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Legal

Closure of borders - overview of adopted measures

In connection with the announcement of a state of emergency, we would like to summarise the basic restrictions for Czech citizens and foreigners permanently staying or working in the Czech Republic or planning to come to the Czech Republic.



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Effective from Saturday 14 March 2020, temporary restrictions have been introduced in the Czech Republic that are intended to stop the spreading of COVID-19 (coronavirus). A government decree has introduced the following restrictions:

- All foreigners trying to enter the Czech Republic from high-risk countries are not be allowed to enter. This restriction does not apply to foreigners who hold some type of long-term residence permit issued by Czech authorities (i.e. a temporary residence permit, a long-term residence permit/visa or a permanent residence permit). Foreigners holding one of these permits, however, are subject to quarantine measures upon entering the Czech Republic.
- At the same time, all Czech citizens and foreigners holding a residence permit issued by Czech authorities are prohibited to travel to the high-risk countries.
- Czech representations abroad (i.e. embassies and consulates) neither accept nor handle visa applications and applications for residence permits until further notice.
- Any proceedings handling applications submitted to the Czech representations abroad before the effect of this measure have been interrupted; the proceedings handling applications for short-term visas are suspended.

Exceptions from the above measures may be made; however, in general, only foreigners not holding long-term Czech residence permits or Czech citizens holding a residence permit issued by one of the high-risk countries are allowed to travel to the high-risk regions.

The above measures were further tightened effective from Monday 16 March 2020 when the Czech borders were closed.

Citizens of the Czech Republic and foreigners holding a residence permit issued by Czech authorities are not allowed to leave the territory of the Czech Republic unless an extraordinary situation is concerned. Only Czech citizens and foreigners holding a permanent residence permit or a temporary residence permit for more than 90 days issued by the Czech authorities who were outside the Czech Republic at the moment the state of emergency was announced should be allowed to return to the Czech Republic. Exceptions from this measure are allowed (e.g. some cases of cross-border employment).

In addition to cancelling business trips abroad, it will also be necessary to consider earlier returns of our employees from their assignments abroad. Once they return to the Czech Republic they will have to follow the relevant

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instructions of the authorities and undergo respective quarantine measures that concern all high-risk regions as of today.

Regarding the temporary suspension of new applications for residence permits and the interruption or stoppage of the handling of already submitted applications, we can expect delays in relocating employees from abroad.

For foreigners living in the Czech Republic based on a valid residence permit, certain restriction have been introduced. The Ministry of the Interior will only accept mailed applications for e.g. residence permit extensions. The deadlines are automatically extended for submissions requiring personal participation by the law. All existing reservations have been cancelled and a personal visit will only be allowed if they concern registration upon arrival, acquisition of biometric data, issue of residence permits and issue of a bridging label, where supported by the proof of travel.

We are continuously monitoring the situation. Please do not hesitate to contact us should you have any questions.

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How government restrictions on business affect employee relations

On 14 March 2020, in response to the coronavirus outbreak, the Czech Government adopted a crisis measure that, with certain exceptions, banned retail sales and the provision of services at restaurants, sports facilities, wellness centres and other establishments. What options are available for employers that are forced to shut down their workplaces or are facing a drop in employee workload as a result of the measure?



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Reassignment to a different job

If employers have a different job available for employees, they may agree with them on a temporary change of the agreed type of work, or modify their job descriptions. Reassignment to a different job without employee consent for the necessary period of time is also an option under Section 41(4) of the Labour Code. Such reassignment is allowed "where this is necessary to avert an extraordinary event, natural disaster or other imminent accident, or to mitigate the immediate consequences thereof, for the necessary period of time". A different job may include the disinfection of the premises, etc.

What if no other work is available for employees?

If employers have no work available for employees for the duration of closure of the business premises, the following options provided by the Labour Code may be considered:

- **Directive to take holidays.** However, such a directive must be issued at least 14 days ahead of time unless employees consent to a shorter notification period. The consent may be either general (e.g. expressed in the employment contract) or given for these specific circumstances. Where holidays are taken en masse, the consent of the trade union, if established, must be obtained and the duration of the holidays must not exceed two weeks. The taking of time off in lieu may be ordered as well. Conversely, unpaid leave may not be ordered unless the employee agrees with it.
- **Application of impediments to work on the employer's part** due to a limitation on the sale of products or demand for services, i.e. so-called "partial unemployment" under Section 209 of the Labour Code. In the event of partial unemployment, the employer may pay reduced wage compensation, but not less than 60% of the employee's average earnings. The employer may not introduce partial unemployment immediately – they must first come to an agreement with the trade union, if established at the employer, or issue and publish an internal regulation on partial unemployment specifying the amount of wage compensation. Subject to the terms of the Employment Act (e.g. a compensation of at least 70 % of average earnings), a contribution may be received during partial unemployment; however, such a contribution is subject to strict formal requirements, i.e. agreement with the Labour Office and prior approval by the government.

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- For establishments shut down completely as a result of the current restrictions, another option is to r**egard the situation as quarantine** under Section 347(4) of the Labour Code. In that case, employees would be entitled to wage compensation as in the case of sickness, i.e. compensation equal to 60% of average earnings for the first 14 days provided by the employer, followed by sickness benefits paid by the social security authority. The respective section of the Labour Code provides that "...quarantine shall also mean isolation and extraordinary measures in the event of an actual or impending epidemic pursuant to the Public Health Protection Act, including a prohibition or restriction of the contact of groups of individuals suspected of infection with other individuals and a prohibition of or duty to perform certain other activities in dealing with an epidemic or a danger of its occurrence, provided that such prohibitions, restrictions or duties prevent an employee from the performance of work". Although this provision seems to fit the current situation very well, all formal requirements have not been met – the measure was issued in accordance with the Act on the Security of the Czech Republic rather than with the Public Health Protection Act, and it was adopted by the government rather than by the respective public health protection authority. Still, we believe that the application of the provision should not be ruled out – the Labour Code probably did not envisage a situation so serious and extensive that it would warrant the adoption of extraordinary measures by the government rather than by individual regional health protection offices, and that this would be done under the constitutional Act on the Security of the Czech Republic. At this point, however, the option to apply this provision cannot be clearly confirmed – except for municipalities whose isolation was ordered by regional public health protection offices (such as the towns in the Olomouc area).
- If the lack of work is caused by a supply failure, this constitutes downtime, i.e. **an impediment to work on the employer's part** pursuant to Section 207(a) of the Labour Code, which entitles employees to wage compensation equal to 80% of their average earnings.
- The most expensive option for the employer is the application of **other impediments to work on the employer's part** under Section 208 of the Labour Code, which entitle employees to full wage compensation. The application of such an impediment is at the employer's discretion – for example, employers may resort to it if they decide to shut down their premises for preventive reasons that do not fall under any other category of impediments, and employees are unable to perform their work duties remotely from home.

What is the position of MoLSA?

The Ministry of Labour and Social Affairs (MoLSA) has issued a very sketchy statement on the matter. It says that if a workplace is closed or its operation limited due to the government crisis measure, and as a result, the employer does not assign work to employees, this constitutes a so-called other impediment to work on the employer's part within the meaning of Section 208 of the Labour Code, for the duration of which employees are entitled to wage compensation equal to 100% of their average earnings.

We believe that although the Labour Code does not address the current situation expressly and unambiguously, the conclusion that employers forced to shut down their premises due to a government decision should pay their employees full wage compensation is extremely unfair to employers and should not hold up. But MoLSA's opinion is different – at least for the time being. According to the latest information, the ministry should issue another statement on the situation very soon.

We also draw attention to the opinion (held, e.g., by the Association of Small and Medium-Sized Enterprises and Crafts of the Czech Republic) that employers should be classified into two categories. For employers whose premises are closed as a direct result of a particular crisis measure, the impediment defined by Section 208 of the Labour Code and full wage compensation should apply. For other employers (such as those supplying goods or services to the first category of employers), 60% wage compensations – under the partial unemployment regime – can be paid in the event of a drop in sales. However, we find such a classification formalistic and unfair to the first category of employers.

Compensation for losses from the state

In the event of crisis measures adopted in accordance with the Crisis Act, the state should compensate all resulting losses, which could also include the reimbursement of wage costs. Compensation claims, including specific

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reasons, should be made in writing with the relevant crisis management authority within six months from the time the employer learned about a loss (but no later than within five years since the loss occurred). Currently, it cannot be predicted how the state will address this duty. MoLSA is presently engaged in negations with representatives of employers regarding the extent of compensation for wage costs paid. In any case, we recommend keeping a file of all resulting losses, including any documentation proving the causality between the adopted measures and the occurrence of a loss, and duly claiming them within six months; otherwise the right will expire.

We are continuously monitoring the situation. If you have any questions, feel free to contact us.

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How to shield your business from the impact of COVID-19

The first cases of COVID-19 (Coronavirus) infection have been confirmed in the Czech Republic. So far, nobody has been able to predict with certainty what course this epidemic will take and how the Czech economy will be affected. Hence, scaremongering, fake news, and panic abound among the population.



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What issues need to really be dealt with? How can you best protect your employees and make sure that your business will withstand this stress test unscathed? Find a short overview below.

Employee protection

1. Which preventive measures should employers introduce?

- Keep abreast of up-to-date and factual information and keep your employees informed about (i) proper hygiene and sanitation practices to lower the risk of infection, (ii) how to proceed when returning from the affected regions (iii) what to do when symptoms of an infection with COVID-19 occur.
- Provide workplaces with disinfectants and recommended protective gear (antibacterial gels, specific types of respirators, etc.).
- Consult in advance with your medical service provider how to proceed if employees suspect that they may have become infected (quarantines, emergency medical check-ups and other measures to avoid the spread of the disease).
- Consider cancelling or limiting any business trips into the affected regions.
- Consult the situation and any possible measures with trade union representatives, employee councils and OSH (occupational safety and health) specialists.
- Review your labour-law documentation regarding the adjustment of shift schedules and mandatory leave.

2. How to react if an employee is displaying infection symptoms (high fever above 38°C/100.4°F, respiratory distress), especially if they've just returned from an affected region or may have otherwise come into contact with the virus?

- Recommend that employees immediately contact their physician or your company's medical service provider.
- If infection continues to be suspected after medical consultation, affected employees should avoid contact

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with others. Consider agreements to perform work from home (home office), invoking obstacles to work, mandatory vacations (in compliance with minimal advance notice requirements), agreements on unpaid days off.

3. Which measures to enact in case of increased employee absences?

- Take preventive measures to assure operations with a limited work force.
- Adjust shift and vacation schedules (in compliance with minimal advance notice requirements).
- Order employees to work overtime.
- Rescind already approved vacations.

Effects on contractual relationships

- Inspect the conditions of your significant contractual supplier and customer relationships, in particular pertaining to acts of nature (force majeure), possibilities to prematurely cancel agreements, and any related contractual penalties. This should include your insurance policies (Do they cover risks from production losses/damages?) and loan agreements (as these might include penalties when economic performance indicators change).
- With your business partners, update each other about the fulfilment of your mutual commitments. As soon as you assert that you will not be able to fulfil any kind of obligation, inform your business partners without undue delay and ask for an adjustment of contractual conditions or the termination of the obligation.
- Should delays or cancelations of supply deliveries be expected, try to cover such outages through deliveries from other suppliers. Do not take on new orders unless you have assured yourselves that you will indeed be able to deliver, as you have a preventive obligation to avoid damages.
- Liabilities may cease to exist because of a subsequent impossibility of performance/delivery due to an act of nature. However, the current situation pertaining to COVID-19 cannot be regarded an act of nature. At the same time, a performance or delivery cannot be deemed impossible if it can be carried out (i) under difficult conditions, (ii) with increased costs, (iii) with the help of others, or (iv) after the given deadline. Business partners must be informed about any extinguished liabilities without undue delay.
- Liabilities for damages may be discharged if it can be proven that the fulfilment of an obligation was temporarily or permanently prevented by an unpredictable and insurmountable obstacle, i.e. an act of nature. Such an obstacle must have arisen prior to any delays in the obligation fulfilment.
- Do not expect that any of your liabilities will be extinguished or discharged, as the burden of proof will be on your side and most likely subject to litigation. Contractual relationships can be altered in various ways or may be bound by other/foreign legal orders which may not allow for the cancelation or discharge of liabilities and obligations.
- In case of questions, please do not hesitate to contact your KPMG engagement team or turn to Martin Hrdlík, Partner of the law offices of KPMG Legal or Barbora Cvinerová, KPMG Legal's labour-law expert.

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