

Managing HR Through COVID-19

A Practical Guide for Multinational Employers





Overview

This guide will help employers manage HR legal and practical issues arising from COVID-19. It covers:

1. [Good Practice Guidance giving high-level consideration;](#)
2. [An Action Point Checklist drilling down into the detail;](#) and
3. [Answers to Key Questions facing employers in select jurisdictions](#)

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GOOD PRACTICE

There are a number of key good practice points that employers across all jurisdictions will want to consider in connection with COVID-19:

1. Keep up-to-date with accurate information

It is difficult for an employer to make proper decisions based on rumors, assumptions and “fake news”. Therefore, it is important for an employer to stay up-to-date with accurate information and make decisions based on facts. Employers should monitor official sources, including government advisories and the World Health Organization (“**WHO**”) website, and check that the information they receive is factually correct.

2. Know where your employees are and where they have been

An employer cannot keep its employees out of harm’s way if it does not know where they are and where they have been. As outbreaks of COVID-19 occur in various parts of the world, keep track of which of your employees could be at risk.

3. Communicate with your employees

Employers should communicate openly and often with their employees so that they have the information they need to help keep themselves educated and updated about the coronavirus. It should not assume that all

employees will educate themselves or have access to the same sources of reliable information. Putting everyone on the same page will help the employer and its employees move together in a timely manner as a business. Open and timely communication will help build trust and reduce the spread of rumors that may cause anxiety in the workplace.

4. Provide a safe platform for employees to raise concerns

Employers should give employees a *safe* platform where they can raise concerns on all aspects related to work, from mental health to the risk of having contracted COVID-19. This is not just good employee relations, but early detection and doing something about it can help to reduce the spread of the virus. It is one thing to have an employee assistance plan and ask employees to report issues, but if those who report are stigmatized or treated with contempt, employees may be deterred from reporting.

There may be nervousness and anxiety in the workplace, and possibly even conflicts, given concerns about the virus. Employees should be given avenues to communicate such anxiety to their employer, so that concerns are addressed earlier and do not balloon into bigger issues.

5. If you can be flexible, then be flexible

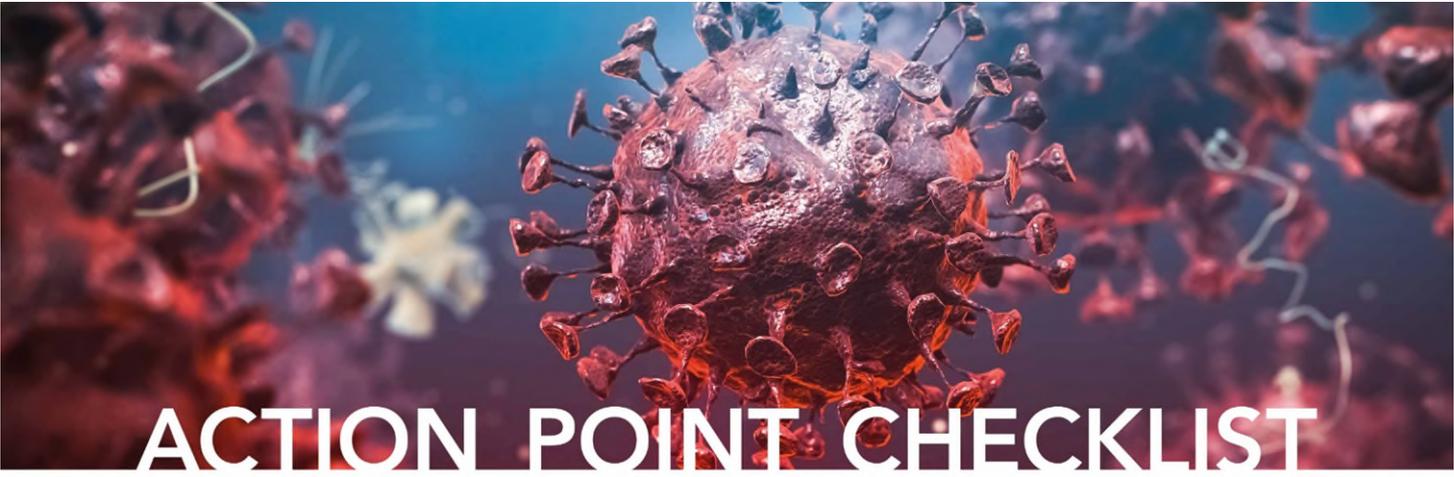
Employers should understand that this is a time of stress for all parties, including employees. Recognize that employees will have different needs depending on their circumstances (e.g., those with school-age children may need more time off as school classes are suspended).

This time of uncertainty will pass but employees will remember how their employer treated them long after the threat of the virus has disappeared. A disgruntled employee may try to make it known to the world how badly their employer treated them. This may affect the employer's brand and ability to attract and retain talent. The employer may then have to wait for another crisis or challenging time to get the opportunity to prove itself as a good employer.

6. One size may not fit all

While consistency in treatment is generally to be favored, be conscious that one size may not fit all. For example, "work from home" or remote working may not work for everyone. The implementation of general directives should be checked against legal obligations under the contract of employment and local law.

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ACTION POINT CHECKLIST

In general terms, the steps an employer needs to be taking now relate to four categories:

Review, Communicate, Update and Travel.

No list of action points will be comprehensive for all employers, but the following will form a good starting point.

1. Review

- Review business continuity plans and how these would be maintained if employees are suffering from coronavirus absences.
- Review existing sickness policies and procedures. Are they adequately disseminated to staff? Do they need amending?
- Review contracts of employment. It may be relevant to establish whether or not individuals can be asked to undertake different work or at different locations or at different times from the norm.
- Review the employer's emergency procedures, e.g., if there is an infection and the workplace is closed on a temporary basis. If appropriate, carry out a test run of an emergency communication to see how robust the process is.
- Ensure contact details for all staff are up-to-date.
- Undertake a risk analysis of high-risk groups of employees, and what steps can be taken to try and reduce risks for those groups. These groups may include:
 - o those who travel frequently to countries where there is currently or may well in future be a risk of infection.
 - o those with health issues, such as asthma, diabetes, cancer, or those who are pregnant, who are more likely to suffer adversely if they become infected with the virus.
- Review procedures in the office for preventing the spread of the virus, e.g. increased cleaning, availability of hand sanitizers and tissues etc.
- Review planning for the possibility of large scale absenteeism. For example:
- Identify the essential positions within the business, what needs to carry on during an emergency, and what is the minimum number of employees required?:
 - o Identifying employees with transferable skills so that these essential positions can always be temporarily filled.
 - o Considering flexible work patterns, such as employees working from home.
 - o Identifying those employees who have the necessary IT infrastructure to work from home (e.g., remote access to the office computer systems).

2. Communicate

- Identify an appropriate person as spokesperson/communicator of updates on policies etc., with appropriate credibility.
- What, if anything, is said about absence from work for reasons other than ill-health, e.g., where an office is closed?
- Assuming the employer has a health and safety committee, have there been any discussions with that committee about COVID-19 and its potential impact? If there is no such committee, the employer may want to consider setting one up.
- Communicate as a matter of urgency with the high-risk groups identified in any risk review to ensure they are aware of their high-risk status and the measures that are being taken to assist.
- Ensure managers are aware of the relevant workplace policies.
- Consider issuing guidance to employees on how to recognize when a person is infected with the coronavirus. What are the symptoms, and what should one do if one is taken ill at home or at work? It is also important to emphasize that individuals may not recognize that they have the virus and so may not be exhibiting symptoms. Employees should be informed of the reporting procedure within their employer if they have a potential infection as well as any official reporting process.
- Provide advice to encourage individuals to take a degree of responsibility for their own health and safety and to slow the spread of the virus. For example, advice on handwashing and use of sanitizer gels, coupled with a willingness to self-identify where it is possible that individuals have come into contact with individuals with the virus, have become infected themselves or have returned from private travel abroad to an area which turns out to be affected by the virus.

- Make clear that where staff are ill, they must not come to work regardless, i.e. "struggle through".

3. Update

- Initiate a system to keep up-to-date, especially given the speed at which infection is spreading.
- Consider establishing a committee on the employer's side to coordinate responses and engage with any staff consultative forum, and with particular responsibility for staying up-to-date with public health updates.
- How will employers communicate to employees regular updates on the coronavirus and its spread? As news develops, it is extremely important for an employer to be issuing fact based updates, to avoid the possibility of fear being used by worried employees to make decisions about whether or not to come to work, whether to travel abroad, etc.
- Who will have the authority to determine changes to policy and issue any new communications to staff?

4. Travel

- Log employee travel before it is booked and check against the latest travel protocols.
- Ensure staff know that this applies to personal travel as well as business travel.
- Encourage staff to tell you if close family members with whom they share a house are travelling to infected areas.
- Replace face-to-face meetings (especially those involving travel) with video conferences, telephone conferences, etc.
- Consult/communicate about whether to encourage varied work patterns to avoid travelling on public transport at rush hour.

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ANSWERS TO KEY QUESTIONS

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COUNTRY OVERVIEWS

As at April 15, 2020

1. What are an employer's main legal obligations?

The main areas of an employer's legal liability associated with coronavirus in the workplace include:

- Ensuring a healthy workplace;
- Even if it is not possible to oblige employees to go through medical examinations other than the periodic examinations envisaged by the Normative Rules ("NR"), it should be recommended that employees who have symptoms related to COVID-19 go through complementary examinations in order to detect if they are infected by the virus; and
- The Law No. 13,979/2020, complemented by the Act No. 356 of the Ministry of Health, established a series of measures to fight the current pandemic. These measures include the isolation of infected individuals; the establishment of quarantines; restrictions on the entry/exit of people to/from Brazil; performance of mandatory medical examinations; immediate communication of potential contact with infectious agents; and restrictions on travel to/from infected regions. However, the employer does not have the autonomy to apply such measures by itself; only the government can apply these measures. In that sense, the employer can and should recommend that employees with symptoms related to COVID-19, or even

healthy employees, work from home in order to prevent the risk of infection.

2. Do I need to prepare for and have in place a workplace plan to deal with COVID-19?

There is no express legal obligation in Brazil on an employer to specifically have a preventive COVID-19 response plan to the workplace. However, the Federal Government recommends employers to have a contingency plan in case any COVID-19 infection is confirmed amongst employees. Such plan must involve the quarantining of infected employees, reinforcement of hygiene protocols, mandatory use of masks, reinforcement of employee health monitoring by the company's physician, etc.

3. What should a workplace COVID-19 response plan cover?

The Brazilian Ministry of Health has issued guidelines on preventive measures that may be taken in order to prevent COVID-19: <https://www.saude.gov.br/noticias/agencia-saude/46540-saude-anuncia-orientacoes-para-evitar-a-disseminacao-do-coronavirus>.

For general guidance on the contents of a workplace COVID-19 response plan, please see the [Appendix](#), in conjunction with the [Action Point Checklist](#).

4. Can I direct my employees to go home or stay at home if there is an outbreak?

Yes, Brazilian sanitary and health authorities recommend that employers do not require employees to remain in the company's facilities if they present flu-like symptoms, since retaining sick employees in a closed workplace would increase the likelihood of further spread of the disease to other employees. However, depending on the form of remote work developed by the employee, the employer may have to establish such alteration (from on-site to teleworking, for example) through a written mutual agreement. Other forms of remote work may be adopted through a company's internal policy that must have the employee's consent. Furthermore, the agreement or the company's policy must clearly state who will be responsible for the acquisition and maintenance of the work equipment and infrastructure (suitable for rendering services remotely), as well as which party will bear the costs.

5. Can I direct an employee to see a doctor?

Yes, if any employee presents symptoms that are similar to COVID-19 symptoms, the employer should direct the employee to the workplace doctor, who will examine the employee and recommend that the employee undergo examinations in order to confirm whether the employee has the virus. The workplace doctor will only inform the employer (and employee) whether the employee should be removed from the workplace, as this is sensitive information regarding the employee's health.

6. Do I have to continue to pay wages and provide other employment-related entitlements during a COVID-19 outbreak?

Not necessarily. The Brazilian Federal Government implemented several law changes that enable employers to suspend employment agreements temporarily, as well as to reduce employees' workload and wages, amongst other measures that help companies across the country to reduce employment-related costs. Among these law changes, the Provisional Measure No. 927 ("**MP 927**") allows the employer to defer the payment of the unemployment guarantee fund (FGTS) on the months of March, April and May of 2020, which would normally expire on April, May and June of 2020, respectively. In addition, the Provisional Measure No. 936 ("**MP 936**") institutes the Emergency Program for Jobs and Income Preservation ("**Emergency Program**"), which allows the employer to reduce the employee's workload and wage proportionally (by 25%, 50% and 70%), and to suspend employment agreements, given that employers enter into individual or collective agreements with employees or their representative union and meet certain requirements. The Federal Government will supplement employees' income through the payment of an emergency benefit.

7. Can I quarantine certain staff to certain parts of an office or send them to a different office?

The employer may quarantine staff in certain parts of an office, as long as this applies to all employees, in order to avoid any kind of

discriminatory treatment. Therefore, if it is in the company's interest to distribute staff in different spaces in the office, aiming to avoid crowding people in a single environment, such a measure is permitted, provided that it is applied to all employees indiscriminately.

Staff can also be transferred/sent to another office. If the other office is located in the same municipality as the office in which the staff were hired to work, the transfer can be made without consent, provided that the employer meets the cost of any potential increase in the employee's transport expenses. If the office to which the employer intends to transfer staff is in another municipality, the transfer will only be allowed if there is permission for the transfer in each employee's employment contract, or if there is a mutual agreement between the company and each employee in which the employee consents to the transfer. For employees in a position of trust, a mutual agreement will not be necessary. The expenses resulting from the transfer will be borne by the employer, and the employer may also have to make an additional payment of at least 25% of the salary received by the employee in the location to which they were transferred for the duration of the transfer, but only if the employee has been transferred to a different municipality from the one in which the employee was hired.

8. Can I direct my employees to report suspected cases of COVID-19?

Under Brazilian legislation, there is no specific provision regarding the obligation of employers to report suspected cases of COVID-19. However, if any employee presents symptoms that are characteristic of COVID-19, we highly recommend that the employer does

not require the employee's presence in the company's facilities and requests that they see a doctor instead. In the current situation, it is very likely that employees will follow the employer's request to see a doctor voluntarily (workplace doctor or outside doctor), not only in their own interest, but also due to potential social pressure from others in the workplace.

9. Can an employee lawfully refuse to attend work if there is a COVID-19 outbreak?

Yes. Article 483 of the Brazilian Consolidation of Labor Laws establishes that employees are not required to work in areas that subject them to imminent risk or danger. If the company insists on putting employees at risk, they may even request termination of the employment contract in case of manifest danger or considerable harm.

10. Can I screen employees and customers before allowing them to enter the workplace?

No, employers are not entitled to submit employees and customers to medical examinations before granting them access to offices. Data related to an individual's health is considered sensitive data, which is already protected by Brazilian legislation and court precedents rendered by Brazilian labor courts. Furthermore, on August 16, 2020, the Brazilian General Law of Data Protection ("**LGPD**") will come into force, and information about an individual's health will be included among the data demanding maximum protection.

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COUNTRY OVERVIEWS

As at April 16, 2020

Update: Confinement

Since March 17, 2020 confinement measures are in place which have now been renewed up to May 11, 2020.

Some public places are shutdown:

- places welcoming the public not essential to the life of the nation, such as cinemas, bars or nightclubs, etc.;
- shops, except those of an essential nature, such as food shops, pharmacies, banks, service stations or press distribution;
- markets except those authorized; and
- schools and universities.

Meetings of more than 100 people are also prohibited, whether indoor or outdoor. In any case, people should comply with confinement measures as exposed below.

It is prohibited until May 11, 2020, for anyone to travel, except for the following reasons:

- travel between home and place(s) of work when the activity of the employee is essential for the performance of activities which cannot be organized by way of work from home (with permanent justification) or professional travels which cannot be postponed;
- buying essential goods in authorized shops;
- health reasons;

- imperative family reasons to assist persons at high risk or child care;
- short journeys close to home for at maximum one hour and within a perimeter of one kilometre around home for individual sport activities, walks with person of the same domicile and needs of pets;
- travel required by the police, administrative or judicial authority; and
- travel to fulfil general interest missions as defined by administrative authority.

Employees travelling must carry a duly completed and signed form which they must be able to show at control points. Should they fail to do so, they may be subject to a fine between €135 and €375 which is increased in case of repeated offence up to €3,750 and also to a six-month imprisonment at maximum in case of repeated offence.

Individual forms must be filled in for any travel with the date and hour.

For professional travels, employers can fill in and stamp a form to allow essential employees to travel for professional purposes between home and office for the periods they define.

Specific forms exist for travel to French overseas communities and for international travel.

These forms can be downloaded using the following link (a bilingual French/English version is available):

<https://www.interieur.gouv.fr/Actualites/L-actu-du-Ministere/Attestation-de-deplacement-et-de-voyage>

It is also possible to download and fill in the individual form on a mobile phone.

All responses to the questions in this section should be read in conjunction with this update regarding the temporary shutdown.

1. What are an employer's main legal obligations?

The main areas of an employer's legal liability associated with coronavirus in the workplace include:

- Ensuring, by all available means of action, the workplace health and safety of employees (as per the Labor code and case law).
- Continuing to pay an employee if the employer requires them to stay at home or top up the salary when the employee is on sick leave.
- Making sure the company has taken health insurance as required by law and, as the case may be, by the applicable industry-wide collective bargaining agreement ("**IWCBA**"), and welfare insurance (life, disability, incapacity) as may be required by the applicable IWCBA.

2. Do I need to prepare for and have in place a workplace plan to deal with COVID-19?

It is strongly recommended that companies set up a business continuity plan as per ISO norm 2230:2019:

<https://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100442.pdf>

There is a legal obligation for all companies to have a single professional risk assessment document, to update it regularly and when a new risk arises. Deriving from this risk assessment, a prevention plan should be drawn up on a yearly basis or sooner in the case at hand, the Social and Economic Council ("**SEC**") should be informed and consulted on such plan, appropriate actions should be taken, and employees informed.

3. What should a workplace COVID-19 response plan cover?

Such plan should be part of the wider global prevention plan and the French government has recently published updated guidelines:

<https://travail-emploi.gouv.fr/actualites/l-actualite-du-ministere/article/coronavirus-questions-reponses-pour-les-entreprises-et-les-salaries>

For general guidance on the contents of a workplace COVID-19 response plan, please see the [Appendix](#), in conjunction with the [Action Point Checklist](#).

4. Can I direct my employees to go home or stay at home if there is an outbreak?

For employees returning from an area at risk or having been in contact with an infected person, or the employee is infected but has mild symptoms, remote work should be used whenever possible.

Remote work is possible with a simple agreement between the employee and the employer by any means (email), even though it is highly recommended that rules are set through an internal policy or a company collective-bargaining agreement. Furthermore, in case of epidemic risk, remote work can be decided by

the employer without the agreement of the employee.

If remote work is not possible, for serious health and safety reasons, the employer may request one of the above-mentioned employees to stay at home.

Also, the French government has specified that measures of temporary unemployment are available for companies seriously affected by COVID-19. Such system allows the employer to close part or all of its business activity or reduce its employees' working time. Employees are under "partial work", their contract is suspended for the non-work portion, and they cannot come to work. The employer must pay its employees an indemnity equal to 70% of their gross remuneration (not lower than €8.03 per hour or more if training measures are put in place), which is not subject to social security contributions and only to a reduced employee tax (CSG/CRDS of 6.7%). The maximum number of unemployed hours is 1,000 hours per year and per employee. The employer can claim reimbursement for this indemnity to the State. However, the salary taken into account is capped at 4.5 times the minimum salary in France (i.e. €6,927.39 gross per month).

Requests can be made online:

<https://activitepartielle.emploi.gouv.fr/aparts/>

For more details, see legal update:

<https://www.mayerbrown.com/en/perspectives-events/publications/2020/03/covid19-update-on-new-social-measures-in-france>

5. Can I direct an employee to see a doctor?

No, this relates to privacy. An employer can only recommend that an employee see a doctor. If an employee who is obviously ill refuses to do so, the employer can make an

appointment with the company occupational doctor, who has limited power.

6. Do I have to continue to pay wages and provide other employment-related entitlements during a COVID-19 outbreak?

If the employee is required to stay home by a public authority (quarantine):

If the employee is identified as high-risk by the Regional Health Agency's doctor, they may benefit from a certificate allowing them not to work for 20 days. In that case, the employee will benefit from a specific daily social security allowance. The employer has a duty to top up the salary as per the law or the IWCBA with no waiting period. The same applies for a parent who must look after a child whose school is closed and with no need of a medical certificate. It only applies to one parent. In case of partial activity, the latter prevails on the certificate.

If the employer requires the employee to stay home:

The employer will have to continue to pay the employee even if no work is performed.

If the employee decides to stay home: If the employer has taken all reasonable measures to protect the health and safety of its employees, the employee is not entitled to stay at home and the employer has no duty to pay them.

If the employee provides a sickness certificate:

The employee will benefit from a daily social security allowance, which the employer has a duty to top up. The percentage and length of guaranteed salary depends on the applicable IWCBA. By law, it should be, at a minimum, equal to 90% of gross remuneration for one month and 2/3 for the next month for

employees with at least one year of service with the company. The mandatory waiting period has been temporarily suspended. In many cases, it is much longer and equal to 100%. Such payments are often covered by company welfare insurance.

7. Can I quarantine certain staff to certain parts of an office or send them to a different office?

For employees returning from an area at risk or having been in contact with an infected person or the employee is infected but has mild symptoms, such measures are possible. However, given the fact that this changes the organization structure at work, the SEC should be informed and consulted before announcing and/or implementing such measures. Also, unless otherwise provided by the employment contract, the employer is entitled to unilaterally change the place of work in the same employment area as assessed by courts (roughly a 50-km perimeter or a one-hour one-way travel). Outside this area, it is considered to be a change in the terms of the employment contract and is subject to the employee's agreement.

8. Can I direct my employees to report suspected cases of COVID-19?

It may be considered legitimate for an employer to ask employees to report suspected cases.

9. Can an employee lawfully refuse to attend work if there is a COVID-19 outbreak?

The French labor code provides for the right for an employee to refuse to attend work (right of

withdrawal) in a work context when it generates a serious and imminent danger to their life and health. With regard to COVID-19, the French labor administration has considered that, when an employer has taken all reasonable measures, as illustrated above, to protect its employees' health and safety, employees are not justified to refuse to attend work.

10. Can I screen employees and customers before allowing them to enter the workplace?

The French government has recently specified that companies can implement fever-testing to persons wishing to access one of their sites. This measure should be implemented by way of an internal note having the value of an addendum to the company's internal rules of immediate effect. The SEC and the labor inspectorate must be informed. However, measures must be proportionate to the objective sought, offer appropriate guarantees to individuals in terms of information and data retention, and respect the dignity of individuals.

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COUNTRY OVERVIEWS

As at May 5, 2020

1. What are an employer's main legal obligations?

The main areas of an employer's legal liability associated with coronavirus in the workplace include:

- Taking all actions required to ensure the health and safety of employees at work to the extent such actions are possible and can reasonably be expected of the employer, i.e., obligation under the Health and Safety at Work Act (*Arbeitsschutzgesetz* – "**ArbSchG**"), the Workplace Ordinance (*Arbeitsstättenverordnung* – "**ArbStättV**"), Sec. 618 Civil Code (*Bürgerliches Gesetzbuch* – "**BGB**"), and general duty of care in accordance with Sec. 242 BGB;
- Taking additional care of special groups of employees who enjoy stronger protection, e.g., based on the Social Code IX (*Sozialgesetzbuch IX* – "**SGB IX**") protecting disabled employees, and the Maternity Protection Act (*Mutterschutzgesetz* – "**MuSchG**");
- Complying with special obligations under the Infection Protection Act (*Infektionsschutzgesetz* – "**IfSG**") if business activity is related to specific types of care for larger numbers of individuals;
- Complying with obligations under the contract of employment, the BGB, and the

various acts and ordinances governing the legal relationship between employer and employee (e.g., continuing to pay wages, ensuring the employee works within the terms of the contract of employment);

- Complying with the information and co-determination rights of works councils in accordance with the Works Constitution Act (*Betriebsverfassungsgesetz* – "**BetrVG**").

2. Do I need to prepare for and have in place a workplace plan to deal with COVID-19?

As in most other countries, there is no express legal obligation in Germany on an employer to specifically have a workplace COVID-19 response plan. However, ArbSchG, ArbStätt, and BGB require all employers in Germany to take all actions required to ensure the health and safety of employees at work to the extent such actions are possible and can reasonably be expected of the employer. Developing and implementing a general pandemic plan (*Pandemieplan*), that would also apply to COVID-19, would be a significant and highly recommended step to address the potential risks and safety issues associated with COVID-19.

We recommend that employers prepare a detailed plan (if one is not already in place) and implement it. The more detailed the plan, the better prepared an employer will be to cope with any COVID-19 outbreak. A plan should deal with preparations to prevent an

outbreak, what happens during the outbreak, and the steps to be taken after the outbreak. Both workplace health and safety issues and business continuity issues should be covered.

The plan may be part of and/or refinement of a broader plan already developed. In businesses that have a works council (*Betriebsrat*), the implementation of a pandemic plan is subject to co-determination of the works council, as it touches topics such as health and safety at work (Sec. 87 para. 1 no. 7 BetrVG), general behavior in the workplace (Sec. 87 para. 1 no. 1 BetrVG), working time aspects (Sec. 87 para. 1 no. 2 and 3 BetrVG), and IT-related aspects in case of home office work (Sec. 87 para. 1 no. 6 BetrVG).

3. What should a workplace COVID-19 response plan cover?

The material scope of a pandemic plan should cover all measures that are necessary in connection with the occurrence of a pandemic to protect against the impairment of workers' health. Specific rules of conduct should reduce the risk of infection. A pandemic plan could be structured following the different stages of preparing for, responding to, or following up to an outbreak. The German Association of Occupational Accident Insurance Funds (*Deutsche Gesetzliche Unfallversicherung e.V.*) has issued a booklet setting out 10 tips for occupational pandemic planning: (<https://publikationen.dguv.de/widgets/pdf/download/article/2054>).

General and medical information regarding COVID-19 can be found on the following websites:

- Robert-Koch-Institute (www.rki.de)
- Federal Institute for Risk Assessment (*Bundesinstitut für Risikobewertung*) (www.bfr.bund.de)

- Federal Center for Health Education (*Bundeszentrale für gesundheitliche Aufklärung*) (www.bzga.de)
- Federal Institute for Occupational Safety and Health (*Bundesanstalt für Arbeitsschutz und Arbeitsmedizin*) (www.baua.de)

For general guidance on the contents of a workplace COVID-19 response plan, please review the [Appendix](#), in conjunction with the [Action Point Checklist](#).

4. Can I direct my employees to go home or stay at home if there is an outbreak?

Yes, but it depends. If an employee is personally infected with COVID-19 and keeping them away from the workplace is reasonably necessary to protect public health, then the employer may direct the employee not to attend at the workplace.

If other employees in the workplace are infected and may have spread the virus and potentially contaminated parts of or the entire workplace so that the safety of the rest of the workforce can no longer be ensured, sending parts of the workforce home may be appropriate. However, before such a significant decision is taken, public health authorities should be consulted, which are then likely to temporarily shut down parts of the workplace and impose a quarantine on employees who may have been exposed to the virus. Depending on the type of business, the public health authority may also decide to temporarily shut down the entire operation (e.g., daycare centers, schools, businesses with a large number of walk-in customers).

5. Can I direct an employee to see a doctor?

No, there is no general right to direct an employee to see a doctor. If an employee shows symptoms in the workplace and appears to be incapable for work, the employer should nevertheless send them to the (works) doctor and consider releasing them from work until the symptoms are cleared up. This applies not only to COVID-19 infection, but also to other infectious diseases. Every infection puts colleagues at risk, so even mild symptoms should be clarified. In the current situation, it is very likely that employees will follow an employer's request to see a doctor voluntarily, not only in their own interest, but also due to potential social pressure from others in the workplace.

6. Do I have to continue to pay wages and provide other employment-related entitlements during a COVID-19 outbreak?

Yes, as a general rule, but an employer may be able to recoup part of the compensation and benefits paid during an outbreak.

In the event of official closure

If a company or business is closed down because of COVID-19 on the instructions of the authorities, the employer is, in principle, still obliged to pay wages – although staff cannot be employed for reasons outside of the control of the employer. The employer bears the operational risk in this case. In situations where neither the employee nor the employer is responsible, employment contracts and collective agreements may provide for deviating provisions. However, such provisions

may be enforceable only if formulated sufficiently clearly and explicitly.

At the same time, the Federal Ministry of Labor and Social Affairs does not exclude the possibility of applying for short-time work compensation in such cases. In this case, part of the remuneration would be paid by the employment agency. The main prerequisite for the payment of short-time work benefits is that an "unavoidable event" leads to considerable non-productive time.

If possible and covered by the right to issue instructions, employers may also assign employees to work at other places, including home offices.

In the case of the isolation of workers

If the employee is able to work in isolation (e.g., quarantine at home upon instruction of public authorities), they must do so. If not, the employer is still obliged to pay the wages for up to six weeks. However, the amounts paid out to the employee shall be reimbursed to the employer by the competent authority upon request.

In the case of illness

If the employee is unable to work as a result of illness, they are entitled to continued payment of remuneration.

However, a claim to continued remuneration is only possible if the employee is not at fault for the illness. Fault can be considered, for example, if the employee has violated a travel warning issued by the Foreign Office during a private trip. At the employer's request, the employee is obliged to provide a detailed description of the circumstances that are relevant to the development of the illness. If the employee violates these obligations to cooperate, the employer can hold back continued remuneration. In this context, the

employer is entitled to ask employees returning from a private stay abroad whether they have stayed in a region at risk. The claim is regularly limited to negative information; the employee is not obliged to provide information about the exact whereabouts.

In the case of closure of schools and day care centers

If the employee is unable to work as a result of official closure of schools and day care centers, losses in income that employees suffer may be covered by the government for up to six weeks. The aim of the compensation scheme is to mitigate the loss of earnings suffered by working custodians of children up to the age of 12 if they have to look after their children themselves due to the closure and are therefore unable to pursue their professional activities. The prerequisite is that the persons concerned do not have access to any other reasonable care (e.g. by the other parent or emergency care in the facilities). Risk groups such as the child's grandparents do not have to be involved in this. Loss of earnings do not exist if there are other ways of staying away from work temporarily on a paid basis, such as reducing working time credits. The compensation amounts to 67 percent of net income, will be granted for up to six weeks, and is limited to a maximum monthly amount of EUR 2,016. Payment is made by the employer, who can apply for reimbursement to the relevant state authority. The regulation does not apply to periods in which the institution would be closed anyway due to school holidays and is limited until the end of 2020.

7. Can I quarantine certain staff to certain parts of an office or send them to a different office?

As a general rule, unless otherwise provided in the employment agreement, the employer's right of direction allows the employer to determine the place of work. Assigning an employee to a certain part of an office or even a different office may also be a reasonable action that an employer can take to protect the rest of its workforce from potential infection. This may be implemented, for instance, if an employee returns from private or business travel with a marginal risk that the employee may have been exposed to infected persons and the isolation of an employee in the workplace is a precautionary measure only. It must, however, not be misused to discriminate against employees.

If employees return from high-risk areas such as Italy or the Wuhan region in China, just isolating an employee within the office may not be sufficient. In such a case, it may be more appropriate to ask the employee to stay at home and ideally work from there until there is confirmation that the employee is not affected or a 14-day period since the employee's return has expired and the employee is free of symptoms. If an employee does not agree to work from home or the job does not allow home office work (e.g., for production workers or medical personnel), the only choice the employer may have is to put the employee on paid leave until it is safe to return to the workplace. Despite an employer's general right to determine the place of work, this does not include an employee's home office. Home office work always requires an employee's consent, be it generally given in an existing home office agreement or on an ad hoc basis in light of a COVID-19 outbreak.

8. Can I direct my employees to report suspected cases of COVID-19?

Yes, but it depends. If employees suffer from symptoms personally and are incapable for work, they have an obligation to report this to their employer without delay. If they are aware of others who are infected, employees are under an obligation to disclose this to the employer as well, given that an outbreak of COVID-19 would pose a significant threat to health and safety (see Sec. 15, 16 ArbSchG). However, employees cannot be directed to report any suspicions that are not based on facts.

9. Can an employee lawfully refuse to attend work if there is a COVID-19 outbreak?

Generally, no, but exceptions may apply. If there is a single case and immediate action was taken by the employer (in coordination with the health authorities) to isolate the infected employee and any persons that may have been exposed to them, this may not be a sufficient reason for other employees to refuse to attend work. If, on the other hand, a larger number of infections has been detected and/or the employer cannot ensure that potentially contaminated areas in the workplace have been properly disinfected, employees may in fact refuse to attend work.

10. Can I screen employees and customers before allowing them to enter the workplace?

Unless employees give their express consent to such a screening in advance, it will in most cases be a violation of current data privacy laws. Even then, it is questionable whether

consent can be validly given, taking into account that an employee will most likely not be permitted to access the premises without giving consent so the consent is unlikely to be voluntarily given. In our view, there is no generally applicable statutory justification based on the General Data Protection Regulations or the Federal Data Protection Act (*Bundesdatenschutzgesetz* – “**BDSG**”) that would permit the collection of such personal data. Exceptions may apply to especially sensitive businesses (e.g., food production or food servicing industry) that are subject to a statutory obligation to permanently ensure employees are healthy when performing working activities.

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[RETURN TO COUNTRY OVERVIEWS](#)

COUNTRY OVERVIEWS

As at April 8, 2020

1. What are an employer's main legal obligations?

The main areas of an employer's legal liability associated with COVID-19 in the workplace include:

- Ensuring so far as reasonably practicable the workplace health and safety of employees (i.e., obligation under the Occupational Safety and Health Ordinance ("**OSHO**") and common law duty of care);
- Complying with obligations under the contract of employment and the Employment Ordinance ("**EO**") (e.g., continuing to pay wages, ensuring the employee works within the terms of the contract of employment);
- Complying with the Disability Discrimination Ordinance ("**DDO**") and other anti-discrimination ordinances;
- Complying with the Employees' Compensation Ordinance ("**ECO**") (e.g., having appropriate insurance and timely reporting of illnesses/death). As well as the legal requirement for an employer to take out the appropriate insurance under the ECO, it may also wish to consider business interruption insurance, medical insurance and evacuation cover; and
- Complying with the Personal Data (Privacy) Ordinance.

- An employer may also wish to review its existing insurance policies, including medical insurance, evacuation cover and business interruption.

2. Do I need to prepare for and have in place a workplace plan to deal with COVID-19?

There is no legal obligation in Hong Kong on an employer to specifically have a workplace COVID-19 response plan. However, the OSHO requires all employers in Hong Kong to, so far as reasonably practicable, ensure the safety and health at work of all their employees. One reasonably practicable step an employer could take is to develop a plan dealing with workplace health and safety issues associated with COVID-19.

We recommend that employers prepare a detailed plan (if one is not already in place) and implement it. The more detailed the plan the better prepared an employer will be to cope with any COVID-19 outbreak. A plan should deal with preparations to prevent an outbreak, what happens during the outbreak, and the steps to be taken after the outbreak. Both workplace health and safety issues, and business continuity issues should be covered.

The plan may be part of and/or refinement of a broader plan already developed.

3. What should a workplace COVID-19 response plan cover?

The Centre for [Health Protection](#) has issued [Health Advice on Prevention of Severe Respiratory Disease associated with a Novel Infectious Agent in Workplace](#), which sets out the guidelines on preventive measures that may be taken.

For general guidance on the contents of a workplace COVID-19 response plan, please review the [Appendix](#), in conjunction with the [Action Point Checklist](#).

4. Can I direct my employees to go home or stay at home if there is an outbreak?

Yes, but it depends. If the employee is infected with COVID-19 and keeping them away from the workplace is reasonably necessary to protect public health, then the employer may direct the employee not to attend at the workplace. The employer should continue to comply with its obligations under the contract of employment (e.g., to pay wages). The DDO prohibits the less favorable treatment of an employee on the ground of disability. There is an exception if the disability is an infectious disease (which includes COVID-19) and the discriminatory act is reasonably necessary to protect public health. So, if there is less favorable treatment of the employee on the ground of disability, the employer should ensure that it can avail itself of the exception.

5. Can I direct an employee to see a doctor?

Yes, but it depends. Requesting an employee to see a doctor is invasive and an employer would therefore generally require an express power in the contract of employment to direct

an employee to see a doctor. Depending upon the circumstances, an employer may require an employee to obtain a clearance from a doctor before being allowed to enter into the workplace.

6. Do I have to continue to pay wages and provide other employment-related entitlements during a COVID-19 outbreak?

Yes. The contract of employment will continue during a COVID-19 outbreak (including during periods in which the office premises are shut as mandated by the government) unless the employment has ceased. Depending on the circumstances, an employer may be able to refuse to pay wages to an employee who, for example, is absent from work without authorization.

7. Can I quarantine certain staff to certain parts of an office or send them to a different office?

It depends but it is possible. An employer must be careful not to contravene the DDO. An employee with COVID-19 or suspected of having it will be a person with a "disability" for the purposes of the DDO. Depending on the circumstances (including if an exception applies under the DDO – see Q4 above), an employer may ask an employee to work from a particular part of an office if it is reasonably necessary to ensure public health. As to whether an employer can send an employee to work in a different office, that would also depend on the circumstances including if an exception applies under the DDO, the contract of employment (e.g., whether it provides that the employee is entitled to work at a particular location), the extent of the travel required and

inconvenience suffered by changing the work location. For example, it may not be permissible to change an employee's workplace from Hong Kong to a place overseas when the employee does not usually travel as part of their duties.

8. Can I direct my employees to report suspected cases of COVID-19?

Yes, in the event of a COVID-19 outbreak, in our view, it would be lawful and reasonable to ask an employee to report if they suspect they have COVID-19.

9. Can an employee lawfully refuse to attend work if there is a COVID-19 outbreak?

It depends but is possible. An employee can only lawfully refuse to attend work if they reasonably fear for their health and safety by doing so. Section 10 of the EO entitles an employee to terminate their contract of employment without notice or payment in lieu if they reasonably fear physical danger by violence or disease which was not contemplated by their contract of employment expressly or by necessary implication. If an employer requires an employee to attend work in these circumstances, it is likely to be in breach of the OSHO.

10. Can I screen employees and customers before allowing them to enter the workplace?

Maybe. Depending upon the extent of the outbreak, the screening of employees and customers may be a reasonable step for an employer to take to reduce the risk of its employees being exposed to harm. However,

depending upon technological and medical testing limitations, there may be logistical and privacy issues with undertaking any such screening in a timely and effective manner before gaining entry to the building.

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[Hong Kong Privacy Commissioner Issues Guidelines For Employers Amid COVID-19 Pandemic](#)

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[COVID-19 - The "No Redundancy" Undertaking under the Employment Support Scheme in Hong Kong](#)

[Overview of the Compulsory Quarantine Regulations in Hong Kong](#)

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[COVID-19 and Staffing Costs in Hong Kong](#)

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[Practical Considerations for Employers In Handling COVID-19 in Hong Kong](#)

[Novel Coronavirus - What Do I Do If My Employee Is Quarantined or Put Under Medical Surveillance in Hong Kong?](#)

[Novel Coronavirus and Employer Obligations in Hong Kong](#) - also published by the [Hong Kong General Chambers of Commerce](#), and [HumanResources online](#).

For more information relevant to [Coronavirus COVID-19](#), please visit our website.

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COUNTRY OVERVIEWS

As at April 10, 2020

1. What are an employer's main legal obligations?

Employers should always ensure that they are complying with the laws and regulations of the Kingdom of Saudi Arabia ("**KSA**"). More specifically, due to the fast-changing nature of the COVID-19 crisis, governmental ministries, including the Saudi Ministry of Human Resources and Social Development, are frequently issuing binding circulars and regulations to which all employers must adhere and monitor.

2. Do I need to prepare for and have in place a workplace plan to deal with COVID-19?

The KSA government requires all employers in the KSA to ensure the safety and health of their employees. There is currently no requirement for a formal workplace plan to be in place. However, employers are required to adhere to all circulars and regulations issued by the Saudi government. To the extent an employer needs to put in place an internal plan in order to adhere to such regulations and circulars, the employer can go ahead and prepare such a plan.

3. What should a workplace COVID-19 response plan cover?

A workplace COVID-19 plan should cover the following:

- Preventive measures, such as enhanced cleaning procedures.
- Ensuring sufficient supplies of masks, gloves, thermometers, disinfectants, etc. and other required equipment.
- Communication strategies; i.e., how information will be communicated to employees, suppliers and customers.
- Where employees will work; i.e., home, in the office or in alternative temporary offices.
- At what stage will the workplace be closed and who will decide that.
- How to deal with the infection of employees.
- A mechanism for determining whether employees, suppliers and customers will be allowed access to the workplace, especially if they show symptoms of being infected by COVID-19.
- What to do with high-risk/exposed staff (e.g., pregnant, key employees and employees who travel).
- How potential visitors to the employer's offices will be made aware of any health and safety hazards associated with entering the workplace before any scheduled visit.

For general guidance on the contents of a workplace COVID-19 response plan, please review the [Appendix](#), in conjunction with the [Action Point Checklist](#).

4. Can I direct my employees to go home or stay at home if there is an outbreak?

After initially requiring most of the private sector to enforce remote working, Saudi Arabia has now imposed a 24-hour curfew in all major cities across the Kingdom. In practice, this means that all employees must now work remotely. The employer should continue to monitor government websites for updated information on whether remote working will remain mandatory.

In the future, if there are no mandatory government remote working-requirements, the employer can still, at the employer's discretion, request employees to go or stay at home.

5. Can I direct an employee to see a doctor?

Depending upon the circumstances, an employer may require an employee to obtain a clearance from a doctor before being allowed to enter into the workplace.

6. Do I have to continue to pay wages and provide other employment-related entitlements during a COVID-19 outbreak?

Based on a governmental circular issued on 6 April, 2020 by the Saudi Ministry of Human Resources and Social Development, for a period of six months, an employer is permitted to give the following three options to employees:

- Annual leave – employees can take their accrued annual leave.
- Unpaid leave – employees will also have the option to take unpaid leave.
- Renegotiating contracts – if the employee rejects the above options, the employer and the employee can consider renegotiating employment contracts with employees; i.e., reduced pay for reduced working hours.

If the employee rejects the above three options, the employer can terminate the employment of such employee as permitted by Article (74) of the Saudi Labor Law due to force majeure. In this case, the employee will be entitled to full end-of-service benefits calculated up to the date of termination. However, the employer cannot use this termination option where it is accepting any benefit from the government under the newly announced government SANAD program to support private sector Saudi employees. (The employer may apply to the General Organization for Social Insurance ("**GOSI**") to cover 60% of its KSA national employees' salaries up to a maximum of SAR 9,000 per employee through the SANAD program (unemployment benefit program). If the employer has five employees or less, then all of them will be covered; otherwise, up to 70% of the employer's KSA national workforce may be covered through this initiative. The payments will be made for three months: May, June and July 2020. During this period the employer does not have to top up the employees' salaries to 100% of what they would normally be. The employee does not have to work during this period when the employee is receiving funds directly from the SANAD program through GOSI).

7. Can I quarantine certain staff to certain parts of an office or send them to a different office?

Unless the Saudi government issues circulars in relation to this issue and subject to what was agreed with the employee in their employment contract, employers may request employees to work from different offices or from certain parts of an office.

8. Can I direct my employees to report suspected cases of COVID-19?

Yes, in the current circumstances, reporting suspected cases would be considered mandatory under KSA laws.

9. Can an employee lawfully refuse to attend work if there is a COVID-19 outbreak?

Yes, if an employee reasonably fears for their health and safety, they may refuse to attend work. However, if such refusal to attend leads to termination and the employee files a case before the Labor Committee, the presiding judge will consider whether the employee's fears were reasonable or justifiable and what measures the employer took in relation to the health and safety of the employee.

10. Can I screen employees and customers before allowing them to enter the workplace?

Yes.

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COUNTRY OVERVIEWS

As at April 3, 2020

1. What are an employer's main legal obligations?

In response to the COVID-19 pandemic, the Ministry of Human Resources and Emiratization ("MOHRE") issued Ministerial Resolution No. 279 of 2020 (the "**Resolution**"). The Resolution is designed to aid employers in the private sector in the UAE by allowing them to adopt certain measures during this situation, while at the same time protecting employees in the case of redundancies being made by employers.

In the case of redundancies, the Resolution requires employers to continue to provide employees made redundant with housing and all other entitlements (except for base salaries) until the earlier of (i) the employee exiting the UAE, or the employee obtaining the necessary authorization to work for another establishment, or (ii) the repeal of the Resolution (i.e., once the COVID-19 pandemic is removed).

The Resolution does not remove the need for a redundancy payment (normally up to three months' full salary). However, the recognition of the concept of redundancy within the Resolution may be an indication that the UAE Labor Courts may be more sympathetic to employers implementing redundancy dismissals (during the crisis) than previously.

The Resolution gives the employer the right to take the following measures (provided that measures 3, 4 and 5 require employee consent):

1. Working from home;
2. Leave with pay (essentially forced annual leave);
3. Unpaid leave;
4. Temporary salary reduction; and
5. Permanent salary reduction (which requires the employer to apply to the MOHRE for the MOHRE labor contract to be amended).

Furthermore, employers should always remind their employees of the laws that apply in the UAE and consider updating and recirculating their internet use and social media policies to reflect this.

2. Do I need to prepare for and have in place a workplace plan to deal with COVID-19?

The UAE authorities require all employers in the UAE to, so far as reasonably practicable, ensure the safety and health at work of all their employees. One reasonably practicable step an employer could take is to develop a plan dealing with workplace health and safety issues associated with COVID-19.

We recommend that employers prepare a detailed plan (if one is not already in place) and implement it. The more detailed the plan, the better prepared an employer will be to cope with any COVID-19 outbreak. A plan should deal with preparations to prevent an outbreak, what happens during the outbreak, and the steps to be taken after the outbreak. Both workplace health and safety issues, and business continuity issues should be covered.

The plan may be part of and/or a refinement of a broader plan already developed.

3. What should a workplace COVID-19 response plan cover?

A workplace COVID-19 plan should cover the following:

During the outbreak:

- Preventive measures.
- Disinfecting the workplace regularly.
- Making sure that employees, suppliers and customers are aware of the employer's plans in the event of an outbreak.
- Ensuring sufficient supplies of appropriate masks, alcohol wipes, gloves, paper towels, thermometers, disinfectants, etc.
- Ensure communication strategies, such as how and what information will be communicated to employees, suppliers and customers.
- Where employees will work (i.e., home, in the office or in alternative temporary offices).
- At what stage will the workplace be closed and who will decide that.
- How to deal with the infection of employees.
- A mechanism for determining whether employees, suppliers and customers will be allowed access to the workplace, especially

if they show symptoms of being infected by COVID-19.

- What to do with high-risk/exposure staff (e.g., pregnant, key employees and employees who travel).

After the outbreak:

- Ways to ensure that employees and customers have fully recovered before they are allowed back into the workplace.
- Rehabilitation for sick employees returning to the workplace.

Employers should make visitors to their offices aware of any health and safety hazards associated with entering the workplace before any intended visit, where reasonably practicable.

For general guidance on the contents of a workplace COVID-19 response plan, please review the [Appendix](#), in conjunction with the [Action Point Checklist](#).

4. Can I direct my employees to go home or stay at home if there is an outbreak?

Please refer to question 1 above.

5. Can I direct an employee to see a doctor?

Depending upon the circumstances, an employer may require an employee to obtain a clearance from a doctor before being allowed to enter into the workplace. However, before implementing any such practices, employee consent should be obtained and consideration given to what steps the business will take if an employee is showing any symptoms.

6. Do I have to continue to pay wages and provide other employment-related entitlements during a COVID-19 outbreak?

Please refer to question 1 above.

7. Can I quarantine certain staff to certain parts of an office or send them to a different office?

Generally speaking, this is acceptable, given that the employer is seeking the best ways to adapt during the quarantine in accordance with the UAE authorities, laws and regulations.

8. Can I direct my employees to report suspected cases of COVID-19?

Yes. Reporting suspected cases is obligatory under the UAE Federal Law No. (14) of 2014.

9. Can an employee lawfully refuse to attend work if there is a COVID-19 outbreak?

Yes, if the employee reasonably fears for their health and safety by doing so.

10. Can I screen employees and customers before allowing them to enter the workplace?

Yes.

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RETURN TO COUNTRY OVERVIEWS

COUNTRY OVERVIEWS

As at April 29, 2020

1. What are an employer's main legal obligations?

In the UK, employers are subject to a framework of obligations, partly contained in common law and partly through statute and regulation. This is further complicated by obligations deriving from Europe. The key obligations are:

- The Health and Safety at Work Act 1974 (the "**Act**").
- The common law (which implies a duty to take reasonable care of employees).
- European Council Directive 89/391/EEC (the Framework Directive) which includes the basic duty to ensure safety and health of workers (articles 5 and 6).
- The Coronavirus Act 2020 (the "**Coronavirus Act**").
- Treasury Direction made under Sections 71 and 76 of the Coronavirus Act 2020

The Act and The Management of Health and Safety at Work Regulations 1999 (the "**Regulations**") set out statutory obligations that employers owe to employees. The Act sets out general duties and the Regulations are more explicit in respect of what employers are required to do to manage health and safety under the Act. Under the Regulations employers are required to:

- carry out an assessment of risk to employees' health;
- have in place a clear emergency procedures policy should there be an event that results in 'serious and imminent danger to persons at work';
- communicate relevant information about the emergency procedures to all employees; and
- provide appropriate training to all employees to ensure that the emergency procedures have been understood.

These obligations are very important to employers looking to formulate their response to the threat of customers, staff, visitors to premises etc., being infected with the coronavirus and so spreading the virus into the employer's workforce. An employer is required to undertake risk assessments against identified risks and it is clear that protection against the risk of infection spreading at work requires a risk assessment. Additionally an employer is obliged to stay abreast of health and safety developments, which is key given the rapidly developing situation and consequently the advice being given by public authorities.

There are a number of more specific legal obligations which employers must not overlook. For example, a global pandemic is likely to result in the need for employers to collect, hold and disclose medical information about employees. As a result, the requirements of the General Data Protection Regulation ("**GDPR**") will be particularly relevant.

Information about employees' health will constitute 'sensitive personal data' and therefore such information will have to be processed in accordance with GDPR. However, employers can process medical data relating to a data subject where it is necessary for the employer to comply with its legal obligations in relation to health and safety.

There are enhanced health and safety duties on employers of pregnant women and disabled employees. This is relevant since pregnant women are thought to be more at risk from the coronavirus as are some disabled staff e.g. asthmatics and diabetics. In particular, pregnant workers are entitled to a work assessment under Regulation 16 of the Regulations if there is a potential risk to health and safety of mother or baby. Clearly this would apply to the risk of infection from the coronavirus.

It is important that any review of arrangements and new policies, initiatives etc., are properly recorded, since policies, training and communications need to be recorded for health and safety records (Regulation 3 Health and Safety (Consultation with Employees) Regulations 1996).

It should not be forgotten that under the Act, all employees have a general duty to take reasonable care to ensure that they do not endanger themselves or anyone who may be affected by their actions at work. Employers should remind their employees of this and warn them that their failure to adhere to an emergency procedure, which results in other employees suffering, could result in disciplinary action or even prosecution under the Act.

2. Do I need to prepare for and have in place a workplace plan to deal with COVID-19?

Most employers will already have business continuity plans in place but it is sensible to review these to consider whether they deal with a situation such as an infectious disease pandemic. If not, then they should be amended quickly and re-communicated to employees.

There are a number of highly important sources of advice for employers. In our view, the duty of health and safety requires employers to stay on top of the latest information about the spread of coronavirus in areas of the world relevant to the employer and its business. This could include advice relating to foreign travellers from associated companies and customers visiting the UK, foreign travel by UK employees to other parts of the world or something as simple as considering areas of high risk of infection within the UK (e.g. during a daily commute on public transport). Useful sources of advice which we have identified include:

[Pandemic flu: workplace guidance – Health and Safety Executive](#)

[Covid-19: specified countries and areas – gov.uk](#)

[Coronavirus \(Covid-19\): government response – gov.uk](#)

[Coronavirus \(Covid-19\): guidance for employers and businesses – gov.uk](#)

[Travel advice coronavirus \(Covid-19\) - gov.uk](#)

[WHO coronavirus disease \(Covid-19\) outbreak](#)

3. What should a workplace COVID-19 response plan cover?

For general guidance on the contents of a workplace COVID-19 response plan, please review the [Appendix](#), in conjunction with the [Action Point Checklist](#).

4. Can I direct my employees to go home or stay at home if there is an outbreak?

Much would depend on the terms of the individual contract. Equally most employees who are capable of working at home may well accept this readily, regardless of the power under the contract to require this to happen.

Following the Prime Minister's confirmation on March 16, 2020, that everyone should stop non-essential contact with others, stop all unnecessary travel and work from home where they possibly can, many employers have now directed employees to work from home.

5. Can I direct an employee to see a doctor?

Current government guidance states that businesses and workplaces should encourage their employees to work at home, wherever possible. If someone becomes unwell in the workplace with a new, continuous cough or a high temperature, they should be sent home and advised to follow the "[stay at home](#)" guidance.

The latest guidance on the gov.uk website also "strongly suggests" that employers use their discretion around the need for medical evidence for a period of absence where an employee is advised to stay at home either as they are unwell themselves, or live with someone who is, in accordance with the public

health advice issued by the government. Whilst this, naturally, requires a degree of trust in employees, it is probably sensible for employers to take this approach, especially since individuals are now advised to contact NHS 111 rather than visit the GP, pharmacy, urgent care centre or hospital. The Government has now introduced a scheme for employees to obtain online Isolation Notes, to provide documentary evidence about the need for self-isolation. Whilst these will, presumably, still require an employer to trust the employee in relation to the information being provided to NHS 111 we anticipate that employees and employers will draw some comfort from having an electronic note confirming the advice given to the employee.

6. Do I have to continue to pay wages and provide other employment-related entitlements during a COVID-19 outbreak?

The Coronavirus Job Retention Scheme (commonly known as the Furlough Scheme)

The recently introduced Scheme enables employers to claim a grant of up to 80% of the employee's "regular wage" or £2,500 per month, whichever is the lower. In addition to this, the employer is also covered for employer National Insurance contributions and automatic enrolment employer pension contributions on that subsidised wage. If the employer pays 100% of the salary whilst on Furlough leave then those excess National Insurance contributions and pension contributions are not covered.

The Furlough Scheme applies to all employers. Any UK organisation with employees can apply. It provides that any employees (including apprentices and company directors) can be put

on Furlough provided they were on the PAYE payroll on or before 19 March 2020. Similarly fixed term employees must have been on that PAYE payroll by that same date. They also however need to be notified to HMRC on an RT1 submission on or before 19 March 2020. It is unclear whether employees have to consent to be placed on furlough as the Direction and the relevant Guidance Note is not consistent but it is more likely that provided the employer is authorised to instruct the employee to go on furlough then that is enough. However, the point is not entirely clear at the time of writing.

It is an all or nothing Scheme which does not permit individuals to undertake any revenue generating activities for the employer whilst they are on Furlough. The Government accepts that holiday may be taken whilst on furlough. Under English law, an employer can generally require some holiday to be taken at a time specified by the employer. There is nothing in the Direction or the Guidance Note that alters that general position.

The Treasury Direction governing the Scheme identifies that an employee is capable of being a furloughed employee if they meet three conditions:

1. the individual has got to have been instructed by the employer to cease all work in relation to their employment;
2. the period for which the employee has or will have ceased such work is 21 calendar days or more;
3. the furlough instruction "is given by reason of circumstances arising as a result of coronavirus or coronavirus disease".

Whilst employees are furloughed, they will continue to accrue leave in line with the employment contract. Employees can take holiday whilst on furlough, so allowing an employee to take one day of holiday will not invalidate a three-week furlough period, which

would leave the employer significantly out of pocket.

Coronavirus Statutory Sick Pay Rebate Scheme

If staff are self-quarantining because they are showing symptoms of the coronavirus, then an employer's sick pay policy will apply. The Coronavirus Act has amended the rules so that statutory sick pay is now payable from the first day of sickness or self-isolation rather than the fourth.

There is also a Coronavirus Statutory Sick Pay Rebate Scheme which will repay employers the current rate of SSP that they pay to current or former employees for periods of sickness starting on or after 13 March 2020. Employers who pay more than the current rate of SSP can only claim the current rate amount. The repayment will cover up to two weeks starting from the first day of sickness if an employee is unable to work because they either (1) have coronavirus or (2) cannot work because they are self-isolating at home. However, it is very unclear whether staff can be put on furlough after they have become ill. The Guidance Note indicates that this is possible whilst the Direction takes a contrary view. We think that the Guidance Note, in practice, will set expectations and so employers can furlough employees who are sick and pay them under the Furlough Scheme but the point is not clear-cut.

Working Time (Coronavirus) (Amendment) Regulations 2020 ('Amendment Regulations')

The government has made amendments to the Working Time Regulations which will allow workers to carry up to four weeks of annual leave over into the next two leave years. This will only apply where they have not been able to take their statutory annual leave entitlement due to coronavirus. The Amendment Regulations also restrict an employer's right to

refuse consent to leave being taken on particular days. Employers will only be able to require a worker not to take carried-over leave on particular days where they have a "good reason" to do so. "Good reason" for this purpose has not been defined, although genuine operational reasons are likely to be sufficient.

Our view is that staff should be paid if they are being asked to remain away from work on medical grounds by either the employer or a medical expert. The same would apply where the medical advice is for individuals to remain away from work although they have only mild symptoms. The same advice would also apply to those with an Isolation Note. Subject to the terms of the contract we think this would be treated as contractual sick pay but we anticipate that many employers will choose to treat people as being on full pay if they have no symptoms but sick pay if they have mild symptoms.

Where individuals are self-isolating because the employer asks them not to attend work (perhaps the employer is taking a more cautious view on the spread of the infection or the individual belongs to a high risk group that the employer wishes to protect) then again we think that the employer should be providing full payment to those individuals. Although the point is arguable, it would seem to be difficult for an employer to require an employee who is otherwise fit and well and willing to work, to stay away from work and then not pay them in full under the contract. It is possible that a different conclusion might be reached if the contract specifically identified another option (for example short time working). In addition, any policy or procedure put in place by an employer is going to depend on compliance of individuals. If the employer is trying to suspend individuals who have self-reported that they have visited an area that was infected or they had come into contact with someone who is

infected, but the employer is not going to pay them, then this will only encourage non-compliance with the underlying procedure by the employee.

The other point to bear in mind is that the employer's treatment of its workforce in these circumstances is going to be remembered. Individuals who are effectively prevented from working and then who are not paid in accordance with the company's sick pay policy or (when they are not sick) are not paid in full, will remember that treatment. Conversely, where an employer has implemented a speedy and effective policy and has stood by employees and complied with the sick pay policy or paid them in full (depending on the reason for absence), this will be a powerful factor in building loyalty and stability in the workforce.

7. Can I quarantine certain staff to certain parts of an office or send them to a different office?

The likelihood is that, in most cases, assuming the employer is trying to take sensible steps, employees will not seek to contest these. Bear in mind that, at the time of this note, many offices are now closed and so for many employees this issue can only apply to key staff, either because the employer has identified them as key, or because the UK Government's identification as key staff applies to them and so they are generally still attending their place of work on a regular basis.

If there is a dispute about the action the employer proposing to take, then the answer will partly depend on the terms of the contract of employment. An employer is entitled to issue reasonable instructions, provided these do not contravene the terms of the contract of employment. Reorganizing an office so that

individuals (such as key staff) have reduced contact with other staff is unlikely to be a breach of contract. Requiring staff to work at a different location could be a breach of contract if it is outside the scope of the relocation clause contained in the contract. If an employer is trying to quarantine high risk staff out of concerns for their safety, it is unlikely that this would amount to a contravention of the legislation prohibiting discrimination against disabled individuals (assuming that high risk staff are more likely to be viewed as disabled). However, if staff object, and it is arguable that the staff being quarantined will suffer a detriment as a result, then the employer may have to tread more carefully. You would hope that an employer that communicates its plans carefully and rationally, and takes on board any concerns raised by employees, is unlikely to have a problem with sensible measures.

8. Can I direct my employees to report suspected cases of COVID-19?

Yes, in the event of a COVID-19 outbreak, in our view, it would be lawful and reasonable to ask an employee to report if they suspect they have COVID-19. The employer has an obligation to report any instances of an employee becoming infected through transmission at work.

9. Can an employee lawfully refuse to attend work if there is a COVID-19 outbreak?

Since many offices are now closed or relying on skeleton staffing only, this issue is only applicable to relatively few employees. Conversely for staff who are key, there will be a greater need for them to attend the office and so greater pressure on them to do so, even if they have understandable concerns. However,

as lockdown arrangements are released then this will become much more of an issue. We have written about such issues in our think piece article called '[Life in the time of Corona](#)', available on our website.

The same issues are likely to arise for employers, whether the employee is being asked to attend work during the lockdown period or is being asked to return to work as restrictions are lifted. In principle, an employee who has no rational reason for staying away from work is guilty of unauthorised absence and can be disciplined accordingly. Employers will want to ensure that they are approaching similar cases in a similar fashion so this may require a joined up approach between different sites and different cases.

But this cannot be answered in the abstract. For example what approach should an employer take with one of the high risk groups who may be more likely to be infected or for whom the consequences are worse? The provisions of Section 44 ERA 1996 also need to be borne in mind. If the employee takes appropriate steps to protect themselves in circumstances where they believe that there is a serious or imminent danger to them, then any attempt to discipline or dismiss that staff member will give rise to an uncapped damages claim. It may be better to say in any policy document that, where an individual has concerns about attending work (given the possibility of picking up the virus) then this must be disclosed before the working day in question and the employee should accept that they should work at home so far as possible and if necessary outside normal working hours, to ensure continuity of operations.

The Coronavirus Act has created 'Emergency Volunteering Leave', which will enable emergency volunteers in health or social care to take unpaid time off work and receive compensation for loss of earnings. Any

employee is entitled to become a volunteer and is entitled to give just three days' notice to the employer. The terms of their employment will be unaffected by their volunteering apart from remuneration, and they will be allowed to return to work as normal after the volunteering stint which is similar to maternity leave.

10. Can I screen employees and customers before allowing them to enter the workplace?

We are aware of a number of examples in the UK where employers are proposing to introduce such screening. There are two separate ways to evaluate this.

The legal issues are tricky. Some form of screening will almost certainly involve the processing of sensitive personal data about that individual. In practice, where an employee consents to this, there is unlikely to be any significant legal risk. However, the litmus test is going to be what happens with an employee, customer, supplier, etc., who declines to be tested. Can the employer then prevent access, in the case of an employee, to the building, where the employee has declined to be tested? Similarly, human rights and civil liberties issues are likely to be engaged if an employee has to permit testing to take place as a precondition to being allowed in to work. If an employee declines to be tested in those circumstances, but is otherwise ready and willing to work and is not exhibiting any signs of illness, then the employer probably has to pay the employee whilst they are at home, since they would, in effect, be suspended. We think it is unlikely that employers would wish to consider dismissing employees (purportedly on the basis that they have declined to comply with a reasonable instruction, i.e. to permit testing to take place).

On the other hand, employers owe a duty to employees generally to take reasonable care for their health and safety. A screening program, designed to slow down the spread of the virus amongst the workforce, has, clearly, got a legitimate objective. The virus is spread by people before any visible symptoms appear, so testing is necessary to identify people who are carriers. Businesses whose workforce has a lower and slower rate of infection will weather the storm more easily than one where there are high rates of infection, leading to mass absences from work. So there is also a legitimate business reason for a testing/screening program. It is also difficult to see many employees objecting to the screening, particularly if it is done in the right way.

Our expectation is that an increasing number of employers will elect to have screening or testing programs. We think it will be important that an employer has considered carefully how to communicate the need for testing, and what the test results will (and will not) identify. The employer should also consider who will be doing the testing, and whether it will be a medically trained professional. Clearly, the test equipment itself must be medically sound. Employers will also need to think about how people will be told if there is a potential adverse result, so that the individual is required to return home. Can individuals be told privately that there is a chance they have become infected, or will this happen publicly? How will employees get home, having been told that they are potentially infectious?

Ultimately, we think that employers may well take the view that it is better to slow down the spread of the virus in the workforce, than run the relatively low risk of a claim from a disappointed employee who declines to take the test. We think that an employer is unlikely to be able to suspend an employee who has not taken the test, and refuse to pay them. An

employee who is otherwise ready, willing and able to work, who is suspended by the employer, almost certainly has the right to be paid during that period of absence. The employer's sanction would be to institute disciplinary action against the individual. However, we think that is unlikely to be attractive to employers.

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[RETURN TO COUNTRY OVERVIEWS](#)

COUNTRY OVERVIEWS

As at April 20, 2020

1. What are an employer's main legal obligations?

The main areas of an employer's legal liability associated with coronavirus in the workplace include:

- Ensuring so far as reasonably practicable the workplace health and safety of employees (i.e., obligations under the Occupational Safety and Health Act;
- Complying with applicable stay-at-home orders and other directives restricting movement and business activities;
- Complying with wage-and-hour obligations under the Fair Labor Standards Act and applicable state laws (e.g., continuing to pay wages);
- Complying, where applicable, with the Americans with Disabilities Act ("**ADA**") and related state laws;
- Complying with the federal Family Medical Leave Act ("**FMLA**") and analogous state laws;
- Complying with the Families First Coronavirus Response Act ("**FFCRA**") (for employees with fewer than 500 employees), as well as state and local sick leave laws; and
- Ensuring that employees are covered by Workers' Compensation insurance and timely

reporting illnesses/death under OSHA and analogous state laws.

Employers may also wish to review existing insurance policies and consider any applicable business interruption insurance, medical insurance and evacuation coverage. In addition, to the extent employers are considering laying employees off or reducing the size of their workforce, they should consider their potential obligations under the federal and analogous state WARN Acts. Employers contemplating salary or wage reductions should be cognizant of applicable notice requirements under applicable state laws.

2. Do I need to prepare for and have in place a workplace plan to deal with COVID-19?

There is no legal obligation in the United States for an employer to specifically have a workplace COVID-19 response plan. However, the "General Duty" clause of the Occupational Safety and Health Act generally requires US employers to provide employees with a safe and healthy workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm, and to comply with occupational safety and health standards and rules.

There are several practical steps that employers should take in connection with COVID-19:

- Implement a Communicable Diseases Policy which sets forth the general manner in which the employer will address communicable diseases in the workplace.
- Develop a specific plan dealing with workplace health and safety issues associated with COVID-19 and implement it. The more detailed the plan, the better prepared an employer will be to cope with any COVID-19 outbreak in their workplace. A plan should deal with preparations to prevent an outbreak, what will happen during an outbreak, and the steps to be taken after the outbreak. Workplace health and safety issues and business continuity issues should be covered in the plan.
- Appoint a central point of contact and cross-functional emergency management team ("EMT") to address all of the workplace issues arising from a COVID-19 outbreak, including employee health and safety; internal and external messaging; medical and sick leaves; workers' compensation; short-term disability; the interactive process and potential accommodations under the ADA; confidentiality and privacy protections; technology support; and legal compliance. Where feasible, the EMT likely should include, at a minimum, representatives of the HR, communications, IT, and legal departments. The EMT should be given sufficient authority (or access to authority) to act nimbly and decisively in the face of quickly changing information and circumstances while possessing the flexibility to make adjustments as time goes on and business needs may require.
- Ensure that the EMT monitors the news and governmental websites on a daily basis for reliable information in this highly fluid situation.

3. What should a workplace COVID-19 response plan cover?

The U.S. Centers for Disease Control ("CDC") has issued [Interim Guidance for Businesses and Employers](#) (the "**Interim Guidance**"), which sets out the guidelines on preventive measures that may be taken by employers. A COVID-19 response plan should also address continuity of business operations in the event employees need to work from home or businesses need to work at decreased staffing levels as a result of quarantine orders or otherwise.

For general guidance on the contents of a workplace COVID-19 response plan, please review the [Appendix](#), in conjunction with the [Action Point Checklist](#).

4. Can I direct my employees to go home or stay at home if there is an outbreak?

Yes, but any work-from-home policies must be implemented in a nondiscriminatory manner so that there is no disparate treatment of employees in any particular protected classes. Consistent with CDC guidance, employers should actively encourage employees to stay home if they are sick or have been exposed to someone who is sick, and to remain home until they meet evolving CDC [guidelines](#) for returning to work.

Similarly, consistent with CDC guidance, individuals who have returned from certain countries must be quarantined for a period of 14 days. Employers should require that if any employees become ill during a quarantine period, they should seek medical care and may return to work only after they have received appropriate clearance from their medical provider, in accordance with CDC guidelines.

When deciding whether to quarantine any employees and when dealing with employees required by governmental authorities to be quarantined, employers may need to address how to compensate such employees, particularly those who cannot work remotely during the quarantine period. Generally, subject to any contractual obligations that an employer may have, employers are permitted to require quarantined employees to use paid time off, provided that they do not work during that time.

Further, if the employer is dealing with unionized employees, there may be an obligation to negotiate with the union regarding quarantine policies because they may alter the terms and conditions of employment, which include wages and hours of work. Depending on the terms of the collective bargaining agreement, the employer may have the right to send an employee home but may still have to pay the employee based on the union-rights clause.

Importantly, the federal government and a number of state and local governments have taken steps to enact new paid sick leave laws that will benefit workers impacted by COVID-19. These laws generally expand existing sick leave and family leave rights and add protections for infected or quarantined employees. For example, the FFCRA, which took effect on April 1, 2020 and expires on December 31, 2020, applies nationwide to employers with fewer than 500 employees. The FFCRA generally requires employers to: (a) provide employees with two weeks of paid emergency sick leave for those unable to work (or telework) as a result of certain COVID-19 reasons; and (b) provide employees with up to 12 weeks of emergency leave in the event they have a "qualifying need" (limited to school closures and related childcare problems) because of COVID-19; the first 10 work days

are unpaid, but the following leave period of up to 10 weeks is paid leave. Both the paid sick leave and the paid family leave provisions are subject to daily and aggregate caps on the amounts paid to employees. Employers who are required to provide these paid leaves pursuant to the FFCRA are entitled to dollar-for-dollar tax credits to cover the costs of paying for the FFCRA leave benefits. We prepared an initial [Legal Update](#) providing an overview of the FFCRA shortly after it was passed, as well as a supplemental [Legal Update](#) with a more comprehensive analysis of the FFCRA and subsequent guidance and regulations regarding the law that were issued by the Department of Labor.

As the coronavirus continues to spread, employers may encounter an increasing number of employees who wish to self-quarantine or self-isolate to protect themselves from workplace exposure to the virus. While employers are not required to grant such requests if they are not subject to a government stay-at-home directive or similar order, employers may want to permit them, to the extent employers have the flexibility to allow employees who wish to self-quarantine to do so. Notably, employees generally are not entitled to leave under the ADA, FMLA, FFCRA, the Occupational Safety and Health Act or sick leave laws if they wish to stay at home for the purpose of avoiding the risk of getting sick if there is no indication of any imminent danger of being exposed to the virus.

5. Can I direct an employee to see a doctor?

If an employee misses work for the employee's own illness due to the coronavirus, employers may (and arguably should) require a medical certification from the employee's physician before permitting the employee to return to work.

6. Do I have to continue to pay wages and provide other employment-related entitlements during a COVID-19 outbreak?

It depends on whether the employee is working and/or whether your business is subject to the FFCRA and related emergency state and local laws. Strictly speaking, subject to any contractual obligations that an employer may have and statutory sick and family leave laws, employers are generally permitted to require employees to use paid or unpaid time off in the event they miss work, provided that they do not perform any work during that time. Employers generally must continue to provide employees with group health insurance and other coverage, even if they are temporarily on leave. As noted above, employers may also have contractual obligations to certain employees, such as unionized employees.

As mentioned above, Congress recently passed the FFCRA to provide employees who work for companies with fewer than 500 employees with paid sick leave and paid family leave related to COVID-19. But all employers, regardless of their size, should pay close attention to emergency legislation on family and sick leave at the state and local levels. For example, New York State's emergency paid sick leave law applies to all private employers with employees in New York, regardless of the employer's size.

7. Can I quarantine certain staff to certain parts of an office or send them to a different office?

Possibly. Under the Occupational Safety and Health Act, employers have an obligation to maintain a safe and healthy workplace, and the CDC has recommended separating sick

employees from those who are not exhibiting symptoms. However, employers must be mindful of their obligations under the ADA and related state laws. While the coronavirus is, for many infected individuals, a temporary and mild condition that may not progress to the level of a disability, the ADA prohibits employers from discriminating against employees whom the employer *perceives* as disabled. It also is possible that employees infected with COVID-19 may develop more serious problems that constitute a "disability" under the ADA. If so, employers will need to consider the required "interactive process" under the ADA and whether reasonable accommodations, such as an additional leave of absence, might enable the employees to return to work or otherwise perform the essential functions of their jobs, as well as any corresponding undue hardships.

Depending on the circumstances, an employer may ask an employee to work from a particular part of an office if it is to ensure the health and safety of the employee or their co-workers. The question whether an employer can send an employee to work in a different office may be more complicated depending on the circumstances, such as the extent of the travel required and inconvenience suffered by changing the work location. For example, it may not be permissible to change an employee's workplace to a different state or country when the employee does not usually travel as part of their duties. Recent travel restrictions also would need to be considered.

8. Can I direct my employees to report suspected cases of COVID-19?

Yes, it is permissible and reasonable to ask employees to report if they suspect that they or other employees have COVID-19. However,

employers should be mindful of their obligations to maintain confidentiality with respect to employee medical information. Employers should not disclose or disseminate the name of any infected employee(s) to their co-workers or any information regarding their medical condition or history, including the fact that an employee shows symptoms of an illness or has (or had) been diagnosed with an illness. However, the Equal Employment Opportunity Commission (“**EEOC**”) has issued [a technical assistance document](#) on COVID-19 that permits employers who learn of an employee with COVID-19 to disclose the name of that employee to public health agencies.

9. Can an employee lawfully refuse to attend work if there is a COVID-19 outbreak?

Maybe. An employee can only lawfully refuse to attend work if there is an “imminent danger,” i.e., a danger exists that could reasonably be expected to cause death or serious physical harm immediately or before OSHA can investigate it. But an employee may not be disciplined or discharged for refusing to report to work if the employee genuinely believes that there is an imminent danger of being infected with COVID-19 by coming to work, and a reasonable person would conclude that there is a real danger of being infected. However, other than using accrued vacation or paid time off, the employee would not be entitled to be paid for the time missed from work. As noted above, employees generally are not entitled to leave under the ADA, FMLA or sick leave laws if they wish to stay at home for the purpose of avoiding the risk of getting sick, absent any imminent danger of being exposed to the virus. But an employee-by-employee analysis is the best approach when employees raise concerns, as each employee may have unique circumstances that should be considered.

10. Can I screen employees and customers before allowing them to enter the workplace?

Yes. On March 11, 2020, the World Health Organization (“**WHO**”) declared COVID-19 a pandemic. On March 13, 2020, President Trump declared the COVID-19 outbreak a “national emergency.” In light of these declarations, the screening of employees and other workplace visitors is a reasonable step for an employer to take to reduce the risk of its employees being exposed to harm.

With respect to employees, the ADA generally prohibits covered employers from requiring medical examinations of employees unless they are job-related and consistent with business necessity when an employer has a reasonable belief, *based on objective evidence*, that (i) an employee's ability to perform essential job functions will be impaired by the medical condition or (ii) an employee will pose a direct threat to others due to the medical condition.

In 2009, in conjunction with the H1N1 flu pandemic, the Equal Employment Opportunity Commission (“**EEOC**”) issued a [technical assistance document](#) on how employers should handle the workplace implications of that pandemic in conjunction with the requirements of the ADA. The EEOC emphasized that whether a pandemic influenza rises to the level of a “direct threat” (such that it cannot be eliminated or reduced by a reasonable accommodation) depends on the severity of the illness. At the time, the EEOC added that if the CDC or state or local public health authorities determine that a pandemic influenza is significantly severe, it could rise to the level of a direct threat.

After the WHO declared COVID-19 a pandemic, the EEOC issued a technical assistance document on COVID-19 titled “[What You](#)

[Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)”, which specifically advises employers that they may measure the body temperatures of employees. The EEOC’s guidance also permits employers to inquire about employees’ symptoms, such as fever, chills, cough, shortness of breath, sore throat, and loss of sense of taste and smell.

Employers should be mindful that inquiries and testing may only go so far in trying to prevent the spread of COVID-19. For example, a fever is only a symptom of COVID-19. Thus, even if a temperature test were to reveal that an employee has a high fever (in excess of 100.4 degrees, as noted by the CDC), the test will not necessarily establish that the employee has or may have COVID-19. Furthermore, as noted by the EEOC, just because a test shows that an employee is free from a fever does not mean that the employee is not infected with the COVID-19, as some people with COVID-19 do not have a fever. For these reasons, testing will have its limits.

Importantly, all medical information gathered about any employees, either as a result of questions about their health or that result from temperature testing, should be kept confidential and maintained separate from an employee’s personnel records. Further, there are a variety of practical considerations that employers need to assess if they wish to implement screening or testing. Accordingly, we recommend that employers consult with their counsel before implementing such procedures.

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RETURN TO COUNTRY OVERVIEWS

COUNTRY OVERVIEWS

As at April 17, 2020

1. What are an employer's main legal obligations?

The main areas of an employer's legal liability associated with COVID-19 in the workplace include:

- Ensuring so far as reasonably practicable the workplace health and safety of employees (i.e., obligation under the Occupational Safety and Hygiene Law ("**OSHL**"), and a duty of care);
- Complying with obligations under the contract of employment and the Labour Code (e.g., continuing to pay wages, ensuring the employee works within the terms of the contract of employment);
- Complying with the Prevention and Control of Contagious Diseases Law ("**PCCDL**");
- Complying with the Medical Examination and Treatment Law ("**METL**"); and
- Complying with the Social Insurance Law, the Health Insurance Law and the Unemployment Insurance Law (collectively referred to as "**Insurance Laws**") (this covers matters such as having appropriate insurance and timely reporting of illnesses/death).

An employer may also wish to consider business interruption insurance, medical insurance and evacuation cover.

2. Do I need to prepare for and have in place a workplace plan to deal with COVID-19?

There is no legal obligation in Vietnam on an employer to specifically have a workplace COVID-19 response plan. However, the OSHL requires all employers in Vietnam to, so far as reasonably practicable, ensure the safety and health at work of all their employees. Therefore, an extension of this logic is that employers should develop a plan dealing with workplace health and safety issues associated with COVID-19.

3. What should a workplace COVID-19 response plan cover?

The Ministry of Health has issued [Guidelines on Prevention of Disease associated with a Novel Infectious Agent in Workplace and Dormitories](#) which sets out the guidelines on preventive measures that may be taken.

For general guidance on the contents of a workplace COVID-19 response plan, please review the [Appendix](#), in conjunction with the [Action Point Checklist](#).

4. Can I direct my employees to go home or stay at home if there is an outbreak?

Yes, but the employer must exercise care in this regard. If the employee is infected with COVID-

19 and keeping them away from the workplace is reasonable and necessary to protect public health, then the employer may direct the employee not to attend the workplace. The employer should continue to comply with its obligations under the contract of employment (e.g., to pay wages).

The PCCDL also generally prohibits any prejudicial treatment of infected persons, such as publishing negative images and information regarding an employee on the basis that the person suffers from an infectious disease. There may be exceptions if such actions are necessary and reasonable to protect public health but an employer should exercise caution in this regard and seek specific advice.

5. Can I direct an employee to see a doctor?

Generally not, but exceptions exist for infectious diseases. Under METL, requesting an employee to see a doctor is invasive (except with respect to infectious diseases – see question 4 above) and an employer would therefore generally require an express power in the contract of employment to direct an employee to see a doctor. Depending upon the circumstances, an employer may require an employee to obtain a clearance from a doctor before being allowed to enter the workplace.

6. Do I have to continue to pay wages and provide other employment-related entitlements during a COVID-19 outbreak?

Generally, yes, unless the parties mutually agree to suspend performance of the contract. In that case, the wage may be paid but should not be lower than the minimum wage as

prescribed by employment guidance regulations.

7. Can I quarantine certain staff to certain parts of an office or send them to a different office?

An employer should exercise care in this regard so as not to contravene the PCCDL. An employee with COVID-19 (or suspected of having it) will be a person with an "infectious disease" for the purposes of the PCCDL. Depending on the circumstances (including if an exception applies under the PCCDL – see question 4 above), an employer may ask an employee to work from a particular part of an office if it is reasonably necessary to ensure public health. As to whether an employer can send an employee to work in a different office, that would also depend on the circumstances – a key factor would be the employment contract (e.g., whether it provides that the employee is entitled to work at a particular location), the extent of the travel required and inconvenience suffered by changing the work location.

8. Can I direct my employees to report suspected cases of COVID-19?

Yes, in the event of a COVID-19 outbreak, in our view, it would be lawful and reasonable to ask an employee to report if they suspect that they have COVID-19.

9. Can an employee lawfully refuse to attend work if there is a COVID-19 outbreak?

An employee may lawfully refuse to attend work due to the COVID-19 outbreak. Certain exceptions exist and certain employees, such as those responsible for implementing tasks to protect human lives and assets of agencies,

organizations or individuals in the prevention and remediation of the epidemic and other emergency services may not refuse to attend work. In this situation, there will be a suspension of work and the employer and the employee will have to negotiate the terms of the suspension, which will not be lower than the regional minimum wage.

10. Can I screen employees and customers before allowing them to enter the workplace?

Perhaps. Depending upon the extent of the outbreak, the screening of employees and customers may be a reasonable step for an employer to take to reduce the risk of its employees being exposed to harm. However, depending upon technological and medical testing limitations, there may be logistical and privacy issues with undertaking any such screening in a timely and effective manner before gaining entry to the workplace.

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WORKPLACE COVID-19 RESPONSE PLAN

A plan should deal with the following:

BEFORE AN OUTBREAK

- Preventive measures.
- Disinfecting the workplace regularly.
- Maintaining good indoor ventilation.
- Making sure that employees, suppliers and customers are aware of the employer's plans in the event of an outbreak.
- Ensuring sufficient supplies of appropriate masks, alcohol wipes, gloves, paper towels, thermometers, disinfectants, etc.
- If employees are required to travel to areas known to have the virus, whether such travel is necessary.
-

DURING AN OUTBREAK

- The steps the employer will take to ensure the safety of employees while at work during a COVID-19 outbreak include how an employer will identify risks of employees becoming infected and how to minimize such risks. The employer may also wish to seek advice from government/official sources as to what steps need to be taken, e.g., quarantine requirements.
- Communication strategies, such as how and what information will be communicated to employees, suppliers and customers.
- Where employees will work, e.g., home, in the office or in alternative temporary offices.
- How to deal with infection and/or deaths of colleagues, e.g., counselling.
- A mechanism for determining whether employees, suppliers and customers will be allowed access to the workplace, especially if they show symptoms of being infected by COVID-19.
- What to do with high-risk/exposure staff (e.g., pregnant, key employees and employees who travel).

AFTER AN OUTBREAK

- Ways to ensure that employees and customers have fully recovered before they are allowed back into the workplace.
- Rehabilitation for sick employees returning to the workplace.

Communication with employees and flexibility on enforcing requirements imposed on employees under their contract of employment will be important in maintaining employee relations and reducing anxiety and panic during an outbreak. Therefore, subject to local legal obligations and requirements, and depending on the circumstances, employers may wish to:

- Discuss with staff the possibility of a workplace closure prior to closing.
- Allow employees to take annual leave or unpaid leave once sick leave has been exhausted.
- Allow employees to work from home.
- Explore salary reduction or unpaid leave as an alternative to termination of employment where business has slowed down.

Employers should make visitors to its offices aware of any health and safety hazards associated with entering the workplace before any intended visit, where reasonably practicable.

[RETURN TO OVERVIEW](#)

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