

Coronavirus – impact on employment and implementation of agreements

The epidemiological risk associated with COVID-19 coronavirus is increasing. On 11 March 2020 the World Health Organisation (WHO) declared a global pandemic, recommending that all countries take intensive preventive actions to limit the spread of the disease. Current situation seriously affects business trading, performance of contracts and employment relationships, and requires immediate legal action in many aspects.

Polish legislator has responded to the growing threat in a special Act of 2 March 2020 on dedicated solutions to prevent, counteract and combat COVID-19 and other infectious diseases and crisis situations caused by them (the 'Act'). The Act provides for numerous significant solutions for Polish entrepreneurs and employers.

The Act was passed for a limited period of 6 months. On the one hand it provides for solutions facilitating employers' quick response to arisen threats and, on the other it obliges Polish entrepreneurs to immediately follow the guidelines of state administration.

LABOUR LAW

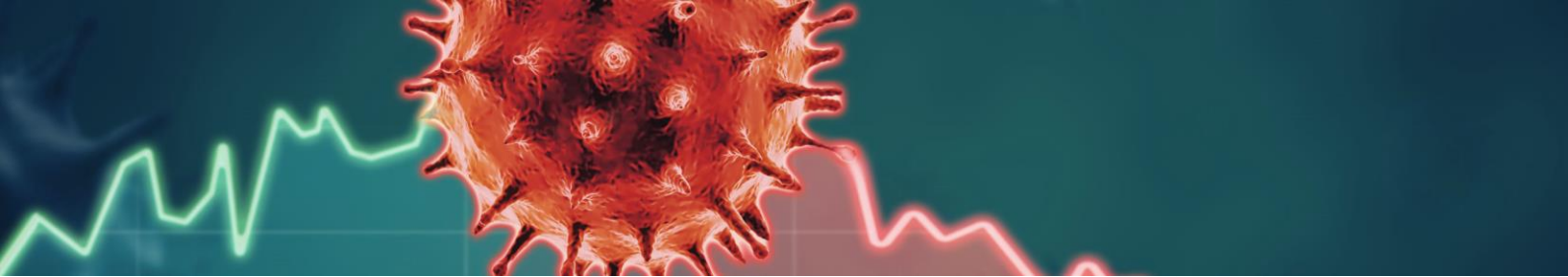
Particular attention should be paid to the new facility in the Polish labor law introduced under the Act, according to which **the employer may instruct in a binding manner the employee to work remotely** (i.e. outside the workplace indicated in the contract of employment). The Act does not specify the form in which the instruction is to be given, but recommends to do it in writing or by e-mail, upon the confirmation of its receipt by the employee.

The concept of remote work is not defined, nor is it present in the Labour Code. Therefore, it is

particularly important for the instruction to work remotely to clearly state the most important terms, i.e. it should:

- indicate where the work is to be performed from
- confirm that work time arrangements remain unchanged and indicate that overtime, if performed, still requires employer's clear instruction to that effect
- oblige the employee to comply with data protection requirements and prevent unauthorised possession
- indicate the period for working remotely - the Act does not allow for the instruction to be issued for an indefinite period. The maximum duration is 6 months, i.e. no longer than the duration of the Act.

The Act also introduced **an additional care allowance for parents** who personally care for a child up to 8 years old in the case of closure of a kindergarten or school, which has already taken place in accordance with the Regulation of the Minister of National Education of 11 March 2020 on temporary limitation of the functioning of the entities of the educational system in connection with preventing, counteracting and combating COVID-19.



Important guidelines for employers are also contained in the **Communication of the National Labour Inspectorate** of 26 February 2020 (the 'Communication'). **The Communication addresses the most important doubts concerning the impact of the epidemic on the employment.** The State Labour Inspectorate has drawn attention to, inter alia, the following:

- **possibility for an employee to refuse a business trip (or a delegation)** to areas at particular risk of coronavirus without suffering any consequences, provided that these areas shall be determined in accordance with guidelines and communications of the relevant state authorities - in particular the Chief Sanitary Inspectorate, the Ministry of Foreign Affairs or the State Labour Inspectorate
- **lack of the employer's right to refuse to allow an employee who is suspected by the employer to be infected to work** - the Inspectorate emphasized that health assessment remains the exclusive domain of a doctor
- **unacceptability of organising employees' quarantine by employers themselves;** moreover, employers cannot oblige workers to take outstanding leave – therefore, the most effective way for employers to respond to these risks is to issue the above-mentioned orders to work remotely.

Numerous legal issues concerning remote working raise doubts and will require ongoing clarification. The Act and introduced institution of remote work do not specify what remedial actions can be taken by the employer with respect to employees who cannot work remotely due to the specific nature of their positions. It is also doubtful **on what principles (and on what basis) the employee should be paid for his work if he cannot provide it** both, in the place indicated in the employment contract and remotely. Such a situation may be considered in terms of downtime as well as the exemption from the obligation to provide work.

Equally cautious approach is required with regulations concerning **health and safety while working remotely.** It might be possible to apply health and safety regulations applicable at teleworking, but only upon their appropriate adaptation.

However, employers are undoubtedly obliged to take more care of health and safety at their premises, if they decide not to introduce remote work and maintain the current work organization. The guidelines of the World Health Organisation and the Chief Sanitary Inspectorate require **employers to take greater care of clean and hygienic work conditions,** among other things by providing employees with common access to disinfectants. Each employer is liable for complying with these stricter requirements.

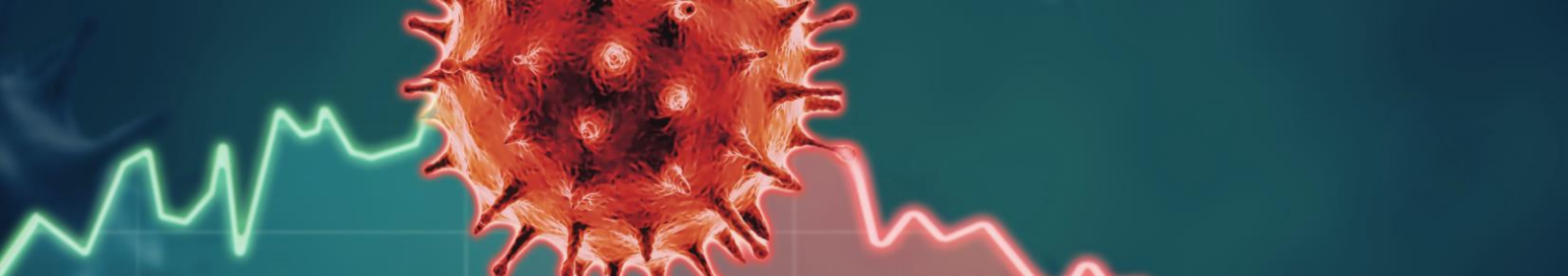
IMPLEMENTATION OF AGREEMENTS – FORCE MAJEURE

The announced epidemiological threat **can be treated as a force majeure event,** which may affect proper performance of contracts.

The notion of force majeure is present in the Civil Code and other Polish laws, but it has not been defined in legal regulations yet. It is commonly accepted that force majeure is an event:

- external
- impossible to predict
- consequences of which cannot be prevented.

These conditions must be met cumulatively. The concept of force majeure must be interpreted with caution, since it is an exception to the rule that contracts must be performed in accordance with their content. Therefore, effective recourse to the force majeure **requires an individual assessment on a case-by-case basis and evaluation** of the extent to which the emergency situation (in case in question the epidemiological threat) has affected the specific contractual relationship.



First of all, it is necessary to analyse whether consequences of force majeure event have not been directly regulated in a given contract, which is a common practice in legal transactions. It is therefore necessary to:

- identify and check the contracts concluded with contractors or customers for **consequences of force majeure stipulated in the contract** - in particular with regard to contracts with entities operating in places of the highest epidemiological risk
- **determine the impact of the force majeure event on the performance** of the contract and identify the associated risks - especially in terms of the ability to meet contractual deadlines
- if there is a risk of non-performance of the contract within the agreed period - **inform the other party and secure the situation** in terms of possible negative legal consequences.

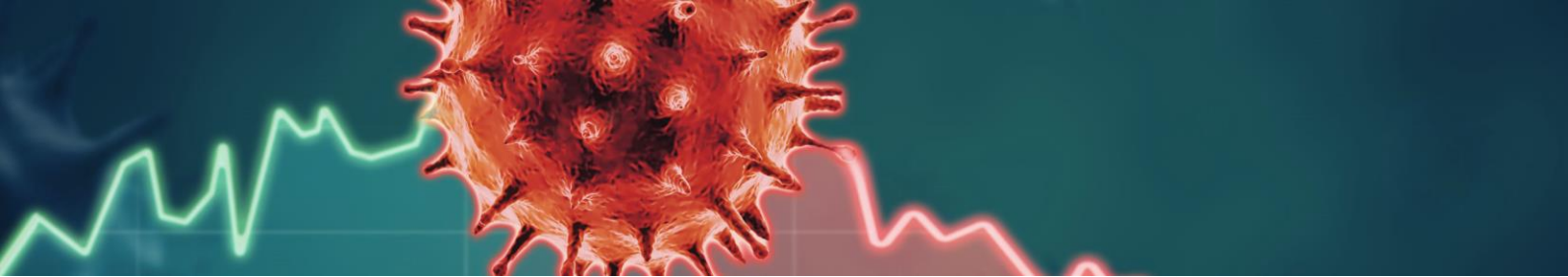
The occurrence of force majeure may have numerous serious legal consequences. Among the most important the following should be indicated:

- **the possibility of exemption from liability for improper performance or non-performance of the agreement** - the occurrence of force majeure event is a circumstance not attributable to the parties, so temporary non-performance of contractual obligations due to such a reason shall not result in liability for damages, provided that a correlation between the non-performance of the agreement and the occurrence of force majeure is proven. The above does not release the parties from liability after the cessation of force majeure event, in which case the performance of the contract should be continued as far as possible
- **extension of contractual deadlines** - if a correlation is established between the epidemiological risk and the impossibility to perform the contract in timely manner, a party who could not meet the deadline due to extraordinary circumstances will not be effectively held liable. In such a situation, the deadline for performance of

certain actions or the entire contract will be extended appropriately in accordance with the duration of force majeure

- **suspension of the running of the statute of limitations for claims** - in accordance with the Civil Code, the running of the statute of limitations does not start and is suspended for all claims that cannot be pursued due to force majeure event. However, as in the cases discussed above, it is necessary to demonstrate the correlation between the occurrence of force majeure and impossibility of timely collection of certain claims.

Under provisions of Polish law the occurrence of **force majeure does not justify termination of the agreement or causes the expiry of the obligation**, but some agreements contain clauses that are linked to their termination upon the occurrence of force majeure. **Therefore, we recommend analysis of concluded contracts also in this respect.**



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Should you have any questions or doubts concerning the legal aspects described in this alert, please feel free to contact us.



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