

Employment Flash

March 2020

Closure of stores, operations... What are the impacts on employers?

The Czech government declared a state of emergency on Thursday. In this context, a crisis measure has been issued with a view to limiting concentrations of large numbers of people, and a crisis measure relating to restrictions on transportation. Both these measures will significantly affect employment. How specifically?¹

The affected employers can be divided into two groups:

1. **primarily affected** employers (e.g. operators of restaurants, stores at shopping malls etc.), and
2. **secondarily affected** employers (e.g. suppliers of goods or providers of services to primarily affected employers).

We are of the view that **secondarily affected** employers will have recourse to the **partial unemployment** clause under Section 209 of the Labour Code, stipulating that when an employer is unable to assign employees to work due to temporary limitation in the sales of that employer's goods or reduction in the demand for that employer's services, such situation constitutes what is referred to as "another obstacle on the employer's part". Based on a written agreement with the trade union organisation the employer may agree that compensation for salaries to employees will be temporarily reduced for the duration of partial unemployment; however, the compensation must amount to **at least 60% of average earnings**. In workplaces with no active trade union organisation the employer may apply equivalent rules by means of an internal bylaw.

This, however, is the last piece of good news for employers. Indeed, the regime of partial unemployment is unavailable to primarily affected employers.

We have noticed views that the simplified procedure applicable to obstacles for work under Section 207 of the Labour Code should be applied:

- letter (a): idle time, or
- letter (b): interruption of work as a result of weather conditions or a natural disaster.

Although we do wish on behalf of all employers that this legal qualification applied as it allows reducing the compensation for salary to a reasonable amount without the involvement of the trade unions and thus to overcome the most sensitive period of large financial losses, we are of the opinion that it does not have any legal support in the Labour Code.

This is due to the fact that the government decision regarding the adopted measures is neither an unexpected technical obstacle constituting an idle time, nor a sudden effect of natural elements. In simple words, the Labour Code does not provide for the state of emergency in which our country currently is. Hence, the only applicable obstacle remains an **obstacle for work on the part of the employer**, with the employees' entitlement to compensation for salary in the amount of 100% of average earnings.

All the adverse impacts have thus been put upon the shoulders of employers. Although, humanly, we do quite understand the undertaken measures, we nonetheless believe that this situation necessitates debate on a legislative change such that the Labour Code will provide for, at least, states of emergency and employers will be able to better overcome the resulting difficulties.

Employers might find consolation in a legislative draft currently under preparation by the Ministry of Labour and Social Affairs which, if adopted, should to some extent compensate them for their financial losses.

¹ Due to lack of time, this text should not be read as a comprehensive or thoroughly substantiated assessment of the statutory provisions applicable to obstacles for work. We have only focused on the impacts of the current situation on employers and employees.

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