



Shield 4.0 – employment

Shield 4.0 was published in the Journal of Laws and the majority of its provisions came into force on 24 June 2020. Below, we present the most important solutions for employers introduced by this new special law.

Clarification of rules regarding remote work

- » According to the new provisions, remote work may be ordered if the employee possesses the technical ability and means and a location to perform such work, and an employee's duties may be performed remotely based on the type of work. Crucially, an employer may, at any time, withdraw the order to work remotely.
- » Shield 4.0 also provides that employers should ensure the materials and tools necessary for remote work. However, the use of tools not provided by an employer is permitted insofar as this allows for confidential information and other legally protected secrets to be respected and secured. The new regulations also authorize employers to require employees working remotely to keep records of the tasks performed, taking into account, in particular, a description of the tasks performed as well as the date and time of their performance.

Granting employees overdue vacation leave

- » For the duration of the state of epidemic threat and/or the state of epidemic declared due to COVID-19, an employer may, for a period of their choosing, grant an employee up to 30 days of unused vacation leave from previous calendar years. This does not require the employee's consent. Until now the law did not expressly grant employers such authority, although unilateral grants of unused vacation leave was permitted by case law. Thus, in practice, this amendment introduces certain unfavourable limitation in this regard for employers.

Termination of non-competition agreements

- » For the duration of the state of epidemic threat and/or the state of epidemic declared due to COVID-19 the party which benefits from a non-competition undertaking following the termination of an employment relationship is entitled to terminate such an agreement with 7 days' notice. This right also applies to non-competition agreements in effect following the termination of a civil-law contract.

Expanding the range of employers entitled to implement furloughs or reduce work hours

- » Until now, employers could, by way of an understanding, furlough employees or reduce their working hours if they suffered a certain reduction in turnover. The amendments also allow the application of the above solutions where the decline in the employers financial situation is a result of a significant increase in its remuneration fund burden.
- » Employees may have their work hours reduced or be furloughed for a maximum of 6 months, however, for no more than 12 months following the revocation of the state of epidemic threat or state of epidemic. Furthermore, if an employer fulfils the conditions to receive subsidies on account of wages, they are entitled to apply for such financial support..

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Subsidies on account of wages independent of furloughs or reductions to work hours

- Currently, where an employer suffers a reduction in turnover as specified in the statute, they may also apply for financial support in respect of employees not furloughed or subject to reduced work hours. The wages of such employees are subsidised by up to half of the amount due, however, no more than 40% of the average monthly wage in the preceding quarter published by the President of Statistics Poland (Główny Urząd Statystyczny) (i.e. PLN 5,331.47 in the first quarter of 2020, meaning that the maximum amount of the subsidy is PLN 2,132.59). However, the wages of employees who received wages exceeding 300% of the abovementioned average monthly wage, i.e. more than PLN 15,994.41 (on the basis of data for the first quarter of 2020), are not eligible for such funds.

Changes regarding social benefits provided by employers

- For the duration of the state of epidemic threat and/or the state of epidemic declared due to COVID-19, where an employer suffers a specified reduction in turnover or a significant increase in its remuneration fund burden, such an employer may suspend the performance of its obligations regarding:
- the establishment or operation of a workplace social benefit fund;
 - making the basic contribution;
 - payment of holiday benefits.

If representative trade union organizations operate within the employer, then an understanding must be concluded with them with regards to the above..

- Moreover, the provisions of collective employment agreements or remuneration rules which provide for higher contributions to the workplace social benefit fund and other social and living benefits than those specified in the Act, do not apply to such an employer. In this case, the contribution amounts specified in the abovementioned Act shall apply.

Limiting the value of benefits paid in connection with the termination of an employment agreement

- Shield 4.0 limits the value of severance, compensation and other benefits paid in connection with the termination of an employment agreement. If the employer's financial situation has deteriorated (i.e. they have suffered a specified reduction in turnover or a significant increase in remuneration fund burden), then the value of such benefits cannot exceed ten (10) times the minimum wage (in 2020 this is equal to PLN 26,000). These limitations apply to cases where the law imposes an obligation to pay a given benefit. The above limit will therefore not apply to benefits provided solely on the basis of a contract.
- These rules apply analogously to the termination or expiry of contracts of mandate, service agreements, contracts for specific work or the dismissal of a person from a paid function, however, with the exception of agency agreements..