

**Pojašnjenja Ministarstva za rad, zapošljavanje, boračka i socijalna pitanja vezano za prava i obaveze poslodavaca i zaposlenih tokom vanrednog stanja izazvanog virusom Covid-19**

Budući da se nakon donošenja Uredbe o organizovanju rada poslodavca za vreme vanrednog stanja (dalje: Uredba) pojavilo niz pitanja, odnosno nedoumica vezano za prava i obaveze poslodavaca i zaposlenih tokom vanrednog stanja izazvanog virusom Covid-19, Ministarstvo za rad, zapošljavanje, boračka i socijalna pitanja je dalo određena pojašnjenja situacija koje mogu nastati u toku vanrednog stanja, koje vam izlažemo u daljem tekstu:

***Rad od kuće***

Zaposleni koji u skladu sa Zakonom o radu i Uredbom rade od kuće imaju pravo zaradu, kao i zaposleni koji rade na svom radnom mestu. Jedina razlika je što zaposleni koji rade od kuće, nemaju pravo na naknadu troškova prevoza za dolazak i odlazak sa rada kao zaposleni koji dolaze u poslovne prostorije poslodavca, kao ni na naknadu drugih troškova u vezi sa organizacijom rada na ovakav način.

U slučaju kada zbog delatnosti i prirode posla poslodavac ne može da organizuje rad od kuće, dužan je da organizuje rad u smenama, kako bi što manji broj zaposlenih i svih drugih radno angažovanih lica rad obavljao istovremeno u jednoj prostoriji, kao i da obezbedi sve mere zaštite bezbednosti i zdravlja na radu u skladu sa Zakonom o zaštiti stanovništva od zaraznih

**Clarifications of the Ministry of Labor, Employment, Veterans' and Social Affairs regarding the rights and obligations of employers and employees during the state of emergency caused by the Covid-19 virus**

Considering that, after adoption of the Regulation on Organizing Work at the Employer During the State of Emergency (hereinafter: the Regulation) a number of questions i.e. concerns arose regarding the rights and obligations of employers and employees during the state of emergency caused by the Covid-19 virus, the Ministry of Labor, Employment, Veterans' and Social Affairs has provided some clarifications of situations that may arise during a state of emergency, which are presented in the text below:

***Work from home***

Employees who work from home in accordance with the Labor Law and Regulation have the right to a salary, as well as employees who work in their workplace. The only difference is that employees working from home are not entitled to reimbursement of transportation costs for travel to and from work, as is the right of employees who work at the employer's premises, nor are they entitled to reimbursement of other expenses related to this manner of organizing work.

In cases where, due to the activity and nature of work, the employer cannot organize work from home, he is obliged to organize work in shifts, so that as few as possible employees and all other work engaged persons work at the same time in one room, as well as to provide all measures of protection of safety and health at work in accordance with the Law on Protection of the

bolesti i drugim posebnim propisima kako je to određeno Uredbom.

***Zaposleni sa utvrđenim hroničnim oboljenjima i lica starija od 60 godina, kao i roditelj sa decom mlađom od 12 godina***

Na osnovu Uredbe, Ministarstvo državne uprave i lokalne samouprave donelo je Preporuku za organizovanje rada u javnim upravama i državnim institucijama (dalje: Preporuka).

Preporuka se, imajući u vidu nadležnost Ministarstva državne uprave i lokalne samouprave, pre svega odnosi na zaposlene u državnim organima, javnim agencijama, javnim službama i jedinicama lokalne samouprave, međutim, ovu Preporuku treba primeniti i na poslodavce u privatnom sektoru, ukoliko to dozvoljava delatnost rada poslodavca.

Prema Preporuci, „*poslodavac prvenstveno treba da ima u vidu da su naročito ugrožena lica sa utvrđenim hroničnim oboljenjima i lica starija od 60 godina i da posebnu zaštitu ima roditelj deteta do 12 godina, a naročito ukoliko sam vrši roditeljska prava, ili je drugom roditelju ustanovljena radna obaveza. Za navedene zaposlene neophodno je omogućiti rad od kuće, i to u skladu sa planom rada i rasporedom koji je poslodavac, odnosno rukovodilac, sam dužan da utvrdi za svakog zaposlenog*“.

Međutim, u slučajevima kada se ne može organizovati rad od kuće (i u javnom i u privatnom sektoru), i ovde važi kao i napred rečeno - poslodavac je dužan da organizuje rad u smenama i obezbedi mere zaštite i zdravlja zaposlenih.

Poslodavac treba da omogući jednom roditelju sa detetom ispod 12 godina da radi od kuće a,

Population from Infectious Diseases and other special regulations as defined by the Regulation.

***Employees with established chronic illnesses and persons over 60, as well as parents with children under 12***

Pursuant to the Regulation, the Ministry of State Administration and Local Self-Government adopted a Recommendation for organizing work in public administrations and state institutions (hereinafter: the Recommendation).

Given the competence of the Ministry of State Administration and Local Self-Government, the Recommendation applies primarily to employees of state bodies, public agencies, public services and units of local self-government, however, this Recommendation should also be applied to employers in the private sector, if the activity of the employer so permits.

According to the Recommendation, “*the employer should primarily bear in mind that persons with established chronic diseases and those over 60 years of age are particularly at risk and that a parent of a child under 12 years of age has special protection, especially if he/she has single parental rights or if the other parent has a work obligation. For the stated employees, it is necessary to enable work from home, in accordance with the work plan and schedule that the employer, i.e. manager is obliged to determine for each employee*”.

However, in cases where work from home cannot be organized (both in the public and private sector), the same applies as stated earlier - the employer is obliged to organize work in shifts and provide measures of protection and health of employees.

The employer should enable one parent with a child under 12 to work from home, however if the

ukoliko je proces rada poslodavca takav da je nemoguće organizovati takav rad, neophodno je da se organizuje rad u smenama, tako da se raspored rada zaposlenog roditelja, ne poklapa sa rasporedom rada drugog roditelja koji takođe ima radnu obavezu.

### ***Zaposleni koji se nalazi u samoizolaciji / karantinu***

Zaposleni koji je u samoizolaciji, a kome je nadležni organ izdao akt (rešenje ili drugi akt) o samoizolaciji ili karantinu, ima pravo na naknadu zarade. Naknada zarade pripada zaposlenom prema Zakonu o zdravstvenom osiguranju, u slučaju kada je zaposleni privremeno sprečen za rad zbog propisane mere obavezne izolacije kao kliconoše ili zbog pojave zaraznih bolesti u njegovoj okolini.

Naknada zarade, prema Zakonu o zdravstvenom osiguranju je prosečna zarada koju je osiguranik ostvario u prethodnih 12 meseci pre meseca u kojem je nastupila privremena sprečenost za rad i određuje se u visini 65% od osnova za naknadu zarade, s tim da ista ne može biti niža od minimalne zarade. Prvih 30 dana odsustva plaća poslodavac, a od 31. dana Republički fond za zdravstveno osiguranje.

Zaposleni u samoizolaciji ili karantinu treba da se jave poslodavcu telefonom i da mejlom ili nekim drugim elektronskim načinom komunikacije, pošalju skeniran ili slikan navedeni akt nadležnog organa. Potvrdu o privremenoj sprečenosti za rad, kao i doznaku za zaposlenog, može da dostavi član porodice ili sam zaposleni kad prestanu razlozi zbog kojih istu nije mogao da dostavi.

employer's work process is such that it is impossible to organize work from home, it is necessary to organize work in shifts so that the working parent's work schedule does not coincide with the work schedule of the other parent who also has a work obligation.

### ***Employee in self-isolation/quarantine***

An employee who is in self-isolation, and to whom the competent authority has issued an act (decision or other act) on self-isolation or quarantine, is entitled to compensation of salary. Compensation of salary is the right of the employee under the Law on Health Insurance, in cases when the employee is temporarily impeded to work because of a prescribed measure of mandatory isolation as a carrier, or due to the outbreak of infectious diseases in his/her environment.

According to the Law on Health Insurance, compensation of salary is the average salary earned by the insured person in the 12 months preceding the month in which temporary impediment to work occurred and is determined at 65% of the basis for compensation of salary, however the same cannot be lower than the minimum wage. The first 30 days of absence are paid by the employer, and from the 31<sup>st</sup> day onward, by the Republic Health Insurance Fund.

Employees in self-isolation or quarantine should contact the employer by phone and send a scan or photograph of the stated act of the competent authority via email or other electronic means of communication. The confirmation of temporary impediment to work, as well as the doctor's certificate of illness for the employee, can be submitted by a family member or by the employee himself once the reasons for which he/she could not provide the same cease.

Pravo na naknadu zarade nema osiguranik, ako je namerno sprečavao ozdravljenje ili ako je zloupotrebio pravo na korišćenje odsustvovanja sa rada zbog privremene sprečenosti za rad na neki drugi način (na primer prekršaj samoizolacije/karantina).

Pravo na naknadu zarade imaju zaposleni i lica koja obavljaju samostalnu delatnost, ali ne i radno angažovani po osnovu ugovora van radnog odnosa (osim ukoliko to nije utvrđeno ovim ugovorom).

***Prekid rada, odnosno smanjenje obima rada do kojeg je došlo bez krivice zaposlenog***

Ukoliko poslodavac ima smanjen obim posla ili je u potpunosti prekinuo rad, zaposleni se mogu uputiti na tzv. „prinudni godišnji odmor“ u trajanju od 45 radnih dana, odnosno i duže (uz prethodnu saglasnost ministra), u skladu sa odredbom članom 116. Zakona o radu.

U navedenom slučaju zaposleni imaju pravo na naknadu zarade najmanje u visini 60% prosečne zarade u prethodnih 12 meseci, s tim da ista ne može biti manja od minimalne zarade.

***Prekida rada zbog naredbe nadležnog državnog organa/organa poslodavca zbog neobezbeđivanja bezbednosti i zaštite života i zdravlja***

U slučaju da do prekida rada dođe po osnovu naredbe nadležnog državnog organa ili nadležnog organa poslodavca zbog neobezbeđivanja bezbednosti i zaštite života i zdravlja na radu, koja je uslov daljeg obavljanja rada bez ugrožavanja života i zdravlja zaposlenih i drugih lica, zaposleni, u skladu sa odredbama člana 117. Zakona o radu,

An insured person is not entitled to compensation of salary if he/she deliberately prevented recovery or abused the right to use absence from work due to temporary impediment to work in some other way (for example, violation of self-isolation/quarantine).

Employees and persons performing self-employed activities also have the right to compensation of salary, however this is not the case for persons work engaged on the basis of an agreement outside of employment (unless provided for in that agreement).

***Interruption of work, i.e. reduction of workload that has occurred without the fault of the employee***

If the employer has a reduced workload or has stopped work altogether, employees can be placed under the so-called “compulsive annual leave” for a period of 45 working days, or longer (with the prior consent of the Minister), in accordance with the provisions of Article 116 of the Labor Law.

In this case, employees are entitled to compensation of salary of at least 60% of the average salary in the previous 12 months, provided that the same cannot be less than the minimum wage.

***Interruption of work due to an order of the competent state body/employer's body for failure to provide safety and protection of life and health***

In the event of interruption of work due to an order of the competent state body or the competent body of the employer for failure to provide safety and protection of life and health at work, which is a condition for further work without endangering the life and health of employees and other persons, employees, in

imaju pravo na naknadu zarade u visini utvrđenoj kolektivnim ugovorom/pravilnikom o radu i ugovorom o radu.

***Ostala prava zaposlenih u skladu sa odredbama Zakona o radu za vreme vanrednog stanja***

Zaposleni i za vreme vanrednog stanja imaju sva prava po osnovu radnog odnosa koja su predviđena odredbama Zakona o radu, a koja se, između ostalog, tiču prava na godišnji odmor, plaćeno/neplaćeno odsustvo, prava za slučaj proglašenja tehnološki viškom i slično, te se u ovim situacijama i dalje primenjuju odredbe Zakona o radu koje se tiču načina odobravanja godišnjeg odmora, plaćenog/neplaćenog odsustva, uslova korišćenja istih, naknade zarade za vreme njihovog trajanja, te procedure koju je poslodavac dužan da sprovede u slučaju tehnološkog viška, načina isplate i visine otpremnine itd.

Bitno je napomenuti i to da lica koja imaju pravo na novčanu naknadu kod Nacionalne službe za zapošljavanje - NSZ (zaposleni na neodređeno vreme koji je proglašen tehnološkim viškom, zaposleni na određeno vreme, kao i lica koje je po osnovu ugovora obavljalo privremene i povremene poslove, a koji su u periodu od najmanje 12 meseci neprekidno ili s prekidima u poslednjih 18 meseci bili u sistemu osiguranja), od 23. marta 2020. godine imaju mogućnost da se prijave elektronski kod NSZ radi korišćenja prava na novčanu naknadu.

Za sva dalja objašnjenja kontaktirajte advokatsku kancelariju Cvetković, Skoko & Jovičić.

accordance with the provisions of Article 117 of the Labor Law, are entitled to compensation of salary in the amount determined by the collective agreement/employment rulebook and employment agreement.

***Other rights of employees in accordance with the provisions of the Labor Law during a state of emergency***

During a state of emergency, employees have all the rights based on the employment relationship stipulated by the provisions of the Labor Law, which, inter alia, relate to the right to annual leave, paid/unpaid leave, rights in the event of redundancy, etc., and these situations continue to be subject to the provisions of the Labor Law concerning the manner of granting annual leave, paid/unpaid leave, the conditions of use thereof, compensation of salary for their duration, and the procedure that the employer is obliged to carry out in case of redundancy, payment method and severance pay, etc.

It is also important to note that persons who are entitled to financial compensation with the National Employment Service - NES (full-time employee who has been declared redundant, part-time employee, as well as a person who, on the basis of an agreement, performed temporary and occasional jobs and who has been in the insurance system continuously for a period of at least 12 months or intermittently in the previous 18 months) from 23 March 2020 have the opportunity to apply electronically to the NES to exercise their right to financial compensation.

Should you need any further explanations, please contact Law office Cvetković, Skoko & Jovičić.