

Coronavirus and workplace. How to proceed? ***A brief manual for employers***

Nowadays, when the world is fighting a pandemic of coronavirus, each of us is trying to take appropriate measures to prevent or at least eliminate it. The workplace is one of the places with the greatest probability of its spreading and that is why employers are looking for the most effective ways of dealing with the situation. Below is an overview of the measures the employer can take these days, as well as answers to the most frequently asked questions.

Which measures should the employer take?

Employers are obliged to ensure working conditions so as not to endanger the health and safety of employees. Therefore, most employers are concerned about the spreading of coronavirus in the workplace, as it is a place with increased concentration of people. The employer is obliged to apply the general principles of prevention in the implementation of measures necessary to ensure safety and health at work, the general principles of prevention also include the elimination of hazards and the resulting risks, as well as risk assessment. Accordingly, the employer is obliged to assess the risk and, based on this assessment, is authorized to take the necessary measures to ensure the protection of employees' health. Employers should therefore take all appropriate measures to detect the presence and avoid spreading of this virus. Suitable measures are for example: reduction or cancellation of business trips, agreement on work from home, reduction of personal meetings, provision of available sanitary facilities, appropriate training of employees, minimization of visits to the workplace, isolation of the risk employees.

Does the employer have the right to ascertain whether the employee or his family member has arrived from abroad or whether he or she has met a person diagnosed with coronavirus?

Although it is information related to the private life of an employee, we believe that in this case the employer's interest in ensuring health protection at work exceeds the right of employee for a privacy. In this situation, the employer is entitled to request such information from the employee.

Can the employer restrict the employee from entering the workplace?

Given the nature of the coronavirus and the potential for its spreading, it is the most appropriate measure to ensure that an employee who might be potentially at risk or who are the threat themselves “stays at home”. For this purpose, the following options may be considered:

- Ordering leave

The employer may authoritatively order the employee to take leave, but not later than 14 days before the commencement of leave. This measure is therefore not very flexible and effective solution to the situation. However, if there is an agreement between the employee and the employer, the employee can start taking leave immediately.

- Work from home or so called „Home office“

For kind of work, which can also be performed from home, not only at the workplace, the proper solution may be so-called “Home office”.

WARNING! The employer is not entitled to order the employee to work from home in the form of a “Home office”, unless such a method of work has been agreed upon, for example, in the employer's internal regulations or in the employment agreement. For this purpose, in order to perform work in the form of “Home office”, an agreement between the employee and the employer is needed, as it is a change in the working conditions.

- Using extra (compensatory) leave

If the employee has unused compensatory leave for the overtime work or work on holiday, taking of this leave may also be considered. The compensatory leave should be agreed between employer and employee. The employer shall provide leave to the employee upon an agreed date. If the employer and the employee do not agree on the date for taking extra leave, the employer is obliged to provide the employee with the extra leave at the latest within the four calendar months (in case of overtime)/ or three calendar months (in case of work on holiday) following the month in which the work was performed (§ 121 and § 122 of the Labor Code).

- Impediments at work on the part of the employer

If there is a need for a general solution to the situation with coronavirus in relation to employees who have not been ordered or agreed to have leave, or agreed otherwise on their absence at work and who are unable to work from home, impediments at work on the part of the employer come into consideration.

WARNING! In the case of employers' impediments at work, the employer does not assign work to the employee, does not allow him to enter the workplace, but is obliged to provide the employee with the wage compensation equal to 100% of the employee's average wage.

- Agreement on serious operational reasons

If the employer has employees' representatives, it is possible to conclude an agreement on serious operational reasons. Under this agreement, if there are serious operational reasons (including the risk of coronavirus spreading), the employer does not assign work to the employees, does not allow them to enter the workplace and the employee is entitled to a wage compensation of at least 60% of the average wage.

WARNING! An agreement on serious operational reasons may only be concluded with employees' representatives.

What to do in the case of employees who have returned from abroad?

Due to the declaration of an emergency situation in the territory of the Slovak Republic, the Public Health Authority of the Slovak Republic ordered a measures pursuant to which all persons with permanent and temporary residence in the Slovak Republic who returned from abroad after 7 a.m. on March 13 (before this date only people arriving from Italy, Korea and Iran), are obliged to remain in home isolation for 14 days. At the same time, these persons are obliged to report this fact by telephone or electronically to the healthcare provider, who is obliged to provide such persons with a confirmation of incapacity for work. This measure does not apply, for example, to track drivers entering the territory of the Slovak Republic for the purpose of transporting, loading and unloading goods. The absence of these persons at work must therefore be regarded as an impediment at work on the part of the employee due to temporary incapacity for work, for which the employee is entitled to wage compensation within the first 10 days of incapacity pursuant to Act No. 462/2003 Coll. on compensation of incomes in case of temporary incapacity for work of an employee, as amended and subsequently as of 11th day for a sickness allowance under the Act no. 461/2003 Coll. on Social Insurance as amended.

What if the employee has returned from abroad or has been in contact with the infected person but still goes to work?

In such a case, the employee violates the current Slovak Public Health Office and the employer is entitled to order the employee to stay at home.

Can the employee decide to stay home without obvious symptoms of the disease, even if he has not returned from abroad?

Among other things, it may happen that an employee without any symptoms decides on his own initiative to undergo home isolation, or due to concern for his health or the health of his family stops going to work (without disposing with certificate of temporary incapacity for work issued by doctor). In such case, the employee may only stop going to work if he agrees

with the employer on the grounds of absence from work. In this context, it is possible, for example, to grant leave on other grounds foreseen by the Labor Code, with or without compensation of wages as agreed between the employer and the employee.

WARNING! An employee who has not been recognized as being temporarily incapable for work (because of symptoms or returning from abroad) cannot unilaterally decide stop going to work unless he agrees with the employer on leave, unpaid leave, work from home or another way of justifying absence from work as described above. The absence of an employee at work without justification shall be considered as a breach of work discipline.

In addition, please note that the Employer is obliged to provide its employees with working conditions so that they can properly perform their work tasks without endangering life and health. If the employee refuses to carry out work or to comply with an instruction that directly and seriously endangers the life or health of the employee or other persons such action may not be considered as a failure to fulfill obligation = breach of the work discipline; if employees' life or health are demonstrably threatened as a result of failure to comply with the conditions in the field of occupational health and safety, employees are not obliged to comply with the employer's instructions.

What if employees are subject to quarantine ordered by the Public Health Authority?

In the event that an employee is subject to a quarantine prescribed by the Public Health Authority, the employer shall justify the absence of the employee at work during the duration of the quarantine. After the quarantine is ordered, the employer is obliged to assign a different kind of work to the employee or to work in another place (i.e. also “Home office”).

The employer no longer needs the employees' consent to assign them another work because of quarantine.

WARNING! If the employer does not have any other kind of work for the employee or work elsewhere, in this case it is an impediment at work on the part of the employee. The doctor shall recognize the person to whom the quarantine measure has been ordered as temporarily unable to work. During this time, the employee is entitled to compensation of the employer's income during the first 10 days of the quarantine measure, and for a sickness allowance under the Act on Social insurance as of 11th day of work incapacity.

How to proceed in case of employee who was confirmed to have a coronavirus?

If the employee has confirmed occurrence of a virus, he/ she will be recognized as temporarily incapable of work and entitled to wage compensation, and subsequently to

sickness allowance as described above. As it is an infectious and transmissible disease, the employee will also be subject to quarantine measures; at the same time, it can be expected that due to the health condition of the employee, his / her assignment to another job will not be applicable.

What about employees who take care for children affected by the closure of school facilities?

In the situation where the employee remains at home because the school attended by his/ her child has been closed at the discretion of the competent authorities, that situation may be regarded as an impediment at work on the part of employee without wage compensation.

Pursuant to Act on social insurance, this employee may claim a nursing benefit in the relevant branch of the Social Insurance Agency - in the case of care for a healthy child up to 10 years of age, if the school attended by the child has been closed or a quarantine measure ordered for particular child.

Employee may apply for a nursing benefit even in case he or she is taking care of a child older than 10 years of age (if doctor evaluates the child's mental and physical abilities and concludes that all day care by parent is necessary).

Should you have any further questions please do not hesitate to contact us