
COVID-19 SUPPORT MEASURES – POLAND

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Note: Please note that Polish Government is currently working on additional COVID-19 related legislation that will amend COVID act and Shield 2.0.

1. GENERAL

Below we present selected tools introduced in Poland to support entrepreneurs during the COVID-19 epidemic.

This compilation is for information purposes only and does not constitute legal advice. Selected issues are presented in a brief form. If you need additional information or legal advice, please contact us:

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1.1. DEFINITIONS OF TERMS USED IN THIS PAPER:

COVID Act - Act of 2 March 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws, item 374, as amended).

Shield 2.0 – Act of 16 April 2020 on specific support instruments in relation to the spread of SARS-CoV-2 virus (Journal of Laws, item 695, as amended).

2. SUPPORT FOR EMPLOYERS

2.1. REDUCTION OF EMPLOYEES' SALARIES OR WORKING HOURS;

An employer affected by a decline in economic turnover as a result of COVID-19 is entitled to introduce economic stoppage or reduce employees' working hours.

Employees covered by the economic stoppage (i.e. employees who are ready for work but do not perform it), the employer may reduce their remuneration by 50%, but this remuneration may not be lower than the minimum remuneration for work (currently PLN 2,600 gross in the case of full-time work), considering the working hours.

In the second case, i.e. in a situation where an employee performs work but on a smaller scale, the employer is entitled to reduce the working time by 20%, but not more than to 1/2 of the full-time. The reduction of working time is equivalent to a proportional reduction of remuneration, with stipulation that the remuneration cannot be lower than the minimum wage, taking into account the working time.

We can speak of a decline in economic turnover as a result of COVID-19 in the case of a decline in sales of goods or services, in terms of quantity or value:

- 1) not less than 15% within any 2 consecutive months falling after 1 January 2020, as compared to the total turnover in the corresponding 2 consecutive months of the previous year, or
- 2) not less than 25% of the month of any given month after 1 January 2020 compared to the turnover of the previous month.

The use of the above described possibilities also requires the conclusion of an agreement between the employer and the company's trade unions or, in the absence of such agreements, with the employees' representatives. The agreement must then be sent to the district labour inspector.

2.2. WAGE SUBSIDIES

2.2.1. Guaranteed Employee Benefits Fund

If the conditions set out in the COVID Act are met and the solutions described in point 1 above are used, the employer may additionally apply for funding granted from the resources of the Guaranteed Employee Benefits Fund.

The employer may apply for:

- 1) co-financing of the remuneration of the employee covered by the economic stoppage, in the amount of 50% of the minimum remuneration for work, so in total up to PLN 1,533.09 gross per employee (assuming the accident insurance premium of 1.67% and taking into account the premiums referred to in point 3) below),
- 2) subsidy to the remuneration of an employee whose working time has been reduced by 20%, up to the amount of half of his/her remuneration, but not more than 40% of the average monthly remuneration from the previous quarter as announced by the President of the Central Statistical Office (GUS), that is in total up to PLN 2,452.27 gross per employee (assuming an accident insurance premium of 1.67% and taking into account the premiums referred to in point 3) below),
- 3) funds for the payment of employees' social security contributions due from the employer.

Note: the subsidy is not applicable to employees' remuneration, the amount of which obtained in the month preceding the month in which the application was submitted was higher than 300% of the average monthly remuneration from the previous quarter announced by the President of the Central Office.

The above mentioned funding is due to the employer for a period of 3 months from the date of application.

2.2.2. Labour Fund

An employer who is a micro, small or medium-sized entrepreneur may also take advantage of another solution, i.e. co-financing part of employees' salary costs from the Labour Fund. In this case too, the main condition is a decrease in economic turnover following COVID-19.

The amount of co-financing in this case is related to the size of the drop in economic turnover:

- 1) decrease by 30% - the subsidy may be granted in the amount not exceeding the amount constituting the sum of 50% of the remuneration of individual employees covered by the application for subsidy together with social security contributions due from these salaries, but not more than 50% of the amount of the minimum remuneration for work, increased by social security contributions from the employer in relation to each employee,
- 2) decrease by at least 50% - the subsidy may be granted in an amount not exceeding the amount constituting the sum of 70% of the remuneration of individual employees covered by the subsidy application together with social security contributions due from these salaries, but not more than 70% of the amount of the minimum remuneration, increased by social security contributions from the employer, in relation to each employee,
- 3) at least 80% - the subsidy may be granted in the amount not exceeding the sum of 90% of the salaries of individual employees covered by the application for subsidy together with social security contributions due from these salaries, but not more than 90% of the amount of the minimum salary, increased by social security contributions from the employer, in relation to each employee.

Note: the application is submitted by the entrepreneur to the poviats employment office competent for its seat or place of work by employees within 14 days from the date of announcement of recruitment by the competent director of the poviats employment office.

The benefits may be combined, however, the entrepreneur cannot receive co-financing in the part where the same costs were or will be financed from other public funds.

In both cases, the term "employee" is also understood as persons employed on the basis of an employment contract or a contract of mandate or other contract for the provision of services under civil law (if it is subject to a pension insurance obligation on this account).

It should also be remembered that the purpose of subsidies from the Guaranteed Employee Benefits Fund and the Labour Fund is to maintain workplaces. Therefore, the co-financing from each of these sources is connected with the ban on terminating employment contracts for reasons not related to the employees or the obligation to keep the employees covered by the co-financing in employment for the period of receiving the financing and the same period after its completion (total maximum 6 months).

2.3. EXEMPTION FROM SOCIAL SECURITY CONTRIBUTIONS

For employers with up to and including 9 employees, it is possible to obtain exemption from social security contributions for 3 months (March, April, May 2020, however the Council of Ministers may determine other exemption periods).

Note: The exemption is implemented in the form of redemption. If the entrepreneur pays the contributions despite submitting an application, he will not be exempt, because only unpaid contributions are remitted.

Pursuant to Shield 2.0, employers employing from 10 to 49 people may be exempted from paying contributions in the amount of 50% of the total amount of unpaid contributions for 3 months (March, April, May 2020, however the Council of Ministers may determine other exemption periods).

2.4. REMOTE WORK, FLEXIBLE WORKING HOURS

The provisions of the COVID Act also give the employer tools to change the organisation of work. First of all, the employer may instruct the employee to perform, for a fixed period of time, the work specified in the employment contract, outside the place of its permanent performance (remote work). Remote work is a broader concept than the "teleworking" regulated in the Polish Labour Code. Remote work does not necessarily have to be performed using remote communication devices. To exercise this right, the employer does not have to meet additional conditions.

Furthermore, an employer who has experienced a decline in economic turnover following the occurrence of COVID-19 may introduce flexible working time arrangements, i.e.:

- 1) limit the uninterrupted daily rest to 8 hours and the uninterrupted weekly rest to 32 hours,
- 2) conclude agreements on the introduction of a system of equivalent working time, in which an extension of the daily working time is allowed, but not more than 12 hours, for a reference period not exceeding 12 months. Extended daily working time is compensated by shorter daily working time in certain days or days off;
- 3) conclude agreements to apply less favourable terms and conditions of employment than those resulting from the employment contracts concluded with those workers, to the extent and for the duration determined in the agreement.

2.5. EMPLOYEES' ENTITLEMENTS – CARE ALLOWANCE

In the case of employees, it is worth mentioning the additional care allowance introduced in connection with the COVID-19 epidemic. Additional care allowance can be granted to employees who take after:

- 1) a person with a certificate of significant disability up to the age of 18 or with a certificate of disability in the case of closure of an institution,
- 2) sick adult family member with disabilities, in the case of suspension of day care facilities,
- 3) the child until the age of 8.

3. LOANS TO ENTREPRENEURS

3.1. MICRO-ENTREPRENEUR'S

Under the provisions of the Act on COVID and Shield 2.0, in order to counteract the negative effects of COVID-19, a starost may, on the basis of an agreement, grant a one-off loan from the Labour Fund to cover the current costs of running a micro-entrepreneur's business up to PLN 5,000.

The loan plus interest at the request of the micro-entrepreneur shall be subject to redemption, provided that the micro-entrepreneur will continue its business activity for a period of 3 months from the date on which the loan is granted. In the application for redemption, the micro-entrepreneur declares that he or she has conducted business activity for 3 months from the date of granting the loan.

3.2. THE SMALL AND MEDIUM ENTERPRISES

The provisions of the COVID Act provide for the possibility for small and medium-sized enterprises to obtain a working capital loan to finance their working capital deficit.

If an entrepreneur has a working capital deficit and in 2019 he or she had reached over PLN 4 million of turnover, he/she may use the working capital loan from Industry Development Agency (Agencja Rozwoju Przemysłu). The amount of the loan ranges from PLN 0.8 million to 5 million and the financing period to 6 years.

3.3. OTHER SOURCES OF FUNDING

Entrepreneurs may also apply for other forms of financing, including subsidies on preferential terms. Such an opportunity is offered, among others, by Bank Gospodarstwa Krajowego, Industry Development Agency (Agencja Rozwoju Przemysłu) or Polish Development Fund (Polski Fundusz Rozwoju). The latter offers, among others, non-refundable up to 75% interest-free subsidies or preferential loans.

Unfortunately, not every entrepreneur will be able to meet all the requirements for receiving this form of support. In principle, entities that pay taxes outside of Poland or their owner (actual beneficiary) is a tax resident of another country, are excluded from support.

However, it is worthwhile to follow the projects carried out by these institutions, because as of the date of preparation of this information, not all institutions presented a full offer of support and the conditions for its provision.

4. TAX SOLUTIONS

4.1. ACCOUNTING OF THE LOSS INCURRED IN 2020

Entrepreneurs who incurred a loss from their non-agricultural business activity in 2020 and obtained in 2020 total revenue from non-agricultural business activity lower by at least 50% from total revenue obtained in 2019 may deduct the loss from 2020 from revenue obtained in 2019.

This is possible by adjusting the 2019 tax return.

4.2. WAIVING THE PAYMENT OF THE PROLONGATION FEE

If the entrepreneur applies for a tax deferral or spread the payment of the tax in instalments, etc., the entrepreneur will not have to pay a pro-elongation fee (currently such a fee is 4% of the tax amount or the amount of the tax due).

The exemption is valid during the epidemic and within 30 days after its cancellation.

4.3. EXTENSION OF THE TIME LIMIT FOR INFORMATION ABOUT TRANSFER PRIZES

The provisions of the COVID Act extended until 30 September 2020 the deadline for submitting information on transfer prices referred to in Article 23zf(1) of the Personal Income Tax Act of 26 July 1991 and Article 11t(1) of the Corporate Income Tax Act of 15 February 1992 for entities whose tax year started after 31 December 2018 and ended before 31 December 2019.

The provisions of the Shield 2.0 additionally extended the deadline for submitting a statement on preparation of local transfer pricing documentation until 30 September 2020, and the deadline for attaching group transfer pricing documentation until 31 December 2020. It is applicable for the periods as above.

4.4. REAL ESTATE TAX

The COVID Act provides that the municipal council may adopt a resolution to exempt from property tax land, buildings and structures used for business activities.

In addition, the municipal council is entitled to extend the payment deadlines for real estate tax instalments.

4.5. CENTRAL REGISTER OF REAL BENEFICIARIES

The COVID Act also extends the deadline to comply with the new reporting obligation - entry in the Central Register of Real Beneficiaries. This deadline was postponed to 13th July 2020.

5. CORPORATE MATTERS

It is worth recalling that the Commercial Companies Code has been amended so that it is possible to hold meetings of the bodies of a limited liability company or a joint-stock company using means of direct remote communication and adopting resolutions in this way. This applies to the management board, the supervisory board, the shareholders' meeting of the company sp. z o.o. and the general meeting in S.A.

Such a possibility results directly from the Act and no amendment to the articles of association is required. However, it should be remembered that the articles of association may directly exclude such a procedure - then it will not be possible to take advantage of this opportunity.

6. LEASE AGREEMENT SOLUTIONS

The provisions of the COVID Act provide for special arrangements for lease agreements. During the period when it is prohibited to operate in commercial facilities with a sales area of more than 2000 m² in accordance with the relevant regulations, the mutual obligations of the parties to the lease, tenancy or similar agreement expire.

As regards other lease agreements, the provisions of the COVID Act do not provide for special arrangements in this respect. In these cases, general provisions of civil law may apply, including but not limited to extraordinary changes in the legal relationship, force majeure, and the impossibility to perform the contract without any fault. These civil law institutions may be an effective tool in negotiations between both parties to a lease agreement.

It should be mentioned that, with certain exceptions laid down in the COVID Act, where a lease agreement was concluded before 1 April 2020 and expires after that date and before 30 June 2020, such lease agreement could be prolonged. A unilateral statement by the tenant is sufficient to prolong such lease agreement.

Moreover, the COVID Act restricts the possibility of termination of lease agreements or changing the amount of rent in the agreement. This ban applies until 30 June 2020.

7. SUSPENSION OF JUDICIAL TIME LIMITS

The COVID Act also introduced provisions that have the effect of suspending time limits in proceedings before courts, administrative courts as well as before public administration bodies, subject to exceptions, i.e. urgent cases (mainly family cases) and a certain category of administrative court cases. As a result, the course of procedural deadlines in these cases does not start and is suspended for the duration of an epidemic emergency.

In addition, the provisions of the COVID Act have suspended the running of substantive administrative law periods. A material time limit is a period during which the substantive rights and obligations of a given entity may be formed, e.g. the time limit for paying a fee for using a permit to sell alcoholic beverages.

An important change is also the fact that no hearings or public meetings are held during the period of an epidemic emergency or state of epidemics, except for hearings and public meetings on urgent matters. This will undoubtedly affect the accumulation of cases in the courts after the epidemic ceases and the proceedings last longer.

8. SUSPENSION OF LOAN REPAYMENTS

The provisions of the COVID Act have not introduced any regulations imposing obligations on banks with regard to the possibility of automatically suspending the repayment of principal or interest payments on mortgage, investment or cash loans.

However, the Polish Bank Association has issued communications which indicate that banks will introduce simplified procedures relating to the possibility of suspending instalments, as well as other forms of aid. It should be stressed, however, that each bank, in principle, introduces its own rules, following only general guidelines. Therefore, the issue of suspension of repayments and changes in other conditions of credit agreements remains to be negotiated between the entrepreneur and the bank.

9. OTHER MEANS OF SUPPORT

The COVID Act and Shield 2.0 also provide other tools to support entrepreneurs. It is worth mentioning among them:

- 1) the possibility for the contracting authority to waive the imposition of contractual penalties for failure to execute public contracts on time, if the delay is due to circumstances caused by COVID-19,
- 2) the possibility of amending the public procurement contract, once it has been established that the circumstances surrounding the occurrence of COVID-19 may affect or will affect the proper performance of the contract, in particular by:
 - a) a change in the time limit for performance of the contract or its parts, or a temporary suspension of performance of the contract or parts thereof,
 - b) a change in the way supplies, services or works are carried out,
 - c) change in the contractor's performance scope and the corresponding change in contractor's remuneration– provided that the increase in remuneration caused by each subsequent change does not exceed 50% of the original contract value
- 3) special solutions related to the tourism and hotel industry,
- 4) support for persons running a sole proprietorship (exemption from ZUS, micro-loan, parking benefit),
- 5) the penalty for a mistake in JPK_VAT (the Polish equivalent of SAF-T, Standard Audit File for Tax) is optional,
- 6) until the cancellation of the epidemic emergency and the state of the epidemic, entrepreneurs are not obliged to provide information and notifications, including MDR-3 information, as well as to fulfil other obligations that they would be bound to fulfil under law (applies to the period from 31 March 2020 and not longer than 30 June 2020).