

Dismissing employees in an epidemic

The government's proposed aid solutions aimed at supporting employers and protecting jobs. The scope of the proposed aid is broadening, which allows expressing the hope that it will prove sufficient to maintain jobs in the companies most affected by the turnover decrease. However, employers should also be prepared for a less optimistic scenario and be aware of their obligations and the technical solutions available if job cuts prove to be unavoidable.

At the present time, the Covid-19 epidemic has forced a number of changes in the area of operations of many enterprises and their work organisation. Difficult economic situation related to the suspension of international air transport, closing borders to foreigners and restrictions in the activity of mainly the service and trade sectors, but also other entrepreneurs, may unfortunately affect their financial situation and consequently affect sustainability of employment. Employers who planned to make individual redundancies earlier and those whose circumstances will force to make such redundancies in the near future will have to face additional logistical difficulties in delivering written notices of termination. These difficulties will be related, among others, to the fact that employees will perform remote work from home and the resulting lack of personal contact between them and their superiors. There are doubts among employers whether in the case of directing all or the majority of the employees to work remotely and the lack of direct business meetings, without prejudice to legal requirements, it is possible to deliver a notice of termination of employment contract to an employee without personal contact with him/her?

General requirements

Termination of employment contracts is one of the most challenging and difficult decisions which employers have to make with regards to people they employ. This process is formalised and requires observing strictly defined requirements contained in the provisions of the Labour Code concerning, among others: delivery, written form, the necessity to provide a reason for termination of an employment contract concluded for an indefinite period of time and to inform the employees of their right to appeal to the labour court within 21 days from delivery of the notice.

Remote delivery

The notice of termination of an employment contract, which has been signed by the employer or another person duly authorised to do so and meets the requirements set out in art. 30 of the Labour Code, can be sent to the employee by registered letter or by courier with acknowledgement of receipt to his/her home address. However, this solution has several disadvantages. Apart from the objective difficulties of personal communication of the fact of dismissal during the delivery of written notice, one of the main risks



for the employer is the fact that it is impossible to determine the exact date and time of its delivery. It may transpire that on the day of delivery of the notice of termination, the employee was absent from work due to sick leave or leave on demand. One should be aware that notice of termination cannot be given to an employee who is absent from work due to child care as a result of the closure of a nursery, kindergarten or school attended by the child. Although the notice of termination delivered to the employee on such a day will be effective, it is still subject to a breach of art. 41 of the Labour Code, which prohibits the employer from terminating the employment contract during the employee's leave or other justified absence from work. As a result, the employee will be able to appeal effectively to the labour court, which may decide on reinstatement to work or award of compensation.

Electronic delivery

Bearing in mind the above mentioned risks related to remote delivery of notice of termination, it is worth considering the alternative in the form of electronic delivery. The requirement of a written notice of termination of the employment contract will also be met by the notice sent to the employee by e-mail, which as an attachment, includes the notice of termination of the employment contract signed with a certified electronic signature. Pursuant to Article 781 of the Civil Code, a declaration of will made in electronic form is equivalent to a declaration of will made in writing. It should be noted that the document must bear a qualified electronic signature. Such an e-signature can be obtained from one of the certified suppliers. Due to the requirements of submitting electronically signed financial statements to the National Court Register, such signatures are often held by members of the management board of capital companies, i.e. limited liability companies and joint stock companies.

When delivering a notice of termination by e-mail under the above rules, it is worthwhile sending it to the employee's business e-mail address, because in this case the employer who has access to the resources of its own mail server, will be able to prove that the delivery actually took place and indicate the exact moment of its delivery. In addition a recommended solution which can be found in practice is to conduct a simultaneous tele- or video-conference with the employee, in participation with an additional witness on the employer's side, who, if the employee invokes problems with the e-mail, will confirm the course of the business conversation, the fact of sending a notice e-mail during the conversation (the witness may be placed in a copy of the e-mail) and the employee's reaction to this situation. In doing so, care must be taken that the person concerned is authorised to process the personal data of the given employee and is aware of the obligation to keep such data confidential. Most often it will be a direct superior of the employee or a representative of the HR department. As for e-delivery of notice of termination, it is best done on a business day, making sure in advance that the employee was professionally active on that day, i.e. present at remote work and did not take any leave of absence or justified absence from work.



Is it possible to sign the termination of the employment contract using the trusted profile on the ePUAP platform?

No, it is not. Such notice of termination will be defective as the signature using the trusted profile does not meet the requirement of a qualified electronic signature, i.e. the requirement of written form. Despite the introduction of the facility to sign any document on the ePUAP platform, it does not apply to employee matters. Thanks to the trusted profile, it is possible to contact offices and courts and deal with official matters such as, among others, submitting financial statements. However, it cannot be used to sign employment law documents or other statements intended for private individuals.

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