

IMPACT OF COVID-19-RELATED MEASURES ON EMPLOYERS IN THE CZECH REPUBLIC – **UPDATED ON 3 APRIL 2020**

As an employer, you have certainly been facing many challenges due to the spread of the coronavirus. Unlike other European countries that have endeavoured to relax their legislation on redundancies, the Czech Republic is among those countries whose government has been calling on employers to maintain jobs and has been taking measures to support the economy (e.g., no-interest loans to businesses, tax suspension, compensation provided to employers for compensatory wages paid by them, etc.).

Below we summarise the consequences of the measures adopted in the Czech Republic for employers:

QUARANTINE

Employees who have stayed in the risk areas are obliged to observe the mandatory 14-day quarantine. Quarantine is an **impediment to work attributable to employees**, and employers must grant leave from work to the employees concerned for the duration of quarantine. Employees are entitled to compensatory wages for the first 14 calendar days of mandatory quarantine, at **60%** of the reduced average **earnings**. However, unlike mandatory quarantine, employees in voluntary quarantine are not entitled to compensatory wages. In most cases, quarantine does not exceed 14 days; should it be extended for a longer period, employees have the right to receive sickness insurance benefits.

During quarantine:

- i. employees can **work from home** (if this is possible in view of the type of their work and subject to agreement with their employer) and receive full wages; or
- ii. employees can take **holiday** if they themselves ask their employer for it. Employers may not order their employees to take holiday for the duration of quarantine. However, if employees are unable to work from home and if they are considerate of their employer's difficult situation and concerned about losing their job, it can be an effective method for mitigating the consequences of the coronavirus pandemic for the employer's business, which will help both parties with regard to the future development of the economy and the labour market.

CLOSURE OF SCHOOLS AND CARE BENEFIT

Due to the closure of schools, employees with sickness insurance and children up to the age of 10 are eligible to receive a care benefit (*ošetřovné*), if they are prevented from working because they need to take care of their children. Effective 26 March, a law was enacted which, among other things, extends the **period for which the care benefit is paid** from the existing nine days (or 16 days in the case of single parents) to the entire period during which schools and other children's educational establishments will be closed, and increases the children's age limit from 10 to 13 years. The law also allows for two carers to take turns in receiving the care benefit, including repeatedly if needed. The care benefit can be paid retroactively. Care benefit is not wages, it represents **60% of the reduced daily assessment basis** and its amount does not depend on the number of children. Employees are not entitled to the care benefit (i) if they work on the basis of an agreement to perform work (*dohoda o pracovní činnosti*) or agreement to complete a job (*dohoda o provedení práce*), or (ii) in the first 14 calendar days of mandatory quarantine.

RESTRICTION OF FREE MOVEMENT OF PERSONS

The Czech government has also issued a number of bans restricting free movement of persons. Although travel to work is one of the exemptions from this ban, employers have responded by transferring their employees to **working from home** ("home office"). When working from home, employees have the right to receive full wages for the work performed as well as other compensations, depending on the home office arrangements of the particular employer. If an employer does not provide home office as a benefit, employees must agree with their employer on the possibility of working from home.

In the case of a suspicion that an employee could be infectious but has not been ordered to remain in quarantine, the employer may agree with the employee that he or she will work from home, or may change the employee's shift schedule, agree that the employee will take holiday or grant leave from work to that employee without compensatory wages. If, in the absence of such an agreement, the employer is still concerned that the employee can be infectious, this constitutes an other impediment to work attributable to the employer and the employee is entitled to **compensatory wages in the amount of average earnings**.

IMPEDIMENTS TO WORK ATTRIBUTABLE TO EMPLOYERS

For economic reasons or as a precaution, and often under the pressure of trade unions, some employers have **shut down plants** or have **restricted operations** for a certain period. This measure has also been adopted by one of the largest employers in the Czech Republic, Škoda Auto, which suspended production on 18 March, closing its plants for more than two weeks. Other international companies with plants in the Czech Republic have been implementing similar measures, justifying them by idle time (*prostoj*), short-time working (*částečná nezaměstnanost*) and other impediments to work attributable to employers.

Transport complications at borders or quarantine result in delays in raw material supplies or cancellations of orders, leading to **idle time**, in which case employers pay at least 80% of average earnings to employees.

The Czech automotive industry in particular has been trying to use the **short-time working** arrangement as a result of a temporary restriction of sales of products or demand for services (some car makers can also apply the "working time accounts", in Czech *konto pracovní doby*). The short-time working arrangement under which employers pay at least **60% of average earnings** to employees is subject to an agreement with the trade unions; where a company has no trade union organisation, such an agreement can be replaced by an internal regulation.

Other impediments to work attributable to employers include temporary shutdown or operation restriction as a result of extraordinary measures; in such a case, employees are entitled to receive **compensatory wages** for the period during which the extraordinary measures are in place, in the amount of their average earnings.

The measures described above are economically taxing for employers in the Czech Republic and are not sustainable over an extended period of time. Some employers have thus been considering the possibility of agreeing on modifications of the type of work and restructuring measures (e.g., termination of employment relationships or changes to more flexible forms of work).

ANTIVIRUS PROGRAM

On 31 March 2020, the Czech Government approved an amendment of the Antivirus Program¹, which is aimed at helping employers whose **businesses are at risk** due to Covid-19 to safeguard jobs by providing compensation to these employers for wage costs incurred by them. The compensation should cover the period from 12 March (when a national emergency was declared in the Czech Republic) to 30 April and it is anticipated to be extended to May. What the program does not, and presently cannot, cover is the economic impact on employment after the national emergency is terminated. Given the situation on the labour market that had already existed for a certain period of time before the national emergency was declared, employers have now been seeking ways to reduce costs, whether by restricting benefits, reducing salaries or restructuring with a more extensive impact on employees.

Under the Antivirus Program, the Labour Office will provide compensation depending on the type of the impediment preventing the employees from performance of work:

¹ The Antivirus Program was approved on the basis of the Employment Act and, therefore, it will not be necessary to adopt new laws.

1. **Mandatory restriction of business operations and quarantine** (Scheme A) - this scheme covers compensation for compensatory wages paid to:
 - a. employees in **mandatory quarantine** (including isolation); compensatory wages will be paid to these employees at 60% of their reduced average earnings².
 - b. employees of **businesses** (e.g., most shops, hotels, restaurants, gambling rooms, casinos, etc.) that were **ordered to restrict or close their operations** due to emergency measures. Employers will pay compensatory wages to these employees at 100% of their average earnings.

Under Scheme A, state compensation is to be provided at **80%** of the compensatory wages paid by employers, including social and health insurance payments, subject however to a maximum of **CZK 39,000/month** per employee.

2. **Related economic problems** (Scheme B) - this scheme covers compensation for compensatory wages:
 - a. in the event that employers cannot assign work to employees due to the fact that a significant part of them (generally, a significant part means at least 30% of employees) or the **key employees** are absent, e.g., they remain **in mandatory quarantine or take care of children**. Employers will pay compensatory wages to these employees at 100% of their average earnings.
 - b. for employers which have experienced a **limited availability of raw materials, products or services** necessary for their operation (production downtime). These employers will pay compensatory wages to their employees at 80% of their average earnings.
 - c. for employers which are **facing a limited demand** for their services, products and other outputs (short-time working arrangement). These employers will pay compensatory wages to their employees at 60% of their average earnings.

Under Scheme B, state compensation is to be provided at **60%** of the compensatory wages paid by employers, including social and health insurance payments, subject however to a maximum of **CZK 29,000/month** per employee.

Employers entitled to compensation are those which meet certain predefined conditions, in particular: (i) compensation will only be paid in relation to employees with employment contracts, (ii) the employer must comply with its obligations arising from the Labour Code, in particular to correctly assess and prove the impediments to work, (iii) the employees' employment may not be terminated and the employees may not be in their notice period. With regard to employees who are foreigners, the relevant criteria include the Czech-law employment contract and participation in the social security scheme in the Czech Republic.

Employers can file an application for compensation under the Antivirus Program only electronically from **6 April**. The application for compensation only requires a minimum of supporting documents (in particular, employer's affidavits), i.e. there is no need to submit documents proving the impact of the epidemic on the employer and the occurrence of specific impediments to work. Nevertheless, the Ministry of Labour has announced that it intends to carry out random as well as subsequent inspections to verify that the conditions for granting the compensation were satisfied.

If you as an employer intend to use the funds under the Antivirus Program, we recommend that you do not underestimate the potential risk of inspection. The list of the documents that will be checked by the Labour Office during such inspection is quite extensive and it is clear that the inspection will not only be aimed at the occurrence and existence of the impediments to work but also at the compliance with the employment legislation in general. During the inspection, the Labour Office can ask for, in particular, the employment contracts, internal regulations governing the impediments to work, agreements with trade unions governing the payment of reduced compensatory wages, payroll records, etc.

² The reduced average earnings are calculated based on the employee's salary, but are not identical with the employee's salary. They are determined by calculating the average hourly wage which is subsequently adjusted by using the relevant reduction limits defined by law.

It cannot be ruled out that there will be **further amendments** to the Antivirus Program. An extension of the program is currently being considered to include other measures aimed at supporting employers which, despite the current difficult situation, continue to pursue their business activities. It is intended to serve as **positive motivation**. The government is also considering economic support measures for larger businesses.

OTHER MEASURES TO SUPPORT BUSINESSES

In addition to the Antivirus Program, other measures to support businesses have been adopted, in particular:

- **No-interest loans to businesses provided by commercial banks and guaranteed by the Czech-Moravian Guarantee and Development Bank (CMZRB)** (so-called COVID 2, which follows on from COVID 1, the previous allocation of no-interest loans that has been used up). **The State plans to allocate billions**; the amount of loan per business may range between CZK 10,000 and CZK 15 million, with maturity of up to two years and a grace period of up to 12 months. COVID 2 covers particularly (i) the acquisition of current small tangible or intangible assets, (ii) the acquisition and financing of inventories, or (iii) other operating expenses (wages, utilities, rent, etc.), up to 80% of eligible expenditure. Loans will be provided to small and medium-sized enterprises. The COVID 2 program is not intended for projects implemented in the Capital City of Prague.
- **Tax Relief Package I** ("*Liberační daňový balíček I*") which, in particular, (i) allows taxpayers to file personal and corporate income tax returns and withholding tax declarations **until 1 July 2020** without having to file any request for postponement of the original deadline, (ii) waives the obligation to pay administrative fees for requests for waiver of a fine for late submission and requests for tax deferment, if submitted by 31 July 2020, (iii) automatically (or, as the case may be, on the basis of an individual request) waives the fines for late submission of the VAT control report.
- **Tax Relief Package II** ("*Liberační daňový balíček II*") which, in particular, (i) waives the obligation to pay advance payments for personal income tax and corporate income tax due in June 2020, and (ii) introduces the "loss carryback" measure whereby it will be possible to apply the tax loss for the current year 2020 retrospectively to the taxable periods of 2019 and 2018, both with regard to personal income tax and corporate income tax.

The Ministry of Finance has stated that these supportive measures which it considers to be immediate support will be supplemented with other measures to mitigate the losses of businesses. At the same time, however, the Minister of Finance points out that the compensation will only apply to the damage actually incurred, not the loss of profit.

The situation is evolving very rapidly. We are monitoring the developments and consulting the individual measures relating to employees with clients.

CONTACTS



Veronika Kinclová
Associate

T +420 222 555 242
E veronika.kinclova
@cliffordchance.com



David Koláček
Partner

T +420 222 555 262
E david.kolacek
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, Jungmannova Plaza,
Jungmannova 24, 110 00 Prague 1, Czech
Republic

© Clifford Chance 2020

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Moscow • Munich • Newcastle • New York •
Paris • Perth • Prague • Rome • São Paulo •
Seoul • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.