

## Labor law | Newsletter | Employer vs. Coronavirus

The increase in the risk of coronavirus infection (SARS-CoV-2) in Poland means that employers should consider taking measures to protect their employees' health.

What are the obligations and powers of employers in relation to the risk of coronavirus (SARS-CoV-2) infection? What can workers expect from their employers? Some of the most common dilemmas are explained below:

**Does the employer have the right to ask employees if they have been to areas at high risk of infection?**

**YES.** The justification for such questions is the employer's obligation to ensure safe and hygienic working conditions. It is however important to formulate the questions in the correct manner. An employer's question about whether the employee has been to a region with an increased risk of contracting coronavirus infection is not an intrusion in privacy, as confirmed by the Chief Sanitary Inspectorate (GIS) (<https://gis.gov.pl/>).

**Does the employer have the right to ask employees if persons with whom they have been in close contact recently (family, friends, contractors) were in areas with more widespread coronavirus transmission?**

**YES.** For the same reasons as above. The aim is to assess any employee's exposure to coronavirus. In this case, the need to take measures minimizing the risk of coronavirus spread in the workplace is a priority.

**Can an employer prevent an employee from working in connection with coronavirus?**

**YES,** if the employee has symptoms that are known to be indicative of a coronavirus infection. In this case, the employee should be referred to a medical examination, which will determine whether he/she is able to work (note: the National Labor Inspectorate (PIP) presents a different view on this matter).

**NO,** if the employee does not have any disease symptoms, and the only justification for not being allowed to work was only the employer's knowledge that the employee was in an area with more widespread transmission.

**Does the employer have the right to test the temperature of employees and third parties (suppliers, employees of external companies, contractors, clients) and decide whether to let them into the workplace depending on the result of this test?**

Currently there is no legal basis for such temperature screening by the employer, and furthermore the provisions on the protection of personal data are also counter to this. On the other hand, the legitimacy of such tests

can be viewed in the light of an employer's obligation to minimize the risk of infection and ensure adequate care of employees. It is possible that in the coming days an appropriate interpretation of the relevant public institutions or adjustment of the law in this respect will resolve this problem.

**Can an employer oblige an employee who returned from a region with more widespread transmission of coronavirus to work remotely?**

Such a possibility is explicitly provided for in the draft Act on special arrangements related to the prevention and eradication of COVID-19, other infectious diseases and the crisis situations caused thereby.

**Does the employer have the right to send an employee returning from a coronavirus region on holiday?**

**NO.** An employer may not, without consent, oblige an employee returning to work from a stay in a suspected infection zone to take a holiday. The employer is also not entitled to take measures to isolate the employee under quarantine.

**Does the employee have the right to refuse to go on a business trip to an area affected by coronavirus?**

**YES.** The employer is obliged to analyze the possible risks associated with the trip, and may refuse to go for such a trip if the employer does not provide him/her with safe working conditions during such travel.

**What else to think about?**

- ✓ limiting business travel to areas where there are many cases of coronavirus infection;
- ✓ changing the rules of conducting meetings with contractors and other people from outside the organization, so as to minimize the risk of coronavirus infection (e.g. conducting teleconference/ video conferences instead of traditional meetings);
- ✓ providing disinfecting agents at the workplace;
- ✓ providing updated information, e.g. based on Chief Sanitary Inspectorate (GIS) messages.

### Coronavirus and the National Labor Inspectorate (PIP) and Personal Data Protection Office (UODO)

An employer without knowledge of the potential exposure of employees to coronavirus cannot take effective actions. Therefore, the dilemmas of recent days relate to whether the law allows the gathering of necessary information about the state of health not only of employees, but also of those people visiting workplaces. Is it possible to change the organization of work due to the threat of coronavirus? In its communication published on February 26, 2020, the National Labor Inspectorate presents a rather conservative position. On the part of the Personal Data Protection Office, there is no guidance on the interpretation of personal data protection regulations to date. Meanwhile, the situation is developing dynamically and there are increasing questions from employers and employees, which, hopefully, will be answered soon by the public institutions.

## CONTACT US



**Anna Gwiazda**  
Attorney at Law, Partner,  
Head of Labor Law Practice

T: +48 660 765 903  
E: [a.gwiazda@kochanski.pl](mailto:a.gwiazda@kochanski.pl)

**Warsaw**  
METROPOLITAN  
pl. Piłsudskiego 1

**Cracow**  
EQUAL BUSINESS PARK  
ul. Wielicka 28B, C building