

Rödl & Partner

NEWSLETTER LITHUANIA

SUCCESSFUL TOGETHER

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Covid-19: topical issues for the employer

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→ Certain aspects of employment in the case of COVID-19

Legal aspects

DO EMPLOYEES HAVE A RIGHT TO REFUSE TO WORK IF COLLEAGUES ARE ILL OR CUSTOMER TRAFFIC INCREASES THE RISK OF ILLNESS ("DO I HAVE TO GO TO WORK")?

As a general rule, employees must appear on duty if they are healthy. They cannot stay away from work for general and non-specifically justified fear of a contagion risk.

However, if the employer does not take any additional safety and health measures (provisions of disinfectants, protective masks, additional disinfection of premises etc.) the employee has the right to refuse to work if his or her safety and health is endangered or if the employer is asked to perform work under not safe and healthy work conditions.

Work must be stopped when the working environment is harmful, or the health or life of employees is endangered. In view of the coronavirus emergency situation in Lithuania employers must take additional protective measures or suspend ongoing work. If work is stopped due to unsafe conditions, employees must be paid their average salaries until safe working conditions are restored by the employer.

In the event of a risk to safety or health, the employee has the right to stop work and immediately notify the employer in writing regarding the reasons for the refusal to work. A reasoned refusal by an employee may not be regarded as a breach of his or her duties.

Employees who have recently returned from foreign countries are obliged to stay at home for 14 days and to observe their health. Employers are requested to provide for such employees the possibility to work from home for at least 14 days. If home office is not possible, the employees have the right to apply for an electronic certificate of incapacity for work (a "medical certificate of absence") through the National Public Health Center under the Ministry of Health. Sickness allowance is paid by the employer only for the first two days of incapacity for work, whereas the allowances for the remaining days are covered by the Lithuanian social insurance.

CAN AN EMPLOYEE REFUSE TO TRAVEL TO RISK AREAS ORDERED BY THE EMPLOYER?

Yes. The employee can refuse to travel to risk areas.

A quarantine regime has been declared by the Lithuanian government, which will be effective from 16 March 00:00 until 30 March 24:00, prohibiting all foreign travel to citizens of Lithuania, unless they return to their place of residence or place of work.

ARE EMPLOYEES ENTITLED TO WORK IN THE HOME OFFICE OR CAN HOME OFFICES BE ARRANGED?

According to the quarantine regime, employers are encouraged to provide employees with the possibility to work remotely. If work from a home office is possible, employers should approve a policy of remote work.

In general, work from a home office can be assigned at the request of the employee or by agreement of the parties. According to the Lithuanian Labor Code, employees have the right to request to work from a home office even in cases not related to the Corona Virus.

DO EMPLOYEES HAVE TO GO TO WORK WHEN THE TRAIN (LOCAL TRANSPORT) STOPS RUNNING?

Yes. It is the responsibility of employees to show up for work on time.

WHAT HAPPENS IF EMPLOYEES HAVE CHILDREN WHO NEED CARE BECAUSE THE SCHOOL AND / OR KINDERGARTEN REMAINS CLOSED?

On the 12th of March the Lithuanian government has already ordered to close all schools, kindergartens and universities for at least two weeks.

If schools or kindergartens remain closed, employees who have children going to a kindergarten, pre-school or primary school have the possibility to request for incapacity for work. An electronic certificate of incapacity for work is issued by the family doctor from the date of quarantine in the educational institution. Sickness

allowance is paid for such employees by the employer only for the first 2 days.

ARE THERE ANY OBLIGATIONS ON THE EMPLOYER TO ACT BASED ON THE CURRENT RISK OF INFECTION? DO EMPLOYEES HAVE TO FOLLOW PRESCRIBED PROTECTIVE MEASURES?

Based on the current risk of infection, the employers are obliged to take additional protective measures. According to the recommendations issued by the Lithuanian State Labor Inspectorate, if work from a home office is not possible, the employers should:

- Ensure regular ventilation of the working space at least 5 times a day.
- Provide personal hygiene products (soap, paper towels, hand sanitizers) and ensure that they are constantly replenished.
- Ensure the availability of personal hygiene products (disinfectants) throughout the workplace (at the central entrance, at the entrances to the toilet facilities and other facilities with washbasins).
- Ensure wet cleaning of office surfaces (tables, chairs, window sills) at least once a day.
- Ensure that in-house toilets and their door handles are disinfected at least 5 times a day.
- Inform employees about the application of personal hygiene measures in frequently visited and visible areas (for example, information at entrances / exits).

WHAT OPTIONS DO EMPLOYERS HAVE TO REDUCE ANY ECONOMIC CONSEQUENCES?

Employers can create the best possible conditions for the employee to be able to work from home and thus reduce the amount of work lost - if this is possible depending on the type of work.

Some employers have insurance policies that cover production downtime under certain conditions.

In addition, employers should review supply contracts to determine whether, and if so how, loss of production through no fault of one's own or cases of force majeure are regulated.

Employers could also encourage employees to use-up accumulated annual vacations.

Employers could assess the possibility to remodel full-time employment agreements into part-time employment agreements for a fixed period of time.

Employers could announce temporary closure (downtime) and pay respective proportions of salary according to the law.

DO THE WORKS COUNCIL'S RIGHTS TO PARTICIPATE HAVE TO BE TAKEN INTO ACCOUNT WHEN TAKING MEASURES TO REDUCE THE RISK OF INFECTION AND MITIGATE THE ECONOMIC CONSEQUENCES OF THE EMPLOYER?

Yes. However, Lithuanian works councils are hardly comparable to the German works councils which have extensive information and influence rights. In general, work councils have the right:

- to participate in information, consultation and other participatory procedures by which the employees and their representatives are included in the employer's decision-making process;
- to submit proposals to the employer on economic, social and labor issues, decisions of the employer that are of relevance to the employees,
- to discuss, where necessary, economic, social and labor issues of importance to the employer's employees and convene a general meeting (conference) of the employees of the employer or of the workplace, upon coordinating the date, time and place of the meeting/conference with the employer.

ARE EMPLOYEES ENTITLED TO CONTINUED PAYMENT IN THE EVENT OF A TEMPORARY CLOSURE?

In the event of a temporary closure and if work from a home office is not possible, downtime provisions according to the Lithuanian Labor Code will apply.

If downtime is declared for up to one working day, the employee shall be paid his or her average remuneration and the employer shall have the right to demand that the employee be present at work.

If downtime is declared for a period of more than one working day but no more than three working days, the employee may not be required to come to the work each day for more than one hour's time. While present at the work during downtime, the employee shall be paid his or her average remuneration, and for the other period of downtime when the employee is not required to be at work, he or she shall be paid two-thirds of his or her average remuneration.

If downtime is declared indefinitely or for a period of more than three working days, the employee shall not be required to come to work but must be prepared to come back the next working day after the employer's notice. During the remaining period of downtime the employee shall

be left 40 per cent of his or her average remuneration.

During a calendar month when downtime was declared for an employee, the remuneration paid to the employee for that month may not be lower than the minimum monthly wage approved by the Lithuanian Government (currently 607 EUR gross) when full standard working hours are agreed upon in the employment contract.

WHAT HAPPENS IN THE OFFICIALLY ORDERED QUARANTINE CASE? DO EMPLOYEES CONTINUE TO RECEIVE THEIR SALARIES? WHO EIMBURSES THESE COSTS TO THE EMPLOYER?

If an employee is quarantined because of an order from an authority or his doctor, the same rules apply as in the case of illness. The employer would pay for the first 2 days of sick leave, and the state insurance would cover the remaining period of sick leave.

On the 16th of March, the Lithuanian Government endorsed a 2.5-billion-euro economic stimulus plan to mitigate the effects of the coronavirus epidemic. According to the plan, the state will, amongst other incentives, provide additional economic assistance to businesses in order to preserve jobs during partial or full downtime.

INFORMATION REGARDING LOCK-DOWN: DO TENANTS HAVE TO CONTINUE RENT PAYMENTS FOR SHOPS, OFFICES ETC.?

In order to stop the spread of the coronavirus, the Lithuanian government has announced a two-week nationwide quarantine, that came into effect yesterday. The measures include closing of all shops, except supermarkets, pharmacies, specialized veterinary pharmacies, and grocery market-places. As a consequence, many businesses were forced to close their doors. The question rises whether tenants have the right to demand a reduction or suspension of rent payments.

The basic principle of civil law *pacta sunt servanda* dictates that agreements must be kept and contractual obligations fulfilled. According to the law, force majeure shall not include circumstances such as absence of goods in the market or lack of necessary financial resources. Therefore, a suspension of contractual obligations due to force majeure reasons might be difficult to prove. Closed shops will have a negative economic impact on the business of the tenant; however, this does not automatically provide a legitimate reason to suspend or terminate the rent agreement.

Another important principle that could be relevant given the current circumstances is

clausula rebus sic stantibus, stipulated in Art. 6.204 of the Lithuanian Civil Code. According to this principle, the tenant has the right to initiate a change in the terms of the contract, such as a request for a reduction of rent, if the contractual obligations become excessively difficult to perform due to a fundamental change of circumstances. However, in order for this principle to become effective, such circumstances have to meet all of the following conditions:

- these circumstances occur or become known to the aggrieved party after the conclusion of the contract;
- these circumstances could not reasonably have been foreseen by the aggrieved party at the time of the conclusion of the contract;
- these circumstances are beyond the control of the aggrieved party;
- the risk of occurrence of these circumstances was not assumed by the aggrieved party.

The application of Art. 6.204 was popular during the economic crisis of 2008, leading to some controversial court decisions. As a result, some contract parties explicitly agreed to waive their right to invoke this article. Therefore, it is highly recommended, that all cases and contracts are assessed individually.

During this difficult period, contract parties are invited to pursue an open dialogue in order to find an acceptable solution for both parties. Not only the tenants, but also landlords, who on the other hand have obligations towards their own shareholders, business partners and financial institutions, are interested to keep their tenants and constant cash flows.

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Tax aspects

THE STATE TAX INSPECTORATE (STI) HAS ALREADY ANNOUNCED SEVERAL MEASURES TO EASE THE TAX BURDEN

- taxpayers are allowed to switch the calculation method of CIT from the retrospective method (CIT calculated according to previous year results) to forecast method (CIT calculated according to the financial results estimation) until March 30th;
- deadline for advance CIT payment extended to March 30th instead of March 16th
- businesses are available to conclude a tax loan agreement with the STI and make the tax payments according to the agreed schedule with the STI (WITHOUT LATE PAYMENT INTEREST). This may also apply for PIT payments too;
- delay of the tax execution procedures, payment of fines and late payment interest;
- payment of social insurance contributions may be also delayed under certain circumstances.

So far:

- no changes in advance immovable property tax (deadline March 15th)
- no changes in PIT payments (deadline March 15th)
- no changes in VAT payments (deadline March 25th)

Update: But the STI will not take tax execution actions in case of non-payment.

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