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# Tax & Legal

Taxes

Special Edition

# Obsah

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# Can employers take employees' temperatures before they enter the workplace?

As the measures adopted to avoid the spread of COVID-19 are loosened, employees can gradually return to their workplaces. The Office for Personal Data Protection (OPDP) has dealt with the question of whether employers are authorised to take their employees' temperatures as a precondition for entering their workplace.



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An elevated body temperature is one of the typical symptoms of COVID-19. But information about body temperature can be classified as sensitive data on the health condition of employees. As such, its processing constitutes an interference with privacy and possibly with other rights of employees, e.g. should they subsequently be prevented from entering the workplace.

To avoid any doubts, the OPDP has announced that under the current exceptional circumstances, taking employees' temperatures before their entering the workplace can be considered personal data processing in the employer's legitimate interest as it helps to ensure that the employer meets its labour law obligations aimed at preventing risk to employees' health. The Labour Code stipulates a duty for employers to create safe and harmless working environment and working conditions through suitable organisation of occupational safety and health protection and by adopting risk-prevention measures.

However, the employer should always keep the measures adopted up to date with regard to the nature of the workplace, the number and concentration of employees and possibly other persons present at the workplace, as well as the current development of the pandemic. In case of any doubts, the OPDP recommends to consult medical professionals.

Furthermore, the OPDP added that taking employees' temperatures would not always be considered personal data processing under the GDPR, such as in cases where the temperature taken is not recorded in connection with the name or other data of specific persons allowing for their identification. For instance, if there was a sensor in place taking temperatures of the persons passing through and merely reporting elevated temperatures detected by the sensor, without recording any data, personal data would thus only be processed in relation to specific employees detected by the sensor. These could then be dealt with by an authorised employee.

In conclusion, the OPDP emphasises that after the state of emergency ends, these extraordinary measures will no longer be justified. Employers should cancel them and only reintroduce them should the situation get worse again, e.g. in case of a new wave of the pandemic.



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# Modification of occupational health check-ups after the end of the state of emergency

The Ministry of Health has issued an extraordinary measure to prolong the validity of affirmations which replace initial medical check-ups, as well as the validity of periodical and extraordinary check-ups by 30 or 90 days of the end of the state of emergency. Employers must have the check-ups performed before the end of the prolonged validity period.



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During the state of emergency, the duty to undergo initial and periodical check-ups was governed by Government Resolution No. 280 of 23 March 2020. Based on this resolution, the persons employed on 12 March 2020 or later could replace a mandatory occupational health check-up by an affirmation. In addition, they were not obliged to undergo periodical check-ups.

Another Government Resolution, No. 538 of 11 May 2020, fixed the validity of these affirmations until the end of the state of emergency. The validity of those confirmations of medical fitness to work issued on the basis of initial, periodical and extraordinary check-ups which were supposed to expire during the state of emergency was also prolonged until the end of the state of emergency (if the required check-up was not performed).

In this connection, the Ministry of Health issued an extraordinary measure on 13 May 2020 to prolong the validity of the above affirmations: by 90 days of the day following the end of the state of emergency for the first and the second risk categories according to the Protection of Public Health Act, and by 30 days for the third and the fourth risk categories and for high-risk work according to the decree on occupational medical services. The occupational health services provider or the general practitioner of the employee concerned must, at the employer's request, perform the initial check-up of the employee and issue a confirmation of medical fitness to work within the prescribed period.

Furthermore, the measure prolonged the validity of confirmations of medical fitness to work issued on the basis of periodical check-ups by 90 days of the day following the end of the state of emergency if the employee concerned is confirmed to be medically fit to work, or by 30 days if medically fit to work subject to certain conditions.

As for the confirmations of medical fitness to work issued on the basis of extraordinary check-ups whose validity ended during the state of emergency, these are prolonged by 90 days of the day following the end of the state of emergency if the employee concerned is confirmed to be medically fit to work, or by 30 days if medically fit to work subject to certain conditions.

The state of emergency ended on 17 May 2020, which means that the above prolonged periods started on 18 May 2020. Employees must undergo the required check-ups before the end of the respective period, i.e. 30 or 90 days, as mentioned above. The employer must not allow any employee to perform prohibited work or work whose difficulty does not correspond to the employee's abilities and health.

With respect to the above, we highly recommend that employers contact their occupational health services providers and ask for the required check-ups as soon as possible because it can be expected that many employers



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will be interested in having the check-ups done now.



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# Crossing borders after the state of emergency

The state of emergency ended in the Czech Republic after 66 days on 17 May. Although many restrictions still remain in place, there have been several changes. The current conditions governing the entry of foreigners to the Czech Republic are summarised by the measure of the Ministry of Health of 15 May.




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In practice, this protective measure preserves many of the restrictions adopted by Government Resolution No. 511 of 4 May, which we described here. So, what are the main changes?

From now on, EU citizens who enter the Czech territory to perform an economic activity not exceeding 72 hours are no longer obliged to fulfil the obligations pursuant to Government Resolution No. 332, determining the work conditions for critical infrastructure employees. This means, for example, that the employer is no longer required to provide separate areas for eating, restrict the employees' free movement in the workplace or provide them with FFP2 respirators. However, employers are still obliged to provide certain incoming foreign employees with accommodation, medical care, transport from the border and to work, and to pay the costs related to repatriation of foreign employees who have lost their job in the Czech Republic.

The Ministry of the Interior should also restore all visa and residence proceedings of those foreigners who applied for them at foreign embassies. This condition, however, only concerns proceedings initiated in "non-risk countries". The list of these countries has been published on the website of the Ministry of Foreign Affairs and is regularly updated according to the development of the epidemic.

Another important change concerns foreigners included in one of the Government programmes for economic migration (Key and Research Staff Programme, Highly Qualified Worker Programme, Qualified Worker Programme), who are able to file applications from now on. The applicants included in one of the first two programmes may file their applications without limitation provided that the situation in their country allows so according to the list of the Ministry of Foreign Affairs. Applications of foreigners under the Qualified Worker Programme will be accepted only in case they work in health care or social services. It is also newly possible to apply for residence permits for the purpose of scientific research and under the Student Mode; married couples and minor children of foreigners with long-term or permanent residence in the Czech Republic may apply for residence with a view to family reunification.

The end of the state of emergency also terminates the validity of certain simplifications. For example, the Ministry of the Interior will no longer allow foreigners to change their employer during the first 6 months, nor will it allow for accelerated proceedings in case of a change regarding an employer who helps implement emergency measures. Employees will thus have to file their applications for approval of a change of employer under standard conditions, i.e., subject to certain exceptions, not sooner than 6 months after they obtained their permit and at least 30 days before the planned commencement of work, and will have to wait for approval of the Ministry of the Interior. As of the end of the state of emergency, a 60-day deadline for finding a new job and the corresponding change of



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employer also commences for the holders of employee cards who lost their jobs during the state of emergency and up to 60 days before its beginning. This also means a return to the standard rules.

According to the Government's statement, the emergency measures can be expected to be gradually loosened in the upcoming weeks and months. From 26 May, general border controls should be replaced by random checks. Nevertheless, foreigners may only enter the Czech territory with a negative Covid-19 test until further notice. The Minister of Health has announced that the borders could fully reopen on 8 June if the epidemic continues to develop favourably. Protective measures and the duty to submit a negative test would then apply only to foreigners coming from risk countries as listed by the Ministry of Health based on the circumstances.



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# The State pledges to pay half of the rent for entrepreneurs

On Monday, 18 May 2020, the Czech Government approved the COVID – RENT programme. The programme's aim is to support entrepreneurs who have not been able to pay the rent for their business premises as a result of the COVID-19 emergency measures. The programme is to be launched by the Ministry of Industry and Trade.




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The programme is primarily targeted at entrepreneurs operating a retail business or providing services to customers on premises leased or subleased before 12 March 2020. Such affected businesses will be able to request support amounting up to CZK 10 million per business, applicable to rents payable from 1 April to 30 June 2020. A key precondition for obtaining the support, covering 50% of the rent, is that the landlord lowers the price of the rent by 30%. The tenant will then have to pay the remaining 20% of the original price. For the time being, the Government has allocated CZK 5 billion for the COVID - RENT programme, and this amount may be further increased.



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# COVID III guarantee programme will support businesses with up to 500 employees

On 18 May 2020, the Government announced the COVID III programme to support entrepreneurs whose business activities have been limited as a result of COVID-19 and the corresponding protective measures. Although the programme follows on from the previously announced COVID I and COVID II programmes, there are several important differences.



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Unlike its predecessors, COVID III will provide support not only for small and medium-sized enterprises but also for big companies with up to 500 employees (the number of employees must be proved separately for each applicant). This time, the programme will have countrywide scope and will thus also help businesses seated in Prague. The way of applying for support also changes this time. While in the first two programmes, the business was to contact the Czech-Moravian Guarantee and Development Bank (CMZRB) directly, under COVID III it must pre-negotiate the loan with its own bank, which will then complete the application with the CMZRB. The Government will provide 30% guarantees in an aggregate amount of CZK 150 billion, which makes it possible to support loans in a volume of up to CZK 500 billion.

The specific parameters then depend on the size of the business. While for businesses with up to 250 employees, the State guarantee will cover 90% of the principal amount of an individual loan, for companies with up to 500 employees, this ratio will be 80%. In both cases, the maximum amount of the loan is CZK 50 million and the duration of the guarantee will not exceed three years.

The programme is aimed at covering operating expenses, such as salaries, rents, payments for utilities, supplier-customer invoices and procurement of inventories and materials. Do not hesitate to contact us for help with preparing an application.



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# COVID plus – experience with utilising EGAP guarantees

The COVID plus guarantee programme provides support for large businesses with at least 20% of their total annual revenue from sales coming from export. The window for filing applications has been opened as the European Commission has approved guarantees worth CZK 142 billion for the programme. This is a summary of some experience from practice.



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With COVID plus, the application procedure is quite different from the previous programmes, COVID I and COVID II, aimed at supporting small and medium-sized enterprises, where each business had to directly contact the Czech-Moravian Guarantee and Development Bank directly (CMZRB). In this programme, the businesses are supposed to first pre-negotiate the loan with their own bank, which will then complete the guarantee procedure with the Export Guarantee and Insurance Company (EGAP).

As such, the provision of the guarantee depends on evaluation by EGAP in each case. That means that EGAP's internal rating of the individual applicants is an important parameter. Companies rated above B- will obtain a guarantee of up to 80% from EGAP. For B-, the maximum guarantee will be 70%. Applications of businesses rated lower than B- will be denied.

The loans and guarantees will be provided for a maximum of 3 years for operating loans and loans financing working capital and maintenance of business activities, and for a maximum of 5 years for investment loans, where the loan margin of the financing bank cannot exceed the following numbers for the duration of the loan:

- 1.5% p.a. on loans provided for up to 1 year;
- 2.5% p.a. on loans provided for up to 3 years;
- 3.5% p.a. on loans provided for up to 5 years.

As the maximum sum that the State has allocated for the COVID plus guarantees is CZK 142 billion, it can be expected that the possibility to acquire support will expire after this amount is utilised. If this does not happen, it will be possible to file applications until the end of 2020. The list of annexes necessary for filing applications is available here. Do not hesitate to contact us for help with preparing an application for COVID plus.



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