

CORONAVIRUS (COVID-19): CHALLENGES FOR EMPLOYERS

As the Coronavirus (Covid-19) outbreak continues to spread, businesses face a range of issues. What are the key risks and legal considerations for employers?

1. Workplace Safety

Employers have duties to provide a safe place of work and take reasonable care of the health and safety of their employees. In some countries, the duties may comprise statutory duties, contractual duties and common law duties, including tortious duties.

In many countries, Coronavirus (Covid-19) has yet to be classified as an “occupational disease” entitling compensation under local legislation. However, it may be possible for employees to have contracted the virus during the course of employment and this may lead to the risk of claims being brought under local employee compensation legislation or occupational safety and health legislation.

To mitigate the risks of spreading illness, precautionary measures and relevant information should be considered, continually monitored, and actioned upon to protect the health and well-being of employees. Depending on the severity of the risks, precautionary measures to be taken may vary from country to country. These may include: stepping up cleaning and hygiene practices (and in some cases, provision of protective apparatus); considering alternative work arrangements such as rotation, shifts, rosters and working from home; limiting access to some company areas; requiring provision of medical and travel records; setting up an approval regime for travel; protocols on external client or supplier meetings and handling client requests in high-risk zones; suspending group activities; collecting self-declaration information from staff; applying access restrictions for employees and clients who have either had close contact with infected individuals or have recently travelled to high risk areas; and so on.

Employers should conduct risk assessments of the work of their employees, and, based on the results of the assessments, provide them with the necessary information and equipment to safeguard their health and safety. Coronavirus developments and guidance should be monitored, such as the latest guidance from WHO or competent local authorities on precautionary measures to be adopted.

For example, in France, the local labour administrations are competent for advice on measures to be taken to face the pandemic, including closure of an office or of the company. If an employer needs to close an office, it must inform and consult the Works Council prior taking such decision, and send a request for partial activity authorisation to the Labour administration. This will allow employees to receive unemployment benefits. In Germany, employers may not unilaterally instruct their employees to work from home unless this is otherwise agreed in their contracts. Similarly, employees may not refuse to work or travel from work without justification, although employers should carefully balance their business goals and the risks of spreading any infection in the workplace and harming their reputation.

2. Knock-on Effect: Pay, Paid Leave, Tax Implications

Changes to work arrangements may potentially have a knock-on effect on employees' pay, holiday and sick leave entitlements, particularly if employees are restrained from undertaking certain work activities due to medical surveillance, compulsory quarantine, or self-quarantine, or are within restricted zones overseas.

Generally, if an employee is ready, willing and able to perform their work, and work can be performed remotely from home, the employee should be paid in the usual way. If an employee's inability to work is the result of government decision or external constraints, the position is less clear and the practical implications would be jurisdiction specific.

Similarly, if, following a holiday or business trip, employees are stranded overseas as a consequence of locally imposed travel or quarantine restrictions (e.g. in China or South Korea), employers and employees should discuss what safe travel options exist and the possibility of remote working.

Remote working in places outside of the employee's usual place of work may have tax and work visa implications, particularly if the arrangement stretches for months as opposed to days or weeks. Although some jurisdictions have exemptions where an individual spends time (or more time than usual) in a jurisdiction in exceptional circumstances, these are not comprehensive and will not necessarily apply, especially in cases where the remote working does not result from a government restriction on the employee returning to their usual place of work. Employees may become subject to tax in the jurisdiction they are working in on their employment income for that period or may even become tax resident in that country. Employers will need to consider whether there are any withholding, reporting or social security obligations which they need to fulfil in respect of such employees.

An individual's presence or activities in a foreign jurisdiction may also cause corporate tax liabilities or reporting obligations to arise for the employer. Whether the individual's presence or activities are such that these obligations would be triggered will differ significantly from jurisdiction to jurisdiction (although the focus by many tax authorities will be on revenue-generating activities such as habitually signing contracts). These issues will be particularly difficult where very senior employees, and in particular directors, are involved. Any remote working arrangements should be carefully considered in the context of the rules in the relevant jurisdiction (and any applicable double tax treaties). In some cases (particularly where an employee is expected to be outside their home jurisdiction for an extended period), a secondment to another group entity may be appropriate to mitigate risks in this area.

For example, in Italy, some payment of taxes has been delayed and the Government might decide to fund part of the compensation to be paid to employees suspended from work. In France, if quarantined employees are unable to work remotely, they can benefit, for a maximum 20-day period, by way of derogation, from daily social security benefits, even if they do not meet the normal conditions for entitlement to these benefits, provided that they are identified by the Regional Health Agency. The French Labour Administration might also accept or decide to delay the payment of some taxes and social contributions. In Germany, if employees are willing and able to work but the company decides to suspend its business, the employees will have the right to continue to receive their salary. However, if an employee is banned by the authorities from working for health reasons, the employee may claim statutory compensation against the state, and the compensation will then be paid by the employer and reimbursed by the state upon request.

For workplace measures and travel advisories in response to Coronavirus, please refer to the checklist below.

3. Regulated Sectors: Key Persons and Qualified Staff

For banks and regulated financial institutions operating in cities where the outbreak is particularly serious, having appropriate team rotation and other risk management arrangements would be particularly important, as there must be sufficient human and technical resources devoted to operational risk management to ensure that business activities are conducted by qualified staff with the necessary experience and technical capabilities.

If key persons are stranded or if the entire team has contracted the virus, business operations would be severely hampered. Regulated entities that are required to have a business continuity plan should ensure that the business continuity plan sufficiently covers such situations. Individual licensing issues, both for licensed staff and licensed corporations, should also be considered.

4. Data privacy

Companies are multiplying measures to prevent Coronavirus from contaminating their premises. These measures sometimes require them to collect, analyse and share information about their employees and other individuals (e.g. customers, contractors). For instance, a company may wish to request employees and office visitors to provide information about their recent travels, exposure to potentially contaminated individuals, and/or symptoms, for the purpose of Coronavirus containment.

Processing this personal data is usually necessary for the company to comply with health and safety regulations. Nonetheless, it raises data protection challenges, in particular with respect to the information of concerned individuals regarding what the company envisages to do with one's personal data, types of personal data that it is permitted to collect, conditions to process sensitive data such as health data, and circumstances under which such personal data can be shared within and outside the company's group

5. Unlawful Discrimination Issues

If there is a legitimate cause, such as recent travel history or close contact with infected persons, to require an employee to self-quarantine or stay away from the workplace to prevent the spread of the virus, this may not amount to unlawful discrimination, particularly if this is necessary for public health, and is statutorily provided for in some jurisdictions.

For example, in Italy, in principle, persons residing or domiciled in the "quarantine" areas are banned from going to work even in workplaces outside those areas.

In France, in the event of an epidemic, employers can compel employees to work remotely, and disciplinary sanctions can be imposed on them in the event of refusal. The company's occupational physician and Works Council could be consulted on this measure, which mitigates the risk of alleged discrimination. In Germany, if an employee's child falls ill with Covid19, the employee has a right to stay at home and care for the child. In that event, the employee will either continue to receive salary from the employer or benefits from the health insurance fund, depending on the terms of the contract.

However, employers should be alert to, and deal promptly with, any acts of discrimination and harassment of staff perceived to be from countries with high infection rates by colleagues, clients and customers.

In China, the PRC Ministry of Human Resources and Social Security issued a circular on 24 January 2020 prohibiting employers from terminating the employment of any employees who are infected by Coronavirus during their quarantined treatment (otherwise than for misconduct).

In France, an employee may refuse a professional trip to China, or any zone at risk, on the basis of his right of withdrawal, provided that he or she has reasonable grounds to believe that the work situation presents a serious and imminent danger for his or her health. The employer cannot sanction an employee who makes use of his right of withdrawal.

Checklist – workplace safety

- Whether information has been provided, or reasonable protective or precautionary measures have been taken, to minimise the risks of spreading illness? For example, good hygiene practices, self-quarantine, referral for medical advice, approval regime for business travel, protocols on external client or supplier meetings and handling client requests in high-risk zones, monitoring Coronavirus developments and guidance such as the latest guidance from WHO or other competent local authorities on precautionary measures to be adopted.
- Whether there is a need to consider alternative work arrangements? For example, remote working and IT and other tech options to facilitate staff in their roles, such as client conferences by video.
- In respect of employees infected, was it in the course of, or arising out of employment, and would it be considered a workplace accident entitling compensation?

Workplace measures in response to Coronavirus (Covid-19)

Public resources: Quarantine & travel advisories	
WHO Recommendations for international traffic	<p>WHO continues to advise against the application of travel or trade restrictions to countries experiencing Coronavirus outbreaks.</p> <ul style="list-style-type: none"> • It is prudent for travellers who are sick to delay or avoid travel to affected areas, in particular for elderly travellers and people with chronic diseases or underlying health conditions. • Affected areas are considered to be those countries, provinces, territories or cities experiencing ongoing transmission of Coronavirus in contrast to areas reporting only imported cases. • WHO is publishing daily <u>situation reports</u> on the evolution of the outbreak. (The Situation Reports deal with global stats.) <p>https://www.who.int/emergencies/diseases/novel-coronavirus-2019/travel-advice</p>
China	<p>Government news:</p> <ul style="list-style-type: none"> • http://english.www.gov.cn/2020special/5e2f934ec6d019625c6040a0/wuhantour • http://english.www.gov.cn/policies/latestreleases/202002/25/content_WS5e55075ac6d0c201c2cbce5e.html • http://english.www.gov.cn/policies/latestreleases/202002/26/content_WS5e565703c6d0c201c2cbd056.html • http://english.www.gov.cn/policies/latestreleases/202002/23/content_WS5e526a8ac6d0595e03c214ad.html

	Public resources: Quarantine & travel advisories
China – Hong Kong	<ul style="list-style-type: none"> • Advice from the HK CHP: when there is a suspected or confirmed case of Coronavirus (Covid19) – Health Advice on Prevention of Coronavirus disease (COVID-19) in Workplace (Interim) • Advice on travels: https://www.chp.gov.hk/en/features/102624.html#FAQ14 • Entry to Hong Kong: https://www.brandhk.gov.hk/html/en/WhatSON/Novel-Coronavirus.html • General update from the HK Government: https://www.coronavirus.gov.hk/eng/
France	<ul style="list-style-type: none"> • Travel advice to various Corona virus affected countries: https://solidarites-sante.gouv.fr/soins-et-maladies/maladies/maladies-infectieuses/coronavirus/coronavirus-infos-voyageurs • Advice to companies: www.entreprises.gouv.fr/coronavirus-des-mesures-pour-entreprises-françaises-impactees
Germany	<ul style="list-style-type: none"> • List of worldwide travel advisories for Germany: https://www.auswaertiges-amt.de/de/ReiseUndSicherheit/10.2.8Reisewarnungen
Italy	<ul style="list-style-type: none"> • http://www.viaggiaresecuri.it/documenti/FOCUS%20CORONAVIRUS.pdf • Travel advisories worldwide: http://www.viaggiaresecuri.it/
Japan	<ul style="list-style-type: none"> • Japanese Ministry of Health, Labour & Welfare: https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/newpage_00032.html • Important Notice on New Restrictions Related to Novel Coronavirus (Feb 26,2020): https://www.hk.emb-japan.go.jp/itpr_en/important_notice3.html • Government Initiatives Related to Coronavirus Disease (COVID-19) https://www.hk.emb-japan.go.jp/itpr_en/2020_coronavirus_0221.html • From Japan Ministry of Foreign Affairs: https://www.mofa.go.jp/press/kaiken/index.html
Singapore	<p>Singapore Ministry of Manpower:</p> <ul style="list-style-type: none"> • General advisory for employers if a confirmed or suspect case of COVID-19 is detected at the workplace • General Advisory for Workplaces and Frontline Workers in Response to Confirmed Cases of Local Transmission of Coronavirus Disease 2019 in Singapore • Advisory for Employers and Employees Travelling to and from Affected Areas in Response to Increase in Cases of COVID-19
United Kingdom	<p>UK Government travel advice: https://www.gov.uk/guidance/travel-advice-novel-coronavirus</p>

Practical implications stemming from changes to work arrangements

- What are the practical pay and other implications if employees are restrained from undertaking certain work activities?
- Are there tax, immigration and other implications for employees working remotely?
- Whether work restrictions or self-quarantine requirements can give rise to potential unlawful discrimination issues?
- Consider whether welfare aid may be applied for.
- For financial institutions and regulated entities, consider:
 - whether there are sufficient human and technical resources devoted to operational risk management such that the regulated person's activities are conducted by qualified staff with the necessary experience and technical capabilities; and
 - whether the existing business continuity plan sufficiently covers the current situation.
- **Data privacy:** Consider the necessity to collect travel and health-related data from employees, and record-keeping and data privacy implications.
- Consider planning for different notification scenarios and alert systems for any suspected or confirmed cases of COVID-19 amongst employees.

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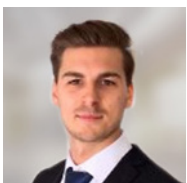


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Data privacy

C L I F F O R D

C H A N C E

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