

PETERKA PARTNERS

THE CEE LAW FIRM

The new authorization of the employer to demand from the employees the so-called COVID-19 passes

In connection with the third wave of the COVID-19 pandemic, the National Council of the Slovak Republic has passed with effect from 15th November 2021 a new bill, which amends also the Slovak Labour Code. The amendment introduces temporary requirement for the employee's entry to the workplace consisting in either (i) producing a certificate of completion of vaccination, (ii) proof of overcoming COVID-19 (iii) producing a negative COVID-19 test result or (iv) undergoing a COVID-19 test directly at the workplace with a negative result.

The above is an expression of a so-called "OTP regime" (completed vaccination, overcoming illness, negative COVID-19 test result) introduced at the workplaces.

The obligations of employers related to the entry of employees to the workplace are regulated also by the Slovak Government Decree in so-called "Covid Automat" which introduces "OTP regime" at the workplaces with effect from 22 November 2021.

According to Covid Automat OTP regime shall apply in the districts classified in I – III Warning Levels (red, dark red, black). Therefore, only fully vaccinated persons (persons until 1 year from completion of basic vaccination scheme), tested persons (from PCR collection 72 hours, Ag 48 hours) or person who overcome COVID-19 disease (confirmed by PCR and overcame in the last 180 days) will be entitled to entry the workplace.

If the employee does not produce any of the documents listed in (i) to (iii) above, the employer may, as an alternative, offer the employee to perform a free covid test directly at the workplace. However, the employer is not entitled to command employee to undergo the test at the employer's workplace. In this context, the Government of the Slovak Republic should adjust the conditions for ensuring free delivery of COVID-19 tests for employers. According to the information from the media it seems that costs of the employers related to testing will be compensated until the end of November.

In the case that the employee refuses to provide the relevant document listed in (i) to (iii) above or refuses the possibility of free test at the employer's workplace, the employer is entitled to ban such an employee from entering the workplace as well as from performing of work at the workplace. In such case, the employee's absence at work will be considered as obstacle at work on the part of the employee with no entitlement to salary compensation, unless the employer and the employee agree otherwise (e.g. if they agree to perform work from home or to provide salary compensation).

Pursuant to the amendment to the Labour Code, the above-mentioned rights of the employer are possible only during the effectiveness of the Decree of National Public Health Authority (in Slovak "Úrad verejného zdravotníctva SR"), that should specify the obligations of the employers in more details. This Decree has not been adopted yet.

Until the adoption of such Decree, the employer may proceed in this way (ban entry) only if it is necessary for the purpose of ensuring the occupational health and safety. However, until the adoption of the Decree, an employee's absence at work due to fact that he/she refuses to submit relevant document on OTP or refuses

PETERKA PARTNERS

THE CEE LAW FIRM

possibility of free test at the workplace will be considered as an obstacle at work on the part of the employer, and the employee will be entitled to salary compensation in the sum of 100% of his/her average earning.

In practice, the new employer's rights will applied temporarily, until 30 April 2022.

For non-compliance with the measures (failing to apply requirement for the employee's entry) the employer may be fined up to EUR 20,000 by competent public health authorities, or directly in accelerated administrative proceedings by the competent authorities of the Police Force up to EUR 5,000 (in the order for payment procedure up to EUR 7,000).

We will continue to monitor all legislative changes related to the COVID-19 pandemic, and will keep you informed of the outcome of the government's discussions, the text of the Decree of Public Health Authority as soon as it is adopted, as well as other relevant changes that may be of interest to you.

* * *

This summary is for informational purposes only and may not be considered a legal opinion or advice on how to proceed in a particular case. The summary reflects the status as of 19 November 2021.

*For any legal matters arising in these special circumstances, please do not hesitate to contact our **COVID-19 Help Desk** at covidhelpdesk@peterkapartners.com.*