



COVID '19 – Hungary. Measures concerning employment, collective labour law and social security

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1. Legislative background – declaration of state of emergency

The Fundamental Law of Hungary contains special rules for the state of danger. Government may declare a state of danger and may introduce extraordinary measures laid down in a cardinal Act. In the state of danger, the Government may adopt decrees by means of which it may, as provided for by a cardinal Act,

- suspend the application of certain Acts,
- derogate from the provisions of Acts and
- take other extraordinary measures.

These decrees of the Government shall remain in force for fifteen days, unless the Government, on the basis of authorisation by the National Assembly, extends those decrees. Upon the termination of the state of danger, such decrees of the Government shall cease to have effect. [[Fundamental Law of Hungary Article 53, Section 1–4](#)]. Therefore, all specific measures are regulated by government decree and are temporary nature.

The state of emergency in Hungary was declared by 40/2020. (III. 11.) Government Decree¹ on March 11, 2020. Thereafter, the following amendments of legal regulation came into force in the field of employment, collective labour law and social security until 4 April 2020.

2. Employment and collective labour law

2.1. *General reflection on the measures adopted*

The provisions adopted in the field of labour law generally made it easier for an employer to organize work during the state of emergency. The new temporary provision which made possible to deviate from the provisions of the Labour Code by an agreement of the employer and the employee, in our opinion, can easily eliminate the protective function of labour law.

¹ Magyar Közlöny (Official Hungarian Gazette) 2020/39, <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20039.pdf>.

2.2. Regulatory structure of labour law

The structure of the legal regulation of employment is different in private labour law and public service law. The Government Decrees contains crisis management measures only for the private sector (competitive and non-profit sphere) until April 4, 2020.

Employment in the private sector – as in the so-called post-socialist Central and Eastern European states – is regulated by a statute (Act I of 2012 on the Labour Code, hereinafter LC) in Hungary. This means that all legal institutions of individual – e.g. employment contracts, termination of employment, working time and rest period, or employer’s liability for damages – and almost all institutions of collective labour law – trade unions’ and works councils’ rights, collective agreement – are regulated in the LC. In addition to LC, there are separate laws e.g. on labour protection², labour inspection³, right to strike⁴ and equal treatment⁵.

The 47/2020. (III. 18.) Government Decree on immediate measures to mitigate the effects of the coronavirus pandemic on the national economy⁶ (hereinafter 47/2020. Government Decree) affects the LC’s rules of employment relationships and collective agreement. The rules entered into force on March 19, 2020 and shall be applied during the state of emergency or for the next 30 days thereafter.

2.3. Extending unilateral decision-making power of employer

Three issues make it easier for an employer to organize work during the state of emergency and beyond that for 30 days.

a) Work schedule

According to LC the employer may alter the communicated work schedule upon the occurrence of unforeseen circumstances in its business or financial affairs, at least ninety-six hours in advance before the start of the scheduled daily working time [LC Article 95, Section 5]. The 47/2020. Government Decree permits the employer to deviate from these rules [47/2020. Government Decree Article 6, Section 2 a)]. This means that the employer can change the communicated work schedule for example from day to day – avoiding overtime work and the payment of at least fifty per cent wage supplement.

b) Teleworking and home office

According to the LC *teleworking* shall mean activities performed on a regular basis at a place other than the employer’s facilities, using computing equipment, where the end product is delivered by way of electronic means. In the employment contract the parties shall agree on the employee’s employment by means of teleworking [LC Article 196, Section 1–2].

Home office (or ‘work at home’) is not governed by the law. According to the legal practice it can be based on an agreement between the parties or a unilateral commitment by the employer. The employee does not necessarily need a computer for this job, it is a so-called partial telework (e.g. an employee works three days a week at home and for two days in the employer’s office).

² Act XCIII of 1993 on Occupational Safety and Health, <https://net.jogtar.hu/jogszabaly?docid=99300093.tv>.

³ Act LXXV of 1996 on Labour Inspection, <https://net.jogtar.hu/jogszabaly?docid=99600075.tv>.

⁴ Act VII. of 1989 on Strike, <https://net.jogtar.hu/jogszabaly?docid=98900007.tv>.

⁵ Act CXXV of 2003 on equal treatment and the promotion of equal opportunities, https://www.egyenlobanasmod.hu/sites/default/files/content/torveny/J2003T0125P_20190415_FIN%20%281%29.pdf.

⁶ Magyar Közlöny (Official Hungarian Gazette) 2020/47, <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20047.pdf>.

According to 47/2020. Government Decree employer can unilaterally oblige the employee to telework or work in home office [LC Article 6, Section 2 b)]. This means for telework – derogating from the LC’s requirement – an agreement of the parties in the employment contract is not required. It has at least two positive consequences if the employee can also perform his or her job in the frame of teleworking or home office. On one hand, this could prevent employees from becoming infected with the coronavirus in the workplace. On the other hand, the employment relationship could be able to ‘survive’ the state of emergency. Serious employment problems arise where the employer is unable to provide work within the „walls” of the enterprise (e.g. hotels, theatres, restaurants, factories).

c) Health control

According to 47/2020. Government Decree employer shall be allowed to take the necessary and justified measures to check the health of the employees [47/2020. Government Decree Article 6, Section 2 c)]. The question arises as to why it was necessary to introduce this rule temporarily. According to LC the responsibility for the implementation of occupational safety and occupational health requirements lies with the employers [LC Article 51, Section 4]. The Hungarian National Authority for Data Protection and Freedom of Information’s advice on coronavirus epidemic data processing⁷ has not considered proportionate to practise a screening test for all employees using any diagnostic tool (such as a thermometer) ordered by the employer. The advice of the Authority was published before the declaration of the state of emergency. It is a question: does the quoted rule of 47/2020. Government Decree set aside the requirement of proportionality or not during the state of emergency?

In our view, it meets the requirements of the General Data Protection Regulation’s (hereinafter GDPR)⁸ e.g. if all employees must measure their body temperature – properly segregated – before entering the workplace. Use of a diagnostic tool that applies to all employees in this critical situation meets the following provisions of “*lawfulness of processing*” of GDPR:

Processing shall be lawful – among others – only if and to the extent that at least one of the following applies:

- processing is necessary for compliance with a legal obligation to which the controller is subject;
- processing is necessary in order to protect the vital interests of the data subject or of another natural person [GDPR Article 6, 1 c)–d)].

As the responsibility for the implementation of occupational safety and occupational health requirements lies with the employer (controller), it is a part of this legal obligation to prevent one employee infects the others in the times of virus threat. This is necessarily related to the fact that the employer’s (controller’s) processing is necessary in order to protect the vital interests of the employees (data subject) or of the employer’s client (another natural person).

It also worth mentioning, Government Decree did not otherwise regulate the provisions governing working conditions or mechanisms for the prevention of occupational risks during the state of emergency.

2.4. Exclusion of certain provisions of the collective agreement

Collective agreement provisions derogating from the provisions mentioned above under 2.3 shall not apply during the term of the validity of 47/2020. Government Decree. In addition, there is no

⁷ NAIH 2020/2586, https://naih.hu/files/NAIH_2020_2586.pdf.

⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0679>.

legislation limiting the regulatory function of the collective agreements during the state of emergency. According to the general rule of LC in the absence of any provision to the contrary, in the collective agreement derogations are allowed from the provisions of *Part Two (Employment Relationship)* and *Part Three (Industrial Relations)* of LC [LC Article 277, Section 2]. Otherwise, we are not aware of any collective agreement so far that would include rules for dealing with the state of emergency.

2.5. Agreement of the parties – Can all provisions of the LC be disregarded?

The employee and the employer may deviate from the provisions of the LC in a separate agreement [47/2020. Government Decree Article 6, Section 4]. First of all, it must be noted, that this possibility of derogation does not apply to a collective agreement. According to LC, unless otherwise provided for by law, the employment contract may derogate from the provisions of *Part Two (Employment Relationship)* of LC and from employment regulations (these include the collective agreements) to the benefit of the employee [LC Article 43, Section 1].

In our view, there are constitutional and international law concerns regarding that the 47/2020. Government Decree provides a full derogation from the LC by the agreement of the parties.

The Fundamental Law of Hungary contains special rules for the state of danger. However, this epidemiological emergency does not justify a regulation authorizing absolute deviation from all LC rules by the agreement between the employer and the employee. This might be a breach of the legislative power provided by the Fundamental Law of Hungary. (It is questionable how e.g. the rules on the protection of rights relating to personality, non-discrimination or the employer's liability for damages of LC are related to the emergency?) The possibility of such a derogation can easily eliminate the protective function of labour law until the end of the emergency.

It is an international law concern, that the agreement between the parties that differs from the LC may also be contrary to the law of the European Union (e.g. contrary to the EU directives). None of the Member States of the EU can alone authorize a derogation from the legislation of the EU. In view of all above, the Government Decree should have precisely defined those provisions of the LC from which the agreement of the parties may deviate to the detriment of the employee.

One of the critical rules of the LC regarding state of emergency is the so-called downtime. In the event of the employer's failure to provide employment as contracted during the scheduled working time (downtime), the employee shall be entitled to his or her base wage, unless it is due to unavoidable external reasons [LC Article 146, Section 1]. The fact of a coronavirus epidemic alone is not an unavoidable external reason (force majeure) for the employer. The 47/2020. Government Decree could have given the parties an opportunity to agree – among the above-mentioned authorizations – that e.g. an amount lower than the basic wage could be paid to the employee for downtime.

3. Vulnerable sectors – temporary rates and reduction of taxes and contributions

Employers in the tourism, hospitality, entertainment, gambling, film, performing arts, event management and sports services sectors are exempted from paying most of the taxes and contributions imposed on wages from March to June 2020. In these sectors employers only have the obligation to pay health insurance contributions, but its monthly rate should not exceed the amount of the health service contribution (7,710 HUF/month; approx. 22 EUR) [47/2020. Government Decree Article 3–4]. As a general rule, the employer must pay 17.5 percent social contribution tax⁹ and 1.5 percent vocational training contribution¹⁰ (the calculation is based on the amount of gross wages).

⁹ 2018 LII. Act on the Social Contribution Tax, <https://net.jogtar.hu/jogszabaly?docid=a1800052.tv>.

¹⁰ 2019 LXXX. Act on Vocational Training, <https://net.jogtar.hu/jogszabaly?docid=a1900080.tv>.

The 61/2020. (III. 23.) Government Decree amended the 47/2020. Government Decree. As a result, the range of beneficiary employers expanded in the second half of March. Employers in the areas of taxi passenger transport, publishing of newspapers, magazines or periodicals and broadcasting do not have to pay social contribution tax. These employers – likewise the above-mentioned employers – only have to pay health insurance contributions, which is 4 percent of the income of the contribution base (it may not exceed 7,710 HUF, appr. 21 EUR) [61/2020. (III. 23.) Government Decree Article, Section 1–2 and 10]¹¹.

So far, neither the issue of subsidies nor the reduction of taxes have been raised in other sectors.

4. Questions for the near future

This week the government announced in the Parliament that a proposal to restart the economy will be published next week (after April 6, 2020). The exact details are not known at the time of closing our manuscript. According to the government press conference on April 4, 2020, a special tax is levied on multinational retail chains and the banking sector. Among the taxes due to local governments, the so-called car tax will be directed into the central budget. Healthcare workers will receive a one-time gross benefit of HUF 500,000 (appr. 1,368 EUR), and nurses and healthcare professionals will receive a 20 percent wage increase in November 2020.

In our view, in order to avoid higher unemployment, it is essential that the state should provide wage subsidies to employers for the duration of the emergency. Especially in sectors where even part-time employment is not possible.

An event from the rather weak Hungarian social dialogue: on April 1, 2020 three employers' organizations and three trade union confederations present at the Permanent Consultation Forum of the Competition Sector and Government¹² have jointly called on the government to widely take over 50–80 percent of labour costs from troubled companies to alleviate the employment crisis caused by the coronavirus epidemic. The proposal really would require a “very significant” budget contribution.

In a week, maybe we could write about a better situation...

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¹¹ Magyar Közlöny (Official Hungarian Gazette), 2020/51, <http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK20051.pdf>.

¹² This is not a tripartite decision-making body. The government only consults with and asks for the opinion of the three employers' and three trade unions' associations invited by the government.