

Covid-19

Employment law

Dear Clients,

In a follow-up to our previous newsletter concerning the state of emergency declared in response to the coronavirus epidemic, we now provide a summary of regulations that have taken effect since and have relevance for employment matters. This newsletter cannot be treated as legal advice on a specific matter, since particular employers and particular employees will be subject to a variety of additional rules, and many other circumstances will also have to be evaluated before specific advice can be given. Please read this newsletter with this in mind.

I. SUMMARY

The time limit of averaging arrangements that employers can unilaterally introduce has been raised significantly under Government Decrees introduced as part of the government's Economic Protection Plan. Due to the epidemic emergency, a new arrangement called reduced-time employment (which is distinct from an ordinary part-time employment) has been introduced. The essence of the arrangement is that in the case of employers that get into temporary trouble and are unable to comply with the obligation to provide work to some or all of their employees, the government will top up the salaries of employees who work shorter hours, provided that certain conditions are met.

II. WORKING TIME FRAMEWORK

In addition to the changes relating to employment law that were discussed in our previous newsletter, the Labour Code should be applied with the deviation that employers may unilaterally implement an averaging arrangement for up to 24 months. (Previously, the maximum allowed duration was basically 4 months and 6 months under certain conditions.) Any averaging arrangement that was implemented before the above rule took effect may be extended to 24 months. As a general rule, the provisions of the Labour Code regarding the schedule of the daily work, daily rest periods, weekly rest days and weekly rest time should be applied without any deviation. An exception is the case of employees

employed in domestic and international road passenger and freight transport, rail passenger transport and rail freight transport, where the rules allowing derogations from the Labour Code continue to apply. In the case of employers that are subject to a collective bargaining agreement, the provisions of the collective bargaining agreement cannot be applied if they contradict the Government Decree. The eventual termination of the state of emergency declared due to the epidemic will not affect the application of 24-months averaging arrangements.

III. EMPLOYMENT IN REDUCED WORKING TIME AND THE RELATED GOVERNMENT SUBSIDY

Below we summarise the most important rules of Government Decree 105/2020 (IV. 10.) as they are currently in effect. (The original rules have been changed significantly.)

Definition of reduced working time

It qualifies as reduced working time if the parties, after the declaration of the state of emergency and with regard to it, agree to reduce working time, calculated on the average of three months, by at least by 15% and at most by 75%. Thus, a reduced working time arrangement means a minimum of 2 hours and a maximum 6.8 hours of work per day.

Conditions of access to the government subsidy

The government subsidy may be granted if

- a) the employee
 - a. does not receive any other support necessary for his/her part-time employment in respect of the same employment relationship,
 - b. has been employed by the employer at least since the date when the state of emergency was declared (11 March 2020)
 - c. is not on his/her notice period.
- b) the employer
 - a. employs the employee (who files a joint application with the employer) in a reduced working time arrangement (including telework, home office work, working time framework) in order to prevent job losses,
 - b. has been in operation for at least 6 months,
 - c. does not receive any special emergency aid for the employment of R&D workers or any salary-like EU-funded job preservation or job creation aid.

By taking advantage of the subsidy, the employer and the employee agree that the employee will work in reduced working time (part-time) for as long as the subsidy is paid. If the reduced working time is more than half of the working time under the employment contract that was in place before the amendment, the parties are obliged to agree on what is called “individual development time” in addition to the reduced working time.

The employer may not terminate the employee’s employment while the subsidy is paid and for another month after the payment ends. The employer may not order overtime work for subsidised employees for the duration of the benefit.

In order to obtain the subsidy, the employer will have to prove that it meets the requirements of fair and lawful industrial relations. The employer must also demonstrate that the economic reason for reduced-time employment is directly and closely related to the state of emergency and provide credible evidence that maintaining the relevant employment relationship is in the national economic interest in the context of its continuous economic activity.

Filing and examination of the applications

Budapest and county government offices are responsible for the assessment of applications and the payment of the subsidies. An employer and its employee(s) must submit the application jointly, in an electronic form. The government office will make a decision to authorise or refuse the payment of the subsidy within 8 days. There is no appeal against the decision of the government office and it cannot be challenged in court. If the application is rejected, it may be re-submitted on one occasion.

Modification of employment contract

The parties do not have to modify their employment contract separately if the application is submitted. If the subsidy is granted, the employment contract will be considered to have been modified by virtue of the government decree in accordance with the decision of the government office.

Repayment obligation

Employees will be obliged to repay the subsidy if they were not eligible for it on the basis of the conditions specified in the government decree.

An employer will be obliged to pay to the government an amount equal to the subsidy paid to employees if the employer was not eligible for the subsidy on the basis of the conditions specified in the government decree. This rule will not apply if an employer is dissolved without a successor, if the employer terminates a subsidised employee with immediate effect or if a subsidised employee terminates his/her employment by notice.

Amount of the subsidy

The subsidy may be granted in a maximum of three monthly instalments that follow the date of the application.

The amount of the subsidy is 70% of the net base salary payable for the lost working time. The net base salary used in the calculation of the amount of the subsidy may not exceed twice the net minimum salary.

For instance, if an employee has a gross base salary of HUF 300,000, 15% personal income tax, 10% pension contribution, 7% health insurance contribution and 1.5 % labour market contribution will have to be deducted, and so the net monthly base salary will amount to HUF 199,500. If the employee's working time is reduced by 50%, the amount of the subsidy will be equal to 70% of the base salary payable for the relevant period, i.e. HUF 69,825. In the above example, the employee's base salary will provisionally be HUF 169,575. The subsidy is tax-free.

If an employee takes unpaid leave, no subsidy can be paid to him/her for such period.

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In the light of the introduction to this newsletter, we would note that proper legal advice on specific situations can only be provided in full knowledge of the relevant circumstances, and the terms of the relevant employment contracts or, as the case may be, collective bargaining agreement or works agreement. If you have any questions or would like engage our services, please contact us, because we continue to offer our services without any disruptions.

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