

# COVID-19 and Labour Law: Hungary

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### Abstract

The most important new measure is Article 6(4) of the Government Decree No. 47/2020. It allows employees and employers to freely derogate (*in melius* and *in peius*) from any provision of the Labour Code by their agreement. This brings us back to the total freedom of contract over statutory law.

**Keywords:** Covid-19; Labour Law; Freedom of contract.

Following the virus outbreak in Hungary, a state of ‘Emergency’ was declared on March 11, and thereby a special legal order entered into force. In case of ‘Emergency’, the government may issue special ‘Government Decrees’, which may suspend the application of certain laws, derogate from statutory provisions and take other emergency measures (Article 53-54 of the Fundamental Law, Constitution). The measures taken by the Government severely affected employment relations and working conditions by social distancing, limitations to freedom of movement, lockdowns, interruption of business operations, and increased risks for workers’ health and safety.

In particular, the following issues and counteracting measures emerged:

- interruption of business operations: exemption of designated branches from social security benefits;
- health and safety of workers: social distancing;
- increased caregiving duties due to school closures and daycare services stoppages: unlimited use of home office;
- particularly vulnerable workers: exemption of small businesses (with enlisted activities) from certain taxes.

At national level, there has not been any form of social dialogue and the government has not involved social partners at all in the legislative process. However, at workplace level many collective agreements immediately arranged and mitigated the social consequences of the crisis, particularly in large industrial firms.

The only new law in the field of Labour Law is Article 6 of Government Decree No. 47/2020 (in force from 19 March):

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“6(1) Under Government Decree 40/2020 (3/11 of 2020) on the declaration of a state of emergency in order to comply with the prohibitions and restrictions imposed during the period of emergency ordered by that Decree; Act 1 of 2012 on the Labour Code (hereinafter: Labour Code) shall be applied with the amendments in Subsections 2 to 4 of this Article.

6(2) The Labour Code shall apply for the period of the emergency and 30 days following the cessation of the emergency, with the following amendments:

a) the employer may modify the announced working time schedule differently from the notification rules laid down in Article 97 (5) of the Labour Code,

b) the employer can unilaterally assign the employee to work from home and telework,

c) the employer may take the necessary and justified measures to control the health of the employee.

6(3) The provisions of collective agreements contrary to the rules in Subsection 2 shall not apply during the period of application of this Decree.

6(4) The employer and the employee may derogate from the Labour Code by their agreement.”

Thus, during the period of Emergency, the rules of the hierarchy between the Labour Code, collective agreements and agreements between the parties have partly been changed. The current rules of the Labour Code on the hierarchy of labour law sources shall, therefore, apply during the period of the Emergency, with these modifications. It has to be emphasized that the reason for these changes is the observance of the prohibitions and restrictions imposed during the period of the emergency, so the new rules must be applied for these purposes. Thus, the following new rules have a declared purpose and a definite duration.

Article 6(2) of the Government Decree contains the following rules of the Labour Code, which are modified for the duration of the emergency for a definite period:

a) The employer may modify the announced working time schedule differently from the notification rules laid down in Article 97(5) of the Labour Code: it means, that the employer may modify the announced working time schedule any time, even immediately before starting or during scheduled work.

b) The employer can unilaterally assign the employee to home office and telework: it means, that there is no need for a mutual agreement for telework, and home office may be ordered without a time limit (opposed to yearly 44 working days in Article 53.1).

c) The employer may take the necessary and justified measures to control the health of the employee: it means relaxed health protection obligations.

The most important provision of the Government Decree is Article 6(4), since the employee and the employer may derogate from the provisions of the Labour Code by their agreement. This means that any rule of the Labour Code, whether for the benefit or the disadvantage of the employee, may be derogated from by an agreement between the parties. This rule obviously overwrites the pre-emergency rules of the Labour Code, whereby the parties' agreement could derogate from the Labour Code and collective agreements only to the benefit of employee (*in melius* derogations). However, the agreement of the parties could derogate only from the second part of the Labour Code, while the rest of the Labour Code is *ius cogens* (no derogation is allowed at all).

The question is whether the authority of the parties to deviate from the Labour Code by their agreement is truly unlimited, that is, any rule can be deviated from or not. The only

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limit to this, according to Article 6(1) of the Decree, may be the purpose limitation: the reason for the deviation from the Labour Code may only be the observance of the prohibitions and restrictions prescribed during the period of the emergency.

However, the Decree states that the agreement of the parties may absolutely freely derogate from any provision of the Labour Code, so it may equally derogate to the benefit and disadvantage of the employee. This means that neither the constitutional nor the EU rules restrict the free derogation of the parties. So, the derogating agreement of the parties may contravene constitutional rights and primary and secondary EU laws. This result may be limited by the interpretation that the agreement of the parties must comply with constitutional rights and EU laws. However, this interpretation does not explicitly follow from the text.

It is not settled by the Decree, what happens to these agreements after the cessation of the state of Emergency. One interpretation may be that after that these agreements must be null and void. However, the parties may agree upon long standing rules, such as exclusion of termination of employment for a year, or a longer working time reference period (2 years or so). It is an open question, what will happen to these agreements after the cessation of the state of Emergency.

The legal basis of the labour law measures of Decree 47/2020 seems to be problematic. Article 53(2) of the Fundamental Law provides authority to the government to issue regulations on certain issues specified by the Act on protection against catastrophe (article 47, No 128 of 2011). However, this Act does not provide authority of the government to pass Decrees on labour law matters. So it seems, that Decree 47/2020 was passed without an authorization, which seriously raises unconstitutionality of the Decree.

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