

Rationale for Government Resolution No. 206 of 26 February 2021

This Extraordinary Measure has been issued in connection with the adverse development of the epidemiological situation in terms of the occurrence of the COVID-19 disease, caused by the novel coronavirus designated as SARS-CoV-2 in the Czech Republic.

Czech Republic Government Resolution No. 206 of 26 February 2020 on the adoption of a crisis measure, allows that from 27 February to 28 March 2021, medical assessments for persons seeking employment pursuant to Act No. 373/2011 Coll. on Specific Healthcare Services, as amended (hereinafter Act No. 373/2011 Coll.), with employers, whose employment relationship is established after the date of declaring the state of emergency, may be replaced with an affidavit; furthermore, that employees need not undergo periodical medical examinations pursuant to Section 11 of Decree No. 79/2011 Coll., implementing certain provisions of Act No. 373/2011 Coll., on Specific Healthcare Services (the decree on labor medical services and certain types of evaluative care), as amended (hereinafter "Decree No. 79/2013 Coll.).

In summary, the government resolution particularly amends or stipulates the following:

- a) the medical fitness assessment of persons seeking employment,
- b) the issuing of health passes pursuant to the provisions of Section 19 of Act No. 258/2000 Coll., on Public Health Protection and on amendments to certain related acts, as amended,
- c) exemptions to the conducting of periodical examinations pursuant to Decree No. 79/2013 Coll., on Occupational Medical Services and Certain Types of Assessment Care, as amended,
- d) the procedure after terminating the state of emergency for issuing medical assessments, including a transition period, and
- e) the resolution in Annex No. 1 regulates the format of affidavits.

This extraordinary measure of the Ministry of Health stipulates that the affidavits issued in accordance with the aforementioned Czech Republic Government Resolutions are valid for a temporary period even after the termination of the state of emergency, so that the employees who are qualified to perform work on their basis do not all suddenly lose this qualification at the moment when the state of emergency ends. Pursuant to Section 103(1)(a) of Act No. 262/2006 Coll., Labor Code, as amended, the employer is obliged not to permit that an employee performs prohibited work and work, the complexity of which does not correspond to their abilities and medical qualifications. The law does not allow exceptions.

Article I specifically regulates the procedure for preliminary medical examinations regulated, including their scope, by Act No. 373/2011 Coll., and the implementing regulation Decree No. 79/2013 Coll. The affidavit, which is regulated in the Annex to this crisis measure, may only be applied as a substitute for the preliminary medical examination for work which, pursuant to Act No. 258/2000 Coll., on the Protection of Public Health and on the amendment of certain related laws, as amended (hereinafter "Act No. 258/2000 Coll."), are identified as low-risk, and to work which does not involve a risk of harm or damage to health pursuant to Decree No. 79/2013 Coll. On the level of the risk of harm or damage to health pursuant to Decree No. 79/2013 Coll., the crisis measure applies exceptions for the following life-threatening risks.

The idea of the affidavit enabling the substitution of the preliminary medical examination was narrowed down to only low-risk work in order to avoid the possible risk of there being a person on the workplace without an independent assessment of the job seeker's health fitness, whose health condition would not correspond to the character of the work. This is a generally binding requirement, that for high-risk work there is a higher risk of damage to health of employees,

colleagues or persons who are linked to the relevant work, e.g., passengers in a means of public transport.

On the level of low-risk and high-risk work, the existing instrument for assessing work risks was used, the result of which is the categorization of work mandatorily compiled by the employer pursuant to Act No. 258/2000 Coll. In this sense, it was inferred from the premise that work defined as high-risk by Act No. 258/2000 Coll., meaning work in risk categories two, three and four, pose an increased risk of damage to health. Category 3 - work during which hygienic limits are exceeded; this work also meets other criteria for including the work in category three, whereas the exposure of the natural persons performing the work is not reliably reduced below these limits by technical measures, and in order to protect personal health, it is necessary to use personal protective equipment, organizational and other measures, and work during which there is a recurrence of occupational diseases, or a statistically relevantly higher frequency of disease, which may be considered work-related pursuant to current findings; category 4 - work, during which there is a high risk of harm to health, which cannot be entirely eliminated even when using available and applicable protective measures.

The submitter definitively identified the risk of harm to health as unacceptable and does not accept the option of applying an affidavit in lieu of a preliminary medical examination for this character of work.

Hence, the crisis measure allows the use of an affidavit for work in categories one and two, respectively category 1 - work during which there is no probable impact on health according to current findings (administrative work); category 2 - work during which a negative impact on human health may be expected only exceptionally according to the current level of findings (among especially sensitive individuals); this is work during which hygienic limits on factors stipulated by special legal regulations are not exceeded, and work which meets the other criteria for inclusion in category two pursuant to the above-cited Decree No. 432/2013 Coll., which stipulates the conditions for including work into categories, the limit values for biological exposure test indicators, conditions for collecting biological material for conducting biological exposure tests, and the requirements for reporting work with asbestos and biological agents, as amended.

From data available to the ministry through the hygienic register of work categorization, there are 282,104 employees in the first category (incomplete data - no reporting obligation) and 1,784,505 in the second category (completed data, excluding self-employed persons).

The exception under Art. I, meaning the application of an affidavit instead of a preliminary medical examination, concerns points 1, 2, 4, 5 and 13 of Annex No. 2, Part II to Decree No. 79/2013 Coll. These pose a risk to health.

1 - Work at schools and school facilities pursuant to the Schools Act, at healthcare facilities, at social service facilities and at other facilities of a similar character, except for work in buildings where primary contact with pupils, clients or patients is not usual, and also work including the provision of social services in the natural social environment of persons

2 - Epidemiologically relevant activities

4 - The operation and driving of motor and electric vehicles and operation of forklifts

5 - The driving of motor vehicles, except for drivers pursuant to Section 87(1) of Act No. 361/2000 Coll., on Road Traffic Operation and on the amendment of certain acts (the Road Traffic Act), as amended, if this activity is performed as a regular part of work performance or if other persons are transported to the place of work performance, and

13 - Work at night.

In summary, these are risks to health which are a part of non-risky work, which is essential for the current operation of important components participating in anti-epidemic measures or to saturate the population with vital supplies and products. The use of an affidavit is permitted for persons seeking employment, which they may perform at social facilities, work with clients, retail or wholesale warehouse operations. All professions saturate the standard staff where, for example, COVID-19 caused a temporary work incapability. This refers to work which is essential for the continued operation of important infrastructure during the pandemic, which cannot be limited e.g., due to a shortage of staff. The general strain on the healthcare system, due to the increased number of patients, illness among healthcare service providers or conducting vaccination against COVID-19, is further caused by the overloaded and limited operation of registering healthcare service providers to persons seeking employment or their providers of occupational medical services.

The government resolution also regulates the procedure for issuing health passes during the state of emergency. In the given case, for epidemiologically important work for which a health pass is issued pursuant to Section 19(2) of Act No. 258/2000 Coll., the procedure is the same as for assessing health fitness, where a preliminary medical examination should be conducted. Hence, in this case the issuing of a health pass may be replaced with an affidavit pursuant to Annex No. 1 to the government resolution. This form was also chosen based on the aforementioned aspects of the system reporting the provision of medical care.

These objective reasons also lead to the defined options under Art. II, meaning to not perform periodical occupational medical examinations within the defined period. In the given case, stratification according to high-risk or low-risk work pursuant to Act No. 258/2000 Coll. was not chosen, but on a general level it is possible for the employer through the medical service provider not to conduct the next follow-up periodical occupational medical examination. This is based on the basic theory that the employee's health was thoroughly assessed during the preliminary medical examination and subsequently during the periodical examination. The periodical examination is conducted in order to ensure the timely detection of changes in medical conditions arising in relation to the health demands of the performed work or ageing of the organism, where the continued performance of the work could cause harm to the health of the assessed employee or harm to the health of other persons. The deadlines of periodical examinations are most often defined by Decree No. 79/2013 Coll., in relation to the assessed person's age, every 6, 4 or 2 years. Again in relation to the risk level of the work.

In the case of opposition from the employer, medical service provider or employee themselves, the institute of an extraordinary medical examination may be applied and the employee's health fitness to perform specific work may be assessed. Extraordinary medical examinations are not affected by the government regulation in this respect.

Article III regulates the continued validity of individual occupational medical examinations, whose validity will expire during the state of emergency, for the period when the state of emergency ends. Employers are thus informed by the deadline by which medical examinations with expiring validity must be replaced, and the deadline for replacing the affidavit with a standard preliminary occupational medical examination is also stipulated.

Annex No. 1, respectively the affidavit form, is conceived as a declaration by the assessed person that they have been adequately informed in relation to occupational health and safety, and about the type, characteristics and categorization of the activity they will perform and the related risks (e.g., handling of loads, local muscular strain, working position, noise and its consequences, cold or heat stress, visual strain, mental strain, work at heights, operation of handling equipment, etc.), and that they have consulted their health condition with the employer in this regard, including all

prior injuries/anamnesis, and are capable of performing the activity.

The Ministry of Health simultaneously published an interpretation of Art. III of Government Resolution No. 54 of 18 January 2021.

Medical assessments on health fitness issued based on periodical labor-medical examinations performed pursuant to Section 59 of Act No. 373/2011 Coll., on Specific Medical Services, as amended, and Section 11, including Annex No. 2, Part II, of Decree No. 79/2013 Coll., can still be considered valid, even if their validity expired during the state of emergency. The list of affected legal regulations herein has its importance and emphasizes the importance of the following facts. In summary, it may be stated that Art. II (1) of Government Resolution No. 54 of 18 January 2021, but also the previously mentioned government resolution, concerns health fitness pursuant to Decree No. 79/2013 Coll.

As suggested, Art. III of Government Resolution No. 54 does not concern health fitness determined under special legal regulations. The idea therefore correlates Art. III (1)(a) with the provision of Section 11 of Decree No. 79/2013 Coll.

The important and frequently used special legal regulations include:

- Act No. 361/2000 Coll., on Road Traffic and on the amendment of certain acts (the Road Traffic Act), as amended, which primarily concerns drivers, especially drivers for whom motor vehicle operation is agreed as a type of work in the employment contract,
- Act No. 221/1999 Coll., on Professional Soldiers, as amended, Act No. 361/2003 Coll., on the Civil Service of Members of Security Forces, as amended
- Decree No. 101/1995 Coll., which issues the Rules for health and professional fitness for persons during the operation of railways and railway transportation, as amended,
- Government Regulation No. 352/2003 Coll., on Assessing the Health Fitness of Employees of Corporate Fire Rescue Brigades and Members of Volunteer Fire Brigades at Municipalities or Corporations, etc.

Another solution would not presently be appropriate even for corporate medical services providers, those currently being primarily the registering healthcare services providers for the assessed persons, nor for the employees or employers.

An epidemic refers to the increased incidence of a disease which is limited geographically and in time. During epidemics of an infectious disease, there is typically a steep rise in the number of cases in time, where the contagion rate achieves higher values than regular sporadic contagions. The contagion rates at which epidemic spreading is achieved (the epidemic threshold) are various and differ according to the disease. For some diseases, the epidemic threshold value is not precisely known. The main criterion to determine whether or not there is an epidemic is the mutual epidemic connection between individual cases of the disease. The speed of the disease's spread in the population depends on the originator of the contagion, the incubation period of the disease and the transmission paths. The most serious epidemics in terms of impact and burden on the population are those caused by person-to-person contagion. The highest contagion rate in the population is reached through airborne spreading, via droplets containing the infectious agent that are released in the patient's space when speaking, breathing, coughing and sneezing. Every infectious disease epidemic is an epidemic process composed of three basic elements: source of contagion, transmission path and a vulnerable individual.