

## CHANGES TO THE ANTIVIRUS PROGRAM AND OTHER MEASURES TO SUPPORT EMPLOYMENT IN THE CZECH REPUBLIC – **UPDATED ON 1 JULY 2020**

As an employer, you have certainly faced and probably still are facing many challenges due to the coronavirus spread. 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 the 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 measures that will remain relevant for employers for some time after the pandemic subsides.

### ANTIVIRUS PROGRAM

Schemes A and B under the Antivirus Program which help employers safeguard jobs by providing compensation for compensatory wages have been extended until 31 August. Additionally, Scheme C has been introduced under which social security payments are waived for certain employers.

Under Schemes A and B, the Labour Office provides compensation depending on the type of impediments to work:

1. **Mandatory restriction of operation and quarantine** (Scheme A), under which compensation is provided for compensatory wages:
  - a) paid to employees in **mandatory quarantine** (including isolation); employees receive compensation of 60% of their reduced average earnings<sup>1</sup>;
  - b) paid to employees of businesses that were ordered to restrict or close their operation under an emergency or extraordinary measure; employees receive compensation of 100% of their average earnings.

Under Scheme A, the state contribution is 80% of the wage compensation paid by employers, including social security and health insurance contributions, subject however to a maximum of CZK 39,000/month per employee.

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<sup>1</sup> 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.

2. **Related economic problems** (Scheme B), under which compensation is provided for compensatory wages, mainly:
- a) for employers which cannot assign work to employees due to the fact that a **significant part** of their employees (usually at least 30%) or their **key employees** are absent due to the fact that they are, for example, in mandatory quarantine or need to take care of their children, in which case employees receive compensation of 100% of their average earnings;
  - b) for employers which have experienced a limited availability of raw materials, products or services necessary for their operation (due to production downtime) and which pay to their employees a wage compensation of at least 80% of their average earnings;
  - c) for employers which are facing **limited demand** for their services, products and other outputs (so-called short-time working) and which pay to their employees a wage compensation of at least 60% of their average earnings (based on an agreement with trade unions or an internal regulation) for the days on which employees are "impeded to work", i.e., they do not work. Employees are entitled to full wages for the days on which they perform their work.

Under Scheme B, the state contribution is **60%** of the wage compensation paid by employers, including social security and health insurance contributions, subject however to a **maximum of CZK 29,000/month** per employee.

The entitlement to compensation under Schemes A and B is conditional on the employer meeting certain predetermined conditions, in particular: (i) the compensation is only paid for employees in employment relationships, (ii) the employer must comply with its obligations under the Labour Code, particularly to correctly assess and prove the impediments to work, (iii) employees cannot be dismissed and cannot be serving notice period (except for a notice of termination pursuant to Section 52(g) and (h) of the Labour Code), (iv) the employer may not be in liquidation and may not be bankrupt. In the case of employees who are foreigners, the relevant factors include whether they are employed on the basis of an employment contract under Czech law and whether they are subject to the Czech social security scheme.

Employers may file their applications for compensation under the Antivirus Program Schemes A and B only electronically. In connection with the application, the subsequent agreement and the compensatory wage compensation statement, it is only necessary to submit the specified documents (in particular, the employer's affidavit); there is no need to submit documents proving the impacts of the pandemic on the employer and the occurrence of the impediments to work. Nevertheless, the Ministry of Labour and Social Affairs has warned that it intends to conduct random as well as subsequent inspections.

If you are an employer who has received or will receive compensation under the Antivirus Program Schemes A and B, we recommend that you should not underestimate the risk of potential inspection. The list of documents which will be inspected by the Labour Office is quite long and indicates that the inspection will not focus only on the existence of the impediments to work but will also focus on the compliance with the employment law in general. During the inspection, the Labour Office can request the employees' employment contracts, internal regulations governing the impediments to work, agreements with trade unions allowing the payment of reduced wage compensations, payroll records, etc.

### 3. **Waiver of social security payments for June, July and August 2020** (Scheme C):

Under the law governing the waiver of social security payments, the payments of social security and employment contributions payable by the employers as taxpayers may be waived **for businesses with up to 50 employees** in employment relationship (who participate in the sickness insurance scheme) for June, July and August 2020, provided that the businesses meet the following conditions:

- i. The number of employees on the last day of the calendar month for which the social security payment is to be waived **has not reduced by more than 10%**, compared to the last day of March 2020;
- ii. The sum of the wages assessment bases (i.e. the volume of wages) for the calendar month for which the social security payment is to be waived **has not reduced by more than 10%** compared to the March 2020 figures;
- iii. The employer pays the insurance contributions paid by the employer on behalf of the employees in a proper and timely manner;

- iv. The employer **does not use other subsidies** under the other Antivirus schemes for the same calendar month;
- v. The employer is resident for tax purposes in a state specified by the law (i.e., thus excluding the tax havens residents).

The conditions must be assessed separately for each calendar month. The employer will be subject to subsequent inspections.

Social security payments can be waived in full only in cases where the maximum salary assessment base amounts to **1.5 times the average salary** (CZK 52,253). However, this does not mean that a social security payment cannot be waived partially for an employee with a higher salary. In such a case, the maximum portion that can be waived corresponds to 1.5 times the average salary and the remaining part will have to be paid by the employer. Also, the employer will not be entitled to apply reduction of the assessment base in the case of employees dismissed due to organizational reasons.

It cannot be ruled out that there will be further amendments to the Antivirus Program, mainly due to the dissatisfaction of some employers with the predetermined conditions. Recently, the requests to increase the state contribution in Scheme B to 80% and to enable the use of Scheme C for employers with more than 50 employees have been emphasized.

## **POSTPONEMENT OF SOCIAL SECURITY PAYMENTS AND EMPLOYER'S INSOLVENCY**

The bill reducing penalties on social security and employment contributions can represent an alternative for businesses with more than 50 employees, which are not eligible under Scheme C of the Antivirus Program. The bill effectively allows all employers to postpone the payment of the social security and employment contributions or a part thereof, payable by the employers as taxpayers, for May, June and July 2020. Any penalties imposed on such postponed payments **will be automatically reduced by 80%**, provided that:

- i. the employer has paid the insurance contributions paid by the employer on behalf of the employees in a timely manner and in full;
- ii. the employer will pay the outstanding contributions no later than by **20 October 2020**;
- iii. the employer will continue to submit the "Report on Social Security Payments" for each calendar month to the competent social security authority by the specified deadline, containing all the information required, including information on payments postponed by the employer.

Although any insolvency petitions filed by creditors will not be acted upon until the end of August 2020 thanks to the "Lex Covid", under the new law focused on the **protection of employees in the case of the employer's insolvency**, employees may enforce their claims during the pandemic in another way. If an employer does not pay wages to its employees, employees may apply for their due wages to be paid by the Labour Office (subject to the conditions set out by law). Employers will be obliged to refund the amounts so paid to the Labour Office within 15 business days of having received a written request from the Labour Office. These requests cannot be sent earlier than 3 months after the end of the period during which insolvency petitions filed by creditors will not be acted upon (i.e. such a request cannot be made before 1 December 2020).

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