

COVID-19 and Labour Law: Belarus

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Abstract

The article presents a brief analysis of the situation in Belarus with the spread of coronavirus Covid-19 and measures taken by employers to optimize labour relations in a context of epidemic and economic situation. A brief overview of the legal decisions taken by the President, Government and Ministry of health of the Republic of Belarus aimed at declines of coronavirus infection is presented. The latest changes in the Labour code of Belarus, which regulated the possibility of remote work, were touched upon.

Keywords: Covid-19; Labour Law; Labour Relations; Self-isolation; Remote work; Payment for temporary disability; Business trip.

1. General Framework

In the conditions announced on March 11, 2020 by the World Health Organization of the Covid-19 coronavirus pandemic, most of the world's states have taken measures to close borders and restrict the movement of citizens within their countries. However, many countries have imposed quarantine or even declared a regime of emergency in connection with the pandemic Covid-19 (UK, India, China, most countries of the European Union, Russia, USA, Ukraine), some states (Belarus, Sweden) were limited to more mild measures, without limiting the right of its citizens to move within their own countries.

In Belarus, as of 01.05.2020, 14917 people were registered with a positive test for Covid-19, which is 8 % of the number of tests performed. A total of 186262 tests were conducted. During this period 93 patients with a number of chronic diseases with detected coronavirus infection died. 2918 patients who had previously been diagnosed with Covid-19 recovered and were discharged¹.

In April 2020, a new concept of "self-isolation" appeared in the legislation of Belarus. Since 28th of January 2020 amendments to the Labour code of Belarus have legalized the use of distance work. Distance learning methods are widely used in universities. At the same time, Belarus is restraining mass layoffs of employees, many employees are on unpaid leave, work remotely or are on self-isolation.

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¹ Telegrams-channel "*is the Official Ministry of health*"// URL: <https://t.me/minzdravbelarus/638>. Date of Access: 01.05.2020.

2. Regulatory regulation of self-isolation

In accordance with article 23 of the Law of the Republic of Belarus dated January 7, 2012 № 340-Z "On sanitary and epidemiological welfare of the population", restrictive measures are introduced (canceled) by the decision of the Council of Ministers of the Republic of Belarus, local executive and administrative bodies on the recommendation of the chief state sanitary doctors. The list of restrictive measures and the procedure for their implementation are determined by the Ministry of health of the Republic of Belarus.

In accordance with these rules in order to prevent the spread of infection caused by a coronavirus Covid-19, a Resolution of the Council of Ministers of the Republic of Belarus dated 08.04.2020 № 208 "About introduction of restrictive measures" (hereinafter – Resolution № 208) on the territory of the Republic of Belarus was introduced is restrictive as self-isolation.

Resolution № 208 legally defined the concept of "self-isolation" as a system of measures that ensure the isolation (in the home or other conditions) of persons who came from epidemic countries, or persons who had or could have had contact with persons who have infectious diseases, and (or) persons who are carriers of pathogens of such infectious diseases, and (or) persons who are recovering from infectious diseases.

According to paragraph 3 of Resolution No. 208, three categories of citizens of the Republic of Belarus, foreign citizens and stateless persons are subject to self-isolation:

- 1) having Covid-19 infection;
- 2) related to contacts:

first-level contact with persons with Covid-19 infection – within 14 calendar days from the date of last contact;

second-level patients with Covid-19 infection, if one or more respiratory symptoms are present, for the duration of the specified symptoms.

The criteria for classifying citizens as persons who have these first- and second-level contacts are established by the Resolution of the Ministry of health of Belarus dated 10.04.2020 № 36 "On the implementation of the resolution of the Council of Ministers of the Republic of Belarus dated 08.04.2020 № 208»;

3) persons who arrived in the Republic of Belarus from countries where cases of COVID-19 infection are registered, within 14 calendar days from the date of arrival in the Republic of Belarus.

A citizen who is subject to self-isolation is handed a requirement to comply with the rules of behavior in self-isolation.

In accordance with paragraph 6 of Resolution No. 208, citizens who are in self-isolation are assigned the following duties:

- 1) not to leave the place of residence (stay), including not to visit places of work (study), trade and public catering facilities, sports, exhibition and concert halls, cinemas, train stations and other places of mass stay of people, except in the following cases of extreme necessity:
- 2) visit the nearest grocery store or pharmacy to purchase the necessary goods;
- 3) notify the employer of the reason for absence from work;

4) exclude the use of services that involve contact with other persons, except in cases where such services are required to ensure the safety of life;

5) if your health condition worsens (body temperature rises to 37 °C or higher, coughing, shortness of breath), contact an ambulance.

If a citizen violates the requirement of self-isolation, the temporary disability benefit is assigned at the rate of 50 percent of the benefit calculated in accordance with the law. In addition, violation of the requirements for self-isolation may involve administrative or criminal liability.

3. New Chapter 25¹ of the Labour code of Belarus on remote work

The law dated 18.07.2019 № 219-Z introduced global amendments to the Labour code of Belarus, which came into force on 28.01.2020. In particular, the Labour code has gotten a new Chapter 25¹, which contains special rules of labour law that regulate the specifics of labour relations with remote employees². Remote employees are individuals who have signed an employment contract for remote work. Remote work is work that an employee performs outside of the employer's location using information and communication technologies to perform this work and interact with the employer.

A form of non-standard employment, such as home-work is closely related to remote work. The work of homeworkers is regulated by Chapter 25 of the Labour code of Belarus.

Chapter 25¹ of the Labour code of Belarus regulates the specifics aspects of labour relations such as concluding, changing and terminating an employment contract with remote employees, and allows for extensive self-regulation of working hours and rest time by remote employees.

So, the Belarusian legislator shortly before the Covid-19 coronavirus pandemic had created a legal basis for the use of remote work by employers.

According to available information, employers use this flexible form of employment quite widely, transferring many of their employees to remote work by concluding additional agreements to employment contracts³.

4. New opportunities for temporary transfers and changes in essential working conditions

Decree of the President of the Republic of Belarus of 24.04.2020 № 143 "On support of the economy" (hereinafter – Decree № 143) extraordinary expanded rights of employers to change labour relations with employees.

² Article-by-article commentary on the Labor code of the Republic of Belarus, G. A. Vasilevich G. A., Grechenkov A. A., Shishko G. B. et al. [et al.] (eds.), 2020, 1044-1051; Lipen L. L., *Commentary to the Labor code of the Republic of Belarus: in 2 v.*, Vol. 2, 2020, 247–267.

³ Tomashevski K. L., *Optimization of labor relations in the context of a coronavirus infection pandemic*, Personnel department. №4, 2020, 69–75.

According to paragraph 14 of Decree No. 143, employer have the right to change the essential working conditions of an employee, with the exception of salary reducing, due to justified reasons for the adverse impact of the epidemiological situation on the activities of the company. In this case, the employer must notify the employee of changes in essential working conditions in writing no later than one day in advance. It is appropriate to remind that according to part 3 of article 32 of the Labour code of the Republic of Belarus, a period of warning of employees about change the essential working conditions is provided for no later than one month. For comparison, in Russia, such warnings should be issued by the employer 2 months in advance, in Kazakhstan – 1 month before the corresponding changes. A Belarusian employee finds himself in a difficult situation: to agree to work in significantly changed working conditions from the next day, or to be dismissed for refusing to continue working due to changes in significant working conditions with the payment of a two-week average salary.

In paragraph 14 of the Decree № 143 there is another rule, which also limits the labour rights of workers: employers are entitled to make temporary transfer, including to another branch or another company in connection with production necessity, caused by the unfavorable impact of the epidemiological situation the activity of the employer, and also for replacement of an absent employee without the employee's consent for up to three months. Note that before the adoption of Decree № 143 temporary transfers in connection with industrial necessity were limited to one month without the consent of employees (article 33 of the Labour code of Belarus). Moreover, even this rule was criticized by scholars, since it bordered on forced or compulsory labour, which is prohibited both by the article 41 of the Constitution of Belarus and by ratified ILO conventions № 29 and № 105. We hope that the provisions of paragraph 14 of Decree № 143, which restrict the labour rights of employees and force them to change essential working conditions and forced temporary transfers for them, will be in effect temporarily, only during the period of the epidemic rise of the Covid-19 disease and when the epidemic situation in the country improves, will be canceled.

5. Payment of temporary disability benefits

The single real form of material support for the population in the conditions of the epidemic upsurge and the global economic crisis on the part of the Belarusian state at the moment can be considered the expansion of the grounds for temporary disability benefits.

Paragraph 15 of Decree № 143 prescribes that temporary disability benefits should be paid to persons actually caring for a child under the age of 10 who attend a pre-school or general secondary education institution, if this child is a first-level contact with persons with Covid-19 infection, or a second-level contact with persons with Covid-19 infection, if there have one or more respiratory symptoms. This care allowance is assigned in accordance with the procedure established by the Council of Ministers of the Republic of Belarus for granting temporary disability benefits in the case of caring for a sick child under the age of 14.

6. Guarantees for employees returning from foreign business trip

Resolution of the Council of Ministers of the Republic of Belarus dated 03.04.2020 № 194 "On official business trips abroad" established that if an employee cannot return to the Republic of Belarus from a business trip from a foreign country where cases of infection caused by the Covid-19 coronavirus are registered, the period of official business trip for those employees is extended until the day of their arrival in Belarus (included). Their place of work (service) and their position (worker's profession) are preserved, and expenses are reimbursed in accordance with the legislation for employees sent on official business trips.

From the date of extension of business trips before the day of arrival to the Republic of Belarus (included) and also at impossibility of execution of the employment contract (job duties) during the period of secondment, after their return from a business trip in isolation (14 days) they retain the wages in the amount of at least two thirds of the salary, unless otherwise determined by collective agreement or local other legal act of the organization.

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