

COVID-19 and Labour Law: Poland

Izabela Florczak*

Abstract

The COVID-19 pandemic was a shock for the Polish economy, which in many sectors has almost ceased to operate, while in others it has largely limited its previous activity. This has negatively impacted masses of employees, persons employed under civil law contracts or self-employed people. Therefore, the Polish legislator has taken steps to prevent destabilization of the labour market, doing so mainly by supporting employers in the fight to maintain jobs.

Keywords: Covid-19; Labour Law; Remote work; Financial support; Protection against dismissals.

1. Introduction.

The first patient with the COVID-19 was diagnosed in Poland on 2nd of March 2020. The same day Polish legislator prepared the *Act on specific solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them*¹ (hereinafter the “COVID Act 1”). The regulation was promulgated on March 7. The Act set out the rules for preventing and combating SARS–CoV-2 infection specified in the Act, known worldwide as the abbreviation COVID-19. COVID Act 1 regulated issues connected with labour law and social security law to a limited extent.

The COVID Act 1 was amended with the *Act on the amendment to the Act on specific solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them, and certain other acts*² (hereinafter the “COVID Act 2”). This act extended the regulation with several remedies to the situation on the broadly understood labour market.

While this report is being prepared Polish legislators are working on the *Act of on specific support instruments in connection with the spread of the SARS-CoV-2 virus*³ (hereinafter the “COVID Act 3”), which is supposed to change i.e. COVID Act 1 and its amendment introduced by COVID Act 2.

The state of epidemic threat was introduced from 14/03/2020 pursuant to the Regulation of the Minister of Health of 13/03/2020 *regarding the announcement of the state of epidemic threat*

* Assistant Professor at the University of Lodz, Department of Labour Law, ORCID 0000-0003-3167-3382, <https://www.wpia.uni.lodz.pl/en/about/staff/izabela-florczak.html>. All sites last accessed on 10 April 2020.

¹ Journal of Laws 2020 item 373.

² Journal of Laws 2020 item 568.

³ The proposal of the COVID Act 3 - <http://sejm.pl/Sejm9.nsf/druk.xsp?nr=330>.

in the territory of the Republic of Poland⁴. This state was canceled on 20/03/2020 by the ordinance of the Minister of Health of 20/03/2020 *regarding the dismissal of the state of epidemic threat in the territory of the Republic of Poland*⁵. On the same day, the state of the epidemic was introduced pursuant to the ordinance of the Minister of Health of 20/03/2020 *regarding announcement in the area of the Republic of Poland epidemic status*.⁶ The epidemic status has been announced until further notice.

The current situation has already caused damage to the labour market⁷ and its development seems to be unstoppable.⁸ The question is what is being done is to minimize the loss?⁹

By 10th of April - 5955 patients were officially diagnosed in Poland with the COVID-19, 181 deaths were attributed to contagion of COVID-19.

2. Remote work.

Article 3 of the COVID Act 1 provides the possibility of instructing an employee for a fixed period of time to work remotely to counteract COVID-19. The employee's consent to this mode of work is not required. The term “remote work” is new in the Polish legal system and its regulation is very limited in its content. It seems that remote work can be introduced for both an individual employee as well as a group of employees or even the entire office. The Polish Labour Code gives a possibility to use telework as a way of organizing the work performance. But remote work is a different, exceptional way of organizing the process of work, introduced due to the pandemic in a lot of sectors, even in a public administration¹⁰.

3. Additional care allowance.

Due to the closure of a nursery, kindergarten and school because of the coronavirus pandemic employees are entitled to use additional care allowance. Generally, except from

⁴ Journal of Laws 2020, item 433, as amended.

⁵ Journal of Laws 2020, item 490.

⁶ Journal of Laws 2020, item 491 as amended.

⁷ Ciobanu C., *Polish Layoffs Soar Despite Government Support Package*,

<https://balkaninsight.com/2020/04/06/polish-layoffs-soar-despite-government-support-package/>;

Coronavirus to deepen economic slowdown in labor market, <https://wbj.pl/coronavirus-to-deepen-economic-slowdown-in-labor-market/post/126486>.

⁸ Gagolski Ł., *Labour market will face huge redundancies due to coronavirus – daily*, <https://www.thefirstnews.com/article/labour-market-will-face-huge-redundancies-due-to-coronavirus---daily-11445>.

⁹ Some commentators point out that it is impossible to keep jobs with the current form of state aid and dismissals are necessary. Krzyżniak B., *Tarcza nie pomoże. Zwolnienia w firmach już się zaczęły*, <https://www.forbes.pl/gospodarka/firmy-zwalniają-pracowników-przez-koronawirusa-pracodawcy-o-planowanej-redukcji/fysppyc>.

¹⁰ The share of companies that implemented home office working during the coronavirus (COVID-19) epidemic in Poland as of March 2020, by industry, is available at: <https://www.statista.com/statistics/1108019/poland-companies-that-implemented-remote-working-during-covid-19/>.

regulations which derives from the COVID Act 1, in accordance with the *Act on cash benefits from social insurance in the event of sickness and maternity*¹¹ an employee who is released from work due to the need to personally take care of a child up to the age of 8 years, in the event of unforeseen closure of the nursery, kindergarten or school to which the child attends, is entitled to care allowance paid by a social security fund. In such a case the total period of receiving this benefit is 60 days in a calendar year. The period of receiving additional care allowance is not included in the abovementioned 60-day period of receiving care allowance.

The COVID Act 1 introduced additional care allowance for a period of no more than 14 days if a nursery, kindergarten or school closes because of COVID-19. According to the Ordinance of the Minister of National Education of 11 March 2020 *on temporary restriction of the functioning of units of the education system in relation to the prevention, counteraction and eradication of COVID*¹² from 16th until 25th of March all nursery, kindergarten and schools were closed. This allowance applies only to parents of children under 8 years old. Parents of older children are not entitled to any special allowances due to closure of school.

The COVID Act 2 expanded the beneficiaries entitled to additional care allowance to persons caring for the disabled.

The closing period for nursery, kindergarten and school was extended with the Ordinance of the Minister of National Education of 20 March 2020 until the April 10th.

4. Financial support.

COVID Act 2 introduced several financial mechanisms which are supposed to counteract reduction of employment and support those who lost their source of income.

a) Support for employers through co-financing of remuneration for employees from the Guaranteed Employee Benefits Fund in the event of a decrease in turnover which leads to the demurrage connected with reduction of remuneration or reduction of working time. In the first event (demurrage) the funding is granted in the amount of 50% the minimum salary. In the event of reduced working time by 20%, but no more than up to 0.5 full-time employment, the funding is granted up to no more than 40% of the average monthly salary. To get such support three additional conditions must occur:

- the employer has to prove that he made all payment of contributions and taxes by the end of the third quarter of 2019;
- there has to be a decrease in economic turnover of an employer due to COVID-19;
- the employer has to sign an agreement with trade unions or employee representatives regarding the reduction of remuneration due to economic downturn or reduction of working time.

¹¹ Journal of Laws 2019 item 645, as amended.

¹² Journal of Laws 2020, item 595, as amended.

This mechanism guarantees the maintenance of the workplace by prohibiting the termination of the employment contract during the period of using the founding and for 3 months after it.

b) Co-financing of part of the employee remuneration costs and social security contributions due by the staroste¹³, in the event of a decrease in economic turnover following the occurrence of COVID-19 for micro, small and medium-sized enterprises. This mechanism is similar to the mechanism from point 3.1, except that this type of founding is granted at discretion, it is necessary to prove a decrease in turnover on a larger scale and protection against termination of employment is weaker.

c) Exemptions from social security contributions for 3 months are available for self-employed, contractors and micro-enterprises which reported less than 10 insured persons for social security. This limit is supposed to be changed in the COVID Act 3 by increasing the limit to 49 reported insured persons for social security.

d) One-off payment for persons conducting sole proprietorship (in this case, there must be a decrease in income) and persons performing work on the basis of civil law contracts, provided that these persons have no other social security title. The benefit is paid up to 80% of the minimum wage in 2020. The COVID Act 3 provides that this benefit may be paid up to three times.

e) A low-interest loan of PLN 5,000 is available for micro-entrepreneurs, amortized if the employment level is maintained.

4. Changes in the working time.

The COVID Act 2 enabled employers that in the event of a decrease in economic turnover caused by the coronavirus pandemic they can adapt more flexible rules for determining employees' working time and modifying employment conditions in order to preserve their jobs such as:

- limiting uninterrupted daily rest from 11h to 8h;
- limiting uninterrupted weekly rest from 35h to 32 h;
- introducing an equivalent working time system without having to meet the requirements of the Labour Code.

¹³ Staroste - an office related to the management of the administrative unit in Poland.

5. Health and safety at work.

The Ordinance of the Council of Ministers of 31/03/2020 *on establishing certain restrictions, orders and bans in connection with the occurrence of the state of the epidemic*¹⁴ obliged employers to ensure:

a) persons employed irrespective of the basis of employment have access to disposable gloves or hand sanitizers,

b) a distance between working areas of at least 1.5 m, unless this is impossible due to the nature of the activities carried out in the workplace, and the employed are provided personal protective equipment related to combating the COVID-19 epidemic¹⁵.

This regulation is in force since 2nd of April until 11th of April. With the Ordinance of the Council of Ministers of 10/04/2020 it has been repealed with new *Ordinance on establishing certain restrictions, orders and bans in relation to the outbreak of the state of the epidemic*¹⁶. This Ordinance provides for the same regulations with effect until April 19th.

6. Summary.

Regulations created in Poland, which were supposed to minimize the impact of the COVID-19 pandemic on the labour market, highlighted many problems existing before, such as the bad economic position of entrepreneurs, the high rate of precarious employment, which does not guarantee stability, and the lack of social dialogue. This last element was particularly visible in the absence of proper consultation with the social partners of the introduced regulations.

It is very likely the legislative work on the new regulations will continue for another few months.

Copyright © 2020 Izabela Florczak. This article is released under a Creative Commons Attribution 4.0 International License

¹⁴ Journal of Laws 2020, item 566 as amended.

¹⁵ None of the law regulations specify the term “provided personal protective equipment related to combating the COVID-19 epidemic”.

¹⁶ Journal of Laws 2020, item 658.