹ i.e. China (mainland), Hong Kong SAR, Macau SAR, Iran, South Korea and Israel.

² Remote work normally requires amending employment agreements or – at least – the introduction of a remote work policy, however temporary arrangements may be made for a period of up to 44 work days by the employer unilaterally. In order to facilitate social distancing, the government of Hungary issued a decree which temporarily allows employers to unilaterally put in place remote work (work from home) arrangements. Employees should still be reminded – e.g. by means of issuing a remote work policy – that they must create a work environment in their homes which satisfies occupational health and safety requirements and conditions necessary for effective performance of their duties.

- **Employees returning³ to Hungary from abroad**

Returning employees will be placed under a government mandated quarantine of 14 days in their homes (“home quarantine”)⁴ (in Hungarian: “*hatósági házi karantén*” or “*járványügyi megfigyelés*”) in accordance with emergency government decree no. 41/2020. Observance of home quarantine will be monitored by law enforcement authorities and just as in the case of persons quarantined in healthcare facilities, breaches of quarantine may be criminally sanctioned. The government decree does not specifically regulate whether employees in home quarantine should be remunerated by their employer, but in our assessment of the current legal situation these employees will also be entitled to sick pay provided by social security or other state compensation.⁵

- **Employees potentially infected by Coronavirus**

Potentially infected employees should be asked to follow the protocol proposed by the government’s COVID-19 Task Force by contacting their GPs by phone if they detect any symptoms. Depending on their evaluation of the employee’s account of symptoms GPs either (1) clear the employee for work; (2) request that the employee remain under voluntary self-isolation in their home; or (3) arrange for their transport to a healthcare facility for purposes of conducting a Coronavirus test – if positive they’ll be quarantined as noted above, if negative, they should be encouraged to maintain self-isolation and repeat testing after a few days.

- **Employees in self-isolation mandated by the employer’s Pandemic Business Continuity Plan**

Self-isolating employees may (1) work remotely and be paid their regular wages; (2) be placed on paid leave by employers either unilaterally – provided that a notice of 15 days is respected – or with their consent and be paid their absence fee; (3) take unpaid leave – employee consent is required;⁶ (4) be placed on gardening leave by employers and receive their regular wages; (5) be moved to part-time work with their consent; (6) – if they obtain a certificate from their GP – be placed on sick leave with entitlement to 70% of their absence fee during the first 15 days (or less, if they had taken a part of their annual sick leave earlier) and receive sick pay provided by social security for any subsequent days of absence; or (7) – if the employer uses a time banking system (in Hungarian: “*munkaidőkeret*”) – schedules may be modified to allow employees to stay away from the workplace and allow employers to condense workable hours at a time when they may safely return to work.⁷

- **Voluntary self-isolation or social distancing requested by employees**

Employee requests for remote work may be turned down by employees lawfully if the employee in question is not otherwise entitled to working remotely, e.g. based on their employment agreement or a remote work policy issued by the employer.

In our assessment employees may not lawfully refuse work on grounds of exposure to a risk of infection at the workplace unless they can demonstrate a direct and serious danger to their life or health and in view of the current spread of the COVID-19 crisis in Hungary these conditions are not applicable as of the date of this report – this is especially the case if their employer has complied with the obligation to mitigate risk of infection (this is all the more reason for the employer to implement the above mentioned actions, at least in part).

Mitigating the financial impact of wage costs accrued on passive employees

- **Employees taking care of home-schooled children**

The Hungarian government suspended attendance in secondary and primary schools and most local municipality governments instituted similar suspensions in the case of kindergartens and nurseries.

³ Hungarian citizens, diplomats accredited to Hungary and EEA citizens who have obtained a certificate of Hungarian residence may continue to enter Hungary from abroad, including from formerly designated high risk areas, but third country (non-EEA) citizens and EEA citizens without a certificate of Hungarian residence will be returned at border crossings or international airports. The Hungarian government suspended scheduled international coach and train traffic as well as scheduled flights to/from formerly designated high risk countries until further notice.

⁴ Law enforcement authorities may issue special dispensations on a case-by-case basis.

⁵ The government decree establishes that mayors and councils of local municipalities are primarily responsible for organizing steps guaranteeing that the basic needs of persons under home quarantine are taken care of.

⁶ During such unpaid leave, employees are required to arrange for direct payments in order to remain entitled to social security services, including the services of the state public healthcare insurance, system. Employers may decide to cover/reimburse such payments effected by employees on unpaid leave, or alternatively, they may offer to provide partial remuneration of such leave based on a special agreement.

⁷ Working time schedules (i.e. allocation of contracted hours) may be amended by employers unilaterally, and the government of Hungary issued a decree which allows employers to disregard the normally applicable requirement of providing 96 hours’ notice.

Parents staying home to take care of their children may (1) work remotely and be paid their regular wages; (2) request being placed on paid leave by their employers and receive their absence fee; (3) take unpaid leave – even without the consent of the employer;⁵ (4) be moved to part-time work with the consent of the employer; or (5) be placed on sick leave and receive sick pay provided by social security if they obtain a certificate from their pediatrician and if the child they are taking care of is below 12 years of age.

- **Employees whose roles are affected by government-mandated limitations on opening hours**

Effective as of March 17, the Hungarian government has decreed—in order to encourage social distancing—that wholesale and consumer retail operations have to be closed to the public between 15:00 (pm) and 6:00 (am) and so do restaurants and other catering operations (coffee shops, pubs, bars, etc.) – with the exception of take-away and delivery services. The decree emphasizes that employees may be present at these workplaces and can be requested to work outside the set time period, but limited opening hours must be put in place vis-à-vis consumers/clients.

Employers may (1) amend schedules of employees in order to comply with limitations on opening hours; (2) introduce shorter working weeks by placing employees on paid leave or unpaid leave (with consent) for 1-2 days per week during such time as the limitations apply; (3) place employees on gardening leave and provide regular wages; (4) move employees to part-time work with their consent; or (5) – if using a time banking system – modify schedules to condense workable hours to a time when limitations are revoked.

- **Employers affected by curfew restrictions and/or significant decrease in demand for their services**

Effective as of March 28, the Hungarian government issued restrictions on movement requiring that citizens and residents only leave their homes with a valid reason. Although work and professional obligations – including visiting suppliers and handling deliveries and taking care of transport of goods – constitute valid reasons for movement, the decree is expected to severely restrict client/consumer traffic in the case of businesses operating outside the narrowly set scope of the exceptions in the decree and may require some employers to consider restructuring or layoffs.

Movements necessary for purposes of any of the valid reasons (in Hungarian: “alapos indok”) listed below are exempt from curfew restrictions:

- purchase of food products – including for pets and animals;
- visiting restaurants – if purchasing take-away food;
- fuel purchases;
- banking, financial and insurance services;
- postal services;
- using cleaning and waste management services;
- drugstores, pharmacies and other sale of medical and medicinal products – including for pets and animals;
- tobacco shops; and
- healthcare, medical services and psychotherapeutic treatment.

Hungarian employment laws do not allow employers to unilaterally reduce wages or working hours, but there are certain practices which may be applied in order to limit losses and prepare for a future market rebound:

- Employees who cannot work because production is decreased or put on hold may (1) be placed on unpaid or partially paid leave with employee consent; or (2) be moved to part-time work (reduced working hours) with consent.
- In absence of consent the foregoing, employers may require employees to (3) use their vacation days, by taking paid leave to condense workable days to the latter part of the year; and (4) if using time banking systems, employers may modify working time schedules to concentrate workable hours to latter weeks or months of the time banking period.
- Hungarian laws also allow employers (5) to place employees on downtime (in Hungarian: “állásidő”) if they cannot provide employment as contracted (i.e. during normally scheduled working time). Such downtime must be remunerated unless the reasons for the employer’s inability to provide employment are due to “unavoidable” external factors. We are of the view that, in the event of a full government mandated shutdown of operations, affected employers could place employees on downtime without remuneration, on grounds of their inability to provide employment due to unavoidable and external reasons. Similarly, if an employer offers services to physically present clients/customers, but such services are not listed among the valid reasons exempted from the curfew restrictions, then it may use unremunerated downtime for employees whose jobs are linked to the physical presence of clients/customers (receptionists, salespersons, attendants, etc.).

Whether an employee's job is linked to physical presence of clients/customers should be assessed carefully, on a case-by-case basis.

- If the above options are not practicable, employers may resort to terminating employment citing layoffs necessary because of decreased demand for products/services due to the COVID-19 emergency. In this case, severance entitlements would apply – with the exception of pension age employees and employees with less than 3 years of service time – and notice periods would have to be respected – with the exception of employees on probation.

Revoking offers of employment and withdrawing from employment agreements

Offers of employment may be revoked unilaterally any time prior to acceptance by the candidate unless the offer itself specifies a deadline for acceptance. If the offer of employment specifies a deadline for accepting then it may not be revoked unilaterally before the deadline lapses.

Employers may however, unilaterally withdraw from employment agreements between signing (accepting) and the first day of work provided that such withdrawal is due to materially changed business conditions which make it impossible for the employer to maintain employment without unreasonable hardship. In our assessment the spread of the COVID-19 pandemic qualifies as a materially changed business condition with a view to the severity of the healthcare situation in Hungary and the very significant adverse implications on business continuity – especially in certain sectors such as the tourism, catering, entertainment, gambling and film industries and companies undertaking event management, performing arts and sports services.

Government steps to mitigate the risk of increased unemployment

The government of Hungary has not yet issued a general, overarching policy aimed at addressing the financial impact of the COVID-19 crisis on employers, it has however as of March 19, put in place certain sector-specific policies affecting businesses operating in certain fields.

These sector-specific policies affect companies undertaking the following activities: ⁸

- taxi operation;
- accommodation;
- food and beverage service activities;
- publishing of newspapers;
- publishing of journals and periodicals;
- motion picture, video and television program production, sound recording and music publishing activities;
- programming and broadcasting activities;
- organization of conventions and trade shows;
- creative, arts and entertainment activities;
- gambling and betting activities;
- sports activities and amusement and recreation activities;
- travel agency, tour operator reservation service and related activities;
- physical well-being activities – on condition that the provider is in compliance with ministerial decree 37/1996 on the foundation and operation of public baths); and
- inland passenger water transport.

Employers in these sectors are exempted from payment of the social contribution tax and the vocational training contribution. Furthermore, in the case of these employers the government also introduced a temporary reduction of social security contributions normally deducted from gross salaries by employers by introducing a cap of HUF 7,710 (approximately EUR 20) per employee for the in-kind health insurance contribution and suspending collection of pension contributions and labor market contributions.

In the case of taxpayers under small business taxation (Hungarian abbreviation: *KIVA*) wage costs shall not be considered part of the tax base.

The temporary exemptions, reductions and tax base calculation rules will apply from March to June, 2020, and on condition that most, but at least 30% of the employer's overall income of the past 6 months was realized as a result of one of the activities listed above and such activity was actually conducted as the main activity.

⁸ For a detailed list of affected NACE codes, please see the following: 4932; 50.30; 55 (all sub-categories); 56 (all sub-categories); 5813; 5814; 59 (all sub-categories); 60 (all sub-categories); 79 (all sub-categories); 8230; 90 (all sub-categories); 92 (all sub-categories); 93 (all sub-categories); and 9604.

Temporary deviations from general employment law regulation

Remote work arrangements: In order to facilitate social distancing, the government of Hungary issued a decree which temporarily allows employers to unilaterally put in place remote work (work from home) arrangements. Remote work normally requires the amendment of employment agreements or – at least – the introduction of a remote work policy and employees may only be required (without consent) to work remotely for a period of up to 44 work days.

Changes to working time scheduling: Working time schedules (i.e. allocation of contracted hours) may be amended by employers unilaterally under general circumstances, but in order to allow employers to better adapt their operations to COVID 19 contingencies, the government of Hungary issued a decree which allows employers to disregard the normally applicable requirement of providing 96 hours of notice when implementing changes to regular working time allocation.

Processing employee health data: A decree recently issued by the government of Hungary explicitly permits employers to take necessary and proportionate steps to check the health (infection) status of their employees. This may allow employers to process employee data that would normally qualify as sensitive, so far as such data processing is necessary and proportionate to the scale of the emergency. We note though, that the Hungarian Data Protection Authority issued a guidance just before the emergency was declared by the government, in which it discouraged general and indiscriminate use of body temperature checks upon entry to workplaces that are carried out by the employer in lieu of health professionals. As the pandemic situation is evolving rapidly, we expect that the Hungarian Data Protection Authority may update its guidance in this regard.

Contracting out of general employment law regulation: During the state of emergency employers and employees may deviate from general employment law regulation by mutual agreement. The effective duration of such agreements may not exceed that of the state of emergency and deviations may not contradict collective bargaining agreements and works council agreements. We recommend that employers considering using such options proceed with caution and make sure to include any such agreements in writing.

Processing of employee data in relation to the emergency

In regard of data processing attaching to employment relationships, the essential requirement, providing conditions for a safe and healthy working environment, and establishing all related data processing procedures, is the employers' task. In this framework, the NAIH has set out measures that can be reasonably implemented:

- Employers are advised to produce detailed information notices for their employees with the above mentioned content.
- Employers are also advised to communicate an information notice to external persons (clients, visitors, subcontractors), calling on them to disclose potential exposure to infection (business trips, proximity to infected persons) upon entry and follow the protocol put in place by the employer – notice should include reference to the processing of their data.
- According to NAIH's recommendations, employers should elaborate data protection aspects by amending privacy notices issued to employees if they opt to introduce special rules on business operations, business travel or remote work.

If an employee reports an assumed contact with the virus to his/her employer, or if the employer suspects, from the information provided by that employee, that he/she has been exposed to it, the employer may record the following data in connection with the report:

- time of the report and the personal data necessary for the identification of the employee concerned;
- any international travel itineraries of employees – even if it was for personal reasons, and especially if they overlap with formerly designated high risk areas – and dates, as determined in the information notice of the employer;
- data on any contacts of employees with persons coming from risk areas as specified in the employer's information notice; and
- measures taken by the employer based on the information available (for example providing the possibility to seek medical help from the company doctor).

The NAIH considers it acceptable to ask employees to fill questionnaires covering the above data if the employer, based on a preliminary risk assessment, comes to the conclusion that such suspension of the employee's right to privacy is necessary and proportionate to the scale of the emergency. However, it is important that the questionnaire must not contain information regarding health history and the employer must not require employees to attach health records to it.

Based on the communication of the NAIH, the legal ground for processing personal data in the above case is the legitimate interest of the employer. There may be stricter conditions for processing health data by the GDPR, as, in this case, the processing is necessary for compliance with legal obligations arising from legal requirements governing employment, occupational health and safety and social security.

The NAIH outlined that considering the current pandemic situation in Hungary, ordering the use of diagnostic equipment (in particular body temperature check) for all employees in general by employers is not proportionate.

However, in individual cases and with due regard to the circumstances, or based on employers' risk assessments, employers may order tests for employees having to work at stations of higher exposure to contagion. In view of the decree mentioned above permitting employers to take necessary and reasonable steps to check the infection status of their employees, we are of the view that these tests may be carried out by a the employer directly (i.e. without involving a healthcare professional or the occupational physician).

There is no clear guidance from the NAIH as regards sharing data on employee infection status with employees, clients, customers or business partners with whom an individual employee has been working.

In our view employers may provide information on self-isolation to other employees, however, the specific reasons and other background information of such self-isolation need not be communicated to the other employees to minimize the data being shared. In our assessment, providing information on self-isolation exceeds the scope of data that can generally be shared with third parties (clients, customers, business partners). In any event, communication needs to be limited to the extent possible (e.g. inform only if an employee was in close physical contact with such third parties but no further personal data, e.g. the name of the employee).

What should companies and employers operating in Hungary expect?

The government of Hungary has declared a state of emergency (in Hungarian: "veszélyhelyzet") effective as of March 11, and the Prime Minister's Office is expected to continue issuing government decrees in the coming weeks and months, providing guidance and recommendations and regulating detailed employer obligations applicable until such time as the declaration of the state of emergency is rescinded. We at Dentons Budapest are closely following these developments and are at your disposal if you, or your company require further information on applicable rules and best practices.

As you know, Dentons operates and serves client needs in 75 countries, including virtually every location where COVID-19 has already had a serious impact, so our firm is exceptionally well placed to address your queries and provide legal support as the global COVID-19 public health emergency continues to spread and create challenges for businesses worldwide. Please consult the [Dentons COVID-19 \(Coronavirus\) hub](#) for further insights and news items concerning various jurisdictions, including a compilation of our COVID-19 insights, alerts and newsletter summarizing regulation and recommendations for businesses operating in Hungary.

If you have any questions regarding the issues raised above, please do not hesitate to contact us.

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