

Entrepreneurs with fewer than 50 employees may decide not to set up a Occupational Social Benefits Fund or not to pay a holiday benefit in 2021. However, they should inform their employees by 31 January.

In the light of the provisions of the ZFŚS Act only until January 31, entrepreneurs have time to decide not to create a Company Social Benefits Fund or not to pay a holiday benefit. It is customary for this term not to apply to all entrepreneurs, but only to those with fewer than 50 employees. In 2021, however, the resignation of the ZFŚS will be facilitated. This possibility is given by the new provisions of the law related to the fight against COVID-19 in Poland.

In accordance with the provisions of the Act of 4 March 1994 on the Occupational Social Benefits Fund (Journal of Laws 1994 No. 43, item 163), the creation of the ZFŚS in the workplace is mandatory for employers employing at least 50 employees as of January 1, 2021, on a full-time basis.

On the other hand, employers with at least 20 and fewer than 50 full-time employees have the right to create the ESM on a voluntary basis. These employers shall set up the Fund at the request of the trade union organisation. However, if fewer than 50 people are employed in an establishment and there is no collective agreement or remuneration regulations in place, the employer has the right to decide not to create a Occupational Social Benefits Fund.

Entrepreneurs who decide not to create the ESM in 2021 must inform all employees employed. It will be safest to do this in writing.

The COVID-19 Act expands the group of entrepreneurs who can opt out of the creation of the ZFŚS in 2021. The possibility of temporarily suspending the establishment and operation of the ESM in the workplace is given by the Act of 2 March 2020 on special arrangements related to the prevention, prevention and control of COVID-19, other infectious diseases and the crisis situations caused by them (OJ 2020, item 1842). In accordance with the provisions of the above-called Act, during the period of the epidemic emergency or the state of epidemic declared due to COVID-19, in the event of a decrease in economic turnover for employers (by 25% in the month following 31 December 2019 to the day preceding the date of application or 15% in the two months following 31 December 2019 to the day preceding the date of application) or a significant increase in the burden on the remuneration fund (if the share of wages and income increases by at least 5% per month), the employer may suspend the obligations to:

- the establishment or operation of an occupational social security fund,
- making a basic copy,
- payment of holiday benefits

However, the condition will be that the employer confirms the decrease in economic turnover or a significant increase in the burden on the wage fund.

*Source:*

<https://www.pit.pl/aktualnosci/w-2021-roku-wiecej-przedsiębiorstw-skorzysta-z-możliwości-ni-etworzenia-zfss-1005010>