

# Legal Alert

## in the field of labour law

10 February 2021

Weinhold Legal

### Measures related to border crossings

On 3 February 2021, the Ministry of Health of the Czech Republic approved a protective measure File no. : MZDR 20599/2020-53/MIN/KAN ("**Measure**"), which, with effect from 5 February 2021, stipulates obligations related to crossing the Czech Republic's state borders (at present, some of the obligations set out below have been in force since 1 July 2020 and in a modified form, also applied before that date). The text of the Measure can be found [here](#).

Whoever **accepts foreigners** in the Czech Republic **for the purpose of their economic or educational activities must provide** to foreigners who entered the Czech Republic after 1 July 2020:

- ▶ accommodation for the entire period of their stay in the Czech Republic, including the place where quarantine measure will be carried out in the event of any order in respect of the same by a public health protection authority;
- ▶ health care or a registered provider of health services for the entire period of their stay in the Czech Republic;
- ▶ payment of health care, unless otherwise provided, this does not apply in the case of a long-term residence permit holder; and
- ▶ return to the country of origin in case the purpose of stay in the Czech Republic no longer applies; unless otherwise provided, this does not apply to a long-term residence permit holder.

### Restrictions related to entry to the workplace

**Employers and end-users of workers** (regardless of

nationality) who have resided for more than 12 hours in the last 14 days in the territory of any State :

- ▶ which is on the list of countries with a **medium risk of COVID-19** (four countries as of 9. 2. 2021) **must not allow these persons to enter any establishments and workplaces** of the employer unless they submit a written confirmation from an accredited laboratory on a negative outcome of an antigen or RT-PCR test; the antigen test must be performed no more than 24 hours and the RT-PCR test no more than 72 hours before the start of the journey (these persons should have confirmation before entering the territory of the Czech Republic);
- ▶ which are among the countries with a **high risk or a very high risk** of COVID-19 (as of 9. 2. 2021 all countries except six with a low and four with a medium risk) **must not allow these persons to enter any premises and workplaces** of the employer, if these persons do not submit a **negative result of the RT-PCR test** for the presence of SARS-CoV-2 from the territory of the Czech Republic, and **at least 5 days after arrival** in the territory of the Czech Republic, when it comes to persons who were in a country with a **very high risk** of COVID-19 disease. This obligation **does not apply after the completion of insulation** according to the decision on insulation or other quarantine measures. We believe that employees arriving from countries with a high risk of COVID-19 may submit negative RT-PCR test results for entry to the workplace, which they underwent upon arrival in the Czech Republic within 5 days after arrival.

If the isolation or other quarantine measures is not ordered to the employee or if he/she is not allowed to work from home, his absence from work is considered as another obstacle to

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work on the part of the employee under Section 199 of the Labor Code and the employee is not entitled to compensation of wages, unless provided otherwise. However, if an employee returns from abroad from a trip on which he was sent by the employer, his absence is considered as an obstacle to work on the part of the employer within the meaning of Section 208 of the Labor Code and the employee is entitled to wage compensation of 100% of his average earnings. In this case, the cost of the test should be paid by the employer. For more details, see the statement from the Ministry of Labor and Social Affairs of the Czech Republic ("MLSA").

The list of countries with a low, medium and high risk of COVID-19 is issued by the Ministry of Health of the Czech Republic. The announcement of February 1, 2021 can be found [here](#). **Countries which are not explicitly mentioned** in this Communication are considered to be **at very high risk** of COVID-19.

All persons returning from countries with a medium, high and very high risk of COVID-19 (including employees) **are obliged to wear respirators** without an exhalation valve with a classification of at least FFP2, KN95, N95, P2, DS, or at least **one-time medical face masks**, when staying away from home (in situations where such movement is not restricted to them), **for a period of 10 days after entering the territory** of the Czech Republic.

## Vaccination against COVID-19 caused by SARS-CoV-2

In connection with the adoption of Act No. 569/2020 Coll., which regulates the distribution of vaccine against COVID-19, we noted an increased number of inquiries regarding the obligation to get vaccinated or the possibility of ordering such vaccination by the employer.

Vaccination against COVID-19 is currently covered by the public health insurance system and is carried out on a **voluntary basis**, ie. there is no general obligation to undergo vaccination.

## What does the vaccination option mean for employers?

Currently employers cannot offer vaccination as a benefit to employees (although some employers already have vaccination plans in place), as the distribution of the vaccine is currently only in the hands of the state.

Vaccination is now preferably provided to priority groups (health care workers in key medical facilities and departments, employees of homes for the elderly, members of the Czech Army and IRS units) and risk groups (for more details, see [the COVID-19 Vaccination Strategy in the Czech Republic](#) ). However, it should be subsequently available to all persons over the age of 16.

## Leave and compensation of wages

Currently, employers have to deal with the absence of employees not only for the purpose of vaccinating themselves, but also because of accompanying a family member for vaccination. The MLSA issued recommendations to employers on how to provide time off to employees in the case of testing, vaccination and accompanying a family member to vaccination. The full text can be found [here](#). In the opinion of the MLSA, undergoing an antigenic or RT-PCR test or **vaccination**, regardless of whether the employee underwent them voluntarily or in connection with employment, can be considered as treatment according to point 1 of the Annex to Government Decree No. 590/2006 Coll. sets out the scope and extent of other important personal barriers at work ("**Government Decree**"). Similarly,



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the escort of another person to carry out the vaccination (and in our opinion also the escort for the test), if necessary, can be classified under point 8 of the same Annex to the Government Decree. The provision of time off work and possible compensation of wages will thus be governed by a Government Decree.

On the part of the employee, there is an obligation to inform the employer in time that he or she will need this leave and also to prove the existence of an obstacle.

If the employee experiences adverse effects after vaccination and the employee is unable to perform the work activity, it may be recommended that he or she use the incapacity, or the so-called sick-day, if provided by the employer.

### Can employees be ordered to be vaccinated?

When citizens of the Czech Republic or holders of long-term residency in the Czech Republic, or persons assigned to workplaces with a higher risk of infectious diseases, are obliged to undergo vaccination against infectious diseases, follows from the Public Health Protection Act respectively the implementing regulation - Decree No. 537 / 2006, Coll., on vaccination against infectious diseases, as amended. However, this legislation does not yet stipulate the obligation to vaccinate against COVID-19, even for selected groups of the population or employees. Thus, at present, **it is not possible to prescribe COVID-19 vaccination to employees.**

Public health authorities (the Ministry of Health on the basis of a proposal from the regional hygienic station) may order extraordinary vaccination as one of the extraordinary measures in the event of an epidemic or the risk of its occurrence.

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.

For further information, please contact the partner / manager you are usually connected to.



Anna Bartůňková  
Managing Attorney  
Anna.Bartunkova@weinholdlegal.com



Eva Procházková  
Attorney at Law  
Eva.Prochazkova@weinholdlegal.com



Daša Aradská  
Attorney at Law  
Dasa.Aradska@weinholdlegal.com