



Legal Alert

Anti-crisis Shield 4.0 and dismissal allowance for former employees

23 June 2020

Remote work, subsidy to remunerations of employees not covered by downtime or reduced working time, compulsory leave, non-competence release, cap on compensation and severance pay are just some of the topics provided by the anti-crisis Shield 4.0¹. Employers have gained legal tools to adapt employment relationships to the reality changed by COVID-19 outbreak. The new provisions² guarantee that employees dismissed after 15 March will be entitled to financial aid.

Remote work

The new provisions clarify the conditions for remote working. This type of work is introduced and cancelled based on the employer's order. Employers may apply this solution until 4 September 2020. Moreover:

- remote working may be ordered if the employee has skills, technical and accommodation means to perform such work and the type of work so permits; remote work may be performed using means of IT equipment, or may involve the performance of material-based art of work;
- the employer is obliged to provide the employee with all equipment required to perform such work; the employee may use equipment not provided by the employer as long as protection of personal data and confidential information is assured;
- at the employer's request, an employee performing such work is obliged to keep records of activities performed and to specify its timing, date, character.

Subsidies to remuneration guaranteed regardless of introduction of downtime and reduced working time

Entrepreneurs who have experienced a decrease in economic turnover falling within the limits defined in Anti-crisis law³, may apply for a subsidy from the Guaranteed Employee Benefits Fund ("FGSP") to the remuneration of those employees who have not been covered by downtime within the meaning of the Labour Code, economic downtime or reduced working hours (these two last solutions are provided by Anti-crisis law). The subsidy is granted up to half of remuneration. It may not exceed 40% of the average monthly remuneration from the previous quarter published by Main Statistical Office (GUS), i.e. currently PLN 2,132.59. The subsidies are not available with regard to

We can help

Ewa Łachowska-Brol
Head of Employment Team
+48 22 50 50 797
ewa.lachowska-brol@
eversheds-sutherland.pl

Adam Nierzwicki
Counsel
+48 22 50 50 752
adam.nierzwicki@
eversheds-sutherland.pl

Paweł Lasota
Senior Associate
+48 22 50 50 798
pawel.lasota@
eversheds-sutherland.pl

Natalia Nawrocka
Lawyer
+48 22 50 50 743
natalia.nawrocka@
eversheds-sutherland.pl

¹ Act of 4 June 2020 on subsidies to interest rates on bank loans granted to provide financial fluidity to entrepreneurs affected by COVID-19 and on simplified arrangement approval proceedings (Journal of Laws 2020, item 1086), "Shield 4.0" .

² Act of 4 June 2020 on solidarity allowance granted to counteract the negative effects of COVID-19 outbreak (Journal of Laws 2020, item 1068).

³ Act of 2 March 2020 on Special Solutions for Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them, and Other Acts (Journal of Laws 2020, item 374 as amended), "Anti-crisis law".

employees, whose remuneration exceeds 300% of the average monthly remuneration from the previous quarter, i.e. currently PLN 15,994.41.

Compulsory outstanding leave

The employer may unilaterally, at a date indicated by the employer, without the employee's consent and irrespectively of scheduled leave plan, order the employee to use the outstanding leave from previous years. Granting accumulated leave of up to 30 days is allowed as long as an epidemic state or state of epidemic threat is in force.

Non-compete following termination of employment

A non-competition agreement after termination of employment on the basis of an employment contract (or a civil law contract) may be terminated by the employer upon seven days' notice. This option is allowed as long as an epidemic state or state of epidemic threat is in force.

Lower threshold for severance and compensation payments

In the event of a required level of decrease in economic turnover or a significant increase in the burden on the remuneration fund within the meaning of Anti-crisis law and Shield 4.0 accordingly, the amount of severance pay, compensation and other payments required by applicable provisions that are paid due to termination of employment contracts, as well as certain civil law contracts cannot exceed ten times of the minimum remuneration for work, i.e. PLN 26,000 gross.

Cap on these payments may be applied as long as an epidemic state or state of epidemic threat is in force.

Changes in the functioning of the Company Social Benefits Fund (ZFŚS)

During an epidemic state or state of epidemic threat it is allowed to suspend the obligations related to the ZFŚS in the scope of its creation or functioning, making a basic write-off and payment of holiday benefits. For this purpose a consent of employees' representatives is required.

These solutions may be applied by the employers in case of a required level of decrease in economic turnover or a significant increase in the burden on the remuneration fund within the meaning of Anti-crisis law and Shield 4.0 accordingly.

Additional basis for reducing working time and introducing downtime

There is one more ground allowing to reduce working time and introduce downtime. Further to demonstrating a decrease in turnover, a new basis for reducing working time and introducing downtime is the occurrence of a significant increase in the burden on the remuneration fund following the COVID-19 outbreak. The legislation provides detailed methods of calculating such an increase.

This solution can be implemented by agreement with trade unions or the employees' representatives. This option does not exclude the eligibility for a subsidy provided for in the applicable regulations.

This option has a time-limited application, as it is available for a period of up to 6 months from the month in which the rates of increase in the burden on the remuneration fund become stable at a certain level, but no longer than 12 months from the date of cancellation of state of epidemic or epidemic threat, unless the employer earlier restores the working time binding as before or ceases economic downtime.

Dismissal allowance for former employees

Polish citizens, EU nationals and certain groups of foreigners who were employed on the basis of an employment contract for at least 60 days in 2020 may apply for financial aid in the amount of PLN 1,400 gross for each calendar month (social insurance contributions are covered by the Social Insurance Fund).

So called "solidarity allowance" is available to former employees with whom the employment contract was terminated by notice after 15 March 2020, as well as to employees whose contract was terminated due to lapse of time for which it was concluded.

The benefit is due for a period of 3 months - from 1 June to 31 August 2020. It can be extended for further months by the Government. The solidarity allowance is paid by Social Insurance Fund (ZUS) upon the request filled electronically until 31 August 2020. Its payment suspends entitlement for unemployment allowance.

How can we assist?

- We will explain the new rules and implications for the employers and advise on how to properly organize the work of remote employees.
- We will assist you in dealing with non-compete and leaves queries.
- We will help you to prepare new solutions and new documents after the crisis is over.

eversheds-sutherland.pl

The information in this document does not constitute legal advice. If you would like legal advice or more detailed information, please contact the above-named lawyers.

© Eversheds Sutherland Wierzbowski 2020. Eversheds Sutherland Wierzbowski is a member of Eversheds Sutherland (Europe) Limited.