

AmCham.Pl QUARTERLY

The official magazine of the American Chamber of Commerce
in Poland



3/2020

VOL III, No. 3 • ISSN 2545-322X

EXPERT:

PwC's Paweł Dudojc and Michał Rams present legal obligations for companies to safeguard adequate safety standards in the time of the pandemic.

EVER SINCE ITS INCEPTION 30 YEARS AGO, ONE OF THE MOST FUNDAMENTAL FUNCTIONS OF AMCHAM HAS BEEN TO MAINTAIN PLATFORMS FOR SHARING PROFESSIONAL KNOWLEDGE AND EXPERIENCE BETWEEN ITS MEMBERS. THERE ARE SEVERAL SUCH PLATFORMS, INCLUDING AMCHAM MONTHLY MEETINGS, THE AMCHAM COMMITTEES, AND THE EXPERT SECTION OF THE CHAMBER'S MAGAZINE.

IN THIS DISPATCH, **PAWEŁ DUDOJC, COUNSEL AT PWC LEGAL, AND MICHAŁ RAMS, COUNSEL, ADVOCATE, AT PWC LEGAL,** WRITE ABOUT LEGAL OBLIGATIONS FOR COMPANY MANAGERS TO SAFEGUARD ADEQUATE COVID-19 SAFETY STANDARDS FOR THEIR PERSONNEL AND CLIENTS.

EXPERT **Pandemic law**

A ROADMAP TO SAFETY

Organizations need Covid-19 risk checklists.

The new business reality during the Covid-19 pandemic involves meeting numerous legal requirements and adapting to sanitary standards aimed at ensuring the safety of employees and clients and preventing the spread of the virus. The failure to meet the imposed sanitary standards to decrease the risk of Covid-19 infections may result in criminal or civil liability of a company and its managerial staff. Therefore, appropriate mechanisms become necessary to limit the liability mentioned above. These elements are particularly important because of the risk of subsequent waves of the pandemic. It may turn out that only companies that can guarantee adequate levels of safety for their employees and clients will be able to continue functioning.

PERSONAL LIABILITY

One of the Covid-19 liability risks is related to sanitary issues and may occur when an employee or a customer becomes infected. In such a case, compliance with sanitary standards by the company and its managers may be a way to assess the extent to which the infection could have occurred as a result of misconduct. In other words, compliance with sanitary standards may be an element of assessing how much reasonable care has been taken in the company. If a lack of reasonable care is demonstrated by a prosecutor or an infected person, a risk of criminal or civil liability for the managers or the company itself may materialize. Another business-related risk can occur

when one of the company's employees gets infected and, due to a lack of sanitary procedures, has been in contact with other people. In such a case, the whole company may have to be quarantined, making it impossible to continue business activities.

RISK ASSESSMENT

No less important is assessing the risk that the managers and the company could incur as a result of their non-compliance with sanitary standards, and how to eliminate possible gaps in this respect. An appropriate policy related to applicable Covid-19 requirements, limiting the risk of liability of the company and its managers, should be considered a remedy for such threats. This document helps to control, monitor, and report the risk of non-compliance with sanitary standards within the company. A comprehensive policy and relevant risk register should help demonstrate that the company has exercised reasonable care with respect to compliance with sanitary standards.

PUBLIC ANNOUNCEMENTS

Companies need also to pay attention to orders issued by local and central governments. Under the new legislation adopted during the pandemic, the Voivode (the region's governor appointed by the prime minister), the Minister of Health, and the Prime Minister have been empowered to issue binding orders to entrepreneurs. In turn, the sanitary inspector has been authorized to issue decisions imposing obligations



By **Paweł Dudojc**, Counsel, PwC Legal; and **Michał Rams**, Counsel, Advocate, PwC Legal.

on entrepreneurs. Due to the broad discretion of the authorities mentioned above, it is reasonable to adopt a policy to assess the legitimacy of a given order. Importantly, orders may be issued in oral form. Therefore, it becomes crucial to document the fact of its execution properly. This protects the company and the managers themselves against possible allegations of failure to execute an order.

SANITARY CONTROLS

The imposition of parallel control procedures usually complements new obligations. With regard to Covid-19 regulations, the imposition of sanitary regimes, as well as tasking existing sanitary authorities with their enforcement, internal guidelines for controls by public authorities should also include provisions for sanitary controls.

A structured approach to inspections or investigations by authorities is crucial to ensure procedural fairness, quick identification, and effective implementation of corrective measures. It is best when procedures are in writing. Such a document should assign basic responsibilities to employees, educate on their rights and obligations during such controls, and outline the range of actions or tools available to the company.

DATA PROTECTION

Many activities that companies undertake to counteract Covid-19 are in collecting and processing personal data, including on recent personnel travels or personal data, including health data, temperature readings, and others. Therefore, to ensure compliance with Covid-19 requirements, every company should

also bear in mind that personal data protection law, especially the EU General Data Protection Regulation, still applies, and potential deficiencies in this regard could still result in the organization's liability. The main concerns in this area are related to investigating potential Covid-19 infection cases in the company's facility and the process of people traffic control, including taking temperature readings. The Polish sanitary authorities are continuously issuing new guidelines and individual decisions on how to ensure sanitary protection in organizations and conduct a proper investigation on Covid-19 infection cases. Therefore, any procedure implemented in response to the Covid-19 threat will affect other processes related to personal data, including information obligation and data inventories.

SUMMARY

The pandemic is a threat to all organizations which run business operations using human resources. Those organizations that will not identify such threats, assess the risks, and implement appropriate mitigative measures will be vulnerable to legal consequences. The managers will potentially have to face a criminal or civil liability for possible deficiencies in the sanitary protection system.

To limit such risk, companies need to identify the pandemic as a threat to their business operations and their employees. With that, every organization should analyze its business operations vis-a-vis all possible Covid-19 and data protection risks to find gaps and then introduce proper compliance solutions.