



## Anti-Crisis Shield and employment-related solutions

The "Anti-Crisis Shield" (i.e. the law on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them, and certain other laws together with the law amending it, and collectively referred to as the "Law") introduces a number of measures aimed at supporting entrepreneurs during the economic crisis caused by the COVID-19 pandemic. We present below a list of the most important measures. The following summary lists the most important measures introduced by the Law, as well as the most important changes introduced by the amended Law: the act dated 16 April on special instruments of support in relation to spread of SARS-CoV-2 virus (hereinafter referred to as "Shield 2.0") and the act dated 14 May on amending specific acts within the scope of protective actions in relation to spread of SARS-CoV-2 virus (hereinafter referred to as "Shield 3.0")

### Agreement with trade union organisations / employee representatives

➤ In the event of a decline in economic turnover (at the level specified in the Law) following the occurrence of COVID - 19, an entrepreneur being: (i) a natural person, a legal person or an organizational unit which is not a legal person but to which a separate law grants legal capacity, performing economic activity, or (ii) partners of a partnership within the scope of their economic activity (each an "**Entrepreneur**") may conclude an agreement with trade unions or employees' representatives (in the absence of trade unions) on the reduction of employees' working hours or the introduction of economic downtime (an "**Agreement**"):

- **OPTION 1** – if an Entrepreneur continues to need its employees to work, an Agreement may stipulate the reduction of the employees' working time by 20% (a fixed percentage), but not below ½ of the full-time equivalent; the remuneration of the employees after the reduction of their working time may not be lower than the statutory minimum, proportionally to the working time; and/or
- **OPTION 2** - if an Entrepreneur does not need the work of all or some of its employees but the employees are ready to perform work, the Entrepreneur, under an Agreement, may introduce economic downtime and, during such period, may pay the employees their remuneration reduced by no more than 50%, but the remuneration after the reduction of working time may not be lower than the minimum wage for work, proportionally to the working time.
- Option 1 and Option 2 can be used jointly i.e. an entrepreneur may reduce working time for some of the employees and move the rest of the employees to downtime. An Agreement must be forwarded to the competent district labour inspector within 5 working days after its conclusion.

### ➤ Changes provided in the Shield 2.0:

- The measures may also be used by a non-governmental organization or a state legal person which has experienced a decline in economic turnover;
- An employer will be entitled to reduce the working time of employees **by up to 20%** (now it can be lower reduction) (still not below ½ of the full-time equivalent), with the reservation that the remuneration may not be lower than the minimum wage for work determined on the basis of the provisions on minimum wages, proportionally to the working time.

## Co-financing from the Guaranteed Employee Benefits Fund

»» An entrepreneur may receive a subsidy from the FGŚP (the guaranteed employee benefits fund) if: (i) **its economic turnover has declined** by the amount indicated in the Law, (ii) **the entrepreneur is not in arrears in payment of tax and social insurance contributions as at the end of the third quarter of 2019**, and (iii) **there are no grounds to declare its bankruptcy**. The co-financing amounts to:

- **OPTION 1 – up to 50% of the employees' remuneration, but not less than 40% of the average monthly remuneration** for the last quarter per person (in the last quarter of 2019 it amounted to PLN 2,079.43); social insurance contributions due from the employer in respect of such co-financed amounts are also subsidised, and
- **OPTION 2 - 50% of the minimum wage for work taking into account the employee's working time per person**; social security contributions in respect of such co-financed amounts due from the employer are also subsidised.

The subsidy may be granted for a period of 3 months from the date of submission of the application (this period may be extended by way of a regulation), but does not apply: (i) if the Entrepreneur has received aid with respect to the same employees as regards the same titles of payments for the protection of jobs, or (ii) to the remuneration of employees whose remuneration obtained in the month preceding the month in which the application was submitted was higher than 300% of the average monthly remuneration from the previous quarter as announced by the President of the GUS (Central Statistical Office).

An entrepreneur who receives the subsidy may not terminate contracts with employees covered by the subsidy for reasons not related to them (e.g. liquidation of the work position) during the subsidised period and for 3 months after the end of that period. Otherwise, the entrepreneur will be obliged to reimburse the grant received in respect of the remuneration of such employee, together with interest.

### »» **Changes provided in the Shield 2.0:**

- The measures may also be used by a non-governmental organization or a state legal person which has experienced a decline in economic turnover.
- Co-financing is available for a period of 3 months from the month (and not the day) of the submission of the application.
- Prohibition to terminate employees' relationships as mentioned above concerns only period of subsidy (and not the period following subsidy).

### »» **Changes provided in the Shield 3.0:**

- Similar solution is available for entities which own a legal title to a monument of a status of a historic monument or a monument listed on the World Heritage List. Such entities, employing at least 50 workers, are allowed to pursue funding in the amount of 80% of an employee's gross remuneration (not more than 100% of a minimum remuneration), if the employee performs professional tasks related to the monument or infrastructure related to it, and has been employed permanently for at least 3 month directly preceding the epidemic danger state. A condition for granting the funding is a drop of the entity's income related to the monument by at least 25% and a fact that the entity did not gain funding from public funds for the same employees' remuneration. The funding might be also granted for remuneration of persons hired on a basis different than an employment contract.

## Co-financing by the district governor

- »» The support of the district governor is aimed at micro, small and medium-sized entrepreneurs who: (i) have recorded a decline in their economic turnover as a result of COVID - 19 within the meaning of the Law (the definition of a decline in turnover in this case is different from the definition introduced for funding from the FGŚP, (ii) are not in arrears of taxes and social security contributions as at the end of Q3 2019, and (iii) have no grounds for declaration of their bankruptcy. The amount of the support depends on the percentage decline in economic turnover and amounts to a maximum of: (i) in the case of a decline in economic turnover by at least 30% - **PLN 1,300 per employee** (ii) in the case of a decline in economic turnover by at least 50% - **PLN 1,820 per employee**, and (iii) in the case of a decline in economic turnover by at least 80% - **PLN 2,349 per employee**, plus social security contributions due from the employer in respect of such supported amounts. The subsidy may be granted for 3 months.

An entrepreneur is not entitled to receive a subsidy in respect of costs which have been or will be financed from other public funds. An employer who benefits from the assistance of a district governor must retain the employees covered by the support for the period of co-financing and for a period equal to the period of co-financing after the benefits have been received. Otherwise, the entrepreneur will be obliged to reimburse the subsidy in proportion to the period of non-retention of the relevant employee.

»» **Changes provided in the Shield 2.0:**

- The subsidy is to be granted for a period of 3 months from the month (and not the day) of the submission of the application.
- Prohibition to terminate employees' relationships as mentioned above concerns only period of subsidy (and not the period following subsidy).

## Exemption from the extension fee in the event of deferment of payment of social security contributions (ZUS) or their distribution in instalments

- »» If warranted by economic or other justifiable reasons (we believe that the situation caused by COVID - 19 should be treated as such), an employer may apply to ZUS for deferral of payment of social security contributions or their distribution in instalments (there are no specific requirements for COVID - 19 in this respect). **If an application is submitted during the state of epidemic threat or state of epidemic (as is currently the case) or within 30 days of its revocation, no extension fee will be charged.**

## Loan from district governors

- »» A district governor may grant a one-off loan to a micro-entrepreneur to cover the current costs of running a business. A loan of up to PLN 5,000 gross may be granted and its repayment period may not, generally, exceed 12 months (this period may be extended by way of a regulation).

At the request of a micro-entrepreneur, a loan and the related interest may be subject to redemption if, for a period of 3 months from the date of granting the loan, the micro-entrepreneur has not decided to reduce the employment as compared to the employment as of 29 February 2020.

»» **Changes provided in the Shield 2.0:**

- The loan together with the related interest may be subject to redemption if the micro-entrepreneur's commercial activity operates for 3 months from the day of granting the loan. Thus, redemption conditions are softened because the act does not require a sustainability of an employment situation.

## Other facilities for employers

- An employer who conducts activity related to providing operation of systems and objects of a critical infrastructure or providing operation of petrol stations, might change a system or working time and order the employees to provide work overtime within a scope necessary for providing permanent operation of an entity.
- An employer who has experienced a decline in economic turnover as a result of COVID-19 and who is not in arrears in the payment of taxes and [social security] contributions as at the end of Q3 2019 (with exceptions) may:
  - limit the length of uninterrupted daily rest of its employees to not less than 8 hours and the length of weekly rest to 32 hours;
  - conclude an agreement with trade union organisations, or in the absence of trade unions, with employees' representatives, to introduce a system of equivalent working time in which the daily working time may be extended to not more than 12 hours, within a settlement period not exceeding 12 months; and
  - conclude an agreement with trade unions or, in the absence of trade unions, with the employees' representatives to apply less favourable conditions of employment than those resulting from the employment contracts concluded with those employees, to the extent and for the duration agreed in the agreement; the agreement is to be forwarded to the competent district labour inspector within five working days of its conclusion.

## ➤➤ Changes provided in the Shield 2.0:

- The Law extends such employers' rights to impose on their employees' free time. According to the new regulations, such an employer will be entitled to oblige an employee to perform on-call duty at the workplace or another designated location outside normal working hours. Further, the employer will be entitled to instruct an employee to exercise his or her right to daily or weekly rest at a place designated by the employer. In this case, an employee will have to be provided with accommodation and meals.
- The catalogue of entities which are entitled to such prerogatives is to be extended. In particular, changes in the organisation of working time may be introduced by, among others, entities providing banking services or entrepreneurs operating in the agri-food sector related to the production or supply of food.

## Remote work

- The Law provides the possibility for an employer to issue an order to employees to perform work outside the permanent workplace (remote work). The regulations do not specify the rules and conditions for performing remote work. Consequently, it seems that such organization of work may be introduced for a period of time unilaterally defined by and under conditions indicated by the employer.

## Suspension of an obligation to perform periodic medical examination

- According to the Law, in the event of the declaration of a state of epidemic threat or a state of epidemic (as is currently the case), the application of regulations requiring periodic and control medical examinations is suspended and, instead, these examinations must be carried out within no more than 60 days from the revocation of such a state. In addition, if a physician who is authorized to perform an initial or control examination is not available, such examination may be performed by another physician who may issue the relevant medical certificate. The validity of a medical certificate issued by another physician expires 30 days after the date of revocation of an epidemic threat, if no state of epidemic is declared, or from the date of revocation of the state of epidemic.

## Care allowance

- Due to the closure of schools and kindergartens, and in cases of the lack of possibility for a sitter to take care of a child, an employee may receive a total of 28 days of care allowance under the Law (this period may be extended by way of a regulation) for exercising personal care over: (i) a child up to 8 years of age, or (ii) a child who has a certificate of severe or moderate disability up to 18 years of age, or a child with a certificate of disability or a certificate of need for special education.

## Solutions provided in the amendments of the Anti-Crisis Shield

### Initial health and safety training in electronic form

- The Law allows for the conduct of all initial training in respect of occupational health and safety by means of electronic communication. However, traditional workplace training will still have to be carried out for some employees, including those exposed to hazardous agents, as well as for those transferred to such positions and for students undergoing practical training or students undergoing apprenticeship..

In addition, where the time for periodic occupational health and safety training falls within the duration of the state of epidemic (or epidemic threat)) or within 30 days of its revocation, the deadline for such training is extended to 60 days after the revocation of the state of epidemic (or epidemic threat).

### Payer declaring up to 49 insured persons partially exempt from social security contributions

- The Anti-Crisis Shield allows payers who have reported less than 10 persons insured for social insurance purposes to be exempt from the obligation to pay social security, health insurance, Labour Fund, Solidarity Fund, FGŚP and Bridge Fund contributions for the period from 1 March 2020 to 31 May 2020.
- A new arrangement in this respect was introduced in the amended Law, according to which payers who as at 29 February 2020 reported 10 to 49 persons insured for social insurance purposes will be entitled to apply for an exemption in respect of 50% of the total amount of unpaid contributions with respect to the above insurances and funds for the period from 1 March 2020 to 31 May 2020.
- The Shield 3.0 enables payers who run non-agricultural activity and entrepreneurs benefiting from the relief for a start, to submit a motion for an exemption from contributions paid by them for a period from 1 April 2020 to 31 May 2020.

»» A person undertaking a non-agricultural activity might exercise such a right if they pay contributions only for own social insurance or health insurance, the activity has been operating before 1 April 2020 and:

- Revenues from this activity for the first month of a period for which a motion is submitted, was higher than 300% of the predicted average monthly gross remuneration in national economy in 2020 and
- Income from this activity for the first month of a period for which a motion is submitted, did not exceed PLN 7000.

An entrepreneur benefiting from the relief for a start, paying contributions only for own health insurance, might submit a motion for exemption from the contributions if the business operation has been conducted before 1 April 2020 and an income obtained in the first month of a period for which a motion is submitted:

- Did not exceed 300% of the predicted average monthly gross remuneration in national economy in 2020 or
- Was higher than 300% of the predicted average monthly gross remuneration in national economy in 2020, but revenues did not exceed PLN 7000.