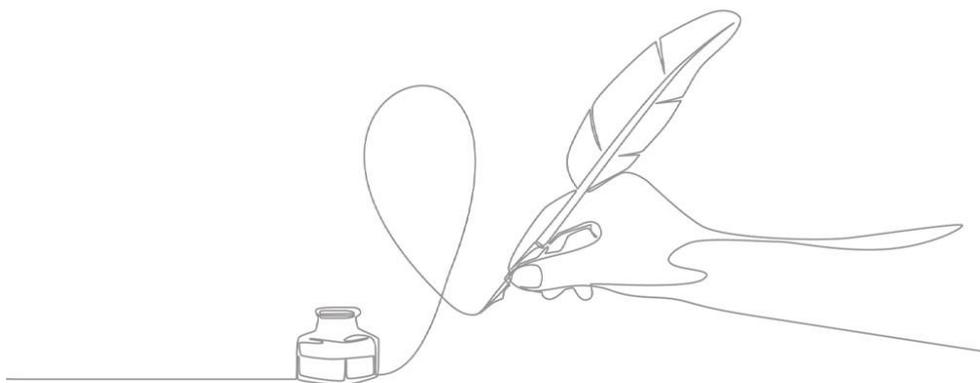


**Dear Readers,**

In the December issue, we started by discussing the latest amendment to the Anti-crisis Act. Commonly known as the 'Industry Shield', it provides financial support for particular types of business activity, which were especially affected by the recent restrictions. Since Saturday, 19 December this year, the sectors listed in the Act have been able to apply for a subsidy for employees' salaries. Therefore, we would like to discuss the application procedure currently in force and draw your attention to the problems that may arise during this application process.

We also explain step-by-step the changes which concern the duty to carry out medical examinations during an epidemic or an epidemic threat. We also put forward a solution on how to deal with the issue of taking outstanding leave during the pandemic.

**Sławomir Paruch,****Robert Stępień**

### **Amendments to the Anti-Crisis Shield Act - aid solutions for particular types of business activity**

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The amendment to the provisions of the 'Anti-Crisis Shield' Act offers yet another aid solution, under which entrepreneurs can apply for funding. The new solutions include the subsidies for employees' salaries and subsidies to cover the running costs of a business - the latter form of support may be used only by micro and small enterprises. However, subsidies are no longer widely available. The regulations significantly narrow the pool of entities that can apply. Moreover, to receive the salary subsidy of 2000 zł per employee (proportionally to the length of working time), several conditions must be met:

- a) the entrepreneur run the business on 30 September 2020;
- b) the predominant business activity of the enterprise as of 30 September 2020 was one of those set out in the Act;
- c) the enterprise revenue fell by at least 40% for COVID-19-related reasons in one of the three months preceding the application, compared to the previous month or the same month of the previous year;
- d) the entrepreneur is not in arrears with statutory charges (taxes and contributions to social security, health insurance, Guaranteed Employee Benefits Fund or the Solidarity Fund) as of the third quarter of 2019. However, the law provides for a particular exception for indebted entrepreneurs;
- e) the entrepreneur does not meet the conditions for bankruptcy procedure and is not subject to restructuring or liquidation proceedings.

In practice, doubts may arise when calculating the loss of revenue. Should the loss be calculated only for the revenue derived from the predominant activity or the whole business activity of the enterprise? The latter is the right approach.

The application for subsidies can be submitted in electronic form to the director of the relevant voivodeship employment office by 28 February 2021.

The subsidies are granted for the total period of 3 calendar months. They are paid out in monthly tranches, beginning from the month when the application was submitted.

### **Health examinations under new rules**

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The duty to carry out periodic health examinations is temporarily suspended during an epidemic or an epidemic threat. Periodic health examinations should be carried out immediately, but no longer than 180 days, after the state of an epidemic threat or epidemic has been recalled. Previously the deadline was 60 days.

Furthermore, the initial and periodical medical examinations carried out by a doctor of specialty other than occupational medicine will remain valid for 180 days instead of 30 days.

Medical certificates issued for employees as a result of initial, periodical and return-to-work health examinations which expired after 7 March 2020 should be renewed within 180 days after the state of an epidemic threat or epidemic has been recalled.

According to the new regulations, during an epidemic or an epidemic threat the period of exemption from the duty to undergo an initial health examination for persons re-employed by the same employer for the same position or position with equivalent working conditions other than the administrative and office job is extended from 30 to 180 days.

This applies accordingly to persons employed by other employer for a given position, provided that the requirements set out in the Labour Code are met.

At the same time, persons employed for administrative and office jobs are not required to undergo initial health examinations, if:

- -they have an up-to-date medical certificate confirming there are no reasons preventing them from working under the working conditions determined in the referral for medical examination;
- the employer confirms that those conditions correspond to the conditions in a given job that such a person is to perform.

In such a case, the medical certificate remains valid regardless of the time that has passed since the termination or expiration of the previous employment relationship.

### **Outstanding leave during the pandemic**

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In view of travel restrictions and epidemiological risks, employees were reluctant to take their annual leave in 2020. Furthermore, on numerous occasions they were unable to start their holidays according to the plan as they were in quarantine or domestic isolation. Hence, the employer was obliged to postpone their annual leave for another date.

The consequence of the above is the accumulation of outstanding and current holiday leaves. How to address this problem in order to reduce possible risks for the employer?

The Labour Code only mentions that the outstanding leave should be used by 30 September of the following calendar year at the latest. This is where the "Anti-crisis Shield" Act comes to the rescue. Pursuant to the Act, the employer can arbitrarily decide when an employee is to use the outstanding leave. The provisions stipulate that the leave granted in this way may not exceed 30 days. Furthermore, the employer is not obliged to obtain employee's consent nor take the leave plan into account. However, this procedure applies only to the outstanding leave, i.e. leave not used in previous calendar years, and by no means to the current leave year.

The provisions of the shield, although useful, fail to clear up the lingering doubts concerning e.g. the possibility of extending the deadline for using the outstanding leave until the end of the pandemic.

In these circumstances, there are reasonable grounds to grant employers the right to request their employees to go on compulsory leave. This is often the only way for employers to fulfil their duty to grant leave to their employees.



**It is lawyers' business to make your business run smoothly** - Sławomir Paruch talks to Wojciech Tumidalski for RZECZoPRAWIE.

A discussion about the development of PCS Paruch Chruściel Schiffter | Littler, cooperation with Littler, pandemic and guidelines on how to work with lawyers.

To watch the discussion in full, please click: [here](#).

