

Labour Law | Newsletter | Employee Travel and COVID-19

In recent days, many employers are taking steps to minimise the risk of COVID-19 spreading in the workplace. To this end, employers are, among others, collecting information on employees' trips abroad, cancelling foreign business trips and introducing recommendations to limit private travel.

Can an employer oblige its employees not to go on private trips to regions at a significant risk of COVID-19 spread?

No. An employer is not entitled to stipulate rules concerning the way employees spend their holidays, including their chosen holiday destinations. Therefore, any recommendations made by the employer in this regard are not binding. However, employees must bear in mind that, in some situations, they will be required to undergo relevant examinations to verify their health and fitness for work prior to returning to work from a holiday.

Can an employer recall an employee from vacation leave if he is aware that the employee is going to visit a region at a significant risk of COVID-19 spread?

No, if this fact is the sole reason for recalling the employee. The employer may recall such employee from annual leave only if the condition set out in Article 167 § 1 of the Labour Code is satisfied, i.e. where the employee's presence at the workplace is required due to circumstances unforeseen at the time the leave began.

Can an employer prevent an employee from working who is known to have returned from a region at significant risk of COVID-19 infection?

Yes. In the current situation, taking into account the World Health Organisation (WHO) announcement on the COVID-19 pandemic and the decisions of the Polish authorities to close educational and cultural institutions, and in view of the increasing number of cases in Poland, in our view the employer may prevent an employee known to have returned from a region with a higher risk of coronavirus infection, from working – whether or not the employee has any symptoms of the disease.

Can an employer request an employee returning from a region with more widespread transmission of coronavirus, to undergo medical examination?

Yes, if the employee shows signs of infection. Generally speaking, labour legislation provides only for pre-employment, periodic and prophylactic medical examinations and the employer may not use the above examinations to assess the health condition of an employee knowing that he/she has symptoms of a disease. However, pursuant to Article 229 § 4 of the Labour Code, the employer must refuse to allow an employee to work without a current medical certificate stating that the employee has no contraindications to work in a specific position. The Supreme Court is of the opinion that such a certificate is valid for the period stated therein, however such certificate loses its validity if events occur in this period that may be indicative of a change in the employee's health condition (judgment of 18 December 2002, I PK 44/02). In our opinion, a coronavirus outbreak in the region where the employee spent their leave can be considered such event, provided that the employee shows symptoms of illness.

Can an employee who has returned from a region at a higher risk of COVID-19, refuse to undergo a medical examination requested by the employer?

If an employee refuses to undergo such examination, the employer must forbid them from working. In this case, if the refusal to undergo the examination is due solely to circumstances attributable to the employee, the employee will also not be entitled to receive their salary for the time they do not work.

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