Dear Readers,

We would like to present the November issue of *HR Perspectives*, where we discuss **how to manage employees in quarantine or isolation.**

Firstly, we take a closer look at the question of whether or not employees can actually work remotely while in isolation. It is, in fact, possible on two conditions: first, the employee is able to work and, second, the working conditions and the nature of work allow it.

We also touch on the subject of **the employment contract termination for workers in quarantine or isolation.** Such termination is permitted in cases where employees are actually working albeit remotely.

Then we will finish off with insights into **how to organise work more efficiently and reduce costs in the face** of the next phase of economic restrictions.

Enjoy your reading!

Sławomir Paruch,

Robert Stępień

Working remotely while in isolation

Employees staying in isolation can work remotely, as can employees in quarantine, on two conditions - that they are able to work and the conditions of isolation and the nature of work allow it.

Currently, no medical certificate or written isolation order is issued for positive COVID-19 cases. The law requires an employee to stay in isolation for at least 10 days.

Isolation, as well as quarantine, does not mean that the employee is automatically incapable of working. The mere fact of confirming that a person is infected (and therefore, considered sick, according to the definition of isolation at home) is not tantamount to being incapable of working. It is considered so only for the sake of having the right to sick pay.

Due to absence from work caused by obligatory isolation (quarantine), an employee is entitled to a remuneration or sick pay. It means no more than that the isolation and quarantine are considered to be justified reasons for absence from work. And for such an absence the employee is entitled to the same statutory benefits as in the case of incapacity to work. What it does not mean is that working in quarantine or isolation is prohibited. Employees can work remotely in such circumstances.

Notably, the new laws that will soon take effect explicitly state that remote working in obligatory quarantine is allowed (we discussed it more thoroughly in the October issue).

Terminating employees working remotely in quarantine or isolation

Are employees in quarantine or isolation covered by the same employment protection as employees on justified leave due to, e.g., incapacity to work?

It depends on whether or not the employee is actually working. It is permitted by law to terminate an employment contract with an employee who is working remotely while in quarantine or isolation. According to the Polish Labour Code, the employer cannot terminate an employment contract with an employee who is absent from work for justified reasons. However, if the employee is actually working while in quarantine or isolation, it cannot be deemed an absence per se. Therefore, there are no grounds for considering such an employee to be effectively covered by statutory employment protection.

Furthermore, under the social security laws, the inability to work as a result of being put in mandatory quarantine is treated in the same way as incapacity to work due to illness or injury. However, an employee in quarantine who is prevented from providing work by, e.g., the nature of his duties or the employer's lack of consent but otherwise enjoys good health is not incapable of working, just temporarily unable to do so.

If an employee can and does provide work, then it is neither a question of the ability nor capacity to work.

How to manage resources effectively and save costs

In view of the growing numbers of positive covid-19 cases and further restrictions introduced by the government, we come up with a few ideas that will help reduce the costs and tide businesses over the coronavirus downturn. We focus on effective resource management and saving opportunities. The employment law provides a number of solutions that allow to alter the employment terms and conditions. It may help employers facing financial problems to avoid employee termination. Some of these solutions include collective bargaining with employee representatives, others involve individual arrangements between the parties to an employment contract.

1. Provisional downgrading of the employment terms and conditions – which means that the employment terms and conditions are temporarily altered. Employers may conclude agreements with employee representatives or trade unions (if they exist in the workplace). Hence, they will be able to apply less favourable employment conditions than those resulting from the employment contracts. However, it does not apply to the employers covered by collective labour agreements – they may resort to suspending the collective labour agreement.

2. Temporary reduction of working hours and pay - reducing employees' working hours and, proportionately, remuneration for work is another solution that helps to bring down the employment costs. Such a change may be effected under a collective agreement. There is no need to conclude individual agreements with each employee in order to change the employment terms and conditions. Nor it is necessary to distribute individual notices of termination amending the contract of employment (under the so-called “anti-crisis shield” laws or under the labour code; nonetheless, the latter applies to the employers not covered by a collective labour agreement).

3. Temporary suspension/reduction of bonuses, allowances and other components of remuneration - an employer may cancel certain employee benefits, bonuses and other allowances or perks (e.g. subsidized Multisport cards) by temporarily suspending their payment.

4. Cancellation of annual (inflation) raise/ discretionary bonuses – quite often collective labour agreements or other internal regulations provide for an annual remuneration review. However, it does not necessarily mean that the employer is bound to increase remunerations. In most cases, the employer will have the opportunity to forgo pay rises without consulting it with the unions or employees.

5. Suspension of collective agreements. Termination of an Enterprise Collective Labour Agreement (ECLA) or other collective agreements - parties to a collective labour agreement may agree to suspend it. The suspension may apply to the whole or part of the collective agreement. It may last no longer than three years. As a result of the suspension, the obligation to pay benefits under the agreement no longer applies. There is no need for concluding individual employee agreements or to submit individual notices of termination amending the contract of employment.

In justified cases, the employer may also decide to terminate the collective labour agreement. Other types of collective agreements can also be terminated - they do not require concluding individual employee agreements or submitting individual notices of termination amending the contract of employment.

6. Working time-related savings – these include longer reference periods, changes in working time schedules, flexible working time, a balanced working time system, a task-based working time system. When deciding on the company's restructuring, employers should first consider introducing changes to working time. Careful planning of employee working time may help to avoid redundancies.

7. Cancellation or suspension of the Employee Benefit Fund - the employer may decide not to establish the Employee Benefit Fund (EBF), even in the course of the year, by amending the remuneration regulations accordingly. In such a case, it is not necessary to make a contribution to the EBF in a given year. The employer may also decide to temporarily suspend the EBF for a part of the year. This must be justified by the employer's financial situation.

8. Change of duties without notice – part of employment restructuring may also be a reorganisation of tasks performed by individual employees. As a rule, a significant change of the employment terms and conditions requires that the employee be given notice of termination amending work and pay conditions, i.e., the so-called amending notice. However, an employer does not always need to change these principles permanently. Sometimes it is enough to temporarily entrusts employees with other tasks, e.g., when the operation of one production area is halted for some time. When it happens, the employer may unilaterally decide to entrusts the employee with other tasks than those resulting from his or her employment contract, with no change to terms and conditions thereof. Such an arrangement may be introduced for a maximum of 3 months in a given calendar year (if the other tasks are performed intermittently, the total amount of days and weeks when the other tasks were actually performed is taken into account).

Webinar: How to carry out a home office accident investigation?

1 December 2020, 11:00 – 11:45 a.m.

Hosts: Sławomir Paruch and Gaweł Bezeg.

Please register here: perspektywyhr@pcslegal.pl

PCS | MeetUp: On conflict of interest and expensive Christmas gifts

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