



Optimistic prognoses or guaranteed information regarding the end of the global pandemic of COVID-19 did (unfortunately) not come true, and we must therefore deal with this disease and its consequences more than a year after its official outbreak in the Czech Republic. Although we would all like to see that the situation is under control and the responsible authorities know exactly what to do and how, both the issued measures and related communication are still quite confusing. Therefore, we summarize for you the most important information about current development below – in particular the information on mandatory testing of employees in companies and related personal data issues, the newly effective Pandemic Law and the newly planned compensation programs COVID 2021 and COVID – Nepokryté náklady.

## CURRENT INFORMATION REGARDING COVID-19

### MANDATORY TESTING OF EMPLOYEES IN THE WORKPLACE

In connection to the repeated declaration of the state of emergency, the Czech government has implemented **new measures in order to combat the spreading of the COVID-19 disease** concerning testing of employees and employer duties that arise from them. These individual measures shall apply until further notice. We bring you a summary of the most important information regarding these measures below.

#### Who?

Since **12 March 2021** all employers on the territory of the Czech Republic, who are entrepreneurs or national or state companies and employ **at least 250 people**, are obliged to allow entrance to the workplace only to employees that have undergone the relevant test in the past 7 days.

Above mentioned also applies to employers that employ **at least 50–249 people**. The only difference is that a slightly extended period applies to them – they are obliged to demand proof that they have taken a relevant test from **15 March 2021**.

Effective from **26 March 2021** (including), the mandatory testing of employees shall begin to apply also to employers who have from **10 to 49 employees**.

Effective from **6 April 2021** (including), the mandatory testing of employees shall also begin to apply to the remaining part, i.e. to employers with **1 to 9 employees** and **self-employed persons**.

#### Who to test and who not?

The mandatory testing applies to **all employees of employers in question**, whereas also agency assigned employees and **other persons** that, based on a different legal relationship than employment, work or perform similar activity in the employer's workplace together with his employees (e.g. various supply works).

On the other hand, employees who (i) **suffered from COVID-19** confirmed by a laboratory, their isolation period has passed and it has been less than 90 days since their first RT-PCR or antigen test, or those who (ii) have a **certificate of performed vaccination** against the COVID-19 disease issued by the Ministry of Health and more than 14 days have passed since the second vaccine (in case of the two-doses scheme) or since the first vaccine (in case of a one-dose scheme) **do not need to take any test**.

Mandatory testing shall not apply to employees who are working from home office. If an employee is performing work exclusively outside of the employer's workplace (e.g. various salesmen), the employer shall enable such an employee to take the test outside of the workplace.

Employees of employers, who are obliged to test employees, must undergo the testing. Otherwise, the employees violate their employment obligations and will not be permitted to work in the employer's

workplace. If the employee has not agreed on home office, vacation or unpaid leave with the employer, then his/her decision not to undergo the tests constitutes an impediment of work on the side of the employee without being entitled to wage.

### How?

**Employers are obliged to ensure the testing for their employees in at least one of three different ways –** (i) RT- PCR test, (ii) POC antigen test or a (iii) preventive test (provided by the employer).

The conditions for **RT-PCR tests** remain unchanged and are executed only by certified sampling places. **POC antigen tests** are executed in a network of authorized sampling centres, or by other healthcare providers (e.g. occupational doctors). **Preventive tests** may be performed by a laic person or by the employee himself in the workplace.

The frequency of testing should be at least once in 7 days.

### What are follow-up obligations?

If an employee underwent an RT-PCR or antigen test, then he is obliged to prove it in a form of a confirmation issued by a healthcare provider. **In case of preventive tests, it is the employer's obligation to keep records of conducted tests of individual employees.**

## **MANDATORY TESTING AND PERSONAL DATA PROTECTION**

On the basis of extraordinary measures of the Ministry of Health, companies are currently undergoing extensive testing of employees and other persons entering their establishments, during which extensive processing of personal data takes place. In the given case, it is the processing of personal data on health status, which according to the GDPR have a higher degree of protection.

Many questions from both employers and tested persons are about whether they are entitled to process the personal data at all. The answer is yes, they are, because when providing testing, employers (as controllers of personal data) perform imposed obligations under extraordinary measures and thus do not need another legal reason for this activity (e.g. a consent of tested person). However, it is essential that, as controllers of personal data, they comply with the principles set out in the GDPR during processing and are also able to prove this in the event of a control or complaint by the data subject. The basic principles applicable to any processing are, in particular, transparency, minimization of the scope of processed data, purpose limitation and ensuring the security of processed personal data.

The basis is therefore to always provide the tested persons with information on the processing of personal data, which will meet the requirements of Articles 12 and 13 of the GDPR, with the scope of processed information generally not exceeding the basic identification data of the person, insured person number, health insurance company data, data on test taken and the result of the test, or the basis for exceptions from testing. The purpose of processing can then only be to ensure the individual steps within the testing (according to extraordinary measures and related guidelines of ministries). At the same time, employers must ensure that personal data is processed with the highest possible protection of privacy, i.e. that it is not made available to an unlimited number of persons. The retention period of the processed data is not yet clear, but it is possible to agree with the statement of the Office for Personal Data Protection that this will be at least for the period of validity of the emergency measures

## **SUPPORT AND RELIEFS FOR ENTREPRENEURS**

In publicly available electronic library of the planned legislation (so called eKlep) two proposals of new programs aiming to support entrepreneurs have appeared – namely programs COVID 2021 and COVID – “Nepokryté náklady” (aiming at uncovered costs). These are to be two new programs to replace several existing programs, and the whole process should therefore be simplified. However, as always, the individual conditions for granting support will need to be examined very carefully.

Both new programs should be compatible with support from the Antivirus program, but they should not be compatible with each other or with the so-called compensatory bonus. At the same time, the applicant would most probably need to undertake not to cease its activity during the next three months.

### COVID – Nepokryté náklady

The COVID – Nepokryté náklady program should be a so-called “cost-based” program and is intended to be support for entrepreneurs who in the decisive period (from 1 January 2021 to 28 February 2021) recorded decrease in turnover by at least 50% compared to the same period in 2020 or 2019, and at the

same time must be **loss making** for this decisive period. As part of the application, the applicant probably (if wording of the call will not materially change) will have to prove its results by means of a **profit and loss statement** prepared on the basis of interim financial statements for the relevant period.

The amount of support is **60% of uncovered fixed costs**, but a maximum of CZK 40 million within one call (i.e. round of the program). Uncovered fixed costs for the purposes of the program means a loss reduced by other subsidies provided to the applicant. The support is provided up to the unspent amount of EUR 10 million per beneficiary in accordance with Art. 3.12. of the Temporary Framework of the EC.

Please note that according to the proposal, it should be possible to include remuneration of members of the statutory body and other bodies of legal entities in the costs, but only up to the amount not exceeding the average gross monthly salary (i.e. CZK 30,402).

### COVID 2021

The new COVID 2021 program is an alternative to the cost program "COVID – Nepokryté náklady" – the calculation of support should not depend on the decrease in turnover, but on the **decrease in sales for the relevant period of time** (again in the first call from January 1, 2021) compared to the same period in 2020 or 2019, **by at least 50%**.

The maximum amount of support is given as the **amount of CZK 500 times the number of employees in an employment relationship times the number of days**. The so-called cooperating persons as defined in the Income Tax Act (i.e. spouse/common household member/family member partaking in the family business; only in case that the applicant is a natural person) and also managing directors with a contract to perform an office are also considered employees within this program. The support is provided up to the unspent amount of the limit of EUR 1.8 million per beneficiary (enterprise) in accordance with Art. 3.1 of the Temporary Framework of the EC. The novelty should be that even if the employer has less than three employees, he is still entitled to support in the minimum amount of CZK 1,500 / day (i.e. as if it had at least three employees).

The support is provided for the period from 11 January 2021 to 31 March 2021 (for the time being, but it can be extended), but no later until 31 December 2021.

The existing support programs in the form of **a compensatory bonus and the Antivirus Program** remain unchanged for the time being.

### **PANDEMIC ACT**

In February, a new law has been published in the Collection of Laws – the so-called Pandemic Act (Act No. 94/2021 Coll. on emergency measures in the event of a COVID-19 epidemic and on the amendment of certain related acts). The law and the procedures established in it **apply exclusively to the situation associated with the COVID-19 disease and its impacts**. With the law becoming effective (i.e. on 27 February 2021), the state of the so-called **pandemic emergency** was also declared – this state may be terminated or renewed by a resolution of the Chamber of Deputies adopted at the proposal of the government or one-fifth of all deputies.

Primarily, the Pandemic Act allows the **Ministry of Health or the regional hygienic stations to impose extraordinary measures**, the list of which is given directly in the Act (among others e.g. the current obligation to test employees in companies). In case of the ministry the measures shall have nationwide effect, while in case of regional hygienic stations the effect will be limited by the territory of their administrative district. Along with these new competences comes the **obligation of all persons affected by the measures to comply with them**; otherwise, the Act contains special provisions on misdemeanors, both for natural and legal persons.

The extraordinary measures under the Pandemic Act may be imposed only **in the necessary extent and for the necessary time, with the prior consent of the government**. The government must publish its (non)consent on its website and in the mass media. At least **once every 2 weeks** the measures shall be reviewed by the ministry itself or the regional hygienic station, which may terminate them (if the **reasons** for their adoption **have ceased to exist**). At the same time, the government is obliged to submit a report on the measures taken in the state of pandemic emergency to the Chamber of Deputies at least once in 2 weeks as well.

The extraordinary measures taken in the state of pandemic emergency **shall cease to be valid upon termination of the state of pandemic emergency**. They can also be revoked by the Chamber of Deputies,

but only within the termination of the pandemic state of emergency as such, not individual measures separately.

The law also stipulates a special procedure for reviewing the adopted emergency measures – the **Supreme Administrative Court** (in case of extraordinary measures issued by the Ministry) and the relevant regional court (in case of measures issued by regional hygienic stations) are competent to review them. **A proposal to repeal a measure may be submitted within one month from the day such measure became effective.** The fact that it has already lapsed does not prevent the measure from being assessed by the court, and if the court concludes that it was unlawful, it shall be stated in the judgment (this will likely be important in relation to exercising the right for compensation of damage caused by incorrect administrative procedure). A cassation appeal against a court decision is not admissible.

Last but not least, it is necessary to mention that the Pandemic Act contains special **provisions on compensation for actual damage** caused to natural and legal persons during the state of pandemic emergency in causal connection with the emergency measures, either under the Pandemic Act or under the Public Health Protection Act (if their purpose was to manage the COVID-19 epidemic). However, the costs incurred in connection with the acquisition or use of protective, washing or disinfecting agents will not be considered as damage within the meaning of the Pandemic Act. **The condition is to assert the claim with the Ministry of Finance within 12 months from the moment the person learned of the damage, but no later than 3 years from its occurrence** (if the claim is not asserted within this period, it expires). This initial claim is also a condition for any judicial enforcement of the claim.

We assume that the damage under the Pandemic Act may be e.g. a damage caused by the obligation to purchase tests for mandatory testing of employees, if the tests are significantly more expensive than their usual price – but you must be able to **accurately prove** that you were not able purchase other (cheaper) tests. In the absence of evidence, the authorities may not grant such a claim. We will be happy to provide you with more detailed information in case of your interest.

## RANDLS BUSINESS BRUNCH

The date of the **second Business Brunch is May 25, 2021 (9:30–12:30).**

The central topic of this Business Brunch will be the **Digitization and computerization in the practice of business corporations.**

As part of the news, we will not forget to mention the **legislative news and new case law of courts and state authorities.** With regard to the impact of measures related to the spread of COVID-19 on entrepreneurship, we will nevertheless also focus on the support programs for entrepreneurs and other news related to the ongoing pandemic.

You can sign up at [brunch@randls.com](mailto:brunch@randls.com). Details about the organization and registration can be found [here](#).



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