

COVID-19 and Labour Law: Estonia

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Abstract

The restrictions implemented to counteract the spread of the Covid-19 disease has led to a high degree of teleworking. The application of the provisions allowing unilateral amendment of the employment contract by the employer (mainly to reduce wages) has become commonplace. The Unemployment Insurance Fund pays the wage compensation to employees whose employer's operation has been considerably disrupted by extraordinary circumstances.

Keywords: Covid-19; Labour Law; Telework; Reduction of wages; Wage compensation.

On 12 March 2020, the Government of the Republic of Estonia declared the emergency situation to prevent the spread of the Covid-19 disease in Estonia¹. Initially, the following measures² were taken to avoid the spread of the coronavirus:

- all public gatherings were prohibited;
- all educational institutions (primary, basic, secondary, vocational and hobby schools as well as higher education establishments and universities) switched over to remote and home studying;
- all performances, concerts, conferences and sports competitions were prohibited; museums and cinemas were closed³.

A few days later, several public leisure facilities, such as sports halls, sports clubs, gyms, spas, swimming pools, water centres, day centres, children's play rooms, casinos and slot machine halls, hookah cafés, recreation and entertainment facilities, were closed⁴. Restaurants, cafés and bars were to be closed from 10 p.m.

Since 25 March 2020, it was prohibited for more than two people to be together and move around in a public place. Also, at least two metres of distance from others were required to be kept indoors (except in homes) and places intended for public use which mean,

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¹ Information concerning the emergency situation is available on the special website; and also in English. <https://www.valitsus.ee/en/emergency-situation-estonia>, accessed 5 Apr. 2020.

² This paper does not deal with the restrictions imposed on entry into Estonia and the reintroduction of border control and other similar restrictions due to the emergency situation.

³ Application of measures of emergency situation. Government of the Republic Order No. 77. Passed on 13 Mar. 2020. <https://www.riigiteataja.ee/en/eli/517032020005/consolide>, accessed 5 Apr. 2020.

⁴ Order of the person in charge of emergency situation concerning restrictions imposed on institutions accessible to the public. Order of the Prime Minister No. 29. Passed on 14 Mar. 2020. <https://www.riigiteataja.ee/en/eli/525032020003/consolide>, accessed 5 Apr. 2020.

above all, stores, outdoor playgrounds and sports grounds, beaches, promenades, health and hiking trails, parks and public transport vehicles⁵.

Shopping centres were closed at the end of March, with the exception of grocery stores, pharmacies, bank offices, points of sale of telecommunications companies, post offices and other similar establishments located there. However, these establishments were required to ensure the availability of disinfectants and supervise that people walk around in groups of one or two people while keeping at least two meters of distance from others⁶.

All these and other constraints imposed due to the emergency situation have affected the employment relationships of a large number of employees. However, neither the Government nor the Prime Minister has adopted acts to amend the rules of labour law. Social partners have not been involved in the development of legislation concerning the emergency situation.

The implementation of the restrictions has led to a high degree of teleworking. As previously, the main problem when working from home is ensuring the health and safety of employees because their homes are not under the employer's control. The application of the rules on the employer's right to unilaterally change the employment contract has also become important, especially since there is almost no previous practice on these issues.

According to the Estonian Employment Contracts Act (TLS)⁷ § 17 (3) and (4), an employee does not have to follow an instruction not related to the employment contract, collective agreement or law, unless it arises from an emergency (which is usually related to *force majeure*). The spread of the Covid-19 disease can be considered as *force majeure* and instruction not related to the employment contract have been given primarily to medical professionals. Under that provision, there is no possibility to transfer employees who are not directly affected by the coronavirus to another job.

During the emergency situation, many employers used the right to reduce wages under § 37 of the TLS. According to TLS § 37 (1), if an employer, due to unforeseen economic circumstances beyond its control, fails to provide an employee with work to the agreed extent, the employer may reduce the wages, if payment of the agreed wages would be unreasonably burdensome for the employer. The measures taken due to the spread of the Covid-19 disease can be considered as unforeseen economic factors beyond the employer's control, which may lead to a reduction in the employee's wages.

However, in the case of the reduction of wages, several social protection restrictions must be kept in mind. The employer may reduce the wages to a reasonable extent, but not

⁵ These restrictions did not apply to families being and moving around together; the restrictions did also not apply if it could not reasonably be ensured. Order of the person in charge of emergency situation for imposing restrictions on the freedom of movement in public places. Order of the Prime Minister No. 45. Passed on 24 Mar. 2020. <https://www.riigiteataja.ee/en/eli/525032020001/consolide>, accessed 5 Apr. 2020.

⁶ Order of the person in charge of emergency situation for imposing a restriction on the freedom of movement in commercial establishments. Order of the Prime Minister No. 46. Passed on 24 Mar. 2020. <https://www.riigiteataja.ee/en/eli/504042020002/consolide>, accessed 5 Apr. 2020.

⁷ Employment Contracts Act. Passed on 17 Dec. 2008. <https://www.riigiteataja.ee/en/eli/509052019005/consolide>, accessed 5 Apr. 2020.

below the minimum wage⁸ for up to three months over a period of 12 months (TLS § 37 (1)). If possible, before reducing wages the employer is required to offer the employee other work. The employer is also obliged to inform and consult with employees' representatives (TLS § 37 (2) and (4)).

Pursuant to TLS § 37 (3) and (5), an employee has the right to refuse to perform work in proportion to reduction of the wages. The employee does not have to agree to the reduction of wages; he or she may terminate the employment contract for this reason and is entitled to redundancy benefits.

As a result of the application of measures imposed due to the emergency situation, (collective) redundancies are also taking place. However, this has not given rise to much legal discussion because, unlike the reduction of wages and other measures, redundancies have still occurred from time to time.

Due to the restrictions implemented to counteract the spread of the Covid-19 disease, one important social security measure introduced by the government to protect employees' incomes is the payment of the wage compensation to employees⁹. Wage compensation is paid by the Unemployment Insurance Fund to employees whose employer's operation has been considerably disrupted by extraordinary circumstances for the period from 1 March 2020 to 31 May 2020, but for no more than two calendar months.

Wage compensation is usually paid to employees whom their employer cannot provide with work to the agreed extent and whose wage has been reduced according to the TLS § 37. An employee is entitled to receive compensation of 70% of the employee's average wage but as a gross amount no more than 1000 euros per one calendar month. An employee who is paid wage compensation must be paid gross wages of at least 150 euros by their employer. The compensation paid by the Unemployment Insurance Fund along with the wage paid by the employer must ensure an employee at least the minimum wage (§ 19¹ of the Employment Programme for 2017 to 2020).

This is a good measure to protect employees' income (and to help employers to maintain jobs and avoid redundancies), but it is not very helpful if the emergency situation lasts for several months, because the financial resources of the Unemployment Insurance Fund are limited.

At the beginning of April 2020, the Estonian Parliament (*Riigikogu*) began proceedings on a bill according to which, due to the spread of the Covid-19 disease, state pays social tax for the self-employed in the first quarter of 2020.

As coronavirus is particularly dangerous for the elderly, the legislator should establish a legal basis for this group of employees to temporarily refuse to work.

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⁸ In 2020, the minimum wage in Estonia is 584 euros per month and 3.48 euros per hour.

⁹ Amendment to the Government of the Republic Regulation No. 130 "Employment Programme for 2017 to 2020" of 17 November 2016. Government Regulation No. 21. Passed on 20 Mar. 2020.