

ACC & TAX & LEGAL ALERT



April 2020

OVERVIEW OF THE PREMISES OF THE "ANTI-CRISIS SHIELD" – EMPLOYMENT ISSUES

The President has already signed the package of laws comprising the so-called "Anti-Crisis Shield". Numerous amendments to the special-purpose Act of March 2, 2020 on special measures for the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them ("the Act"), which is the core of the government's Shield, will become effective as well.

The introduced amendment to the Act contains numerous and significant changes concerning labor law, which in particular introduce further improvements from the employers' perspective. In its version of March 2, 2020, the Act already introduced, i. a., remote work and an additional carer's allowance. According to the amendment, employers will be provided with further opportunities to respond to the crisis, which has hit the labor market hard and will continue to affect it for many months.

Below we present the main premises of the amendment to the Act with respect to employment-related issues.

WAGE REDUCTION

The current crisis situation will certainly lead to an increase in unemployment and lay-offs at workplaces. The lawmakers have reacted to this threat by offering **the possibility of lowering the salaries of employees affected by the economic downturn in relation to the coronavirus epidemic**. Wages could be **reduced by no more than 50%**, but still could not be lower than the minimum wage, which in 2020 amounts to PLN 2,600 gross (taking into account standard working time).

A possibility of co-financing the remuneration by the Guaranteed Employee Benefits Fund (FGŚP) will also be introduced, but the Fund's contribution will not be able to exceed 50% of the minimum remuneration (i.e. the amount of PLN 1300).

REDUCTION IN WORKING TIME AND WAGE SUBSIDY

From the employers' perspective, the increased flexibility will result not only from the possibility to reduce wages, but also from new regulations on working time reduction.

An employer who has suffered from a decline in economic turnover due to the coronavirus epidemic will be able to **reduce working time by 20%**, but such a reduction **must not result in the employee being employed less than ½ full time equivalent**.

Consequently, the employee's salary after the reduction cannot drop under the minimum wage. There will also be a possibility to obtain a pay subsidy of **up to 40% of the average monthly salary** in the previous quarter.

Currently, this amount is **PLN 2,079.43**, but in the case of subsequent periods it will be necessary to verify the amount of the average monthly remuneration for work, which will probably decrease due to the starting economic crisis.

The possibility to take the above actions **depends on the decrease in the employer's economic turnover according to indicators defined in detail by the**

lawmakers. A decrease in turnover will be examined according to quantitative or value criteria, depending on the decrease in sales of goods or services.

The amended Act specifies detailed rules in this respect. A turnover drop is defined as a decrease **by at least 15% during at least 2 calendar months** following January 1, 2020, or **as a turnover decrease by at least 25% in any one month in 2020**. Therefore, it will be easier to obtain support if a significant drop in turnover continues for more than a month (then the threshold is lowered from 25% to 15%).

WAGE SUBSIDY

The employer will be able to apply for support from the Guaranteed Employee Benefits Fund in order to **protect workplaces** if their employees are subject to economic downtime or reduced working hours.

The aid will be granted in an amount up to PLN 1,300 gross (50% of the minimum wage in 2020) or **up to half of the reduced employee's remuneration** (in relation to the amount after the reduction of working time), but then up to a maximum amount corresponding to 40% of the average remuneration (that is currently **PLN 2,079.43**).

However, the subsidy is not applicable to the remuneration of employees whose remuneration obtained in the month preceding the application was higher than 300% of the average monthly remuneration announced by the President of the Central Statistical Office (GUS).

IDLE-TIME BENEFIT FOR ENTREPRENEURS

The special-purpose act also provides for payment of an idle-time benefit for entrepreneurs. The conditions for obtaining it will be slightly more complicated. The Act contains a very detailed description of the conditions for granting such assistance. This form of aid is to include the following:

- subsidy to part of employee remuneration costs of the entrepreneur and related social security contributions – in the case of micro-, small and medium-sized enterprises employing employees,
- subsidy to part of the costs of running the business – in the case of the entrepreneur who is a natural person not employing employees.

The subsidy may be granted in the event of a decrease in economic turnover of the entrepreneur resulting from the COVID-19 epidemic. A decrease in economic turnover is defined as a decrease in the sale of goods or services, in terms of quantity or value, calculated as a ratio of the total turnover during 2 consecutive calendar months, falling in the period after 1 January 2020 to the day preceding the day of submitting the application for subsidy, compared to the total turnover during 2 consecutive calendar months of the previous year, as well as 30 consecutive calendar days,

if the two-month comparison period starts during a calendar month, that is, on a day other than the first day of a particular calendar month.

The form of aid will depend on the situation of the company. The Act stipulates that in the case of entrepreneurs hiring employees:

Subsidies:

- will cover part of the costs of employees' salaries and due social security contributions (payable by both employees and the entrepreneur who is the employer) – the entrepreneur will be able to apply for a subsidy for the salaries of all employees, as well as only part of them;
- can be granted when **the drop in turnover reaches:**
 - **at least 30%** – in an amount not exceeding the amount determined as the product of the number of employees subject to the application for the subsidy and **50% of the minimum wage**,
 - **at least 50%** – in an amount not exceeding the amount determined as the product of the number of employees subject to the application for the subsidy and **70% of the minimum wage**,

- **at least 80%** – in an amount not exceeding the amount determined as the product of the number of employees subject to the application for the subsidy and **90% of the minimum wage**;
- can be granted for a period not longer than:
 - 6 months – in case of micro- and small entrepreneurs,
 - 3 months – in the case of medium-sized enterprises.

The subsidy will be paid monthly, after the entrepreneur submits a declaration that in a given month they employ employees under a contract, as of the last day of the month for which the subsidy will be paid.

The amount of subsidy may not exceed the actual costs incurred for the remuneration of employees and social security contributions applicable to such remuneration.

The applications for a subsidy will be submitted by the entrepreneur to the poviát employment agency competent for the entrepreneur's seat or place of work performed by the employees within 14 days from the date of announcement of admissions by the poviát director.

In the application for the subsidy, **the entrepreneur will have to declare that a number of conditions have been met**, i. a. with respect to the amount of decrease in turnover, the number of employees or the amount of de minimis aid, submitted under pain of criminal liability for making false declarations. At the same time, a reservation will be introduced that the entrepreneur cannot receive the subsidy in the amount where the same costs were or will be financed from other public funds.

The co-financing used by the entrepreneur in an improper manner will be subject to reimbursement within 30 days from the date of delivery of the call of the Poviát Authority (Starost). No interest will be charged on the amount to be returned. Aid to the entrepreneur will be granted in accordance with the conditions of de minimis aid eligibility.

In the case of an **entrepreneur who is a natural person not employing employees**:

The subsidy:

- will cover part of the costs of running business;
- can be granted when **the drop in turnover** amounts to:
 - **at least 30%** – at the amount of **50%** of the minimum wage per month,
 - **at least 50%** – at the amount of **70%** of the minimum wage per month,
 - **at least 80%** – at the amount of **90%** of the minimum wage per month
- is granted for a period **not longer than 6 months**;
- is paid out once.

The entrepreneur will be obliged to conduct business activity for the period for which the subsidy has been granted, and in the event of failing to do so, the subsidy will have to be returned in the amount proportional to the period of no business activity, within 30 days from the date of delivery of the call of the Poviát Authority (Starost). No interest will be charged on the amount to be returned.

The applications for a subsidy will be submitted by the entrepreneur to the poviát employment agency competent for the place of business within 14 days from the date of announcement of admissions by the poviát director

In this case as well, in the application for granting the subsidy, the entrepreneur will have to declare that a number of conditions have been met, i. a. with respect to the amount of decrease in turnover, or the amount of de minimis aid, submitted under pain of criminal liability for making false declarations.

The entrepreneur cannot receive a subsidy in the amount where the same costs of conducting business activity were or will be financed from other public funds. Aid to the entrepreneur will be granted in accordance with the conditions of de minimis aid eligibility.

IDLE-TIME BENEFITS FOR THE SELF-EMPLOYED AND PEOPLE EMPLOYED UNDER CIVIL LAW CONTRACTS

The special-purpose act proposes a **one-off payment for persons running a one-man business and persons performing work under civil law contracts, the so-called idle-time benefit**.

This benefit will be granted in the amount of 80% of the minimum remuneration for work applicable in 2020, i.e. **PLN 2080**. The benefit will not be subject to contributions and taxation due to its social nature and is to be financed by the Labor Fund.

If the economic downtime resulting from the coronavirus epidemic is prolonged, both entrepreneurs and those working under civil law contracts will be able to apply for payment of the second idle-time benefit. Then the assistance addressed to them will total PLN 4160. **The second payment will be the same, that is PLN 2080.**

The right to this benefit will be granted due to **economic downtime** (as a result of an epidemic emergency), which has lasted **at least 30 days** before the month in which the application for the benefit is submitted, provided that the income in the month preceding the application for the benefit was lower than 300% of the forecast average gross monthly salary in the national economy in 2020. (5,227 PLN x 300% = **15,681 PLN**).

The benefit will be granted if these persons began their business activity before March 1, 2020, and have not suspended their business activity, and their **income from this activity in relation to the previous calendar month has been reduced by at least 15%**. Persons conducting business activity, where the regulations on lump-sum income tax in the form of a constant amount tax apply, who have benefited from the exemption of sales from VAT under Article 113(1) and (9) of the VAT Act will be entitled to a idle-time benefit in the amount of 50% of the minimum wage applicable in 2020, due to the lack of possibility to verify the income generated. The benefit will also be available to persons who have suspended their business activity after March 1, 2020.

Persons performing work on the basis of civil law contracts, i.e. contracts of mandate and contracts for specific work will be entitled to the idle-time benefit if the civil law contract was concluded before February 1, 2020. The benefit will be available if the remuneration for the performance of the civil law contract is at least 50% of the minimum wage applicable in 2020 or if the ordering party has not received aid for the payment of remuneration under the solutions related to counteracting economic effects of COVID-19.

The amount of the benefit will not depend on the amount of remuneration provided for in the civil law contract as well as the actual payment of remuneration for limited performance of the contract. **In any case, it will be 80% of the minimum wage.**

However, the idle-time benefit will not be granted if the income obtained under the civil law contract or business activity in the month preceding the application was higher than 300% of the average monthly salary as announced by the President of the Central Statistical Office.

The payment of the idle-time benefit is made in a non-cash form to the indicated payment account of the entitled person. No deductions or enforcement shall be made from the idle-time benefit.

DEFERRAL OF PAYMENT OF ZUS CONTRIBUTIONS

If, due to the coronavirus epidemic, an entrepreneur has problems paying current contributions or dues, which result from a previously concluded agreement with the Social Insurance Institution (ZUS) to pay the debt in installments or defer the payment deadline, they can use simplified forms of aid:

- deferral of the deadline to pay contributions for the period from February to April 2020 by 3 months,
- suspension for 3 months of the implementation of the agreement concluded with ZUS, where the deadline to pay installments or contributions had been set in the period from March to May 2020, and thus extension of the deadline for implementation of the concluded agreement by 3 months.

	In order to take advantage of the relief, one should submit an appropriate application(it can be submitted online).
EXEMPTION OF MICRO-ENTERPRISES (EMPLOYING UP TO 9 PEOPLE) FROM SOCIAL SECURITY CONTRIBUTIONS FOR 3 MONTHS	<p>According to the Act, the State will take over payment of social security contributions for 3 months (March, April and May) in the case of micro-enterprises employing up to 9 people, established before February 1, 2020. The exemption applies to contributions for the entrepreneur and their employees.</p> <p>Self-employed with income up to PLN 15,681 (300% of average salary) who pay contributions only for themselves can also benefit from the exemption.</p> <p>Both the entrepreneur and the persons working for them will retain the right to health and social security benefits for the period of exemption from contributions.</p>
DEFERRAL OF ADVANCE PAYMENTS	In the case of tax advances collected in March and April 2020 against salaries paid by employers, the obligation to pay has been deferred to June 1, 2020 , provided that the payers (employers) have suffered negative economic consequences due to COVID-19. This regulation applies accordingly to payments under contracts of mandate and contracts of specific work.
EXTENSION OF THE VALIDITY PERIOD OF WORK PERMITS FOR FOREIGNERS	An important provision included in the Act is the extension of the period of validity of work permits for foreigners (and the decision to extend the work permit) by law, as well as the extension of the permitted period of work without a work permit under a declaration of entrusting work to a foreigner, for the duration of the SARS-CoV-2 epidemic emergency or the state of the epidemic and the following 30 days.
ECONOMIC DOWNTIME AND COMPANY'S OWN ACTS	<p>The revised rules on performing work duties in connection with economic downtime should be regulated in a collective labor agreement or in an agreement concluded with trade unions or workers' representatives.</p> <p>If there are no trade unions at a company, it will be necessary to conclude an agreement with the employees' representatives elected in accordance with the employer's regulations.</p> <p>Revised working conditions are to be agreed with employee representation within 2 days after notification by the employer about planned changes related to economic downtime or reduction of working time. The lawmakers have set a very short deadline allowing employers to take immediate action. In case of a failure to reach an agreement with trade unions or workers' representatives, employers may set new conditions on their own, but in accordance with the general principles of labor law, assuming that even partial arrangements made with workers' representatives are taken into account as far as possible.</p> <p>The amendment to the Act provides that it will be necessary to indicate in the company's internal acts at least the occupational groups that the downtime or reduced working time applies to, the reduced working time (following the rules discussed above concerning the acceptable scope of reduction) and the timeframe in which changes related to the epidemiological crisis will be introduced.</p>
CHANGES IN TERMINATION AMENDING THE CONTRACT OF EMPLOYMENT	Pursuant to the Labor Code, the deterioration of the employee's working conditions or remuneration requires the maintenance of the requirements concerning changing notices, as referred to in Article 42 of the Labor Code. The lawmakers introduce a major change in this respect for the time of an epidemic crisis. The above changes regarding working conditions during periods of an economic downtime or reductions in working time, which are unfavorable for employees, do not require following the procedure of termination amending the contract of employment .

DAILY AND WEEKLY REST	<p>A reduction in the necessary minimum uninterrupted daily and weekly rest has also been planned. Currently, they are 11 and 35 hours respectively.</p> <p>Employers who have experienced a drop in economic turnover in line with the economic conditions specified in the amended Act will be able to limit the uninterrupted daily rest of an employee to 8 hours and the uninterrupted weekly rest to 32 hours.</p>
EQUIVALENT WORK TIME SYSTEM	<p>The provisions on the equivalent work time system (flexible working hours) are to be liberalized as well.</p> <p>It will be possible to conclude an agreement on the introduction of an equivalent working time system, under which it will be possible to extend the daily working hours, but to a maximum of 12 hours and within a settlement period not exceeding 12 months. In accordance with the general principles of an equivalent work time system, longer working hours are to be 'compensated' by shorter working hours on other days or days off.</p> <ul style="list-style-type: none"> ■ However, the introduction of the above changes to the equivalent work time system requires the employer to conclude an agreement with the trade unions or workers' representatives. Additionally, the employer will have to provide a copy of the relevant agreement to the district labor inspector.
CARE ALLOWANCE	<p>In Article 4, the Act provides for a possibility of obtaining an additional carer's allowance up to 14 days.</p> <p>The amendment to the Act provides for further facilitation in this respect – additional carer's allowance will be available for an even longer period. However, the extension of this period is subject to the regulations of the Council of Ministers concerning a further prolongation of the period for which facilities such as nurseries, children's clubs, kindergartens, day care facilities, and other educational institutions will be closed. These periods are to be linked.</p> <p>The statement of reasons behind the amendment to the Act states that the lawmakers' aim was to adjust the regulations on carer's allowance to the prolonged complications related to closing of educational institutions for the youngest.</p>
MEDICAL EXAMINATION	<p>Due to the very high burden on the health service and the need to adjust the regulations concerning occupational medicine examinations to the current state of crisis, it was decided to liberalize the rules concerning occupational medicine examinations.</p> <p>Due to the COVID-19 pandemic, periodic examinations are to be suspended, but they should be performed immediately (not later than 60 days) after the end of the epidemic which was the reason for their suspension.</p> <p>Preliminary and follow-up examinations are still to be carried out under the current rules (they remain necessary), but a possibility to have them carried out by a doctor other than an occupational medicine physician has been introduced.</p> <p>However, the decision of other physician will expire 30 days after the cancellation of an epidemic emergency or the state of the epidemic, so it will have to be confirmed by the occupational medicine physician.</p>
EMPLOYEE CAPITAL PLANS (PPK)	<p>The changes also include the recently introduced common, voluntary and private long-term saving system for employees - Employee Capital Plans.</p> <p>The legislator has decided to postpone by half a year the obligation regarding the Employee Capital Plans in medium-sized enterprises – the deadline for concluding agreements to manage the PPK and to run the PPK (to October 27, 2020 and November 10, 2020 respectively).</p>

This document was prepared for informational purposes only and is of a general nature. Every time before taking actions on the basis of the presented information, we recommend obtaining a binding opinion of TPA Poland and Baker Tilly Woroszyńska Legal experts.

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