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## ***State Support to Employers during the State of Emergency***

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On 24<sup>th</sup> March 2020 in State Gazette # 28 the *Law on the Measures and Actions During the State of Emergency, Declared on 13<sup>th</sup> March 2020 by Decision of the National Assembly* (the “**Emergency Law**”) has been published.

The Emergency Law envisages, among other measures, certain financial state support to employers aiming at preserving employment and further delegates to the Council of Ministers to elaborate on the eligibility requirements and the specifics of the compensation process. The Council of Ministers has thus issued *Decree No. 55 dated 30<sup>th</sup> March 2020 on the Conditions and Procedures for Compensation of the Employers with the Purpose of Employment Retention of the Employees During the State of Emergency Declared by a Decision of the National Assembly Dated 13<sup>th</sup> March 2020* (“**The Decree**”). The Decree enters into force as of 13<sup>th</sup> March 2020.

We provide a basic overview of the main eligibility requirements towards employers in order to participate in the state support scheme.

### **1. Amount of the compensation payable by the State**

The compensation is in the amount of **60 %** of the amount of the social insurance income for January 2020 of the respective employee for whom compensation is requested.

In case of part-time work, the compensation shall be paid proportionally on the remainder up to full-time working time, but for not more than 4 hours per day.

The social security income for January 2020 shall be calculated on a different basis depending on the working days of the employee and whether the employee has been on a leave for the whole or part of January 2020.

It is important to note that the employer shall pay the full remuneration amount to the employees for the respective month and shall pay the social security contributions that are due on such full amount.

The compensations shall be paid out after receiving a positive decision by the European Commission that such state support does not qualify as a state aid within the meaning of Art. 107, para. 1 of the Treaty on the Functioning of the European Union.

### **2. Compensation period**

Compensation shall be paid for the whole or part of the duration of the emergency state but for no more than 3 months.

### **3. Suspension of work or introduction of part-time work as a prerequisite**

Compensation shall be payable only if:

- (i) the employer has suspended the work of the enterprise, part of the enterprise or individual employees by an order issued on the basis of the *Labour Code* or on the basis of an act of a public authority.
- (ii) the employer has introduced part-time work for employees working full-time in the enterprise or in a separate unit of the enterprise by an order issued on the basis of the *Labour Code*.

In both cases the order may refer to the whole period or to part of the period of the state of emergency.

#### **4. Eligible employees, for whom state support can be provided**

The National Social Security Institute shall compensate the employers only for employees working under labour contracts, to whom the suspension-of-work or part-time measures have been applied.

The following categories of employees are not covered by the compensation scheme:

- (i) employees who have not been employed by the employer prior to the date on which the state of emergency has been declared (i.e., employees contracted after 13 March 2020);
- (ii) employees who are on temporary disability to work leave, pregnancy and maternity leave, adoption leave for children under the age of 5 or childcare leave for children under the age of 2;
- (iii) employees for whom the employer receives financing for their remuneration and social security contributions from the state budget, from funds from the European Structural and Investment Funds or from other public funds.

#### **5. Eligible employers**

The following 2 categories of employers may benefit from the state support system:

- I. Employers carrying out activities in certain economic sectors (irrespective of dropdown in revenues)

Employers meeting all of the following requirements shall be eligible for the financial state support:

- (i) local natural or legal persons as well as foreign legal persons exercising business activity in the Republic of Bulgaria;
  - (ii) who apply for compensation payments for employees employed in the economic activities set out in the schedule to the Decree (**see List with Economic Activities** attached herein at the end);
  - (iii) are not liable to the state or the municipality for any tax obligations, including excise duties and customs duties, compulsory social security contributions and other budgetary contributions, established by an act of a competent authority, and for which the employer has not requested deferral, rescheduling or collateral;
  - (iv) have not been declared insolvent and currently are not in insolvency proceedings or liquidation;
  - (v) retain the employment of the persons for whom they have been compensated for an additional period equal to the period for which the compensation is paid;
  - (vi) during the compensation period do not terminate employment contracts of employees on the grounds of closure of part of the enterprise, reduction in the number of posts, reduced workload or work suspension for more than 15 business days;
  - (vii) six months prior to the issuance of the order for work suspension haven't violated Art. 61, para. 1, Art. 62, para. 1 or 3, Art. 63, para. 1 or 2, Art. 118, Art. 128, Art. 228, para. 3, Art. 245 and Art. 301 - 305 of the *Labour Code* or Art. 13, para. 1 of the *Law on Labour Migration and Labour Mobility* (relating, generally, to employment administration obligations) where such violation is established by a penal decree or by a court decision.
- II. Employers carrying out activities in all (except for a few) other economic sectors who face revenue dropdown

Employers in **all other** economic sectors under the Economic Activities Classification Code-2008 (EAC-2008), with exception to sectors A (agriculture, forestry and fisheries), K (financial

and insurance activities), O (government), P (education), Q (human health and social work), T (activities of households as employers; undifferentiated activities of households for the production of goods and services for own consumption) and U (Activities of extraterritorial organizations and services), that

- (i) meet the requirements (iii) to (vii) above, and
- (ii) have sales revenue dropdown of not less than 20%, as follows:
  - for persons, incorporated prior to 1<sup>st</sup> March 2019 – with not less than 20 % for the month, preceding the month of application for compensation payments, as compared to the same month last calendar year;
  - for persons, incorporated after 1<sup>st</sup> March 2019 – with not less than 20 % for the month, preceding the month of application for compensation payments, compared to the average revenues for January and February 2020.

#### **6. Procedure for applying for compensation**

Information on the terms and conditions for applying is published on the website of the Employment Agency: <https://www.az.government.bg/>.

The employer shall submit, including electronically, to the Labour Office Directorate, competent for the territory where the place of work of the employees, is located an application for payment of compensation in accordance with the form approved by the Executive Director of the Employment Agency. The application must be submitted **on a monthly basis** in paper form, electronically or by registered post with acknowledgment of receipt through a licensed postal operator. It must be accompanied by certain documents, including a certified copy of the order for work suspension or the order for introduction of part-time work.

A commission determined by an order of the director of “Labour Office” directorate shall review the documents and shall verify the compliance with the requirements for payment of compensation within 7 working days of application.

“Labour Office” directorate shall notify the employers for their compliance or non-compliance with the requirements for payment of compensations, established by the commission, within 2 business days from the day of issuance of the protocol evidencing the commission’s verification.

If approved, the compensation amounts are paid out to the employer, not to the employees.

In case of recommencement of the work process or revocation of the order for introduction of part-time work during the compensation period, the employer shall notify the Employment Agency in writing within 3 days as of the date of issuance of the respective order.

**The deadline for submission of applications for state support in April 2020 shall expire at 5pm on 21<sup>st</sup> April 2020.**

#### **7. Non-compliance with requirements – reimbursement of funds**

An employer who, among others, fails to retain employment of the employees for whom compensation has been received for the required period, or effects other redundancies during the compensation period, as well as an employer who declares false information in the documents accompanying the application or fails to fulfil the circumstances declared by these documents, shall reimburse the compensations received.

*This brief guide is for information purposes only. The information contained in it does not constitute exhaustive research or legal advice and in no way can it replace professional legal advice on specific cases.*

*The information in this document was presented on 3 April 2020. In view of the dynamic situation and developments, stay tuned to our website at [www.dgkv.com](http://www.dgkv.com).*

DGKV team remains available for more information. As part of our responsiveness in the fight against the “invisible” threat of COVID-19, we will offer to our clients legal services related to assistance for the application for the financial state support at a discounted competitive fee.

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### Schedule

*List of economic activities eligible for state support*

EAC Code 2008	Position Title
47	Retail sale, except of vehicles and motorcycles <sup>1</sup> , other than: 47.11 Retail sale in non-specialized stores mainly for food, beverages and tobacco; 47.2 Retail sale in specialized stores mainly for food, beverages and tobacco; 47.73 Retail sale of medicines and other pharmaceutical products; 47.74 Retail sale of medicinal and orthopaedic goods; 47.8 Retail sale in open-air stalls and markets; 47.9 Retail sale outside of commercial sites
49.3	Other passenger land transport
51.1	Passenger air transport
55	Hotel industry
56.1	Activity of restaurants and fast food establishments
56.3	Beverage serving activities
59.14	Movie projections
79	Travel agency and operator activity; other travel and booking activities
82.30	Organization of congresses and commercial exhibitions
85.10	Pre-school education (private sector)
90	Artistic and creative activity
91	Other cultural activities
93	Sports and other recreational activities
96.04	Maintaining good physical condition
	Other economic activities – for employers who have suspended work carried out on the territory of separate urban areas in which anti-epidemic measures have been implemented under Art. 63 of the Law on Health by an order of public authority

<sup>1</sup> With place of work in commercial site on the territory of the commercial centre.