

# Coronavirus in Poland - guidance for employers

As a result of reported coronavirus infections in Poland, the parliament recently adopted an act on special rules to help the country fend off the threat posed by the coronavirus. Under the new law, employers are able to instruct employees to work from home. The Act also introduced an additional care allowance if schools will be closed (which actually happened on 11 March).

## Duty of care and health and safety

Employers have a duty of care to protect the health, safety and welfare at work of their workforce, as well as others who may be affected by their operations such as contractors and the public so far as is reasonably practical. This would include taking reasonable steps to control the possible spread of the coronavirus at sites under their control and ensure that any control measures are consistent with the government's advice and applicable provisions of labour law.

## What are the circumstances in which self-isolation should occur?

The General Sanitary Inspectorate has published guidance when an individual must stay at home and not go to work, school, or public areas, or use public transport for a period of 14 days. Currently, the people should stay at home and avoid contact with others are those who within 14 days:

- > returned from countries where coronavirus infections have been heavily reported,
- > had contact with someone with coronavirus,
- > an individual has symptoms such as fever, coughing or breathing difficulties.

Unless it is agreed between the parties of the employment relationship an employee cannot unilaterally make the decision concerning self-isolation. The applicable grounds for self-isolation is a sick leave certificate issued by a medical practitioner or isolation ordered by the Sanitary Inspectorate.

## Do employees have the right to receive remuneration?

### An individual has contracted the coronavirus

If an individual has contracted the coronavirus, then they should be paid in accordance with their usual sickness absence and pay arrangements. Normally employees who take time off work due to illness confirmed by a medical certificate are able to claim up to 80% of the remuneration when an illness or isolation due to a contagious disease which lasts up to 33 days in total during a calendar year and if the employee is 50 years of age or more - up to 14 days in total during a calendar year. Any longer periods of sick leave is financed by the government by a sick allowance payment.

### If an employee is not sick but the employer instructs them not to come to work and work from home

If an employee is not sick but their employer instructs them to work from home and not to attend work, perhaps due to the employer taking a more cautious approach he or she should receive their usual pay because they are complying with the employer's lawful and reasonable instruction. Based on the newly introduced law the employer is entitled to instruct its employees, some or all of them to work remotely for a specified period of time thus the employer when ordering remote work shall define the applicable period (e.g. 2 weeks). If necessary the instruction can be repeated. An employee who works remotely is entitled to his/her full remuneration.

### If an employee needs time off from work to look after someone e.g. due to school closures

On 11th March 2020 Polish Prime Minister announced his decision to close all nurseries, schools and universities for two weeks. In this case parents of children younger than 8 years are entitled to an additional care allowance for this period. If the schools remain closed for a longer period the ordinary care allowance would apply which is payable for 60 additional days. Parents of non-infected children at the age of 8 years and older are not entitled to the allowance due to school closure. Different rules apply

if the child has been infected and a medical practitioner issued a sickness certificate. In this case the allowance is payable for 60 days if the child is younger than 14 years and 14 days as for older children. The allowance is financed by the Social Insurance Fund.

### **What factors should be considered in terms of remote work?**

Provisions of Polish Labour Code do not regulate in detail the matter of remote work. Although, similar to statutory regulated teleworking, an employer should provide an employee with the necessary equipment to perform work i.e. computer, mobile phone, etc. An employer should also instruct an employee who works from home office on health and safety at work matters.

### **Should we place restrictions on our staff in terms of work-related or personal international travel?**

The Polish Ministry of Foreign Affairs is currently advising against all travel to South Korea, Vietnam, China, Italy and have asked to postpone all unessential travel. Employees should not be instructed to travel to crisis regions. You can find up to date information here (available in Polish language): <https://www.gov.pl/web/dyplomacja/informacje-dla-podrozujacych>. If an employee is to be directed to a place where the risk of contracting a disease is particularly high, he or she can refuse to go on the trip, indicating that the conditions of work performance do not comply with appropriate health and safety conditions and pose a threat to his or her health.

As regards private travel as a rule the employer has no legal basis to collect information about the employee's personal international travel and the employee is not obliged to disclose such information.

### **Does the employer have the right to ask an employee returning from a coronavirus region to take leave?**

An employer cannot force an employee returning to work from a coronavirus-endangered zone to take annual leave. Nor is it competent to take action to isolate an employee in quarantine. The proper measure would be to instruct the employee to work remotely.

Nevertheless employees are bound by an obligation to take care of their own health and safety, and that of their colleagues. Therefore it is recommended that an employee informs his/her employer if he/she comes back from a crisis region, has been in contact with a contaminated person or shows corona virus symptoms.

### **Does the employer have to advise its workforce if an employee has been identified as suffering from coronavirus?**

Both, i.e. the data privacy rights of the individual such as personal medical information which is sensitive personal data, and the health and safety obligations which the employer has towards all its employees should be considered. As a rule the staff notification should take place on an anonymous basis, i.e. without disclosing personal data of the infected individual. In addition the employer shall notify the local Sanitary Inspectorate about the issue.

### **Can an employer instruct an employee who returns to work after leaving for the region/country where he/she was exposed to the coronavirus infection to have an additional medical examination?**

No. The legislation does not provide for the referral of an employee to examinations in connection with an increased risk of contracting virus diseases. The Polish Labour Code does not provide for direct referrals for additional medical examinations in the event of suspected illness. The proper measure would be to instruct the employee to work remotely.

Nevertheless, according to article 229 section 4 of the Labour Code, an employer may not allow an employee to work without a current medical certificate stating that there are no contra-indications to work in a given position. This is valid unless an event occurs during this period that may indicate a change in the employee's state of health (e.g. accident or sick related absence for more than 30 days). In this case, a medical certificate of fitness for work becomes obsolete and the employer is obliged to remove the employee from work and refer him or her to a medical practitioner.

### Does an employer have the right to ask questions about the employee's state of health?

No. Polish law does not provide for the right to ask questions about the employee's state of health. However, the employer shall raise awareness and provide employees with information regarding governmental recommendations in the case of specific suspicion of illness.

### Where can employers and employees find useful information on the topic?

Information and instructions are provided on webpages of the competent authorities which are:

- > Main Sanitary Inspectorate <https://gis.gov.pl/en/homepage/>
- > State Labour Inspectorate <https://www.pip.gov.pl/pl>

In case of any questions/queries please contact:



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