

Legislative changes in occupational health and safety and assessment of medical fitness for work

In connection with the gradual adoption of legislative measures related to the emergency situation declared as a result of the spreading of the COVID-19 virus, on 02.04.2020 the National Council of the Slovak Republic approved an amendment to Act no. 124/2006 Coll. on health and safety at work (hereinafter the “Occupational Safety and Health Act”). The aim of this amendment is to relieve employers and entrepreneurs in times of crisis from the fulfillment of their obligations under this Act, which, objectively, notwithstanding the measures taken in a crisis situation, cannot be met or would be particularly difficult or disproportionately burdensome. The amendment is effective from 04.04.2020.

On 03.04.2020 also the Act on emergency measures in the field of health, which supplemented several laws, of which the most important for employers is the Act no. 355/2007 Coll. on the Protection, Support and Development of Public Health (hereinafter the “Public Health Protection Act”), which regulates the assessment of the health capability of employees for work. The amendment is effective from 06.04.2020.

Please find the overview of the changes that have been adopted:

The Occupational Safety and Health Act

1. Postponement of employer's information duties

If during the duration of an emergency situation, the state of emergency or the state of alarm declared in connection with COVID-19 (hereinafter “*crisis situation*”), an employer recruits an employee, allocates him to another workplace or job, or introduces new technology, workflow or the work equipment, **he is not obliged to acquaint the employee with:**

- (i) legislation and other regulations to ensure safety and health at work;
- (ii) the principles of safe work, health protection, safe behavior and safe working practices;
- (iii) existing and foreseeable hazards and threats, with impacts that they may cause to health and protection against them;
- (iv) prohibiting entering the area, staying in the area, and engaging in activities that could directly endanger the life or health of an employee;
- (v) a list of works and workplaces prohibited to pregnant women, mothers up to the end of the ninth month after the childbirth, breastfeeding women and juvenile employees.

(hereinafter “*OSH rules*”).

The postponement of the employer's obligation to inform employees about OSH rules is only possible if in a crisis situation these obligations cannot be fulfilled objectively and at the same time failure to fulfill these obligations will not immediately and seriously endanger life and health.

If the employer is unable to fulfill the information duty in a timely manner during the duration of the emergency situation, he is obliged to fulfill these obligations additionally as soon as possible, at the latest within one month from the date of the recall of the crisis situation.

2. Suspension of time limits for the fulfillment of obligations concerning the employees

The amendment introduces a mechanism of temporary suspension of time limits to fulfill the following obligations of the employer:

- (i) repeatedly acquainting employees with OSH rules at intervals specified in the internal regulation pursuant to § 7 (5) of the Occupational Safety and Health Act (at least every 2 years, unless the law imposes a shorter deadline);
- (ii) ensuring the participation of employees in the reconditioning stay according to § 11 par. 12 and 13 of the Occupational Safety and Health Act;
- (iii) provision of preventive medical examinations for employees pursuant to Section 16 (6) of the Occupational Safety and Health Act;¹
- (iv) provision of updating training for employees pursuant to Section 16 (8) of the Occupational Safety and Health Act.

For the above stated obligations, if the deadline for meeting them falls on the duration of the crisis situation, it is considered that the deadline for meeting them during the duration of the crisis situation is suspended (i.e. does not lapse). In addition, the lawmaker has introduced a rule according to which all suspension periods which are due to suspension have to run within one month after the end of the crisis situation, as well as the deadlines which actually fell to one month from the date of the end of crisis situation, shall stay maintained, although they were not suspended, if the employer fulfills this obligation no later than one month after the end of the crisis situation.

Example:

The crisis situation (in particular an emergency situation) in Slovakia is valid from 12.03.2020 (from 6.00 am) and lasts until further notice. For example, if the time limits for the employer's obligation to repeatedly acquaint the employees with the OSH rules expired on 15.04.2020, the period of 35 days between the beginning of the crisis situation and the date on which the employer's obligation to repeatedly acquaint the employees with the OSH rules was supposed to take place, shall be suspended and will not start to lapse until the day following the end of the crisis situation. That means if, for example, the crisis situation is revoked on 01.06.2020, the period for employer's obligation to repeatedly acquaint the employees with the OSH rules would start on 02.06.2020 and expire on 06.07.2020.

If in the same situation (i.e. the crisis situation is revoked on 01.06.2020), for example, the deadline for employer's obligation to repeatedly acquaint the employees with the OSH rules would expire within one month of the date of the withdrawal of the crisis (e.g. 15.06.2020), the employer does not need to fulfil the obligation on such date, but may fulfil it at latest in one month after the crisis situation has been revoked, i.e. until 01.07.2020.

In case of the employer's obligation to repeatedly acquaint the employees with the OSH rules, same as in case of postponement of the employer's information duty under sec. 1 hereof, the suspension period can apply only if it is objectively impossible to fulfill the obligation to notify

¹ This explicitly concerns people who by law need to undergo medical examinations which are necessary to maintain the validity of the evidence of professional competence for the performance of the activities listed in Annex no. 1a. q) to s) of the Occupational Safety and Health Act (e.g. certificates of inspection technicians, certificates for repairs of reserved technical equipment, certificates of service of technical equipment, etc.).

within the original period and at the same time if failure to do so does not immediately and seriously endanger life and health.

The deadlines for fulfilling the remaining obligations mentioned above are unconditional, since they are obligations which fulfillment is not entirely within the competence of the employer, but is necessarily linked to the cooperation of third parties or facilities which activity is or may be limited or suspended in a crisis situation.

3. Suspension of time limits for official examinations, technical examinations, professional examinations and inspections of working equipment

A procedure similar to that for employees' obligations under sec. 2 hereof has also been introduced for the time limits for the performance of official examinations, technical examinations, professional examinations and inspections of working equipment established pursuant to Section 9 (1) par. a) and Section 13 (3) of the Occupational Safety and Health Act in relation to Section 9 (2) of directive no. 508/2009 Coll., which lays down details to ensure safety and health protection at work with technical equipment pressure, lifting, electric and gas and which also lays down technical equipment that is considered as reserved technical equipment, as amended and consequently to Section 5 (3) of the Slovak government regulation no. 392/2006 Coll. on minimum safety and health requirements for the use of work equipment. These provisions do not apply to maintenance which is important from the point of view of ensuring the safe operation of technical equipment or work equipment. The condition for suspension and maintaining time limits is again the objective impossibility of fulfilling the obligation and protecting the life and health of employees. At the same time, the employer is obliged to ensure the highest possible level of safety of the work equipment operated, including dedicated technical equipment. Failure to comply with this obligation cannot directly and seriously endanger life and health. The risk of this threat is at the discretion of the employer.

Public Health Protection Act

The amendment introduced that in times of crisis situation **employers do not have to fulfill certain obligations related to the occupational protection of health** (e.g. health risk assessment at work, reporting obligations, working rules to protect and support the health of employees at work, etc.), except the obligations to take measures in order to reduce exposure of employees and residents to labour and working environment factors. **The employer is obliged to fulfill these obligations immediately after the end of the crisis situation.**

An important change is that, during the crisis situation, the medical capability for work is not assessed and medical preventive examinations in relation to work with employees are not performed. This applies in principle to any preventive medical examinations performed by the occupational health service, the activity of which in this respect is also directly suspended by law. **The assessment of the medical fitness of a natural person applying for employment during a crisis situation, shall be replaced by a declaration on honor. The declaration must be replaced by an assessment of medical examination for work no later than 90 days after the end of the crisis situation.** Regarding repeated assessment of the medical capability of a person who is already working with the employer, a declaration is not necessary by law, but we still recommend to secure it. Unlike jobseekers whose medical examination to work must be assessed no later than 90 days after the end of the crisis situation, the law does not provide a specific time limit for medical examinations of employees and therefore the above mentioned general rule, according to which this obligation shall be complied immediately after the crisis, must be applied.

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