

JUNE | 2020

SHIELD 4.0 – news for employers

24 June 2020 marks the effective date of the Act of 19 June 2020 on subsidies to interest on bank loans provided to COVID-19-affected entrepreneurs to maintain financial liquidity and amending some other acts (Shield 4.0). Presented below is the summary of the most important **solutions addressed to employers**.

1. The rules of remote work made more precise

The existing anti-crisis regulations governing remote work were generally limited to the statement that the employer can ask the employee to work remotely, outside the employer's premises. The Act provides, without limitation that:

- Remote work may be ordered only if the employee has skills and technical possibilities as well as premises required to provide work in this way, and this form of work is adequate to the type of the employee's job;
- the means and materials required to perform remote work and the logistic services are provided by the employer. The employee who performs remote work can use his or her own means provided that confidential information and other legally protected secrets are respected and protected, which also includes protection of business secrets of the enterprise and of personal data, as well as protection of information which, if disclosed, might cause damage to the employer;
- at the employer's request, the employee engaged to do remote work is obliged to keep the record of activities, including in particular the description thereof, the date and time of their performance;
- the employer may, at any time, withdraw the order to provide work remotely.

2. Employers' right to schedule holiday leaves unilaterally

During the state of epidemic threat or epidemics, the employer can ask the employee to use outstanding holiday entitlement (holiday not used in previous years) for a period of up to 30 days, on dates indicated by the employer, i.e. outside the holiday plan, with no need to get the employee's consent.

3. Extended period of allowance

The period of additional child care allowance was extended until 28 June 2020. Those who are entitled to the allowance can use it if the crèche, preschool, school or another institution remains closed and also if it is opened (if the parent takes a decision to provide care of their child personally).

4. Non-competition agreements

During the period of epidemic threat or epidemics, a party in favor of whom a non-competition clause was established (employer, principal, contracting party etc.) will be entitled to terminate the agreement subject to a 7-day notice.

5. Changes to the rules of operation of the in-house social benefits fund

The employer who recorded a decrease in turnover or a significant increase of the burden on the remuneration fund may suspend the operation of the social benefits fund and the basic payments to the fund, and may also suspend payment of holiday benefits. If there is a trade union active at the employer's enterprise, suspension of the above obligations should be made in consultation with the union.

6. Wage subsidies from the Employee Guaranteed Benefits Fund also if there is no downtime or reduced working time

Subsidies from the Employees Guaranteed Benefits Fund can be obtained also by those entities which decided not to apply the economic downtime or reduced working time despite a drop in business turnover as a result of COVID-19. The Employer can apply for the subsidy up to half of the employees' wages, but no more than 40% of the average monthly salary. However, no subsidy will be payable on salaries of staff whose remuneration was higher than 300% of the average monthly wages.

7. Wage reduction during downtime/reduced working time resulting from the epidemics

Employers are allowed to reduce the working time of their employees or apply the economic downtime also if the burden on the remuneration fund significantly increases as a result of COVID-19. The notion of "significant burden on the remuneration fund" is defined as an increase of the ratio of two values:

- the costs of the employees' wages, including contributions to social insurance for employees, payable by the employer and
 - revenue from the sales of goods or services
- from the same calendar month indicated by the entrepreneur at his own discretion, falling after 1 March 2020.

For a significant burden on the remuneration fund to occur, the ratio will need to increase by no less than 5% compared to the ratio in the base month (a month is also understood as 30 successive calendar days, if the comparative period starts in the middle of a calendar month, i.e. on a day other than the first day of the calendar month). The costs of employees' wages will not include the costs of wages of persons with whom employment contracts were terminated and persons who had their remuneration reduced according to Art. 15g(8) currently in force – at the amount corresponding to such reduction.

The wages to be paid to staff affected by the business downtime will be reduced by no more than 50%, but must not be lower than the minimum wages for work in observance of the working hours. The working hours may be reduced by maximum 20%, but no more than to 1/2 FTE, provided that the wages must not be lower than the minimum remuneration for work in observance of the working time before the reduction. It should be noted that this regulation applies solely to entrepreneurs for whom the share of the cost of wages in revenues exceeds 30%.

8. Introduction of a limit on the amount of severance payments

The amount of severance money, damages or other cash payments made by the employer in connection with employment contract termination (if the obligation to make such payments is provided for in the law) must not exceed tenfold minimum remuneration for work, i.e. 26 thousand zlotys. The above limitation will apply to those employers who recorded a drop in turnover (by 25 per cent over a month or 15 per cent over two months), or a significant increase of burdens on the remuneration fund (if the share of wages to revenues increases by at least 5 per cent over a month).

NOTE – NEW:**9. Standstill benefit for contractors**

If the contracting entity refuses to submit an application for a standstill benefit, the contractor may apply for it on his/her own behalf, rather than through the contracting entity, directly to the Social Insurance Institution (ZUS). However, the remaining conditions must be satisfied:

the contracting entity has experienced a downtime of its business activity due to COVID-19,

the contract was concluded before 1 April 2020,

the revenue in the month preceding submission of the application was lower than 300% of the average monthly remuneration for the preceding quarter announced by the President of the Main

Office of Statistics based on the regulations governing retirement and disability pensions from the Social Insurance Fund (for applications filed in June, July or August, the amount of PLN 15,994.41 must not be exceeded, and for applications filed in April and May – the limit of PLN 15,595.74 must be observed).

10. Manner of applying to ZUS

From the day following the date of promulgation of the law, applications for exemptions from social insurance contributions (RDZ) and applications for the standstill benefit and its continuation (RSP-D, RSP-C, RSP-DK and RSP-CK), can only be submitted electronically – via PUE ZUS. Traditional way of submission (by post) as well as filing applications personally at the ZUS branch are excluded.

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