



HR Legal Alert

4 September 2020

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Extension of Program ANTI-VIRUS A a B

At its meeting of 24 August 2020, the Czech Government, adopted Resolution No. 876, which extends the validity of the Antivirus A and B programs until **31 October 2020**.

This program applies to employers whose wage costs are not covered by public budgets and who are tax resident in the Czech Republic or another EU/EEA Member State and have obtained most of their income for the last completed tax period from sources in the Czech Republic. The program deals with costs incurred by employers due to obstacles at work arising out of spread of COVID-19 (wage compensation paid and social insurance, including health insurance). The allowance cannot be drawn in respect of an employee who has been terminated (with the exception of dismissal pursuant to Section 52 letter g) or h) of the Labour Code), and the employee must be employed by the employer as of the date of submission of the allowance statement.

Regime A

Mode A deals with obstacles

- ▶ on the employee's side - quarantine, where the affected employee receives 60% wage compensation of average reduced earnings;
- ▶ in case of the closure of an operation by government decree, by an extraordinary measure of the Ministry of Health or a public health protection body in connection with the spread of COVID-19, where the employee receives 100% wage compensation.

In these cases, the employer can apply for the payment of **80%** of eligible expenses (i.e. wage compensation and the corresponding insurance premiums for social security and health insurance paid by the employer), up to a maximum of **CZK 39,000** monthly per employee.

Regime B

Mode B deals with obstacles on the employer's side according to Part Eight of Title III. of the Labour Code, arising in connection with

the spread of COVID-19, which consist mainly of:

- ▶ the absence of a significant portion of employees due to obstacles to work on their part, when the employer pays compensation to employees ready to perform work according to § 208 of the Labour Code in the amount of 100% of the average earnings to employees;
- ▶ downtime, when the employer pays wage compensation to employees according to § 207 letter a) of the Labour Code in the amount of at least 80% of the average earnings of the employee; or
- ▶ partial unemployment, where the employer pays wage compensation to employees in accordance with Section 209 of the Labour Code in the amount of at least 60% of the employee's average earnings.

In these cases, the employer can apply for the payment of **60% of eligible expenses** (i.e. paid wage compensation and the corresponding insurance premium paid by the employer for social security and health insurance), up to a maximum of **CZK 29,000** monthly per employee.

Extension of the Antivirus C program (remission of social security contributions for smaller employers for which there was no significant reduction in the number of employees and wages costs).

Extension of visas for foreigners

At the same meeting, the Government of the Czech Republic, also by Resolution No. 875, extended the validity of work permits for those categories of foreign employees listed below, until 16 November 2020.

Foreigners with whom employers arrange an extension of employment or one of the agreements or enter into a new employment contract or an agreement following a previous employment relationship, so it lasts for the duration of this measure (from 16 September to 16 November 2020), the period of validity of the work permit pursuant to Act No. 435/2004 Coll., on Employment, as amended, which was issued with an expiration date from 12 March 2020 to 16 November 2020, is extended so that it ends no later than November 16, 2020.

The above mentioned foreigners who resided in the Czech Republic

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from 12 March 2020 pursuant to:

- short-term visas for the purpose of employment or for a seasonal purpose,
- residence visa for more than 90 days for seasonal purposes or
- an extraordinary work visa,

are obliged to leave the Czech Republic no later than by 16 November 2020.

"Orientations" of the European Data Protection Supervisor

On 1 September 2020, the European Data Protection Supervisor (EDPS) issued its "Orientations" for measuring body temperature by some EU institutions when entering buildings in connection with measures against the spread of COVID-19: https://edps.europa.eu/data-protection/our-work/our-work-by-type/guidelines_en. However, in our opinion, his conclusions apply to Czech employers as well.

According to these "orientations", no personal data are processed in the meaning of the GDPR if manual control measurements of body temperature are carried out, unless individual data is recorded or otherwise documented. Conversely, manual temperature control followed by the recording, documentation or further processing of an individual's data, or the operation of an advanced temperature measuring device automatically is already considered as personal data processing and falls within the protection and obligations set out by the GDPR. The EDPS finds the legal basis for the processing of such data by the EU institutions in Article 1e (2) of the Staff Regulations of Officials of the EU (right to health and safety) in combination with an implementing decision of the competent institution which modify the measures in such a way as to preserve the fundamental rights of the persons concerned.

The EDPS adds that, in accordance with Article 24 of the GDPR, temperature control should not only be carried out through automated processing and meaningful human involvement should be ensured at some stage, i.e. in particular when a person may be denied access to a building based on such automated processing. The person involved in such a process should have the authority and ability

(e.g. a nurse or doctor) to reverse the decision to refuse entry.

The "orientations" also contains an indicative list of technical and organisational recommendations that should be duly taken into account.

EDPS recommendations:

- transparent discussions with individuals, i.e. information that the measurement is taking place, its reason and who and when decided on it,
- in the case of a positive result, a follow up procedure should be provided, including the possibility of further re-measurement, including performance in another facility by a healthcare professional,
- regularly evaluate the necessity and adequacy of these measures in consideration of progression in the epidemic and scientific knowledge about it.

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v.o.s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

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