

MARCH | 2020

Anti-Crisis Shield – information for Employers

On 21 March 2020, the Government's Bill of Amendment to the Special Law was published. This regulation, known as the Anti-Crisis Shield, provides for some special solutions intended to counteract adverse economic effects of the COVID-19 epidemic. Presented below is the summary of the most important proposals addressed to employers.

Wage subsidy from the Guaranteed Employee Benefit Fund

Employers will be entitled to apply for wage subsidies and subsidies to mandatory social insurance contributions from the Guaranteed Employee Benefit Fund in the event of:

- economic downtime
- implementation of reduced working time.

If the economic downtime occurs, the employer is to be able to reduce the wages payable to personnel by no more than 50%. The reduced wage amount must not be lower than the minimum gross wages. The employer will be entitled to apply for subsidy during downtime in the amount of (PLN 1,300) and the contributions payable to the Social Insurance Institution (ZUS) by the Employer (PLN 233.09) – in total PLN 1,533.09 per one employee.

The employer will also be entitled to reduce the working time by maximum 20% (to no more than 0.5 FTE) if the turnover decreases. A decrease in turnover is understood as the sale of goods and services by quantity (by no more than 15% percent over two months of 2020 compared with the same period of 2019) or by value (no less than 25% compared with the value in a selected month of the calendar year 2020 with respect to the preceding month's turnover). The subsidy is to be 50% of the wages paid for the reduced working time, no more than

40% of the average monthly salary in the preceding quarter published by the President of the Main Office of Statistics (GUS) valid as at the date of submission of the application for the subsidy.

Employers will be able to apply for funds from the Guaranteed Employee Benefit Fund if they meet the following criteria:

- no grounds for bankruptcy occur,
- they were not in arrears with payment of tax liabilities, social insurance contributions, health insurance contributions, contributions to the Guaranteed Employee Benefit Fund, the Labour Fund and the Solidarity Fund until the end of Quarter 3 of 2019.
- a decrease of economic turnover occurred, which is construed to mean [a decrease] of the sales of goods or services by quantity or value:
 - by no less than 15%, calculated as the ratio of total turnover over 2 successive months in the period from January 2020 to the total turnover from the corresponding 2 months of last year, or
 - by no less than 25%, calculated as the ratio of turnover from any calendar month falling after 1 January 2020 until the date of filing the application compared with the turnover from the preceding month.

Subsidizing SME (additional de minimis aid)

This payment can be obtained provided that the sales of goods or services is reduced by at least 30%, by quantity or value, to be calculated as the ratio of total turnover during any 2 calendar months after 1 January 2020 until the day preceding the submission of the application for a subsidy, compared with the total turnover during any 2 calendar months of the preceding calendar year. To this end, an application will need to be filed with the competent district governor [Starosta Powiatowy] and the relevant agreement will need to be signed.

The amount of the subsidy will depend on the value of the turnover decrease recorded by the Employer. If the turnover decreases by:

- **at least 30%** – the subsidy is to be calculated as the product of the number of employees covered by the application and 50% of the minimum pay;
- **at least 50%** – the subsidy is to be calculated as the product of the number of employees and 70% of the minimum pay;
- **at least 80%** – the subsidy is to be calculated as the product of the number of employees and 90% of the minimum pay;

but no more than the costs actually incurred by the Employer to pay the wages and the contribution payable thereon.

The period of subsidizing must not be longer than 6 months for micro and small enterprises, and 3 months for medium sized entrepreneurs. The subsidies will be paid on a monthly basis.

Changes to the flexible working time

The following possibilities are planned to be implemented:

- limitation of the continuous daily rest to no more than 8 hours (instead of 11 hours required as the minimum under the Labour Code) and the continuous weekly rest to no more than 32 hours (instead of the minimum 35 hours required by the Labour Code);
- conclusion of an agreement on implementation of the equivalent working time system which permits extension of the daily working time to no

more than 12 hours with no need to satisfy the requirement for implementation of this working time system over a longer account period;

- conclusion of an agreement on conditions of employment less favourable than those stipulated in the employment contracts with employees, within the scope and for the duration set out in the agreement.

The changes can be introduced provided that consensus is reached with the trade unions active in the company or with workers' representatives.

Suspension of the obligation to perform medical examinations for the employees

The bill provides for, among other things, suspension of the obligation to administer periodic medical checks for the employees and medical examinations for professional drivers. Medical certificates which became invalid after 7 March 2020 remain effective no longer than 60 days after the state of epidemic has been recalled. Promptly after the state of epidemic is recalled, the employer and the employee are obliged to resume the suspended duties.

However, employees still need to be referred to initial medical examinations and checkups, and if a physician licensed to carry out such examinations is not available, the examinations can be performed by another physician. Such a medical certificate will become ineffective 30 days after the state of epidemic has been recalled. The examinations can be carried out and the certificates can be issued with the use of ICT systems or communication systems.

Employment of foreigners

If the deadline for filing the application for a temporary residence permit falls during the state of epidemic, the permit will be extended until the end of 30th day following the recall of the state of epidemic. Also national visas will be extended by the force of law. Thus, during the epidemic, a foreigner can legally stay on the territory of Poland. The regulations do not apply to a temporary residence and work permit, which is more important from the employers' perspective. If the deadline for submission of the permit lapses during the period of epidemic, the foreigner will only be allowed to stay in Poland but not to work.

With respect to foreigners who work based on a statement and based on a work permit, if the period of validity of these documents lapses, irrespective of whether this happens during the period of epidemic or not, in observance of the deadlines specified in the law, legal employment can continue until the work permit is obtained or extended. However, the condition precedent is that work is commenced during a period not shorter than 3 months and the foreigner legally stays in Poland.

However, the legislator disregarded a considerable group of employees who are released from the obligation to have a visa due to the Schengen treaty, i.e. those who are entitled to cross the border against a biometric passport. The permissible length of stay for them is 90 days. If such employees filed an application for a work permit or temporary residence and work permit, they may only legally stay in Poland during the procedure for issuance of the permit but they must not provide work to their employer.

Should you have any questions regarding the proposed solutions and the possibility for you to benefit from them, please contact us.



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