

Legal Alert

in the field of labour law

2 March 2021

Weinhold Legal

Labour Law measures in connection with the COVID-19 pandemic

Mandatory staff testing

Based on an extraordinary measure of the Ministry of Health ref. no. MZDR 47828/2020-16/MIN/KAN from 1 March 2021 (hereinafter „**Measure**“), whose parameters were discussed by the Government, mandatory staff testing is being introduced for employers with at least 50 employees. The text as a whole can be found [here](#). The implementation of this obligation will take place in two stages depending on the employer's size and will concern employers-entrepreneurs and state and national enterprises.

For **employers** employing **at least 250 employees**:

- ▶ from **12 March 2021**, an employer can only allow the **workplace presence** of those employees who have submitted to a RT-PCR test for the presence of the SARS-CoV-2 virus, POC antigen test for the presence of the SARS-CoV-2 virus antigens, or a preventive test provided by the employer and carried out at the workplace to determine the presence of SARS-CoV-2 virus antigen **with a negative result within the last seven days** (unless the employee has tested positive in the past under the conditions set out below);
- ▶ from **3 March 2021**, employers shall **secure POC antigen tests** for the presence of the SARS-CoV-2 virus antigen that will be **carried out by a health service provider** or tests determining the presence of the **SARS-CoV-2 virus antigen that will be carried out by laypersons** (the list of the tests that can be carried out by laypersons can be found [here](#)) at least once a week;
- ▶ employers are **obliged to notify their employees** to undergo a preventive test listed under the first point by 5 March 2021 at the latest so that their presence at the workplace is secured by 12 March 2021 at the latest.

If the employee is not present at the workplace on the day of the testing, his/her test will be carried out on the day of his/her arrival at the workplace. If the employee is working exclusively outside the workplace within seven days, **the employer will allow him/her to undergo a preventive test outside the workplace; that does not apply to those working from home.**


The above mentioned with a slight deadline extension also applies to employers employing **at least 50 employees** (less than 250), i.e.,

- ▶ from **15 March 2021**, the employer cannot allow the **presence at the workplace of those employees** that did not submit to either an RT-PCR test for the presence of the SARS-CoV-2 virus, a POC antigen test for the presence of the SARS-CoV-2 virus antigen, or a preventive test provided by the employer and carried out at the workplace to determine the presence of the SARS-CoV-2 virus antigen **with a negative result within the last seven days**;
- ▶ the obligation to **secure the tests** applies from **5 March 2021**;
- ▶ the employers must **notify the employees** to undergo the test by **8 March 2021** at the latest.

Obligation to undergo a test

All employees must undergo the tests, except for those who have already **experienced the COVID-19 disease, whose time of isolation has expired** under the extraordinary measures of the Ministry of Health, who **are not experiencing any symptoms** of the COVID-19 disease, and for whom the time passed from the first positive RT-PCR test for the presence of SARS-CoV-2 virus or POC antigen test for the presence of the SARS-CoV-2 virus antigen **has not exceeded 90 days**.

Although the Ministry of Health highly recommends that smaller employers carry out the tests voluntarily, in our opinion, the obligation of employees of smaller employers to undergo the test cannot be concluded.



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A positive result

Should the **result** of the preventive test, carried out at the workplace under Art. I and II of the Measure, be positive, the employee must proceed per the extraordinary measure of the Ministry of Health regulating the obligations of employees during testing for the presence of the SARS-CoV-2 virus antigen carried out by a layperson with a test provided by the employer, which we list below.

Inspiration for the self-testing procedure can be taken from the Methodology of the Confederation of Industry of the Czech Republic, which can be found [here](#).

Self-testing carried out by employees – positive result procedure

Based on the extraordinary measure of the Ministry of Health ref. no. MZDR 47828/2020-15/MIN/KAN from 1 March 2021, layperson testing in case of a positive result procedure is introduced. The text as a whole can be found [here](#).

With effect from 2 March 2021, the employees who carried out or had a layperson carry out the test for the presence of SARS-CoV-2 virus antigen with a test provided by the employer with a **positive result** are **ordered** to:

- ▶ **notify the employer** without delay,
- ▶ **leave the workplace** and move to their **current residence** and
- ▶ **notify the health service provider** of the employer (if the employer had ordered so) or **their registering doctor about the test result**. Should that not be possible, the employee must contact another health service provider or possibly a competent public health protection authority to determine the next steps.

Issue of the confirmatory test requisition and the obligation to undergo the test

Without delay, the health service provider or the public health protection authority that has been informed by the employee about the positive test result is obliged to issue a requisition for the confirmatory RT-PCR test for the examination of the presence of the SARS-CoV-2 virus.

An employee that has been issued a confirmatory examination requisition is obliged to **submit to this examination without delay**.

It is appropriate that the employers incorporate the above obligations for self-testing into their Employment rules, or possibly sufficiently inform their employees about the obligations arising from the extraordinary measure and determine the persons or contact details for the employees with a positive test result.

The above self-testing obligations in the case of a positive test result do not apply to situations when an employee, or possibly the manager of a company/board member, or a self-employed person self-test with a test that they provided.

However, all persons who tested positive under the extraordinary measure on the antigen testing of the population (the text as a whole can be found [here](#)) must notify their registering doctor or the health service provider with which the employer entered into a contract, about the test result via a phone without delay. Should that not be possible, it is necessary to notify a competent regional hygiene office.

Securement of respiratory protection equipment

Following the tightening of the conditions for wearing respiratory protection equipment implemented by the extraordinary measure of the Ministry of Health ref. no. MZDR 15757/2020-45/MIN/KAN from 26 February 2021, all employers, effective from 1 March 2021, are obliged to equip their employees with respiratory protection equipment under the measure (respirators with necessary certification or medical facial mask) depending on the **workplace in sufficient numbers for each working shift**. This obligation

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does not apply if the employee does not come into physical contact with other persons at the time of working hours (for example, when working from home). Further details can be found [here](#).

Pre-recruitment and periodic medical examinations

The possibility of replacing pre-recruitment medical examinations of some groups of employees (depending on the category and risk of work) with an affidavit, granting of an exemption from the obligation to hold periodic medical examinations, and the re-validation of some of the medical evaluations for labor purposes are currently regulated by the Government resolution no. 206 from 26 February 2021 on the adoption of a crisis measure, published under no. 106/2021 Coll. Further details can be found [here](#).

Extension of the Antivirus program

With Resolution no. 186 from 22 February 2021, the Government approved the extension of the period of eligibility of the expenses of the Antivirus program (regime A, regime B, regime A Plus) **till 30 April 2021**.

However, some conditions on granting aid have been changed. According to the information from the Ministry of Labour, the changes will be implemented into the agreements concluded before 28 February 2021 (inclusive) in a form of an appendix generated via a website application.

The changes concern:

- ▶ conditions on only contributing in respect of employees, whose employment has been existing for at least three months on to the day of submitting the invoice, for contributions provided for the months of March and further,
- ▶ the possibility of using the Antivirus Program as a result of the measures based on the Pandemic Act,
- ▶ an increase of the limit of a maximum amount of aid provided in the A Plus regime, i.e., an increase of the total

amount of aid provided under the rules of EU to EUR 1,8 million (Art. 3.1 of Temporary framework) with the contributions granted for the months of February and further.

Further details can be found [here](#).

If the written appendix concerning the above changes is not concluded, the period of eligibility of the expenses expires on 28 February 2021 (i.e., it is possible to contribute to the salary compensation belonging to the employee until 28 February 2021).

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.

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