

Remote work, quarantine, and isolation. What should an employer know?

The second wave of the pandemic has led to quarantine and isolation becoming part of our everyday lives. For fear of increasing numbers of infection, many companies have decided to let their employees work from home. The issue of performing remote work is problematic because the positions of the Social Insurance Institution (Pol. ZUS) and the Labour State Inspectorate (Pol. PIP) are subject to frequent change; further, current legal provisions do not answer employers' doubts.

Quarantine and isolation were equated with incapacity for work for the payment of sickness benefits (both sick pay and sickness benefit). However, this does not mean that these periods are identical.

Quarantine focuses on exposure and is defined as isolating a healthy person who was exposed to infection. Indeed, quarantine aims to prevent the spread of particularly dangerous and highly infectious diseases.

Isolation concerns isolating people confirmed as having an infectious disease or those suspected of having an infectious disease. The purpose of isolation is to prevent a biological pathogen from being passed onto other people.

Remote work

Remote work is not regulated in the Polish Labour Code. The provisions of the Anti-crisis Shield are the only legal basis for its current application. Under these provisions, remote work is defined as work that is specified in the employment contract, performed for a specified period of time outside the place of its permanent performance. The provisions of the Anti-Crisis Shield state the employer may instruct the employee to work remotely.

The Anti-crisis Shield introduced some additional requirements for remote work. According to these regulations:

- employees can work remotely if they have sufficient technical and housing conditions to perform work remotely, and the type of work may be performed remotely,
- the employer should provide the resources, materials, and logistics services necessary to perform remote work,
- employees may use their own resources if the security of information and personal data is ensured, and
- employees performing remote work must keep a record of activities performed according to the employer's instructions.

Can the employer instruct an employee to work remotely during quarantine?

Current regulations do not refer directly to possibility of remote work during quarantine. The act which provides for such possibility (the Act of 28 October 2020 amending

certain acts in connection with counteracting crisis situations related to the occurrence of COVID-19), despite being signed by the President, has not been published yet in Journal of Laws which means that it cannot be formally applied (as of 24 November 2020).

According to its wording, employees and other employed persons who are subject to compulsory quarantine may, with the consent of the employer, provide remote work as specified in the contract and receive remuneration as a result. This means that if an employee is quarantined, the employee should take the initiative to work remotely and obtain the employer's consent. The abovementioned interpretation is similar to the information provided by PIP's helpline - according to which, during quarantine, the employer cannot unilaterally oblige an employee to perform remote work and it depends on the will of employee whether they will work remotely during this period. Additionally, the employee is entitled to remuneration or sick pay simply because he was referred to quarantine, without any further evidence or conditions.

It should be noted that PIP's interpretation has no previous legal basis because: (a) the provisions of this act are not yet binding, and (b) there is no rational justification to make remote work during quarantine dependent on an employee's willingness, instead of the actual possibility to perform the work remotely.

Therefore, working remotely during the quarantine period is admissible. However, if an employee refuses to work remotely, the employer has limited possibilities to force the employee to perform work.

Remote work during part of quarantine

In practice, there are some situations when an employee is willing to work remotely, but then their health deteriorates preventing them from continuing work. As a consequence, such employee will obtain remuneration (for the time worked) as well as sickness benefit for the period during which they didn't work. ZUS has confirmed that the employee who works part of their quarantine does not lose the opportunity to apply for sickness benefit payment for the period during which they didn't perform work. The opposite situation is also possible, and does not deprive an employee from applying for benefits.

Remote work during isolation

People with a positive SARS-CoV-2 test result are directed to isolate themselves. All symptoms of COVID-19 remain unknown, but some people pass the COVID-19 infection asymptotically. Therefore, a positive COVID-19 test result does not always imply that the employee is unable to work due to illness. This means that the employee has an obligation to isolate to prevent the spread of the virus.

Despite cases of asymptomatic COVID-19 transmission, PIP takes the position that remote work during the isolation period is unacceptable. It is not possible to admit an employee to work, even if the employee feels well and is willing to work. On the other hand, ZUS' position has changed frequently. Currently, ZUS does not comment on this issue and does not contest the issue of work being performed during part or all of the isolation period. However, it cannot be ruled out that ZUS' position will once again change, and therefore, ZUS will question the performance of work during isolation in the future to deprive employees from social security benefits.

New rules for informing about quarantine and the isolation of employees

A common problem employers faced was the lack of official information about quarantine or the isolation of an employee. This lack of information made it difficult for employers to pay sick pay, and exposed them to the risk of allowing a person to work who was formally incapable of performing work. ZUS became aware of this problem and developed new functionalities in their electronic system.

From 3 November, ZUS has made the information on an employee's quarantine or isolation available in a new tab of their electronic system – the tab 'quarantine / home isolation'. The appearance of this new functionality means that the employer does not have to wait for the employee to deliver a formal notice of sick leave or the State Sanitary Inspection's decision regarding quarantine. The information ZUS provides is a sufficient basis for the payment of sick pay.

The electronic system automatically retrieves the information provided by doctors and the State Sanitary Inspection. Data migrates between systems at night; this means that the information on isolation or quarantine reaches the employer with a one-day delay.

It should be noted that the employee is still obliged to inform the employer about their absence from work. Problems arise when an employee does not inform the employer about the isolation imposed on them, and this information appears in the system with a delay. The employer should remove the employee from work when they are subject to isolation.

Please note that the above interpretations ZUS and PIP have presented vary. Therefore, we do recommend that employers or employees confirm the validity of the above information on the hotlines provided by ZUS and PIP.

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