

Since last week, you have been contacting us with various questions about coronavirus. One could say, with a little exaggeration, that we do nothing but deal with issues raised by coronavirus. To make our job a little easier, we have prepared this special issue of HR News titled “**Coronavirus in Employment Law Context**” in which we summarise answers to the most frequently asked questions about consequences of coronavirus in employment. Although we do not think there is any necessity for alarm (yet), employers should be cautious and consider methods of responding to varied coronavirus scenarios – such as return of employees to work from risk areas, discontinuance of goods deliveries from China or Italy and resulting decrease in production, or quarantining of workplaces, extended areas like cities, or of employees.

Enjoy the read and stay healthy!

For up-to-date employment law news follow our Randis HR group on LinkedIn!

### What preventive measures can be taken against coronavirus in the workplace?

The most common preventive measures include:

- **banning business trips** (all business trips or just business trips to the risk areas),
- **restricting visits to the workplace,**
- **cancelling external meetings and trainings,**
- where appropriate, a working from home agreement („**home office**“) can be concluded (which, however, carries some of the risks listed below).

The most basic (and sometimes neglected) measure is to instruct employees who are visibly ill to contact their physician or to take a day off work so that they do not spread the disease.

Moreover, according to medical experts, **proper hygiene** is one of the most effective measures against the spread of influenza and coronavirus alike. Therefore, we recommend that employers should stock up on soap and disinfectants as well as clean the workplace more often.

In practice, **providing employees with accurate and timely information** has proved to be very important. Employees appreciate when the employer understands the seriousness of the situation, adopts adequate protective measures, and gives the employees advice on how to behave in situations that may arise.

We also recommend to help **avoid unnecessary panic** – the employer should communicate with employees adequately as not to frighten them needlessly, and, at the same time, provide them with as much up-to-date information as possible. In particular, we advise that you reassure your employees that you are constantly monitoring the latest information published by the Ministry of Health and public health authorities (i.e. hygiene stations). In addition, we recommend emphasizing that coronavirus is not fatal in the majority of the cases and summarising the preventive measures you have put in place to help prevent the spread of the disease for the employees.

### What is the recommendation for employers whose employees have recently returned from one of the risk areas? Can employees be sent home and with what consequences?

We recommend that employers first consult competent public health authorities (i.e. hygiene stations) and **determine whether or not employees concerned are subject to any quarantine measures**. If not, the following options exist.

If the employee **does not** have any symptoms of a respiratory infection after returning from one of the risk areas, you can

- continue to assign work to the employee, or
- agree with the employee to perform work in the regime of home office (if possible), or
- put the employee unilaterally in the regime of obstacles to work on the part of the employer with 100 % compensation of salary (paid by the employer). Please note, however, that the standard recommended period of quarantine is 14 days, as well as that the coronavirus outbreak may last for several months – it may be necessary to put the employee in such regime repeatedly.

If the employee **does** have symptoms of a respiratory infection after returning from one of the risk areas, you should

- contact a competent hygiene station,
- advise the employee to contact (preferably by phone) his or her physician or call emergency medical services (depending on the severity of symptoms).

If the employee is neither quarantined, nor found temporarily incapable of working, he or she can continue to perform work. Otherwise, employee will be quarantined or deemed temporarily incapable of working based on the decision of attending physician / public health authority.

However, if an employee (who is visibly ill!) refuses to go to for medical examination despite your instruction, the employer may, in our opinion, put such employee in the regime of obstacles to work

on the part of the employee without any compensation of salary.

Please note that providers of occupational medical services do not usually examine employees for short-term acute illnesses, and even refuse to perform such examinations. Therefore, you should advise your employees **to contact their own physician or to call emergency services.**

#### **Can the employer order employees to take laptop or company phone home or on holiday?**

**No, the employer may not order employees to take laptop or company phone with them home or on holiday.** The employer can ask them to do so, however, should the employee not comply with the request, such does not constitute breach of duty. If the employee is quarantined after returning from holiday, you can resolve the situation e.g. through delivery of devices by a courier.

#### **Can the employer ask employees whether they have travelled to any of the risk areas?**

**The employer cannot prohibit employees from travelling to the risk areas in their free time, but can inform them which areas are considered risk areas** and recommend that they do not travel to such areas. However, the employer cannot ask employees in advance where they plan to go on holiday or decide whether to allow it or not.

For employers interested in this information for preventive reasons, we recommend that employees returning from risk areas should **complete a questionnaire** designed to minimise the information thus obtained (where more detailed questions are answered only by employees whose risk of coronavirus infection has already been established based on previous answers). Nevertheless, employees can legally refuse to disclose such information to the employer, as it is not closely related to their work.

#### **Can the employer require such information from third persons present in the workplace?**

Yes, the employer is responsible for ensuring occupational health and safety (OHS) in the workplace, and can therefore submit a similar questionnaire **even to third persons** entering the workplace or have them sign a confirmation that they have not travelled to any of the risk areas, come into contact with any infected persons, or shown any signs of a respiratory infection.

#### **Can the employer order performance of work in the regime of home office?**

Unfortunately, home office cannot be ordered unilaterally – **performance of home office work can only be agreed with the employee.** In addition, home office regime is not suitable for all employees – if you put employees (who have no symptoms of infection) in the regime of paid obstacles to work on part of the employer, other employees in the office can also insist on being put in

such regime. We recommend approaching obstacles to work and home office work **very carefully**, as they can be easily abused by employees.

#### **What entitlements do employees have when sent home by their employer (not in home office regime)?**

If this constitutes **solely a preventive measure of the employer** (e.g. when an employee has returned from holiday in Italy but shows no signs of coronavirus) and if official quarantine has not been ordered (to employee or employer), it will be considered an obstacle to work on the part of the employer – the employees concerned will be entitled to **salary compensation equal to 100 % of their average earnings.**

In cases of **quarantine or temporary incapacity for work of employee**, this constitutes an obstacle to work on the part of the employee – the employer is then obliged to pay the employee concerned a **compensation of salary equal to 60 % of reduced average earnings** for the first 14 days of quarantine or temporary incapacity for work (this amount can, however, be increased by the employer as a benefit). From the 15th calendar day onward, the employee receives sickness benefits from the state.

#### **Under what conditions can employees be ordered to take leave by the employer as a possible solution?**

According to the Labour Code, leave-taking can only be **ordered in writing and at least 14 days in advance, unless agreed otherwise** – if the employee agrees, leave can be taken early.

However, leave-taking cannot be ordered during obstacles to work (e.g. during quarantine or temporary incapacity for work) and it is subject to other rules pursuant to the Labour Code.

#### **Is it a breach of OHS obligations if the employer is not currently adopting any measures in connection with coronavirus?**

If there are obviously infected persons (either employees or third persons) present in the employer's workplaces, the employer should address the issue.

**With regard to apparently healthy individuals returning from risk areas, we recommend that you leave relevant decisions to regional hygiene stations or other competent authorities.** If a person is not considered to be a risk by the state, it cannot be a breach of OSH if the employer continues to assign work to such person (and should not be responsible for any subsequent illness of employees).

#### **What to do when employees refuse to work with people who have returned from one of the risk areas even though such employees have no symptoms of coronavirus?**

First of all, we recommend to **continually try to calm the situation down** and point out that the

state authorities do neither consider every person returning from one of the risk areas to be infectious, nor does the state order all such persons to be quarantined. **Employees do neither have the right not to work just because one of their colleagues has returned from Italy, nor the right to require a separate workplace.** The employer is also obliged to **prevent bullying**. Should the situation escalate, despite all the efforts of the employer, it is possible to consider issuing of reprimand letters to the bullying employees.

In practice, there have appeared cases of extreme panic – e.g. of employees losing weight and being extremely hysterical. Such employees can be sent to a doctor who will then assess whether or not they are temporarily incapable of work due to medical reasons of psychological nature.

#### **What if an entire city is quarantined and employees cannot get to work?**

According to Section 347 of the Labour Code, if an official order / regulation issued pursuant to the Act on Protection of Public Health prevents employees from performing work, such is also considered to be a quarantine for employment law purposes. Therefore, if an entire city in which employees work / reside is quarantined and the employees cannot (due to objective reasons) get to work, such is considered to be quarantine within the meaning of the Labour Code and the employer is obliged to pay the employees compensation of salary equal to **60 % of their reduced average earnings**.

#### **Is leave-taking interrupted if employee gets quarantined?**

According to formal interpretations of the Labour Code as well as according to the viewpoint held by the Ministry of Labour and Social Affairs (MLSA), leave-taking is not interrupted in cases of quarantine (as opposed to temporary incapacity for work). In our opinion, however, this is a gap in the law as leave-taking during quarantine (when employee can be e.g. locked in his or her flat or in a hotel room) does not fulfil its purpose, i.e. it does not allow employees to recover and unwind from work. We therefore take the view that leave-taking should be interrupted during quarantine should the employee request it.

#### **What if a school / kindergarten refuses to take in a child? What if school / kindergarten closes due to quarantine?**

If an employee cannot ensure care for his or her child in any other way, this constitutes an obstacle to work on the employee's side without any entitlement to compensation of salary. If the child has been infected, the parent will also likely be in quarantine or can apply for a carer's benefit (if the child is under 10).

Similar approach applies should school / kindergarten close due to quarantine – the employee can also apply for carer's benefit and can be excused from work.

#### **How can a temporary cut in demand for employer's services / products due to coronavirus be addressed?**

It is possible to introduce so-called partial unemployment in order to prevent collective redundancies of employees for whom there is no work due to temporary decrease in sales of your goods or in demand for your services. Partial unemployment can be introduced by internal regulation of the employer or based on agreement with trade union active at the employer. It is an obstacle to work with salary compensation equal to at least 60 % of average earnings.

#### **What kind of obstacle to work is it when the employer lacks the necessary raw materials and has ceased production?**

This is considered to be a so-called dead time (or idle time), i.e. an obstacle to work on the part of the employer, in case of which the employee is legally entitled to compensation of salary equal to 80 % of his or her average earnings. Dead time can be resolved by means of uneven scheduling of working time or by using working time account.

#### **Final recommendation**

We recommend that all employers closely monitor current developments and official communications issued by the state – i.e. the Ministry of Health, hygiene stations, the Ministry of Labour and Social Affairs, the Ministry of Foreign Affairs, the Government (i.e. the Cabinet), as well as of other authorities. The situation may escalate into a declaration of a state of emergency, which may alter some of the conclusions above.

Finally, we invite you to our training on all employment-related aspects of the coronavirus affair (including possible solutions to production fluctuations by means of uneven scheduling of working time) **on 18 March 2020**.

**Randl Partners**  
advokátní kancelář attorneys at law

Tetris Office Building  
Budějovická 1550/15a  
140 00 Praha 4

tel.: +420 222 755 311  
fax: +420 270 007 311

e-mail: [employment@randls.com](mailto:employment@randls.com)  
internet: [www.randls.com](http://www.randls.com)

**lus**  
**Laboris** | Global  
Human  
Resources  
Lawyers

This Special Issue of HR News was prepared for you by:  
Michal Peškar and Lucie Brázdová