

Anti-crisis shield 4.0 – important changes for employers in Poland

May 22, 2020

On May 20, 2020, the Polish Government adopted the draft “Anti-Crisis Shield 4.0” bill, which introduces interest rate subsidies on bank loans to provide liquidity to entrepreneurs affected by COVID-19, and amends certain other laws.

Below you will find a summary of the key changes in the area of labor law to be introduced by the draft bill. The legislation is work in progress and may be subject to change.

1. Clarified provisions on remote working

Pursuant to the bill, the employer will be able to tell an employee to switch to remote working if:

- The employee has the skills, technical capabilities and space at home to perform such work, and
- The type of work s/he performs enables him/her to do so.

The employer must provide the means of work (eg. computer, hardware, software), materials and logistical support required to work remotely. Workers may use devices not provided by the employer when working remotely, only if they can ensure the protection of confidential information, business secrets and personal data.

The employer will be liable for occupational health and safety and accidents at work during remote working only to the extent related to the equipment or materials it has provided.

The employer may require the employee to keep records of his/her activities in writing or electronically.

The bill gives the employer the right to withdraw the order to work remotely at any time.

2. Wider group of employers eligible for particular anti-crisis solutions

Businesses, whose turnover decreased in the meaning of the Anti-Crisis Shield, may apply for additional financing of remuneration for employees who are not covered by downtime in the meaning of Article 81 of the Labor Code economic downtime, or a reduced working hours plan.

Additionally, businesses that:

- Experience a decrease in revenue from the sale of goods or services as a result of the COVID-19 pandemic, and
- As a consequence, they experience a significant increase in payroll related burdens

will be able to reduce employees working hours or to put employees on economic downtime for a maximum of 6 months.

A significant increase in payroll related burdens means that the payroll costs (including both employee remuneration and social security) as a percentage of revenue from sales of a given month were more than 5% higher than the previous month, then they are eligible for support. This can apply to any month (or consecutive 30-day period) after March 1 2020, up to the day before employees were put on a furlough or on reduced working hours.

3. Cap on benefits paid out by the employer to an employee whose employment agreement is terminated

During the epidemic emergency or the COVID-19 related state of epidemic, if the employer experiences a decrease in turnover or a significant increase in payroll-related burdens in the meaning of the Anti-Crisis Shield, there will be a cap on the severance pay, compensation or other pecuniary benefit paid to the employee in connection with the termination of his/her employment contract. The cap will be set at ten times the minimum wage of PLN 26,000.

The provision will also apply in the case of terminating or giving notice of termination under an agency agreement, mandate agreement or an agreement for the provision of services to which mandate regulations apply, a contract for work, or in connection with the termination of any paid function.

4. Option to renounce the creation of Company Social Benefit Fund during the pandemic

During the epidemic emergency or the COVID-19 related state of epidemic, an employer experiencing a decrease in turnover or a significant increase in payroll-related burdens in the meaning of the Anti-Crisis Shield will be able to suspend the obligation to:

- Create or operate the company social benefit fund,
- Make the basic write-off,
- Pay holiday leave benefits.

If the employer's enterprise is a place of activity for:

- Any representative trade union in the meaning of Article 253 (1) or (2) of the Trade Unions Law, and each of such organizations groups represents at least 5% of the employer's employees, or
- Any representative trade union in the meaning of Article 253 (1) or (2) of the Trade Unions Law – if the employer's enterprise is not a place of activity for representative trade union organizations grouping at least 5% of the employer's employees,

then the suspension of the above-specified obligations must be made in consultation with such organizations.

Additionally, such an employer will not be required to apply the provisions of collective labor agreements or remuneration regulations that set a higher amount of the write-off for the company social benefit fund or any other

social and welfare benefits than the one specified in the Law.

5. Granting holiday leave not taken by employees in previous years

During the epidemic emergency or the COVID-19 related state of epidemic, the employer will be able to force an employee to take up to 30 days of holiday leave not taken in previous calendar years, within the time period indicated by the employer, with no requirement to obtain the employee's consent and irrespective of the holiday plan.

6. Possible termination of a non-competition agreement

During the epidemic emergency or the COVID-19 related state of epidemic, a party affected by a non-competition agreement will be able to terminate the non-competition agreement upon seven days' notice, following the expired term of any of the following:

- employment agreement
- agency agreement
- mandate agreement
- any other services agreement to which the legal provisions on mandate agreements apply, or
- a contract for work.

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