

Legal Alert

In the field of labour law

November 22, 2021

Weinhold Legal

Mandatory testing of employees and self-employed persons

Based on an extraordinary measure of the Ministry of Health ref. no. MZDR 42085/2021-1/MIN/KAN from 20 November 2021 (hereinafter "**Measure**"), whose parameters were discussed by the Government on 19 November 2021, mandatory testing of employees is being introduced for all employers, an obligation to test is also imposed on self-employed persons („**SEP**") under the conditions set out in the Measure, the full text of which can be found [here](#). The Measure does not apply to the testing of employees of social and health service providers, which is governed by another extraordinary measure.

How will the testing be done and from when?

From **29 November 2021** at the latest, all employers must ensure that **all their employees** (including agency workers, persons in training or apprenticeship, and volunteers, but not "contractors" - who are obliged to test themselves) are regularly tested for the presence of SARS-CoV-2 virus antigen, **unless one of the specified exemptions applies**, at a frequency of **once a week**, by:

- ▶ a **rapid antigen test (RAT)** designed for self-testing (use by a lay person); or
- ▶ a **rapid antigen test (RAT)** performed by a **health care provider**.

Who does not need to be tested (exceptions)

The employer is not obliged to test persons who:


- ▶ have been **vaccinated** against covid-19 and at least 14 days have elapsed since the completion of the vaccination schedule,
- ▶ have **laboratory-confirmed covid-19 disease**, the period of ordered isolation has elapsed, and **no more than 180 days have elapsed** since the first positive rapid antigen test (RAT)/RT-PCR test for the presence of SARS-CoV-2,
- ▶ have undergone an **RT-PCR test** or a **rapid antigen test (RAT)** for the presence of SARS-CoV-2 virus antigen performed by a healthcare professional within the last **7 days with a negative result**,
- ▶ **have no contact with third persons** at their workplace, except persons living in the same household,
- ▶ work remotely (**home office**).

If the employee is not present at the employer's workplace on the day of the testing date, his preventive testing shall be carried out on the day of his/her arrival at the workplace.

Duties of employees

Employees who are **not covered by an exemption** from testing **are required to undergo the tests**.

Employees who are **exempted** from testing (except for the exemption of not meeting with third persons and home office) **are required to prove the existence of the exemption** by means of an appropriate vaccination certificate or record in the Informační systém infekčních nemocí (ISIN) or a certificate issued by a health care provider.



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Positive result

If the test result is **positive**, the employee must:

- ▶ immediately notify the employer of a planned absence from the workplace due to suspected SARS-CoV-2 positivity,
- ▶ leave the workplace, and
- ▶ if the test is not carried out by a health care provider, notify the test result without delay to:
 - the employer's health service provider, if the employer so specifies,
 - otherwise, their registering medical practitioner.

If the employee is unable to notify the 'company doctor' or his 'practitioner', he must contact another health service provider or, where appropriate, the public health authority competent for the place of work to determine the next course of action.

According to Measure, the period of time between **the discovery of a positive result of the test** carried out pursuant to Article I of the Measure and **the receipt of the confirmatory examination result**, during which no work is performed, constitutes **an obstacle to work on the part of the employer pursuant to Section 208 of the Labour Code**.

Refusal to undergo the test

If an employee refuses to undergo a test provided by the employer:

- ▶ the employer must **report** this without undue delay to **the locally competent public health authority**,
- ▶ the employee shall:
 - **wear a respirator** or similar equipment **at all times while at the workplace**,
 - maintain a distance of at least 1.5 m from other

persons, and

- eat separately from other persons (the obligation not to wear a respiratory protection equipment while eating food does not apply).

The employer must then ensure by organisational measures that the contact of the employee with other persons is limited to the necessary extent.

Records maintained by the employer

As regards the processing of personal data (health information is a special category of personal data), according to the reasoning of the Measure, the exemption from the obligation to undergo testing for the purposes of control by the public health authority can be traced in the Informační systém infekčních nemocí (ISIN) and therefore no records or processing of such personal data by the employer is required. Therefore, the extent of the personal data processed by the employer in connection with the testing should only be to an extent strictly necessary to be documented in the event of a control - i.e. the name and date of the test (not the result of the test).

Issuance of a confirmation test request form and the obligation to undergo the test

Health service providers or public health authorities who have been notified by an employee or a SEP of a positive test result shall immediately issue a request for a confirmatory RT-PCR test for the presence of SARS-CoV-2 virus to that person. Employees or SEP who have been issued with a request for confirmatory testing shall be required to undergo such testing without delay.

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Recommendations

It is advisable that employers incorporate the above obligations of employees to self-test into their internal regulations, OSH guidelines, or inform employees in an appropriate manner of their obligations under this Measure, and identify persons/contact details for employees who test positive and those who will deal with organisational measures in the event of a person refusing to test at the workplace.

Self-employed persons

SEP performing their main self-employed activity in the Czech Republic must undergo a rapid antigen test (RAT) for the presence of SARS-CoV-2 virus antigen for self-testing (use by a lay person) at a frequency of once a week, unless they fall under an exemption as specified above for testing of employees, by 29 November 2021 at the latest.

This obligation does not apply to self-employed persons who do not get in contact with third persons in the course of their work, except for persons living in the same household.

Reimbursement of costs

The measure does not address the issue of the cost of carrying out the testing

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v.o.s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

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