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Coronavirus from the perspective of Hungarian labour law



CORONAVIRUS FROM THE PERSPECTIVE OF HUNGARIAN LABOUR LAW

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Please find below our fresh analysis of the employment situation in Hungary at the time of governmental measures aimed at preventing the spread of the COVID-19 virus. The following scenarios are possible depending on the job description of the actual employee and on the actual state of the epidemic and restrictive governmental measures.



Scenario 1: Downtime

This is the default arrangement for periods during which an employer cannot give work to an employee.

The base wage must be paid to the employee concerned, but no supplements, bonuses etc.

This option has the disadvantage that the base wage appears as a cost, but it is not challengeable from the legal point of view and it can also help in preserving the loyalty of the employees.

Legal conditions

The employer's failure to provide work as contracted during the scheduled working time (Section 146 of Labour Code).

Typically applied in case of lack of raw material, lack of orders from customers etc.

In our opinion, this option should be chosen if the employer takes the decision not for compelling reasons but rather after its own evaluation of possible advantages and disadvantages of stopping the activity of the employees.

Scenario 2: Downtime in case of force majeure

This is a particular case in which the employer's inability to distribute work to employees is caused by compelling external causes.

No wage is paid to employees (not even the base wage).

This option has the advantage of being the most cost-efficient for the employer. However, it is also the most likely to be challenged by employees who lose their income for an indefinite period. Another disadvantage is the loss of loyalty as the employees are incentivized to find another job as soon as possible.

Legal conditions

Unavoidable external reasons prevent the employer from providing work to the employees concerned.

In our opinion, this option should be chosen either:

- if the epidemic makes it impossible for the employer to distribute work to its employee, e.g. because customers refuse personal meetings, or their staff is on sick leave etc., or
- if governmental measures effectively restrict the movement of employees.

Even in such circumstances, the job description of the employees and their actual tasks at the company should be carefully monitored. In fact, if they could be directed to perform other tasks or to work from home, the reference to force majeure would not be acceptable.

Scenario 3: Downtime based on agreement

The employer and its employees can agree upon the terms of suspending work for a planned period. In this case, the agreement regulates the wage and terms of payment. This allows the employer to lower or to reschedule the wage of the employee, provided that the employee accepts such arrangement.

This option gives the opportunity to the employer to elaborate a time and wage schedule fitting to its budget and it is not likely to be challenged by the employees (see however the exception detailed on the right). It also preserves loyalty of employees as they conceive that their interests are taken into account.

Legal conditions

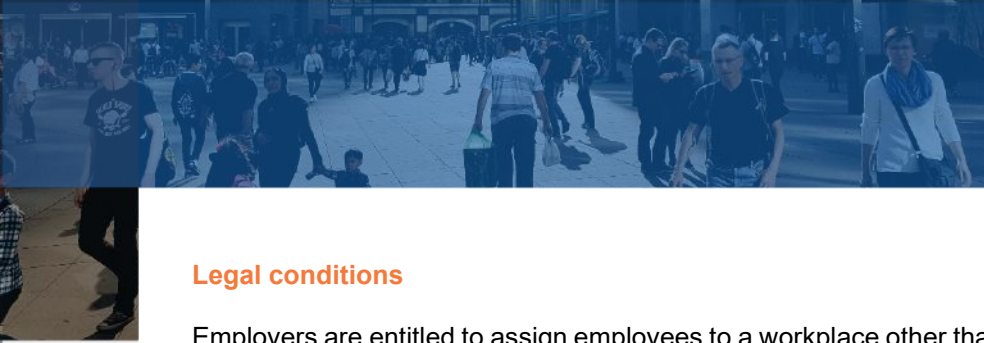
If the employee is exempted from work by the employer's approval, he is entitled to a salary for the missed working time on according to their agreement (Section 146[2] of Labour Code).

See however Section 7 of Labour Code which states that "abuse of rights is prohibited." In means particularly that the employee cannot be coerced to accept such agreement, or the agreement cannot be used to circumvent the obligation paying a base wage in case of normal downtime.

Scenario 4: Home office

For the employees who can effectively perform their tasks from home, teleworking can be a viable option.

In such case, the main terms of the employment (wage, paid leaves etc.) are the same, with some modifications in work arrangement, control, etc.



Legal conditions

Employers are entitled to assign employees to a workplace other than that which is defined in the employment contract. In the present case, this “other workplace” is the home of the employee.

Section 53(1) of the Labour Code limits the cumulated period of assignment to “other workplace” in a maximum of 44 working days (or 352 hours) per calendar years. The employer has the obligation to inform the employee about the expected period of such assignment.

For longer periods spent in home office, the employment contract should be modified with a view of granting the possibility of teleworking (see Section 196 of Labour Code).

Scenario 5: Reorganising the working time banking

This particular case applies only for employees whose working time is scheduled within the framework of “working time banking”, e.g. their working time is distributed unevenly during a longer period.

In such case, working time banking can be modified with the view of distributing the work for a few weeks or months later.

Legal conditions

See Sections 93-94 of Labour Code, if applicable.

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