

COVID-19 - A Brief Overview of Employment Related Implications

Dentons Prague Newsletter

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Employer Protection Responsibilities

What responsibilities do we have towards our employees?

All employers are obliged to ensure occupational health and safety in regard to their employees as well as other visitors and contractors at their premises. You are obliged to continuously evaluate potential risks and develop measures focused on elimination and minimizing of risks. You should also adopt suitable plans and policies regarding prevention of health risks, communicate such plans and policies to the employees and provide training. When putting together safety procedures, we recommend following the recommendations of the Czech Government, Ministry of Health and hygiene stations.

How do we deal with visitors to our premises?

We recommend that you limit any meetings and conferences to the maximum extent possible. The Czech Government has issued a decision ordering to limit contact between people to the maximum extent possible. Although it is permitted to perform occupational and other business activities, it is necessary to limit any potential encounters. Therefore, for any meetings where participants do not have to be physically present, conference calls and other similar measures should be used.

Also consider having a notice shown to all visitors to your premises requiring them not to enter the premises if they have travelled to high-risk countries in the last 14 days and/or been in close contact with anyone who has done so.

What is the current legal framework and actual Governmental instructions and recommendations in the employment area?

With effect from March 16, 2020, the Government has issued a recommendation (not an order) for employers to: (i) to use remote working as much as possible; (ii) to encourage vacation and paid leave; and (iii) to limit the performance of work that is not substantial for the continuity of the employer's operations.

Furthermore, business travel is currently impossible due to the ban on travelling (see section Travel Protocols below).

In general, all citizens are required to travel only to work and back home, with the possibility of visiting necessary shops, authorities, relatives and generally to limit encounters with other people. All shops with the exemption of groceries, gas stations, drugstores, car repair stations and few others, unless providing sales via the Internet or other remote means, must be closed until March 24, 2020.

We are putting together a COVID-19 policy: what should it cover?

A specific policy is not essential, but it can be helpful for managers and employees/workers to have a central source of information. A policy should cover:

- risk management/preventative measures for those at work, based on the latest advice of the Ministry of Health and hygiene stations;

- The Government's advice/instructions on self-quarantine and any wider restrictions you have put in place;
- A reminder of your rules and policies/procedures on homeworking and business continuity; and

- Any guidance put in place for visitors, events and client meetings.

Is there a risk of employees bringing claims against the business?

If you do not take sufficient steps to safeguard employees' health, e.g. by not following the latest Government guidance and/or failing to fulfil your duties in relation to employees' health and safety, there is a risk of an employee who contracts the virus during the course of their employment bringing a personal injury claim. You can minimize the risk of successful claims by monitoring and implementing Government guidance and keeping your risk assessments up to date and under review.

Travel Protocols

Total ban on travelling abroad

As of March 16, 2020, all Czech nationals and foreigners with permanent or temporary residence exceeding 90 days in the Czech Republic are forbidden to travel abroad. Only exemptions apply to truck drivers, pilots and workers working within 100 kilometres of the state border.

Starting on the same date, all foreigners (except for those with permanent or temporary residence exceeding 90 days in the Czech Republic) are prohibited from entering the Czech Republic. Czech citizens will be able to return from foreign countries only by car via designated border crossings or by plane.

In case they return from the following 15 countries, they will be under mandatory 14 day quarantine - China, Italy, South Korea, Iran, France, Spain, Germany, Switzerland, Norway, Denmark, The Netherlands, Sweden, Great Britain, Belgium, and Austria.

Employee compensation in quarantine / if unable to perform functions

If employees have to self-quarantine for 14 days, do we have to pay them? Are they entitled to statutory sick pay?

If the physician of the employee instructed the employee to self-quarantine, then the employee will be entitled to (i) salary compensation at the level of their average earnings during the first 14 days of the quarantine from the employer and (ii) sick pay payable by the state from the 15th day of the quarantine.

However, if the employee decides to self-quarantine on their own decision (i.e. without the decision of a physician), as a precautionary measure, then he/she should do that either by agreeing on vacation or on unpaid leave with the employer – depending on the option agreed, the employer would or would not be obliged to pay the employee during the period of the self-quarantine.

Do we have to pay employees if we decide to introduce our own rules on self-quarantine?

If your business decided to introduce rules on self-quarantine which go beyond the current Government instructions, you should pay salary compensation at the level of their average earnings to employees who are otherwise able to work but staying at home on your instructions. Alternatively, you may agree with the employee that they will work remotely, in which case they will continue to be entitled to standard salary.

Has the Government introduced any special measures?

The Government has ordered physicians to decide on the quarantine of all persons employed in the Czech Republic who have returned back from high-risk countries (currently China, Italy, South Korea, Iran, France, Spain, Germany, Switzerland, Norway, Denmark, The Netherlands, Sweden, Great Britain, Belgium, and Austria), to a 14-day quarantine. In light of that, all employees returning back from these countries are required to contact their physician (by phone) immediately upon return.

If an employee cannot do their role from home, are there alternatives to paying them sick pay?

If an individual is not actually ill, but has chosen to self-quarantine without medical instruction to do so, he/she can work from home where possible, if agreed with the employer. However, working from home will not be a viable option for every role. You may agree with the employee that he/she takes holiday or unpaid leave for the time away from work. You may not force the employee to take the unpaid leave, however you may order the employee to take a vacation -- in such a case, you must however inform the employee about the time of vacation at least 14 days ahead (unless a longer period has been agreed). Immediate taking of vacation is subject to the consent of the employee.

What if an employee has to care for a child because schools have been closed?

Employees who cannot perform work due to taking care for a child under the age of 10 because schools have been closed are entitled to a leave and may be entitled to a nursing allowance paid by the state. The nursing allowance may

be provided for a maximum period of 9 calendar days, in case of a lone parent for 16 calendar days. The Government promised to extend the nursing allowance for the whole period of the pandemic situation; however, the extension has not yet been officially approved.

Were any special types of leaves introduced to react to the current situation?

No special types of leaves have been introduced yet. The standard types of leaves regulated by the Labour Code are the only options.

Can an employee refuse to come to work/travel for work because he/she is worried about COVID-19?

If an employee does not want to come into work because of genuine fears relating to COVID-19, you should take these seriously. Where possible, you should allow the employee to work remotely or to take time off work as holiday or unpaid leave. You should also remind employees of any support systems already in place, such as an employee assistance programme. If an employee unreasonably refuses to attend work, you may consider disciplinary action. Ensure you deal with similar cases consistently, as with any disciplinary matter, but take into account the particular individual's circumstances and reasons for refusing to attend. However, if you do not take sufficient steps to safeguard employees' health, there is a risk of an employee who contracts the virus during the course of their employment bringing a personal injury claim.

Employee diagnosed with COVID-19

What do we do if someone displays symptoms while at work?

When employee displays symptoms while at work, you should contact the Ministry of Health and the local hygiene station (in Czech "hygienická stanice") immediately by phone and follow their medical advice. Employees diagnosed with COVID-19 should follow medical advice and should not enter the workplace. If employees have been in the workplace within the 14-day incubation period prior to diagnosis, it is advisable that affected areas and common areas within the workplace be thoroughly sanitised for the safety of other employees.

Do we have to shut our offices/workplace if someone displays symptoms?

For now, there is no obligation to shut the offices if someone has displayed symptoms, however, the employer should contact the Ministry of Health and the local hygiene station.

Employee data privacy

Should we tell the rest of the workforce if an employee is diagnosed with COVID-19?

You are not obliged to inform the employees that one of their colleagues has been diagnosed with COVID-19, but under current circumstances such notification is advisable and good transparent practice. However, you cannot name the respective employee directly, even though his/her identity might be evident (due to work absence). Since medical information is sensitive personal data, the name of the diagnosed employee cannot be disclosed even internally and all precautions and medical measures must be done anonymously. For the eventuality other employees in the end find out who the affected employee is, you should remind them not to disclose such information in any way.

Employment term adjustment in the event of operational difficulties

What can we do if COVID-19 causes a downturn in work for our business or supply chain issues?

In case that the employer is unable to provide the employees with work within the scope of their agreed working hours due to a temporary drop in sales of the employer's products or due to a drop in demand for the services rendered by the employer, the employer may agree with the trade unions a lower level of salary compensation payable to such employees for the time when the employer did not assign work to them as a result of these circumstances ("partial unemployment", in Czech "částečná nezaměstnanost"). The amount of salary compensation must be at least 60% of the employee's average earnings. In case that there are no trade unions operating at the employer, the agreement with the trade unions may be substituted by an internal regulation issued by the employer.

In case that the employer is unable to provide the employees with work within the scope of their agreed working hours due to supply chain issues or other operational issues, the employer must pay a salary compensation of at least 80 % of the employee's average earnings to the employees.

In case that the employer is unable to provide the employees with work within the scope of their agreed working hours due to a preventive decision of the employer made to stop the spread of the coronavirus, the employer must pay a salary compensation of 100 % of the employee's average earnings to the employees.

Can we decrease the level of salaries?

Employers may unilaterally decrease the levels of salaries if the salaries are determined by a salary letter (in Czech: "mzdový výměr") or a salary regulation (in Czech: "mzdový předpis"). If salaries are contractually agreed, they may only be changed with by an agreement with the employee. In any case, the principle of equal pay for equal work must be honoured.

Government support

What are out options to get financial support from the state?

- The Government has introduced interest-free loans (up to CZK 15 million) to small and medium entrepreneurs, who may apply for the loan in case that performance from business contracts has been delayed, suspended or cancelled as a result of the measures adopted to fight the spread of coronavirus.
- The Government, in cooperation with the Ministry of Work and Social Affairs, plans to introduce a plan to support employment. The Government first discussed the proposal of the Ministry of Work and Social Affairs on March 17, 2020; however, with no specific results yet. We assume the plan will include financial support to employers covering (a part of) their expenses on salaries for employees who could not perform work due to the current measures. No further information is currently available and so we are monitoring any development.
- Under the Act on Crises, the state is obliged to compensate damage incurred by both legal entities and natural persons as a result of the measures adopted by the state during the state of crisis.

The above provision may most likely be invoked in cases where the Governmental measures directly affected the employer's operations, e.g. when the employer was forced to shut down the operation based on the Governmental decree (e.g. restaurants, various types of shops, etc).

If you have any additional inquiries, please do not hesitate to contact us.

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