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LEGAL ALERT

EMPLOYMENT LAW



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Traple
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COVID and employers and employees

We below present an explanation pandemic-related issues that are important for both employers and employees. We encourage you to read these clarifications.

1.Covering faces on the employer's premises - new rules



- The Regulation of the Council of Ministers, **introduced the obligation to cover mouth and nose in places accessible to the public, also on the employer's premises, except where there is only one person in the room, unless the employer decides otherwise. This rule applies until December 27, 2020.**
- Uncovering the mouth and nose is possible when consuming meals or drinks in the workplace.
- We signal that, among others, due to the wording places „accessible to the public”, the scope of application of this regulation (norm) may be subject to inconsistent interpretations.

More on this topic can be found here:

<https://dziennikustaw.gov.pl/DU/2020/2132>

2. Additional child care allowance

- **the period of granting the additional child care allowance was extended** (from November 30, 2020 to December 24, 2020)
- the allowance is granted to parents who look after children under the age of 8, due to closure of schools, kindergartens, and nurseries due to COVID-19
- 80 per cent of the benefit calculation base.

!Note! The Social Insurance Institution (ZUS), has now stated that the allowance will not be granted to parents who decide to keep their child at home when the institution the child attends remains open. While distance learning will apply to elementary school until January 3, 2021, kindergartens and nurseries generally remain open. Therefore, if the parents of a child attending a kindergarten that remains open decide to stay home with their child (due to the risk of infection), they will not be entitled to an additional child care allowance.

More on this topic can be found here:

<https://www.zus.pl/o-zus/aktualnosci/-/publisher/aktualnosc/1/dodatkowy-zasilek-opiekunczy-od-9-listopada/3653466>

<https://dziennikustaw.gov.pl/DU/2020/2109>

3. Performing remote work during employee isolation

The issue of the admissibility of an employee performing remote work during home isolation raises many doubts. In order to dispel these doubts, **the government presented a new bill to sanction the possibility of performing remote work during home isolation.**

On November 27, 2020, the law was passed by the Sejm and submitted to the Senate.

At the same time, we recommend the publication of attorney-at-law Kajetan Bartosiak, who analyzed, among others, the issue of admissibility of remote work during home isolation in the light of current law in a very detailed and thorough way for „Dziennik Gazeta Prawna”.

More on this topic can be found here:

<http://sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=772>

<https://ksiazeklegal.pl/firma-ma-wykazac-ze-pracownik-nie-moze-pracowac-zdalnie/>

4. Domestic business trips during the pandemic

Employees are still free to travel for business purposes. However, at the moment the hotels in Poland are generally open only for guests on business trips. **So employees may stay in hotels, but if they wish to do so, they are required to have a document issued by their employer confirming that they are on a business trip.**

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Hotels can also accommodate people who are not employees, travelling in connection with business or professional activities. This rule may, for example, applies to the self-employed. The fact that such persons are travelling for business purposes is confirmed by their written statement.

These restrictions on hotel operations will remain effective until December 27, 2020.

More on this topic can be found here:

<https://dziennikustaw.gov.pl/DU/2020/2091>

5. The National Labour Inspectorate (PIP) on duties of employers posting employees to Poland during the pandemic

We would like to remind you that posting of workers is related to the temporary performance of duties by an employee in a country other than the one in which the employee normally works, while maintaining the employment relationship between the posted worker and the posting employer.

Despite the state of epidemic, posting workers to work in Poland is not prohibited. However, the National Labour Inspectorate points out that posting new workers to work temporarily in Poland may be hampered due to restrictions concerning entry into the Polish territory and crossing the national border.

The National Labour Inspectorate also emphasizes that the relevant regulations of the Polish labour law should apply to posted workers who are still ready to perform work in Poland, which, however, cannot be performed due to the state of epidemic. Despite the fact that the employee does not perform any work, the employer may be obliged to pay the employee remuneration for the downtime. This applies, for example, to employees in businesses whose operations have been suspended on the basis of a government decision.

More on this topic can be found here:

<https://www.pip.gov.pl/pl/informacje-dla-obcokrajowcow/covid-19-informacje-dla-cudzoziemcow/110167,posting-of-workers-to-poland-in-the-framework-of-the-provision-of-services-during-sars-cov-2-virus-outbreak.html>

6. Facilitation of employment of foreigners

6.1. Employing medical personnel from „third countries” - draft law

The Sejm passed the law to ensure the availability of medical personnel at the time of an epidemiological emergency or a state of epidemic. The law provides, among other things, for the **introduction of simplified rules of work in Poland for medical personnel coming from so-called „third countries”**, i.e. from outside the European Union.

- The law provides solutions for a permanent solution, which will also apply after the end of the epidemic, and an incidental solution, valid at the time of an epidemiological emergency or a state of epidemic.

- At the same time, the law introduces simplified rules for the return to the medical profession of persons who have had a break in the profession for more than five years by replacing the obligation to undergo training by the duty to practice under the supervision of another medical practitioner.
- In addition, the law provides for the possibility of employing medical dispatchers also on a basis of civil contracts, which is intended to broaden the opportunities for this group to increase their remuneration and also to increase the chances of filling dispatcher job positions. For the same reasons, the draft law introduces the possibility to work continuously for 24 hours in selected groups of dispatchers.

On November 27, 2020, the law was passed by the Sejm and submitted to the Senate.

More on this topic can be found here:

<https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=763>

6.2 The catalogue of positions that do not require a work permit to be extended

According to the amended Regulation of the Minister of Labor and Social Policy on cases in which entrusting work to a foreigner on the territory of the Republic of Poland is permissible without the need to obtain a work permit, **the catalogue of such cases was extended**. The aim of the new provisions is to facilitate taking up employment by Belarusian citizens in connection with the worsening of social and political situation in that country.



- This applies to citizens of this country who have the right to practice the profession of doctor or dentist and by foreigners employed in private domestic service by members of diplomatic missions and consular posts, as well as IT specialists, startups and other companies that want to relocate their business to Poland under the Poland Business Harbour program.
- The Regulation assumes that foreigners staying in the territory of the Republic of Poland on the basis of a visa issued for humanitarian reasons and holding a visa with the annotation Poland. The Business Harbour will be exempt from the requirement to have a work permit.
- The above changes entered into force on December 1, 2020.

More on this topic can be found here:

<https://dziennikustaw.gov.pl/DU/2020/2081>

7. Public assistance applies to specified businesses suffering due to COVID

7.1 Time limit for paying advance payment for personal income tax to be extended

According to the Regulation of the Minister of the Finance, Funds and Regional Policy of November 19, 2020, **extended time limit for paying an advance payments for personal income tax (PIT) was established.**

- applies to, among others, entertainment industry, catering industry

More on this topic can be found here:

<https://www.gov.pl/web/finanse/dluzszy-czas-na-przekazanie-zaliczek-pit>

7.2 „The Shield 6.0”



- planned extension of the deadlines for periodic medical examination, extension of the period of validity of medical certificates (regarding initial and periodic medical examination and medical check-ups), extension of the period in which it is not necessary to conduct medical examination for workers hired again on the same work position
- planned salary subsidy, up to 2.000 PLN, in the selected sectors.
- planned extension of the deadline for submitting applications for subsidy from FGŚP, based on the previous regulations (15g, 15gg)
- planned additional remuneration for the time of not working for entrepreneurs in the selected sectors
- planned subsidy for micro- and small enterprises in the selected sectors, up to 5.000 PLN
- planned exemption from the obligation to pay social security contributions in the selected sectors for the period from November 1, 2020 to November 30, 2020

The Act was passed by the Senate.

More on this topic can be found here:

<https://www.senat.gov.pl/prace/proces-legislacyjny-w-senacie/ustawy-uchwalone-przez-sejm/ustawy-uchwalone-przez-sejm/ustawa,1039.html>

8. Changes to the enforcement of alimony

Under the Act of December 6, 2018, amending certain laws to improve the effectiveness of the enforcement of alimonies, changes to the Labour Code were also introduced.

- **If the employer does not confirm in writing the agreement concluded with the employee prior to his or her admission to work**, and the employee is a person against whom the enforcement of alimonies and the enforcement of state budget claims arising from the benefits paid in the case of ineffective enforcement of alimony is pending, and he or she is in arrears with the payment of these benefits for a period longer than 3 months, the employer or a person acting on his or her behalf shall be liable to a fine.
- Moreover, **if the employer pays a salary higher than that resulting from the concluded employment contract**, without any deductions for the payment of alimony benefits, to an employee who is a person against whom the enforcement of alimony benefits is pending and the enforcement of state budget claims arising from benefits paid in the case of ineffective enforcement of alimony and he or she is in arrears with the payment of those benefits for a period longer than 3 months, such employer is subject to a fine.

In both cases the fine may range from PLN 1,500 to PLN 45,000.

The above changes entered into force on December 1, 2020.

More on this topic can be found here:

<http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20180002432/O/D20182432.pdf>

9. The Proposed Minimum Wage EU Directive

On October 28, 2020, the European Commission presented a draft directive on the protection of workers through adequate minimum wages to enable them to live in dignity regardless of the country where the work is performed. The main task of this regulation is to create uniform rules about determining the amount of the minimum wage in all member countries of the EU. Contrary to earlier press releases, the project doesn't require that minimum wage must be 50 percent of average salary and 60 percent of median salary. This project has been criticised by both the trade unions and employers' unions.

The trade unions claim, that the lack of clear rules makes it impossible to achieve the goal set by the European Commission.

The employers' unions claim, that with this project the European Commission has exceeded its powers. They also have reservations to the motive number 21. This motive indicates 50% of average salary and 60% of median salary as an example of the appropriate amount of the minimum wage. The employers' unions claim, that in effect The Court of Justice of the European Union may be able to require the application of these criteria through its case law.

More on this topic can be found here:

https://ec.europa.eu/poland/news/201029_min_wage_pl

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