

## **Coronavirus as an operational reason allowing to pay a wage compensation of at least 60% and effective election of employees' representatives**

Coronavirus and related employers' measures to eliminate its spreading at the workplace are one of the most recent topics today. Employers are starting to solve the optimization of their wage costs very fast in order to ensure the proper functioning of their business as long as it's possible. The failure of employers' orders/work may sooner or later lead to redundancies of employees, but the coronavirus epidemic itself does not constitute an immediate reason for employers to propose the collective redundancies. It is necessary to emphasize that the notices of employees for organizational reasons and collective redundancies are, despite the State of Emergency that was now declared in the Slovak Republic, still strictly regulated by the Labour Code.

If the situation is serious (e.g. decreasing turnover of the employers), employers can agree on the collective redundancies of employees at the earliest in a few weeks, as they have to comply with the deadlines and process specified in the Labour Code. It is necessary to realize what collective redundancies actually mean; this is the reason for the termination of employment with employees because the employer is being wound-up, relocated (and the employee does not agree to change the place of work), or the employee becomes redundant due to the employer's written decision to reduce the number of employees to ensure work efficiency or other organizational changes. The latter reason may, in our opinion, be a frequent reason for terminating employment in the future as a result of spreading of that disease. At the same time, the ratio condition of the number of redundancies to the total number of employees in the employer's status must be met. This process is very lengthy, because the employer can start dismissing employees only after having been interviewed by the employees' representatives and 30 days after receiving the information on the negotiations by the employees' representative and the Office of labour, social affairs and family.

However, from our advocacy experience and practice of mediators and arbitrators for the resolution of collective disputes, we know that this is not a scenario that is currently being dealt with acutely by big employers and Trade Unions. This dispute may come, but at present employers are mainly dealing with cost optimization and maximizing cash, what is understandable. Indeed, any collective redundancies imply additional employee claims such as compensation for termination and severance grant, which is in direct contradiction to the necessary savings and the immediate need for cash.

At present, an agreement *on serious operational reasons appears to be the best measure for employers in terms of the anti-coronavirus tool at the workplace and in particular at the need to maximize cash and cost savings, which may be concluded only with employees' representatives (i.e. trade unions, works council or works trustee)*. In this situation, we therefore recommend to employers (where employees' representatives operate) to conclude the agreement on serious operational reasons. In the agreement, among other operational reasons for which the employer cannot assign work to the employee, the employer also defines the risk of coronavirus spreading. In the event of serious operational reasons as defined in the agreement, the employer does not assign work to the employee, does not allow him to enter the workplace, but the employee is entitled to a wage compensation of at least 60% of the average wage, thereby saving the employer's costs. We note that, unless there are employee's representatives, the employer cannot unilaterally instruct the employee to stay home and not work due to the spreading of coronavirus and to pay him only 60% of his average salary and at the same time cannot agree on such with the employee individually. If there are no representatives of

employees or if he does not agree with them, it is considered an impediment on the part of the employer, what means, in case of employees staying home and not working from home, that he must pay them 100% of their average earnings. We would like to state that the situation for employers is easier in the Czech Republic, because if there are no employees' representatives operating, the employer can decide by himself on serious operational reasons when the employer cannot assign work to the employee and then pay the employees 60% of their average earnings.

At present, the agreement on serious operational reasons is the most effective way of maximizing cash for the employer. The employer's order for taking leave is possible and effective in terms of spreading the disease, but not in terms of the employer's costs. It should be noted that employees on leave are entitled to 100% of their average earnings.

If the employer does not have employees' representatives, the most effective tool against spreading disease at the workplace and at the same time optimizing the costs for the employer seems to be the agreement between the employee and the employer to keep the employee at home and letting him work from home. As you have already learned from many articles, the employer cannot order employees to work from home, so called "Home office", but he can individually agree with the employee about working from home, as well as to change his wage and work scope. Without the employee's or mutual agreement, the employer cannot reduce the employee's wage. It will always be an impediment to work on the part of the employer and the employee is always entitled to 100% of his average earnings in such unilateral decisions.

On the grounds of our advocacy practice, including the practice of collective dispute mediators who deal with collective labour disputes on a long-term basis, we would like to propose to employers to allow employees to choose together with the employer, the employees' representatives as works trustee or works council as quickly as possible, so the employer and the employees' representatives have an opportunity to conclude an agreement on serious operational reasons. The Labour Code allows members of the works council to be elected directly by secret ballot on the basis of a list of candidates proposed by at least 10 % of the employees. The elections shall be valid if at least 30% of all employees who have the right to vote participate in the voting for members of the works council. The candidates with the highest number of votes shall then become members of the works council. We believe that, in cooperation with employees, elections can be organized quickly and effectively so that employee's representatives are validly elected, and that employers and employees' representatives can quickly conclude an agreement on serious operational reasons in the context of a pandemic.

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