



NEWSLETTER 2/2020

Coronavirus – first aid legal guidebook

In relation with the occurrence of the coronavirus pandemic, the Government of the Czech Republic has declared a state of emergency as of 12 March 2020 for 30 days period and adopted several measures that affect not only citizens but also entrepreneurs and companies. We have prepared for you a basic summary of the most important measures and related legal aspects.

I. Restrictions and closures of shops and other venues

- The Government of the Czech Republic has banned the sale in retail stores and sale of other services in other business premises, with some exceptions, listed **here**. For the same period, a prohibition of the presence of the public in food service establishments and a ban on the provision of accommodation services (with some exceptions) is effective as well.
- The government recommends that all retail store operators regularly disinfect at the point of sale (handles, handles, shopping carts).
- If these restrictions affect your business, do not hesitate to contact us in order to set the business conditions to comply with the measures approved by the Government.

II. Breach of contract, change of circumstances and force majeure

- If the adopted measures directly affect your business or if you are indirectly affected by the restriction or cessation of the production or operation of your contractual partners - suppliers / customers, you may find yourself unable to meet your contractual obligations duly and on time. Delays in performance or defects in performance represent a breach of contract, which may result in contractually agreed or statutory sanctions, including the possibility of terminating the contract by withdrawal or notice. If you are dealing with possible consequences arising from a breach of contractual obligations (sanctions, termination of contract, compensation for damage), we recommend that you first check your current contractual documentation. Pay attention to the provisions applicable to the situation, in particular the so-called "**force majeure**" provisions which are generally embodied in the contracts.

- In the absence of an explicit contractual clause, the provisions of Section 2913 (2) of the Civil Code may be invoked, its wording being the followings:
“A tortfeasor is released from the duty to provide compensation [for damages] if he proves that he was temporarily or permanently prevented from fulfilling his contractual duty due to an extraordinary, unforeseeable and insurmountable obstacle created independently of his will...”.
- In order to apply the force majeure, all the above mentioned conditions must be met. In this context, it is necessary to assess in particular whether this is a real insurmountable obstacle, i.e. an essential obstacle that cannot be objectively removed even with all reasonable effort (i.e. efforts, costs and measures that may be required by the contracting party and which are not clearly disproportionate to the protected interest).
 - I.
- As stated above, however, the contracts may contain more concrete or completely different and specific provisions, as well as exclude the application of the section 2913 (2) of the Civil Code.

- If obstacles arise and they are caused by force majeure (circumstances excluding liability), it is appropriate to inform the contracting party with undue delay and propose measures that should be taken.
- Furthermore, we recommend reviewing whether and how your contractual documentation regulates the risk of change in circumstances (Section 1764 et seq. of the Civil Code), according to which, if there is a substantial change in circumstances which disproportionately disadvantage one of the parties, then it is generally possible to seek the resumption of negotiations of the contract, or in the event of failure it is possible to seek remedy at court.
- The resulting restrictions affect more or less the majority of business entities, we recommend establishing communication with your partners and trying to find a compromise acceptable to all parties.

III. Employees and employers

- The Ministry of Labor and Social Affairs issued an opinion regarding the situation stating that if, as a result of declaration of the state of emergency and emergency measures taken in connection with the spread of the coronavirus pandemic, the employer is in a situation of inability to allocate work to its employees, these are so-called **other obstacles in work on the side of the employer** pursuant to **Section 208 of the Labor Code** and employees will be entitled to wage compensation equal to 100% of their average earnings for the duration of these restrictions. At the same time, the Ministry of Labor and Social Affairs encourages the employers to continue to assign work to the employees, or to agree with the employees on a temporary change of the agreed type of work or change in the work schedule, etc.
- However, the Labor Code, in addition to the so-called other obstacles on the side of the employer pursuant to Section 208 of the Labor Code, which does not reduce wages, also regulates a special case of these so-called partial unemployment which results in a wage compensation reduction if the statutory conditions described below are met.

- So-called **partial unemployment** as defined in the section 209 of the Labor Code occurs in a situation when the employer cannot allocate work to his employees within weekly working hours **due to a temporary limitation of the sale of his products or demand for services provided by him**. In such situation, the employer is entitled, after an agreement with the work unions, to limit the amount of **wage compensation up to 60% of the average earnings**. If there are no unions on the side of the employees, the employer can limit the wage compensation unilaterally by an **internal regulation**.
- If the so-called partial unemployment arises on the side of the employer, the employer is entitled to request the relevant Labor Office to provide a **financial contribution during the period of the partial unemployment**. One of the conditions for granting this allowance is the conclusion of an agreement between the Labor Office and the employer, in which the employer undertakes to provide employees with a wage compensation of at least 70% of the average earnings provided that the employee won't lose his work for the organizational reasons, including redundancy. However, the agreement can be concluded **only after its approval by the Government**.

- The amount of the contribution is 20% of the average earnings of the employee, but not more than 0.125 times the average wage in the national economy in the first to third quarters of the previous calendar year, and it can be provided only during the obstacle in work, and no longer than 6 months with a possibility of one repetition under the same conditions.
- In our opinion the employers are experiencing the situation of the partial unemployment as a result of the emergency measures adopted and that employers should be able to follow the provisions of Section 209 of the Labor Code and not Section 208 of the Labor Code as proposed by the Ministry of Labor and Social Affairs. Nevertheless, the situation is developing very quickly and it is possible that the Ministry or the Government of the Czech Republic will adopt a different approach on this issue in the near future. Therefore it is necessary verify further developments.
- We also recommend to employers, if they have not already done so, to properly instruct their employees about the **increased preventive hygiene measures** that need to be taken at the workplace, in particular reduction of the physical contact, regular hand hygiene, covering the respiratory tract while communication with other employees.

- The employer has a general duty to secure to his employees safe and non-hazardous work environment; in this context, the employer should provide the employees with protective equipment and accessory in order to protect them as part of the preventive measures.
- The employer can also agree with the employee on the temporary work from home, the so-called **home office** (if possible, e.g. mainly in the case of administrative staff)..The employer is not entitled to order work from home to his employee unilaterally and a specific agreement on the modification of place of work is to be executed.
- The employer can also order the employee to **take holidays** and this in writing and at least 14 days in advance unless he agrees with the employee for a shorter period (Section 217 (1) of the Labour Code).

IV. Tax and financial aspects

- The Ministry of Finance adopted the decision ref. MF 7108/2020 / 3901-2, which, among others, waives the fine for late filing of income tax returns for both natural and moral persons, and at the same time waives the fine for late filing of withholding tax statements, up to 1.7.2020.
- Českomoravská záruční a rozvojová banka, a.s., within the COVID loan program, will provide interest-free loans for small and medium-sized businesses (up to 250 employees) in the amount of CZK 500,000. CZK to 15 million CZK, mainly to cover operating costs.
- The Government of the Czech Republic is further elaborating programs to support entrepreneurs, which could amount up to a trillion Czech crowns in total, but this program is not yet officially approved.
- We recommend consulting your loan provider directly to postpone instalments and interest payments.
- The Czech National Bank lowered its two-week repo rate to 1.75% as of 17 March 2020.

V. Restriction on free movement and circulation

- Until 24 March 2020 6:00, restrictions on the free movement of persons apply throughout the Czech Republic, although with number of exceptions, including travel to work and business or similar activities.
- As of 19.3.2020, all persons are prohibited from moving outside their home without a mask or other respiration cover.
- Czech citizens are forbidden to travel abroad. Foreigners are prohibited from entering the Czech Republic. International bus, rail and shipping services are suspended. Only drivers of trucks, vehicles under 3.5 t, bus drivers or persons commuting to work within 100 km of the state border have the exception of traveling abroad. Border control is introduced at some border crossing points. Freight transport abroad is still possible, but when crossing the border, drivers should dispose with all the necessary documentation to prove their entitlement to cross the border (consignment note, employment contracts, driver card).

VI. Compensation from the State – The Crisis Act

- Section 36 of the Crisis Act lays down the possibility of claiming compensation from the state for damages incurred as a direct result of adopted crisis measures. However, in view of the current situation, this provision cannot be applied without limits; any damages claimed from the state shall always be assessed by the court, and no concrete conclusions can now be drawn as to whether this procedure could be successful. Therefore, it is still advisable to try finding a solution first with your contractual partner. At the same time, however, we recommend that you continuously record any damage that you incur directly as a result of these measures for possible future claims against the state.

The above information is up to date 19.3.2020, please note that due to the rapid evolution of the situation it is possible that some restrictions may be extended or otherwise modified. Do not hesitate to contact one of our lawyers for more information.

We wish you good health.

For AKVK: Editor: JUDr. Magda Stárková, advocate, e-mail: starkova@akvk.cz

Our newsletters are prepared in order to provide general guidance on relevant matters and cannot be considered as exhaustive professional advice. We are not able and cannot address any specific circumstances or needs in this newsletter. We do not recommend acting upon the information contained therein without obtaining independent professional advice, which we will be glad to provide at your request. No representation or warranty is given as to the accuracy or completeness of the information contained in this publication.