

Dear Sirs,

We are happy to present you the March issue of [HR Perspectives](#).

We start with the coronavirus - we have collected 10 most important issues that employers should take into consideration. We chose them based on our experience in cooperation with our Clients. Most of them probably concern also your business.



We write about the possibility of granting sick leaves to employees based on a phone call. A sick leave obtained in this way is equivalent to this one obtained in the traditional way.

Additionally, we comment on the Supreme Court judgement concerning overtime, which is favourable for employers - in case of flexible work organisation (e.g. remote work or the use of variable working hours, etc.), an employee demanding pay for overtime must prove that he worked in the employer's interest and at least with the employer's implied acceptance, for a specific and verifiable number of hours. Given the current crisis situation, imposing the use of the remote working model or flexible working time arrangements, this judgement can have a significant practical impact.

Finally, we would like to remind you about the change to the minimum threshold of remuneration for foreigners applying for the EU Blue Card, which will also apply to processes that were already underway on February 11, 2020.

I hope that you will find our insights interesting and useful.

Robert Stępień

10 issues to be borne in mind by the employer during the fight against the coronavirus

1. The closure of premises due to the coronavirus does not always mean stoppage. Rules for the payment of wages to employees in the event of an interruption in the company's business operation.
2. A decrease in the number of orders and solutions in case of financial difficulties: redundancies, suspension of the application of the labour law, reduction of working hours, rescheduling of working time, temporary assignment of other work, and remote work.
3. Remote work order. Remote work during a quarantine. Establishment of the rules of remote work, including teleworking, in the regulations.
4. Holiday leave: rules for granting current and outstanding leave. Order to use outstanding leave entitlement. Unpaid leave.
5. Care allowance: the rules for exercising the entitlement to the allowance; conditions of refusal to exercise the entitlement to the allowance.
6. Assessment of occupational risk at job positions and the employer's relevant obligations. Verification of the occupational risk assessment in terms of coronavirus-related risks.
7. Medical examinations of employees: what about preliminary and periodic examinations; when an employee should be referred to a check-up; granting sick leave on the phone.
8. Concluding employment agreements with new workers remotely.
9. Protection of personal data in the context of coronavirus prevention. GDPR as the employer's tool, not an obstacle.
10. Specific entrepreneur categories: shop closures vs online sales; deliveries to shops on non-trading Sundays; obligations and entitlements of entrepreneurs of particular economic and defence significance.



The new minimum salary threshold for foreigners applying for the EU Blue Card

Tomasz Rogala, attorney – at law, senior lawyer

Effective February 11, 2020, a foreigner applying for the so-called EU Blue Card (i.e. a temporary residence permit for the purpose of employment in a position requiring considerable qualifications) will have to present documents confirming that they will receive remuneration amounting not lower than 7,377.26 PLN gross per month, which is the equivalent of 150% of the average salary in the national economy announced by the Central Statistical Office.



The new threshold of the minimum remuneration applies both to applications for the issuance of the Blue Card submitted on February 11, 2020, and later, as well as those for which the issuance process **was already underway as of February 11, 2020**. Bearing this in mind, it is worth making sure that the application submitted, for instance, still in 2019 meets the new requirements for the minimum remuneration.

Foreigners who already have the Blue Card issued before February 11, 2020, may continue to work on its basis without the need to adjust their remuneration to the new minimum threshold.

Sick leave granted on the phone

Maria Boczek, trainee attorney – at law

The possibility to issue sick leave based on a phone call has been provided for in the Act on Medical and Dental Practitioners already from December 2015. However, it had not become a talking point until recent days, due to the spread of the coronavirus in Poland.

The Ministry and the Social Insurance Institution (ZUS) have both replied in the last few days to the question whether it is possible to carry out appropriate diagnostic and therapeutic procedures for the coronavirus during a telephone conversation.



In the opinion of the Ministry, contact on the telephone on the part of an employee suspecting that they have the coronavirus with a doctor is a fully-fledged medical examination, because it comprises a question about symptoms, an interview, and a

diagnosis, and - finally - an electronic prescription or sick leave certificate is issued, which is exactly what happens at the clinic. A new regulations is to be issued in the coming days, which will finally confirm the possibility of issuing sick leave certificates to patients suspected of the coronavirus based on a telephone interview.

From the employer's perspective, a sick leave certificate issued based on a phone call is no different from one issued during a "traditional" visit. Since December last year, all sick leave certificates have been delivered to the employer in electronic form and there is no information based on which examination (telephone or direct) they are issued. Therefore, the employer will have no information about whether the sick leave was issued based on a telephone call.

If the employer suspects that an employee on sick leave is not actually sick or is using the leave improperly, he can check on the employee. Employers who have 20 or more employees can carry out the inspection themselves at the employee's home or another place of residence and check if they are there. As for smaller employers, the inspection will be carried out by the Social Insurance Institution (ZUS).

Overtime must be proved - an important judgement issued by the Supreme Court

Sandra Szybak-Bizacka, attorney – at law

Offering remote working and flexible working time solutions to their employees, employers meet obvious difficulties in controlling overtime work. A significant number of such cases end up in court. In such a situation, the question arises as to who is responsible for proving that overtime actually took place and what was its number?

Doubts in this respect were clarified by the Supreme Court. In its judgement of September 4, 2019. (II PK 172/18), the Supreme Court stated that in every case where the form or method of employment imposes non-standard organisation of the employee's work and when control of working time is impossible or difficult, it is justified to burden both parties to the employment relationship with the obligation to provide proof of the overtime work.

The employee should prove or demonstrate with high probability that on specific days he worked in the interest of the employer and their undertaking of the work activities, expressed in a specific and verifiable number of overtime hours, was at least implicitly accepted by the employer. The employer, in turn, may question this by showing that there was no such need,



since the employee could and should have performed these tasks within normal working hours.. The Supreme Court's position on the subject should be considered correct.

In cases where the employee has flexibility as to the working place and time, the full burden of overtime proof cannot be passed on to employer. In order to avoid such situations, we recommend that in the case of flexible forms of employment, the rules of overtime work should be set out in the agreement with the employee or regulated internally and applied in practice. Such an approach will allow you to avoid any doubts in the future as to whether and to what extent the employee has performed overtime work.