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## Q&A on measures currently available to companies



During the COVID-19 pandemic companies and other business entities are struggling with different questions relating to governmental measures to curb the spread of the virus and other possibilities offered by Slovenian law in addition to interventional measures. In this document, we have collected the most frequently asked questions by our clients.

Our goal is to help you identify, prevent and resolve potential problems as soon as possible. If you have any other questions, KIRM PERPAR law firm Ltd. legal team is available to you at all times.

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**1. What is the relationship between the new "Megalaw" and the Act Regulating the Intervention Measure to Reimburse Salaries and Contributions (ZIUPPP)? Can we choose between the measures provided in both laws and decide which measure would we rather apply? (e.g. 40% subsidy for waiting for work under ZIUPP and not 100% under "Megalaw")?**

The relationship between the respective laws is regulated in the transitional provisions of the "Megalaw", which stipulate that the provisions of the ZIUPPP relating to the right to partial reimbursement of paid wages to employees who are temporary waiting for work at home, are not applied for the duration of the validity of temporary measures under the "Megalaw".

Therefore, for the duration of the validity of the measures under the "Megalaw" (from 13 March 2020 to 31 May 2020), the provisions of the "Megalaw" will apply. Accordingly, the state (under conditions of the "Megalaw") will reimburse 100% of the compensation paid to the employees who are waiting for work at home. However, in case employees will be still waiting for work at home after 1 June 2020 and if there will be no additional measures adopted, the provisions of the ZIUPPP will apply from that moment on. According to ZIUPP the state will, upon meeting the prescribed conditions, pay 40% of the wage compensation.

Thus, the employer cannot voluntarily choose between the respective measures related to compensation of salaries for employees who are waiting for work at home.

Due to the fact that "Megalaw" does not affect other provisions of ZIUPPP, it is our opinion that they remain fully valid also during the time of validity of measures under the "Megalaw".

**2. Is the "Megalaw" already in force?**

At the time of preparation of this document (8 April 2020) the "Megalaw" does not yet apply. It is envisaged that it will enter into force the next day after its publication in the Official Gazette of the Republic of Slovenia.

### **3. What are the deadlines for the employer to claim reimbursement of salary compensation under the “Megalaw”?**

The employer must exercise the right to reimbursement of paid salaries within eight days of the referral of the worker to wait for work at home, but no later than 31 May 2020.

If the employer wishes to claim reimbursement of the salary compensation for the period prior to the validity of the "Megalaw", i.e. from 13 March 2020 onwards, he will have to file the application within 8 days from when the “Megalaw” enters into force.

Given that the date of entry into force of the “Megalaw” is not yet known, official announcements should be followed. The law will enter into force the day after its publication in the Official Gazette of the Republic of Slovenia.

### **4. Is it possible to reactivate an individual worker during the subsidized waiting period?**

Yes, the reactivation of an employee during the waiting period is possible. In accordance with Article 24 of the “Megalaw”, an employee, who was ordered to wait for work at home, is obliged to return to work at the request of the employer for up to seven consecutive days in the current month. Prior to the reactivation of an individual employee, the employer must inform the Employment Service of Slovenia. If the employer breaches its obligations, he must repay three times the received amount of state aid.

While the employee is reactivated, meaning that he/she is working, the period of temporary waiting for the work of an individual worker is not running. We are of an opinion, that in this time the employee is entitled to receive his/her normal salary.

### **5. Is it possible to combine the subsidy of waiting for work with a shorter working time (e.g. the worker is working 3 days a week and waiting 2 days a week) under “Megalaw”?**

The “Megalaw” does not specifically address the respective situation. The only combination of work and waiting for work, which is regulated in Article 24 of the the “Megalaw”, is the referral of an employee to wait for work and the possibility to call him/her back to work for a maximum of 7 consecutive days in a month.

In this event, the employer directs the employee to temporary wait for work with a written notice, in which he specifies the duration of a temporary wait for work, the possibility of the employer to call the employee back to work due to the needs of the work process, the method of such call and the amount of the salary compensation.

### **6. Can I dismiss an employee, if I receive the state aid under the "Megalaw"?**

Unlike ZIUPPP, the "Megalaw" does not envisage the prohibition of dismissal of the employees for business reasons as one of the conditions to obtain a subsidy from the state. Therefore, we believe that during the validity of the “Megalaw” measures you may dismiss an employee for business reasons. In this event, you are entitled to subsidy (for the employee you have sent to wait for work at home and if other conditions are fulfilled) for the time the decision of referral is in force (until termination of employment relationship).

Furthermore, you can still dismiss an employee on the basis of other reasons provided by ZDR-1 (such as fault-based reason, reason of incapacity, unsuccessful result of a trial period, etc.). Termination of employment relationship due to (beforementioned) other reasons under ZDR-1 is not limited by ZIU PPP or "Megalaw".

**7. In the event that I do not qualify for a state subsidy in relation to the referral of the employees to wait for work at home, can I still instruct employees to wait for work at home?**

Yes, this option is provided in ZDR-1.

If the employer is temporarily unable to provide work for the employees, he or she may, in order to preserve employment, order an employee (in writing) to wait for work at home. A written referral can be sent to the employee electronically at the employee's email address provided by the employer. According to ZDR-1, the measure may be valid for a maximum period of six months in each calendar year.

In the event of waiting for work in accordance with ZDR-1, an employee is entitled to a wage compensation of 80% of his/her average salary over the last three months. Furthermore, he/she is obligated to respond to an employer's request in the manner and under the conditions provided in the written referral (there are no restrictions on the length and frequency of reactivation of the employee). The salary compensation is fully borne by the employer.

**8. Do the measures taken pursuant to the "Megalaw" affect the distribution of profits?**

Yes. Article 99 of the "Megalaw" stipulates, that entities that will exercise the rights under this law (reimbursement of salary compensation for the employees who are waiting for work or who cannot work because of force majeure, exemption from contributions or exceptional assistance in the form of monthly basic income), may not share profit or bonuses for business performance or rewards to the management after the "Megalaw" will enter into force and within the year 2020, otherwise they will be obliged to return the received aid together with default interests.

**9. Will the profit sharing, if executed before the "Megalaw" enters into force, also fall under the provision of the Article 99 of the "Megalaw"?**

No, the "Megalaw" stipulates, that employers are not allowed to share profits from when the "Megalaw" will enter into force. Given that the date of entry into force of the "Megalaw" is not yet known, official announcements should be followed. The law will enter into force the day after its publication in the Official Gazette of the Republic of Slovenia. In our opinion, profit sharing can be executed without consequences provided in the Article 99, if executed before the "Megalaw" enters into force.

**10. Does the provision of Article 99 of the “Megalaw” mean that employers are not allowed to pay bonuses based on business performance to employees? Such payments can also include “Christmas bonuses”.**

It is still unclear how Article 99 of the “Megalaw” will be interpreted. In our opinion, the purpose of this provision was primarily to prevent payments for business performance and rewards to the management and not to employees. Nevertheless, it will be necessary to wait for the competent authorities' official explanations.

**11. What if it turns out that our company did not qualify for the received aid?**

In such cases, the law stipulates that the received aid must be returned.

In the event that the received funds have to be returned because of the profit sharing or payment of bonuses for business performance or rewards to the management executed after the “Megalaw” entered into force and within the year 2020, the company must return the received funds together with the statutory default interest.

We would like to emphasize, that in certain cases the company may also be obliged to repay three times the funds received. Such cases are:

- if the employer receiving the reimbursement of the paid salary compensations orders overtime work and this work could be performed with the employees who were ordered to wait for work at home;
- if the employer calls the employee to return to work without first informing the Employment Service of Slovenia and
- if the reasons of force majeure cease to exist and the employer does not inform the Employment Service on the day when the employee is not absent anymore.

**12. Our company will not be entitled to the measures provided by the “Megalaw” in relation to temporary referral of the employees to wait for work at home. Some of our employees are at home due to "force majeure," namely due to childcare. Since the "Megalaw" provides higher compensation than Labor Relations Act (ZDR-1), we are questioning what is the amount of the compensation that we have to pay to such employees?**

It is correct that the “Megalaw” envisages higher % of salary compensation in relation to the employees who are unable to perform work due to force majeure. It stipulates, that regardless of the provision of the sixth paragraph of Article 137 of ZDR-1, the amount of the salary compensation for employees who cannot perform work due to force majeure is determined and the partial payment of the paid salary compensation to these employees is regulated.

In our opinion, a more likely explanation is that this provision also applies to the employees whose employers do not benefit from the measures. Thus, during the period of the validity of the “Megalaw”, such employees shall also receive a compensation of 80% of the average monthly salary in the last three months prior to their absence, instead of 50% of the compensation otherwise payable pursuant to ZDR-1. Given that the provisions of the “Megalaw” are not completely clear in this part, we advise you to wait for the official clarifications of the competent authorities.

### **13. What is the ZIUOPOK credit repayment moratorium?**

In accordance with the Act Regulating the Intervention Measure of Deferred Payment of Borrowers' Liabilities (ZIUOPOK), a moratorium means the deferral of credit obligations for up to 12 months for those who will not be able to meet their credit obligations due to the negative effects of the epidemic. However, the moratorium does not affect the payment of contractually agreed interest - the borrower still has to pay them.

### **14. Am I obligated to pay the rent?**

Currently, intervention measures do not envisage any exemptions from the obligation to pay rent. The rent still has to be paid in accordance with the individual lease agreement. Nevertheless, you may still try reach an arrangement with your landlord due to exceptional circumstances.

However, some municipalities have already declared that all tenants of municipality-owned real estate are exempt from paying the rent for the time of the epidemic. Such order has for example been adopted by the Municipality of Vrhnika and the City of Ljubljana.

### **15. Can I terminate my contract during the COVID-19 outbreak due to “force majeure”?**

Force majeure is not defined in Slovenian law as one of the reasons for unilateral termination of a contract but may be defined as such in an individual contract.

Nevertheless, the occurrence of force majeure in certain situations may still result in the possibility of termination of the contractual relationship. This will become especially relevant in cases where the contract or obligations of the contracting party cannot be fulfilled due to force majeure. According to the provisions of the Obligations Code, in such cases obligations of both parties cease to exist. In this relation the timing aspect will also be important - under Slovene legislation, the debtor will remain liable for partial or full inability to fulfill, if the “force majeure” situation occurred after he was already in delay with fulfilling obligations.

### **16. What should be taken into consideration when concluding new contracts?**

If you are entering into new contracts, the fulfillment of which (at least in part) is envisaged at the time when the epidemic measures are still in force, it is advisable to agree on specific provisions governing the consequences of delays and other breaches of the contract due to force majeure or even specifically due to the outbreak of COVID-19.

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Should you have any questions, please do not hesitate to contact us.

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