

RANDA HAVEL ■ LEGAL

Beware of Significant Provision in the Agreement on Providing Contribution from the Antivirus Programme

We would like to draw your attention to the relatively significant, albeit hidden, provision contained in the agreement ("**the Agreement**") concluded between the Labor Office of the Czech Republic and an employer that applies for provision of a state contribution as compensation of wages paid to its employees under the Antivirus Programme (see our newsletter "Compensation Package for Employers Adopted by the Government of the Czech Republic").

In Article IX. of the Agreement entitled "Settlement", it is set out that by concluding the Agreement, all claims of the employer against the state for damages caused by the relevant emergency measures of the government are settled when it comes to damages arising from the employer's statutory obligation to pay wage compensation to employees due to obstacles to work incurred during the period for which the employer is entitled to the contribution.

For employers, this is to **exclude the possibility of simultaneously drawing money for wage compensation from the Antivirus Programme and to claim damages from the state in the future caused by adopted emergency measures regarding wage compensation paid by the employer using its own money.**

If employers receive a state contribution of 80% of wage compensation paid to employees under regime A, then by entering into the Agreement, they undertake to waive the claim towards the state for reimbursement of the remaining 20% of the wage compensation. This applies equally to regime B employees, i.e. their employers receive a contribution of 60% of the wage compensation paid out and for the remaining 40%, the state requests a waiver of the right to reimbursement to which the employer might otherwise be entitled from the state.

The aforementioned approach by the state and the 'settlement' appear logical in relation to the amount of the state contribution granted. On the other hand, we consider the waiver of any compensation from the state in relation to the part of the compensation paid by the employer using its own money to be really pushed here by the state.

In addition, the application for the contribution itself is silent as to any exclusion of future claims for damages in connection with the Agreement entered into and the payment of the contribution to wage compensation. Employers fill out this application through a web application that automatically generates the application after filling in, together with the Agreement to be concluded with the Labor Office of the Czech Republic. **Thus, in an automatically generated Agreement, employers may not even notice a provision limiting their right to compensation from the state. Also, employers do not have a real opportunity to change the wording of the Agreement in any way and must accept the agreement if they wish to draw money from the Antivirus Programme.**

It is also important to note that the state has not yet informed employers of this restrictive provision. This requirement is also neither reflected in any way in the conditions for receiving contributions in the announced Antivirus Programme, nor in the Employer Manual that was published afterwards.

The Agreement concluded by the employer with the Labor Office of the Czech Republic is a so-called adhesion contract as the draft Agreement is unchangeable and the employer has no possibility to change its content in any way if they want to receive the state contribution. In addition, employers can be considered to be the weaker party in relation to the state, among other things because the employer usually applies for a state contribution in an acutely critical economic situation.

The Civil Code stipulates that a provision of an adhesion contract which is particularly disadvantageous for the weaker party (without a reasonable reason) is invalid. We believe that the conclusion regarding invalidity should also apply to the aforementioned 'settlement' clause in the Agreements. In this respect, however, the courts will have the final say in the event of a dispute with the state.

Perhaps a positive factor is that the state acknowledges its liability for the damage caused by the measures adopted, otherwise the authorities would not insert the provision on 'settlement' and 'waiver' into the draft Agreements.

Please do not hesitate to contact us if you have any questions regarding the right to compensation from the state arising from the adopted measures in crisis or otherwise.

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