

# COVID-19: How and where to work

## Guide for International Employers

COVID-19 is not going away any time soon, but there is now hope in the form of vaccination. We take a look at how this changes the picture and look at whether you can mandate testing for coronavirus or require vaccination, how to handle a refusal or inability for someone to be vaccinated - and in all this, what data privacy issues arise. We also think about the growing questions around remote working and take a special look at what an employer's responsibilities are if, for example, someone works from another country. This can potentially throw up a raft of issues, including tax, social security, immigration, local employment law, data privacy, health and safety measures – and even the possibility of inadvertently creating a permanent establishment for the business in the country concerned, with all the hurdles and liabilities that could lead to.

Our specialist employment lawyers from across the world have put together this Guide on 'How and Where to Work' to help international employers navigate these key issues.



We take a detailed look at the following topics across the countries in our alliance of law firms:

## Our list of topics is:

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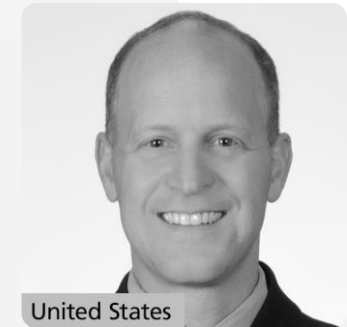
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### Our Global Taskforce

Get in touch with our coronavirus team for all queries about employment and the coronavirus in any of our 59 countries. The team can put you directly in touch with partners in the countries you need to know about.

Note that we make every effort to keep this document up to date, but the landscape is changing rapidly. Before you take action based on anything we say here, please verify it with a specialist employment lawyer. There are plenty to choose from – at the end of each country's text you will find contact details.

You can also visit our [Coronavirus Resource Page](#) and find the information and tools you need to help you manage your international workforce in the wake of COVID-19.

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# Australia

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## 1. Government support for employers

A range of measures are in place to support businesses at both a Federal level, and an individual State and Territory level, including financial support. One of the key financial support mechanisms is the Job Keeper Payment, which has been extended by the Australian Government until 28 March 2021.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

An employer may be able to require employees to take a COVID-19 test by issuing a reasonable and lawful direction, on the basis that that it is an inherent requirement of the employee's role to be free of COVID-19, or that it is necessary for the employer to discharge its health and safety obligations (see 2.2 below). If an employer wishes to require employees to be tested for COVID-19, it should consult with employees and any health and safety representatives about imposing this requirement in line with its obligations under the health and safety laws of each Australian State and Territory and develop a COVID-19 testing policy.

### 2.2 Vaccination and vaccination status in the workplace

*Mandatory COVID-19 vaccinations for work*

Currently, there is no mandatory requirement for individuals to be vaccinated against COVID-19 in Australia. There is also no law that expressly permits employers to require employees to be vaccinated against COVID-19. This may be subject to change.

An employer may require employees to be vaccinated on the basis that this will assist it in discharging its obligations to provide and maintain a safe working environment under occupational health and safety legislation. Employers owe health and safety duties not only to employees, but to those impacted by their operations. Any such requirement should only be issued after consultation with employees and any health and safety representatives, in accordance with the applicable health and safety laws. A requirement may have a stronger basis in industries or workplaces where the risk of COVID-19 transmission is increased, or vulnerable groups of people are impacted by the employer's operations, such as health and aged care settings.

An employer may also issue a lawful and reasonable direction requiring employees to be vaccinated, on the basis that it is an inherent requirement of the employees' role for the employee to free from COVID-19. Whether this would amount to a lawful and reasonable direction will depend on the employer's operations, the employee's role and the employee's

personal circumstances (for example, any reasonable grounds they may have to refuse the vaccination, such as a medical condition).

This is yet to be tested by the Fair Work Commission (the Australian workplace Tribunal) or Courts. However, in the context of a childcare worker and an employer's policy requiring flu vaccination, a view was expressed in passing by the Fair Work Commission that such a requirement is arguably lawful and reasonable where the inherent requirements of the employee's role involved the care of children, including those too young to be vaccinated or unable to be vaccinated for health reasons.

Risks associated with insisting on mandatory vaccinations for employees may include:

- **Unfair dismissal claims** (e.g. an employee may claim constructive dismissal if they are not permitted to perform work without being vaccinated).
- **General protections claims** (e.g. an employee who does not want to be vaccinated, or complains about the requirement, could construct an 'adverse action' claim under the general protections provisions of the FW Act).
- **Unlawful discrimination claims** (e.g. an employee unable to receive the vaccine may allege discrimination

against the employer if the employer seeks to insist upon it, or treat them differently due to their inability to receive the vaccine).

- **Damage to employee and union relations:** a mandatory vaccination requirement could result in push-back and disputation with a representative union or employees.

An employer may have a strong basis to direct to employees to disclose their COVID-19 vaccination status, based on the inherent requirements of the employee's role, or to enable the employer to discharge its health and safety obligations. If this requirement is based on health and safety concerns, it should only take place after consultation obligations, as noted above, are discharged.

### **2.3 Incentives for vaccination**

COVID-19 vaccination will be free for all Medicare-eligible Australians and all visa-holders, excluding visa sub-classes 771 (Transit), 600 (Tourist stream), 651 (eVisitor) and 601 (Electronic Travel Authority). Offering rewards or incentives for employees to get the vaccine could be discriminatory against those who cannot get vaccinated due to, for example, health reasons. Any reward or incentive programme would need to be managed to minimise those risks. This might include an acknowledgement that employees who cannot receive the vaccine would not be eligible for the reward/incentive, with an assurance that

they would not otherwise be treated differently.

### **2.4 Dealing with refusal or inability to get vaccinated**

Equal Opportunity Laws in Australia protect employees from discrimination on the basis of individual attributes, including health (such as allergies, pregnancy, and disabilities), religion and political opinions. Depending on the circumstances, an employee may be able to reasonably rely on one of these grounds to refuse the vaccine. For instance, it is possible that a refusal on the grounds of pregnancy would be reasonable and justified based on current health advice.

Disciplinary actions for employees who refuse vaccination could include requiring the employee to work from home (if possible), preventing the employee from entering the workplace (if this was based on, for example, the workplace being a high-risk area), altering duties or responsibilities, or terminating employment. Whether these actions are reasonable would heavily depend on all the circumstances including the employer's rationale for mandating vaccinations, and the employee's reason for refusing.

If an employee has reasonable grounds to refuse to comply with a vaccination requirement, a risk assessment will be required to determine the risks associated with permitting the employee

to attend the workplace and any measures able to be put in place to address any risks identified. This may, for example, result in accommodating an alternative working arrangement for the employee such as working from home, at an alternative location or different hours. However, this will need to be carefully managed in light of risks associated with the potential claims mentioned in 2.2 above.

### **2.5 Vaccination and data privacy**

An employee's vaccination status or history is 'health information', triggering obligations under health records and privacy legislation. Health records requirements differ across Australian states and territories. In general terms, the company must obtain the employee's express consent to both collect that employee's vaccination information and disclose it to a third party. In seeking express consent, the company must fully inform the employee of the types of persons and organisations to whom the vaccination information is likely to be disclosed, and how it will be used. In states and territories that do not have legislation governing the collection of health information in the private sector (e.g. Queensland), the *Privacy Act 1988* (Cth) (**Privacy Act**) applies. Under the Privacy Act, there are certain exemptions that apply to a company's use of employee records provided the use is directly related to the employment relationship. This exemption does not apply to contractors, and cannot be relied



upon by any third-party organisation receiving employee information. Regardless of whether or not the Privacy Act applies, it is strongly advised that the employer seeks employees' express consent to collect, use and disclose the vaccination information and adopt a consistent approach across Australian jurisdictions.

### **2.6 Vaccination and posted workers**

There are no provisions currently in force relating to posted workers.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

All States and Territories currently require businesses in certain industries to prepare a COVIDSafe Plan prior to re-opening, with Victoria, Queensland, Tasmania and the Northern Territory requiring all businesses with on-site operations to prepare a COVIDSafe Plan. In Victoria, a COVIDSafe Plan (for a business not designated as high risk) must cover:

- physical distancing;
- face coverings;
- hygiene;
- record keeping and consequences if workers become unwell;
- enclosed spaces; and
- workforce bubbles.

There may also be requirements for employees to wear masks at the workplace, or for employees and customers to comply with physical distancing requirements.

Safe Work Australia has published general and industry-specific guidance and resources which will assist employers with their legal duties to provide and maintain a safe working environment without risk to employees' or others' health.

### **3.2 Vulnerable employees**

The Australian Health Protection Principal Committee (AHPPC) has revised its position in relation to managing vulnerable workers, noting that as the current level of COVID-19 cases is low in Australia, even those at higher risk of becoming severely ill from COVID-19 can return to work with appropriate precautions.

The AHPPC recognises that the likelihood of contracting a severe case of COVID-19 increases with age and the presence of certain health conditions such as those who:

- have had an organ transplant and are on immune suppressive therapy;
- have had a bone marrow transplant in the last 24 months or are on immune suppressive therapy for graft versus host disease;
- have a haematologic (blood) cancer diagnosed within the last five years;

- are having chemotherapy or radiotherapy; or
- have other chronic health conditions.

The AHPPC suggests that those with concerns about their risk of contracting COVID-19 request their health care provider to prepare a risk assessment, and an individual action plan to manage their risk of COVID-19. At a workplace level, this may be coupled with an individual risk assessment to identify key risks for them and appropriate measures that can be put in place.

The Australian Technical Advisory Group on Immunisation (**ATAGI**) is continually reviewing data and evidence on COVID-19 vaccines and groups likely to be vulnerable to COVID-19 and advises the Australian Government on its findings. Accordingly, the groups above may change as more information becomes available. However, an employer is not prevented from accommodating special measures for employees that may otherwise be vulnerable against COVID-19, even if presently there is limited evidence that those individuals are subject to a higher risk.

### **3.3 Back in the office**

Where your employees are able to safely transition back to working from the office, a range of factors must be considered. Whether you will be able to force an employee to return will depend, generally, on the reasonableness of the request at the time. Factors will include the current

public health requirements in the specific State or Territory and the worker's individual circumstances.

Before directing an employee to return to the workplace, you must consult with workers and health and safety representatives and ensure that your return to work arrangements adhere to relevant Federal, State or Territory advice.

### **3.4 Suspected cases**

If you reasonably suspect a worker could be infected, then it would be an appropriate safety control (and a reasonable direction) to require the employee to stay at home. There is also individual responsibility for the worker to not attend work if they are displaying any symptoms, and in some States and Territories there is Government financial support available for workers without access to paid sick leave.

If the person is in the workplace, you should isolate the person from others, call your [State or Territory helpline](#) for guidance and follow public health advice. In most jurisdictions, notification to your State or Territory workplace health and safety regulator and health authority will be required. You will almost certainly need to identify the affected person's workplace close contacts, clean and disinfect the areas where the person and close contacts have been, and review and carry out your COVID-19 risk-management controls. A Safe Work

Australia summary of work health and safety incident notification obligations specific to COVID-19 is available [here](#).

The communication requirements will depend on the circumstances and should be informed by medical advice and public health directions or orders in the relevant State or Territory. In general, you may communicate with your workforce that there has been an infection in the workplace. However, you should only use or disclose personal information that is reasonably necessary to prevent or manage COVID-19. For example, it may not be necessary to reveal the name of an individual in order to prevent or manage the infection, or the disclosure of the name of the individual may be restricted to a limited number of people on a 'need-to-know basis'.

You must comply with the Privacy Act requirements on collection, use and storage of personal information (for example, you must obtain an individual's consent when collecting sensitive information such as health information). Additional State or Territory legislation may impose further obligations.

We recommend being transparent with employees (including notifying staff of how their personal information will be handled) and providing regular updates about the company's approach to COVID-19. Collection use and disclosure of any employee's personal information should be limited to what is reasonably

necessary to prevent and manage COVID-19 within the workplace.

### **3.5 Return to work after recovery**

Workers can return to work when they have fully recovered and meet the criteria for clearance from isolation. These may vary depending on the State or Territory and workplace circumstances. Clearance may be by the public health authority or the person's treating clinician. There are specific criteria for clearance which apply to some workers in industries, such as health care and aged care. As the criteria and guidance may change, you should always check with the relevant public health authority before a worker returns to work.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Employees have a right to a healthy and safe workplace, and in circumstances of homeworking this will include their home. The corresponding obligation on employers is to ensure the health and safety of the homeworking environment as far as reasonably practicable; increasingly with longer term homeworking there is a focus on ensuring the psychological health and wellbeing of employees.

Appropriate control measures might include:



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- ensuring workers have appropriate workstations at home, including necessary equipment;
- providing access to information and support for mental health and wellbeing services, such as an employee assistance programme (EAP);
- maintaining regular communication with workers;
- offering workers flexibility as to when and how they undertake their work where possible to assist with other responsibilities they may have, such as caring for children who would otherwise be in school;
- taking action where you notice or suspect that a worker may be struggling;
- informing workers about their entitlements if they feel unfit for work; and
- appointing a contact person in the business who workers can talk to about any concerns related to working from home.

Employees who are working from home may be entitled to claim tax deductions at the end of the financial year for expenses incurred relating to their work such as utility running expenses, or the decline in the value of work equipment or furniture. An employee has the right to stop or refuse unsafe work when there is a reasonable concern of exposure to a risk to health and safety. This may include exposure to COVID-19. If an employee is concerned about the risk of contracting COVID-19 in the

workplace and wishes to continue to work from home, they should raise it with you or a health and safety representative in the first instance. It may assist to share information with the employee about the steps that have been taken to ensure a safe workplace and minimise the risks from COVID-19. If the employee's concern is not reasonable taking into account all relevant circumstances, then you would have the right to direct the employee to return to the workplace. If an employee does not comply with a reasonable direction to return to work then you may be able to initiate disciplinary action. Employees are unlikely to acquire a right to work at home permanently simply because they have been required to do so as a result of the coronavirus pandemic. However, this will need to be determined on a case-by-case basis.

### 4.2 Working from another country

The employer should seek local law advice from the host country, including:

- whether local employment laws might apply to the employee and if so the implications for the employer;
- whether and when a work visa is required;
- any social security issues;
- tax implications for the employer: for example, is there a risk of creating a 'permanent establishment' in the host country by virtue of the employee working there;

- tax implications for the employee: for example, will the employee be required to pay income tax on income earned whilst in the host country;
- any specific health and safety requirements that will apply in the host country.

From an Australian health and safety perspective, the same considerations would apply as if the employee is working from home (see above). The employer should still take steps to discharge its obligation to ensure the health and safety of the employee, so far as is reasonably practical. This may involve undertaking a risk assessment of the employee's working environment overseas, to determine what measures can be implemented to eliminate or reduce health and safety risks.

We recommend that employer's document any arrangement where an employee wishes to work remotely from another country for a period of time. This may include clarifying the intended period of time for which the arrangement will apply, requiring the employee to maintain appropriate insurances, and a confirmation that all other terms and conditions of employment remain the same (if this is the case).

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# Bahrain

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## 1. Government support for employers

The government's salary subsidy for Bahraini nationals ceased at the end of last year. No further subsidy support has been announced.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Employers can require staff to take a COVID-19 test where they reasonably suspect that the individual may be showing symptoms of the virus or if the individual or the workplace has been exposed to a confirmed case of COVID-19 infection before allowing the employee to return to the workplace as part of the employer's obligation to safeguard the health and safety of other employees and anyone else accessing the employer's work premises.

### 2.2 Vaccination and vaccination status in the workplace

The Bahrain government is carrying out a national vaccination plan for all citizens and residents who are being encouraged to register for it. However, as yet, registration is voluntary and therefore employers will not be able to make it a mandatory health and safety requirement for employees to be vaccinated, unless staff work in environments which are high-risk sectors such as healthcare and social care where the employer's obligation to ensure staff do not pose a risk to other staff, patients or clients and

vice versa may include an obligation to ensure staff are vaccinated against common infections, transmissible illnesses and biological hazards. If the government makes vaccination mandatory then employers will be able to make it a general condition of employment for employees to be vaccinated, subject to any exemptions that are medically certified.

### 2.3 Incentives for vaccination

The vaccination is being offered free of charge by the Bahrain government, so payment or incentives are not required.

### 2.4 Dealing with refusal or inability to get vaccinated

Vaccination is not a mandatory requirement in Bahrain and unless this changes it will not be possible to terminate employment lawfully if the employee refuses to be vaccinated whether for religious or medical reasons or for no reason. However, where employees work in a high-risk sector such as healthcare and social care then employers may be able to prevent an employee from coming to work, change their duties or alter their working conditions to reduce the risk they may pose to other employees, patients or clients.

Excluding employees from the physical workplace or otherwise treating them differently because they have refused to take the vaccine may not, of itself, be an

act of unlawful discrimination unless it is also for reasons related to the protected characteristic of the individual, such as their gender or religious belief.

### 2.5 Vaccination and data privacy

There are exceptions to the data privacy laws which allow for the collection, use and disclosure of information where there is consent or where the collection, use or disclosure of information is necessary for the implementation of a legal obligation or in the legitimate interests of the employer (unless it conflicts with the fundamental rights and freedoms of the individual). There is also a general exemption in regard to the management of the employment relationship. Employers should think carefully about collection, use and disclosure of information about an employee's COVID-19 status. Where possible, it is recommended to obtain the consent of the employee. If it is not practicable to obtain consent, then it is important to consider carefully the extent of necessary uses and disclosures. Where they are reasonably considered to be necessary for individual or public health purposes, it is appropriate to proceed while also making sure that procedures are in place to limit the use and disclosure of personal information to uses and disclosures which are permitted by the Personal Data Protection Law.

### 2.6 Vaccination and posted workers

There are no specific provisions related to testing or vaccination for posted

workers. The same considerations will apply as for non-posted workers.

### **3. How to keep workers safe in the office**

#### **3.1 Setting up the workplace**

Employers should take precautions to protect the health and safety of all staff. This can include providing tissues and alcohol-based hand sanitisers, educating staff on the risks of contracting and spreading the virus and ensuring that staff who may have been exposed to the virus or who have similar symptoms do not attend work. It can also include finding alternative ways of working, including working remotely and keep up to date with government guidance. The Ministry of Health has issued guidelines on the recommended response for workplaces which includes these measures.

Employees who are sick should be asked to go home or remain at home and seek medical treatment. Anyone who has come into contact with a sick person but is not showing any symptoms should be asked to see a doctor, particularly if they have travelled to a high-risk area.

Employers should educate staff on measures they can take to prevent infection and update on any current government advice and material changes.

If employees are showing symptoms similar to the virus, then they can be asked to get a medical diagnosis and to stay away from work until they recover. Employees can also be asked whether they have travelled to a high-risk area or have plans to do so in the near future.

Employees can refuse to disclose details of their medical health but if there is any suspicion that the employee may be a risk to the health and safety of others then she/he can be sent home and required to see a doctor chosen by you.

Employees cannot be forced to take a test but employers have the right to request that they are seen by a doctor to prove their fitness for work.

#### **3.2 Vulnerable employees**

There are no separate rules but Bahraini mothers employed in ministries, government bodies and institutions have been directed to work from home during the temporary closure of public and private schools and kindergartens.

#### **3.3 Back in the office**

Although the government has recommended working from home, this is not mandatory. Therefore, employers can oblige employees to work from their respective offices. However, employees arriving in Bahrain from abroad are required to quarantine for ten days. Nonetheless, the ten-day quarantine will

be lifted for individuals who test negative following their arrival.

#### **3.4 Suspected cases**

Where there is a suspected case of COVID-19 then this should be immediately reported to 444 whereby the situation will be evaluated, and instructions will be given thereafter. Nonetheless, the Ministry of Health has provided the following general recommendations in the event of a suspected case of COVID-19 in the workplace:

- Escort the relevant employee to a separate, isolated, well-ventilated room (employers need to dedicate a special place for isolation which is not typically frequented by staff).
- Ensure that employees do not touch the belongings of the individual who may be infected and that any personal items of this person are safely removed from the vicinity of other employees.
- Ensure that employees remain calm and their safety is assured.
- Inform employees that proper measures will be taken in identifying their exposure.
- Ensure that the workplace of the employee who is or may be infected is properly disinfected and sanitised.
- Employers can require employees suspected of being infected to remain away from the workplace.

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The relevant employee may either be asked to work from home or to stay at home on sick leave. However, suspected cases must be immediately reported to the 444 hotline.

Employers are required to report a suspected case via the 444 hotline. There is no requirement to give further notification. The Ministry of Health's contact tracing officers will engage the employer to identify any persons at the workplace who may have had close contact with the employee if he/she tests positive for Covid-19.

There are no specific requirements on how employers should communicate infection information and employers are free to decide how they wish to do so. However, any communication should maintain the confidentiality of employees that are confirmed to be infected with Covid-19.

### ***3.5 Return to work after recovery***

Following reporting an infection to the 444 hotline, the Public Health Directorate will provide the employer with all necessary details about the relevant employee, enabling the employer to make a decision as to when the individual may be able to return to work.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Where employees are required by the employer to work from home then the employer must ensure that the employee is working from a safe environment that complies with the health and safety requirements for the workplace. Employees can also request that employers provide them with the necessary tools and equipment to perform work from home and this can extend to covering fixed costs such as internet and telephone charges.

There is no provision in the Bahrain Labour Law for homeworking and there is no statutory right to do so or to request homeworking. Employees can request to work from home if they consider that the workplace is not a safe environment. However, employers are under no obligation to grant these requests and can refuse them where they have complied with the health and safety at work requirements and put in place the measures suggested by the Ministry of Health to safeguard against COVID-19.

There is the potential for employees to argue that they have acquired the right to work from home where they have done so for a certain period and in circumstances where it was not imposed by the government and either both or one of the parties had requested it. Whether employees will be able to establish a

legal right to homeworking will depend on the court finding that the employee's work location had been varied by agreement or over a period of time by practice.

### ***4.2 Working from another country***

Employers can refuse a request to work in a different country and are not obligated to provide any work to the employee where he/she is unable to attend the workplace. Where an accommodation is made to the employee to work overseas then the employer will need to continue making social insurance contributions on behalf of the employee. The employer should also satisfy itself that the employee's work environment is safe and meets the minimum requirements of Bahraini laws; however, this may not be practically possible if, as is likely to be the case, the employer cannot access the premises. Employers will also need to make sure that employees can safeguard the privacy of data.

If the employee is an expatriate then he or she will need to return to Bahrain before the expiry of their work permit to have it renewed. Employers will need to consider carefully whether any tax obligations may be triggered by the employee working in a different country.

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# Belgium

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## 1. Government support for employers

Numerous business support measures have been put in place at federal and regional level. These are not dependent on continued or new lockdown measures. At the federal level, they include:

- Continued application of the flexible corona force majeure temporary unemployment regime until 31 March 2021 for all sectors. Temporary unemployment benefits are increased to 70 % of the average capped salary of the employee (capped at EUR 2,754.76 gross) and the Unemployment Office equally pays the employee a supplement of EUR 5.63 per day of force majeure unemployment.
- A system of consumption vouchers has been put in place allowing employers to offer vouchers for a limited amount (300 EUR) free of income tax and social security contributions.
- In order to prevent employees who have benefited from Corona force majeure temporary unemployment losing a significant number of holidays and holiday pay next year, a series of royal decrees allow days of work interruption due to Corona force majeure temporary unemployment to be treated as days worked for the annual holiday regime for employees for the period from 1 February 2020 until 31 December 2020. Thanks to this measure, employees will still be

able to retain their holiday entitlements in 2021.

At the regional level, multiple measures (e.g. solidarity funds, premiums, protection mechanism, etc.) have been taken.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

In Belgium you cannot force an employee to take a COVID-19 test. If you suspect an employee has contracted the virus, ask the employee to see a doctor or ask the occupational physician to check the employee's health.

A new Royal decree (which entered into force on 21 January 2021) gives new, temporary tasks to the prevention advisor - occupational physician. If an employee (or a temporary worker) tests positive for COVID-19 and was physically present prior to testing in the workplace, the prevention-advisor occupational physician can perform high-risk contact tracing and give information to the employer so appropriate measures can be taken to contain the virus. The occupational physician can also give a quarantine attestation or even conduct or order a COVID-19 test. However, general testing of the whole or a part of the workforce is not allowed. In principle testing is carried out in the facilities provided by the governments.

### 2.2 Vaccination and vaccination status in the workplace

Vaccination is voluntary in Belgium so you cannot make it mandatory. Employers can only strongly recommend their employees to get vaccinated. Vaccination is also organised by the (federal and regional) governments. Employers will have little or no say on the process. The process as described today is organised per city or area.

### 2.3 Incentives for vaccination

At the moment, vaccines are not widely available in Belgium. The vaccines are currently distributed based on a governmental priority strategy. At a later stage (once vaccines are widely available and no priority strategy must be followed) employers could offer the vaccine as an extra-legal benefit. Both the National Social Security Authorities and the tax authorities consider this as a non-taxable social benefit.

### 2.4 Dealing with refusal or inability to get vaccinated

Since vaccination is voluntary there is no way to refuse an employee on this ground to work or to change his or her working conditions. There is still a duty for the employee to not harm the organisation and his or her co-workers but this does not go so far as to refuse work to an employee, change his or her working conditions or to dismiss the employee on these grounds. Moreover,

dismissing the employee because s/he refuses to be vaccinated risks to be considered manifestly unreasonable or discriminatory giving rise to additional compensation.

Imposing an obligation to vaccinate infringes the right to privacy and the right to physical integrity guaranteed by the ECHR and the Belgian Constitution. The right to freedom of belief and religion could also be violated in such a case. Employers should treat employees equally and treating non-vaccinated employees differently or less favourable than vaccinated employees, risks to be considered discriminatory or in violation with the employees' privacy rights.

### **2;5 Vaccination and data privacy**

In general employers cannot ask employees if they have been vaccinated (except for specific groups of employees depending on the circumstances of the case) and cannot process this information.

The European Convention on Human Rights, the Charter of Fundamental rights of the European Union and the GDPR recognise the respect and protection of personal data on health conditions, DNA, biometric or other characteristics. Vaccination is one of them and at this moment there is no exception under Belgian law.

### **2.6 Vaccination and posted workers**

Travel to and from Belgium for non-essential reasons is currently prohibited from 27 January 2021 until 1 March 2021. If a posted worker's travel is essential (evidenced by a sworn statement for EU/Schengen states or an essential travel certificate for other states), posted workers coming from abroad to temporarily work in Belgium and staying at least 48 hours on Belgium territory must submit a negative test which has been taken at least 72 hours before the start of activities in Belgium. In addition, a quarantine obligation of ten days applies and a second test must be taken on day seven. The negative result of the test may be checked by the prevention advisor-occupational physician and the Social Inspection. The foreign employer should inform the posted worker of his or her obligations and the receiving company is strongly advised to inform the foreign employer of the posted worker's obligations. The Belgian company should further check if the posted employee has completed a Public Health Passenger Locator Form and keep a register of the employees living abroad working in Belgium. These measures apply until at least 1 March 2021.

### **3. How to keep workers safe in the office**

#### **3.1 Setting up the workplace**

Teleworking is mandatory in all companies, associations and services,

unless teleworking is impossible due to the nature of the function or the continuity of the activity. If teleworking cannot be applied because of the reasons described above, organisations must take measures to ensure maximum compliance with the rules on social distancing (1.5 metres between each person). A certificate must be given to employees who cannot telework to prove that their presence at the workplace is necessary. The employer organisations and trade union organisations have drafted a generic guide of best practices for employers (the most up-to-date version of this guide is available in Dutch or French [here](#)). In certain sectors, specific guides have been created. The FPS Employment, Labour and Social Dialogue has published a detailed list of prevention measures for the workplace (in Dutch and French), available [here](#).

You must inform employees promptly about preventive measures in force and provide them with appropriate training. You must also inform third parties of the preventive measures in force promptly. Employers failing to comply with these measures risk severe sanctions. General good practice includes the following:

- You should regularly disinfect, provide disinfecting products and promote regular and thorough hand-washing by employees, contractors and customers.
- Promote good respiratory hygiene (covering mouth and nose with bent elbow or tissue when a person



- coughs or sneezes, disposing of used tissues immediately).
- Inform workers they should not come to work if they have symptoms such as fever or coughing.
- Provide instructions on what to do if someone shows signs of coronavirus infection.
- Take collective protective measures in preference to individual protective measures.

### **3.2 Vulnerable employees**

Employers must, in cooperation with the prevention advisor-occupational physician, carry out a risk analysis, covering all risks that may have an influence on the health and safety of a pregnant (or breastfeeding) employee as well as on the health and safety of the (unborn) child. If the risk analysis shows that there are health risks for certain jobs, the employer must implement prevention measures. The employer must also inform the prevention advisor-occupational physician of the employee's pregnancy. If the risk analysis shows that the performance of her function may entail risks to her health, the employee will be examined by the prevention advisor-occupational physician. Based on the advisor-occupational physician's decision and the results of the risk analysis, the employer must take one of the prevention measures with regard to the pregnant employee (temporary adjustment of working conditions or working time, alternative work compatible

with her state of health, or removal from work).

### **3.3 Back in the office**

In principle an employer can require an employee to return to work, provided the employer puts in place the appropriate preventive measures to ensure the employee's health and safety and the employee is not sick or in mandatory quarantine. Note, however, that teleworking is mandatory (currently until 1 March 2021), unless this is impossible due to the nature of the function or the need for continuity of the business, activities or services. There is a list of activities that are necessary for the vital interests of the country. In addition, employees working on-site at the workplace should be provided with a certificate indicating that their presence at the workplace is necessary. Controls on mandatory teleworking and whether exceptions are required and/or allowed have been increased to ensure compliance with mandatory teleworking. In addition, if the employee feels that the health requirements are not met, s/he must question the employer about this and the employer must examine this.

### **3.4 Suspected cases**

If an employee gets sick, ask him or her to stay home and see a doctor. Ask them to check their temperature regularly and go see a doctor in case of doubt. For the safety of other workers, you can ask employees who are obviously sick to go

home and advise them to seek treatment. If you believe an employee's condition clearly increases risks, you can contact the occupational physician, who will decide if the worker needs a health assessment. Employees must act on this immediately.

Legally, employees must refrain from anything that could harm their safety, that of other employees, their employer or third parties and must observe the applicable COVID-19 measures. In general employees are not obliged to inform you about their health nor can you ask them to prove that they are fit to work. However, an employee with coronavirus who continues to work and fails to inform you could incur civil liability. Testing may be subject to strict conditions, set out by the authorities: in Belgium currently, a person can ask to be tested if he or she shows severe physical symptoms of possible infection or is treated in hospital.

Employers may also instruct employees to notify management about any trips made or planned to infected areas or any contact with confirmed cases of infection.

There is no general requirement to inform the federal or regional governments. Based on health and safety principles, we believe the employer should however inform the prevention counsellor and, depending on the size of the company, the CPPT.

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The employer must inform employees of the measures taken in the organisation to minimise the risk of spreading the virus, including employees who come from abroad. It is the employee's responsibility not to come to work if s/he feels ill or to leave immediately if s/he has symptoms, informing the employer according to the rules applicable in the organisation.

The employer can only communicate general information to the other employees about a (suspected) case. The identity of the person(s) involved cannot be disclosed. Employees who are at risk should only be informed in general terms about the risk and the most appropriate measure.

### **3.5 Return to work after recovery**

Once the (infected) employee is no longer sick, s/he can return to work, however until (currently) 1 March 2021 teleworking is mandatory unless this is not possible due to the nature of the function or the need for continuity of the business, activities or services. The same applies to employees after quarantine. There are no specific rules and the employer cannot ask a certificate stating the employee is fit to work.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Currently Belgium is in a partial lockdown. All employees must work from

home, unless teleworking is impossible due to the nature of the function or the continuity of the activity. If teleworking cannot be applied for these reasons, organisations must take measures to ensure maximum compliance with the rules on social distancing (1.5 metres between each person).

An expense allowance may be granted (exempt from social security contributions) to employees who work entirely at home during the crisis (even employees who did not previously work at home and for whom the employer had not formally concluded a telework agreement). If the employee has other expenses (use of own telephone, purchase of a screen or scanner, etc.), the employer may also reimburse them. The reimbursement must be based on the actual costs.

Employees cannot request to work from home based on a concern about COVID-19.

It is unlikely that employees will be considered to have acquired a right to work from home as a result of doing so in the context of COVID-19 measures, especially since the current legislation imposing mandatory telework is based on exceptional telework and not on structural telework. Once the emergency disappears, normal working conditions (such as working in the office) will be reinstated.

## **4.2 Working from another country**

Employers should check various matters before allowing the employee to work from abroad:

- If the employee needs a visa or work and/or residence permit.
- If other mandatory notifications to local authorities apply and/or certificates must be applied for.
- If any mandatory local employment laws such as minimum wages, working time rules, health & safety requirements, public holidays, rules regarding teleworking, etc. must be observed.
- The impact on applicable social security and taxes as these are very often linked to (amongst others) the place where the employee works. However, some countries have taken the position to (temporarily) neutralise days of teleworking at home from abroad for social security and taxes if solely linked to the COVID-19 restrictions.
- The applicable local sanitary COVID-19 measures.
- If additional privacy measures must be taken.

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# Brazil

Last updated:  
27/01/2021

## 1. Government support for employers

The government still has a special programme in place to protect employment from layoffs through reduced work hours and salaries or to suspend employment agreements. Special conditions include protection against dismissal after the return, tax exemption on voluntary allowances offered by the company and a special pension paid by the government to affected workers. On 13 October 2020, Brazilian Federal Government edited Decree 10,517 extending the period during which employment agreements can be suspended and working hours reduced up to a maximum of 240 days during the period of the coronavirus-related 'State of Calamity', currently set until 31 December 2020.

The government might repeat the transitional deferral of payroll taxes and contributions that was in effect in the early months of the pandemic when we had lockdowns

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Employers can ask employees about potential exposure to the risks of infection, including travel information and contact with people who tested positive for COVID-19, due to the legitimate public interest and the fact that the employer is legally responsible for ensuring a safe

and healthy workplace. Employers can also require employees to be tested, but cannot force them to do it, which means that the employer cannot impose penalties on an employee who refuses to be tested. Note, however, that if the refusal may expose other employees to risk, the employer can put the employee on remote work mode for as long as necessary, or the employer may choose to terminate employment for convenience (without just cause, paying the corresponding severance).

### 2.2 Vaccination and vaccination status in the workplace

Whether employers can make vaccination or disclosure of vaccination status mandatory is still a controversial matter in Brazil, but the prevalent understanding is that, while vaccination is not legally compulsory (which is likely to occur), the employer cannot require employees to take the vaccine, but rather recommend them to. Although the employer has a duty to ensure a healthy workplace, making vaccination mandatory seems a step too far in a matter of public health policies, and restricted to the government. An exception to the general rule is the one that regulates workers in healthcare and other activities with a high risk of infection that are subject to specific professional regulation. So far, the existing regulation is the Regulatory Norm (NR) 32 issued by the Ministry of Labour (now Secretary of Labour) provides, in general, that immunisation must be freely provided by

the employer, who must inform all employees about its advantages and risks. If an employee refuses, s/he must sign a Responsibility Term document, including the risks the employee will be exposed to without the vaccine. Finally, employers can ask their employees to disclose their vaccination status, provided that this data is treated as determined in the Brazilian Data Protection Law (LGPD).

If an employer requires its employees to be vaccinated without there being a statutory obligation, it may be liable for damages for discrimination, violation of privacy and intimacy and restriction of the right to work.

### 2.3 Incentives for vaccination

Motivating employees to get vaccinated adhering to public campaigns is legal. However, providing vaccination directly may pose risks of civil liability for defective vaccines or medical malpractice.

### 2.4 Dealing with refusal or inability to get vaccinated

How employers can deal with employees who refuse or are unable to get vaccinated will depend on prospective legislation on vaccination, which will also set out the scenarios in which the individual may lawfully refuse vaccination. Employers will only be authorised to apply penalties to employees that refuse in these cases, including dismissal,

preventing the employee from coming to work and changing work conditions. However, while there is no legal provision regarding this, the Labour Courts will decide based on reasonability and other Court precedents. The Brazilian Supreme Court has a case pending judgment since 2019 which will decide (with general repercussions) if religious beliefs may be a valid reason to refuse medical treatment (RE 1.212.272).

With respect to risks of adverse effects due to specific health conditions, it is possible to assume that in cases where the vaccine's risks are greater than its expected benefits, the refusal may be considered justifiable by Labour Courts in Brazil.

### **2.5 Vaccination and data privacy**

All data related to the vaccine must be treated in accordance with the Brazilian Data Protection Law (LGPD).

### **2.6 Vaccination and posted workers**

The question of posted workers does not arise in Brazil, however under outsourcing agreements, the host company is responsible for observing the local health and vaccination policies and protocols.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

In Rio, a Municipal Decree (47,488/2020) grants companies the permission to reopen provided the company and employees observe the '10 Golden Rules' dictated by the Resume Programme. The Programme has six phases and Phase 6-A has recently been initiated, covering most activities. In São Paulo, a Municipal Decree (59,473/2020), also grants companies permission to reopen, provided they comply with the relevant protocol agreed upon by the relevant trade/industry association and the municipality. For office-based employment, the Rio Programme and the São Paulo protocols are very similar and include the following obligations on the employer:

- Providing sanitising materials, masks and other protective equipment.
- A special cleaning routine (in Rio, every three hours).
- Keeping employees distant from each other (two metres in Rio, 1.5 metres in São Paulo).
- Providing adequate ventilation by keeping windows open and cleaning the air-conditioning system. Open windows pose a practical problem in modern buildings whose windows do not open for safety reasons, so we

believe this one may be waived by inspection authorities.

In the event of litigation, the Labour Courts may, however, may impose restrictions or conditions based on the employer's general duty to look after its employees. A recent decision by the Labour Court of Santos, State of São Paulo, granted injunctive relief to stop a bank from requiring employees to resume in-office work if they live with individuals in a COVID-19 risk group. The injunctive relief was granted until further revision by the court or the expiration of the 'state of calamity' (31 December 2020).

### **3.2 Vulnerable employees**

You must inform vulnerable employees or groups, or employees who cohabit with vulnerable individuals about the disease and risks of contamination. Local rules or industry regulations may require special routines or precautions concerning these groups, such as, making them the last group to go back to work if reopening is in tranches, or requiring them to remain on remote work or leave depending on medical assessment.

### **3.3 Back in the office**

An employer can require an employee to return to on-site work if there are no lockdown restrictions in place; the employee is fit for work and the employee does not have any condition or vulnerability that requires special protection.



### **3.4 Suspected cases**

You can ask an employee about risks of infection, including travel, because there is a legitimate public interest and because you are legally responsible for ensuring you provide a safe and healthy workplace. Temperature monitoring is also acceptable but requires medical supervision. The company may ask its employees to be tested, especially if the work environment is particularly challenging, for example, on oil rigs. Consent is always necessary. However, you cannot force employees to be tested. If the employee refuses to be tested, the company will need to evaluate the best option under the circumstances, including, leave, suspension of contract, assignment to a different job on remote work and termination. If someone shows up with symptoms of COVID-19, you must immediately put the employee on medical leave and send them to the occupational medical service for proper examination and diagnosis.

Employers not only have the capacity but the duty to prevent suspected cases from coming to work. Employers have a duty to look after employees' wellbeing and to promote a safe and sane workplace. Employers also have the discretionary capacity to organise and regulate work conditions. You should consider, however, whether removal from work without justifying circumstances, or in an arbitrary manner could be considered discrimination. Information is key to avoiding panic and other unjustified

reactions. If discrimination happens among co-workers in the workplace, the employer may be liable for damages.

You must notify the sanitary authorities if there is an outbreak of any pandemic disease among employees. Information will be limited, of course, because you will not have access to the medical diagnosis. It will be a mere report that symptoms were detected. You will not need the employee's consent to communicate this: it falls under the exemption for sharing data to fulfil a legal obligation.

There is no mandatory format or content for informing the workforce about infection. We recommend communications should be in writing, straightforward, clear and to stick to the essential.

### **3.5 Return to work after recovery**

Medical discharge is necessary. The company is responsible for paying for medical leave for up to 14 days. After that, the employee will be covered by the Social Security Programme and collect sick leave benefit. In this case, the employee can only return to work after discharge from the official Programme.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

In general, homeworking in Brazil is regulated by article 75-B (and following)

of the Brazilian Labor Code (CLT), which defines it as work performed predominantly outside the employer's premises with the use of information and communication technologies that, by their nature, do not constitute external work. Although the employee can attend the employer's premises to perform specific work, it is important that the work is performed predominantly outside the employer's premises.

First, the employer must obtain the employee's consent in writing (between April and July the consent was waived under Provisional Measure 927/2020). The written agreement must minimally stipulate the following conditions:

- The employer must provide the employee with the necessary tools and infrastructure or indemnify him/her accordingly, including professional equipment and ergonomic furniture and electricity consumption.
- The employer must provide orientation information and obtain the employee's written acknowledgement of ergonomics and health and safety rules and the employee's pledge to observe them.

Monitoring is only possible using telematic systems, which include software, phone and internet usage reports, but exclude the use of cameras for privacy reasons. In this case, the default rule of exemption from overtime will no longer apply.

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Employees can only request long-term homeworking based on concerns about coronavirus if the employee has some condition or vulnerability that requires special protection. Again, the employer should consider whether removal from work without justifying circumstances, or in an arbitrary manner could be considered discrimination.

Employees will not acquire the right to work at home if they have done it for a certain time. The law on telework stipulates that employers have the legal capacity to change the regime to on-site work at any time provided that it informs to the employee about the transition within at least 15 days in advance.

### **4.2 Working from another country**

The CLT does not provide neither impose any limitation regarding the place where this homeworking will be rendered, meaning it is possible to assume that there is no legal obstacle to an employee working in a different country that the one specified in his or her employment contract as a result of COVID-19. The aspects the employer needs to consider in this situation in terms of immigration, local employment law, social security, tax, data privacy, health and safety measures will vary depending on the specifics of each case. In general, considering that the work abroad was employee's personal choice, the employer should regulate the conditions of this remote work carefully in a written agreement, stating that the employee has

decided unilaterally to work abroad during this period of social isolation for personal reasons and that the employer has agreed, provided that the conditions of the employment agreement and employee's country of tax residence do not change. The agreement must also establish that employer's head office in Brazil will be considered as the employee's base for all purposes (such as union and health insurance coverage and for tax and social security reasons). In this case, the employer will keep the same conditions for the employment agreement and will not be responsible for employee's immigration issues. Brazilian law will apply.

Article 75-E of the CLT states that the employer must instruct its employees, expressly and extensively, regarding precautions to avoid work-related accidents and diseases and other legal provisions (Ordinance 17 from the Ministry of Economy and Chapter V of the CLT) impose general obligations to be complied with by both employers and employees in connection to the working place and general working conditions, it is strongly recommended employers have a written policy setting out the conditions and obligations that all employees must comply with when working from home: this is specially important if the employee is working from abroad, where monitoring by the employer is almost impossible. The employee must give an acknowledgement of that policy.

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# Chile

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26/01/2021

## 1. Government support for employers

The Law on Employment Protection (aimed at protecting family income and jobs due to Covid-19) provides the possibility, if requirements are met, of accessing unemployment insurance coverage in three scenarios:

- The employment agreement is automatically suspended where a COVID-19-related governmental measure involves the suspension of the organisation's activities in all or part of the country preventing or totally prohibiting the provision of the services.
- Employer and employee mutually agree on the temporary suspension of the employment relationship, when the employer's activity is totally or partially affected.

In these cases, the employee is not obliged to provide services and the employer is not obliged to pay salary (or other non-salary allowances), only social security payments. The employee will receive his/her remuneration from unemployment insurance.

- The parties can agree on a temporary reduction of working hours provided the legal requirements are met. The employer must continue to pay social security and pension contributions according to employees' effective working hours. The employee receives remuneration in proportion to his/her effective working hours and

an additional payment from his/her individual unemployment account.

On 28 September 2020, the Government introduced new subsidies for employers, in order to encourage job retention and the hiring of new employees and avoid dismissal of employees who are covered by the Law on Employment Protection. The following subsidies were established:

*Retention Bonus:* Employers can receive a benefit of CLP 160,000 per month (approximately USD 200), for a maximum of six months for each employee who returns to his or her functions after being suspended under the Law on Employment Protection.

*Hiring Bonus:* Employers can receive a percentage of the gross monthly salary of new employees, for a maximum of six months. The percentage will depend on the characteristics of the employee hired.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Employers cannot force an employee to get tested for COVID-19. This could be considered an infringement of his or her fundamental rights. However, given the employer's obligation to take all the necessary measures to effectively protect employees' life and health, employers can ask employees whether they have recently travelled to a high-risk area, if they have been in contact with someone who is infected or if they are sick or have

been diagnosed with COVID-19. If an employee voluntarily agrees to take the COVID-19 test, the cost of the test must be borne by the employer.

### 2.2 Vaccination and vaccination status in the workplace

Currently the vaccine against COVID-19 is not mandatory in Chile. Only certain groups of people have received the vaccine voluntarily. Despite this and pursuant to article 184 of the Labour Code, employers must adopt all effective and necessary measures to protect the life and health of employees. Therefore, once all Chilean citizens have begun to be vaccinated, a pronouncement from the Chilean Labor Authority is expected to determine whether or not the vaccine will be mandatory for employees.

### 2.3 Incentives for vaccination

Currently there are no rules relating to incentives for vaccination as vaccines are not yet widely available or mandatory.

### 2.4 Dealing with refusal or inability to get vaccinated

Currently there are no rules relating to employees' refusal or inability to get vaccinated as vaccines are not yet widely available or mandatory. However, employees are protected by discrimination and privacy rules, which may be relevant in this case.

The Labour Code prohibits discrimination on the basis of health status. In addition, the Labour Authority has noted that employers should avoid any infringement of employees' fundamental rights while taking health and safety measures in the workplace to prevent the spread of COVID-19.

### **2.5 Vaccination and data privacy**

According to Chile's data privacy law, health data may only be processed when determined by law or when the owner of the data (the employee in this case) gives written consent.

### **2.6 Vaccination and posted workers**

As vaccinations are not yet widely available or mandatory, this is not currently regulated in Chile. However, regarding COVID-19 tests, anyone entering Chile must provide a negative PCR test to the Health Authority. The test must have been performed a maximum of 72 hours before entry to Chile and must have been carried out by a recognised health authority laboratory in the country where it was conducted. In addition, arrivals in Chile must undergo a mandatory ten-day quarantine period upon arrival. This requirement can be lifted by the health authorities if they are provided with a negative COVID-19 test result. The test must be performed from the seventh day since entry to Chile, after which the person will be authorised to end their quarantine from receipt of the negative test result.

Consequently, in the context of the employer's duty of care, an employer could request posted workers to show a negative PCR test before entering the workplace.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

On resumption of activity, you must implement strict health and safety measures in the workplace, following the health authority instructions. These include, but are not limited to:

- Encourage employees to wash hands properly by providing them with water, soap, and alcohol gel.
- Reinforce cleaning of bathrooms, food consumption areas, door handles, pencils and other work tools.
- Cover mouth with tissue when coughing or sneezing (or an elbow or shoulder if no tissue is available).
- Ensure masks are worn in common spaces such as dining rooms, transport, offices or desk spaces at all times and that a one-metre minimum distance is maintained between employees.
- Avoid touching your eyes, nose and mouth.
- Do not share hygiene or food items.
- Avoid hand shaking or kissing.
- Use of face masks in the workplace is mandatory.

- Demarcate a safe physical distance of at least one metre on the floor.

You are also allowed to do temperature checks at the entrance to the workplace, with thermometers requiring no or limited physical contact with employees. The Ministry of Labor and Social Security Step by Step Return to Work plan includes recommendations for employers and employees for care and protection at the workplace. They are:

- Be informed: Constantly review safety and health recommendations and protocols.
- Organising and Agreeing: Integrate employees and unions in all stages of the process and in development of internal protocols.
- Socialising and Training: Permanently communicate measures taken to employees. Inform them about their rights and obligations.
- Adapting and Implementing: Adapt the physical workspace; prepare entry and exit routes; including signage and demarcating physical distance.
- Prioritising Mental Health: Establish spaces for permanent dialogue; promote health and wellbeing in the workplace.
- Collaborate with Traceability: Providing information on traceability, including early identification of suspicious cases,

- keeping a record of third parties on site and identifying workers who have been abroad.
- Evaluating and Updating: Evaluate the provisions implemented with objective guidelines; monitor the measures implemented.

### **3.2 Vulnerable employees**

It is recommended employees who belong to vulnerable groups (e.g., employees over 60, with health conditions or pregnant women) should not return to the workplace. On 4 September 2020 a law modifying the Chilean Labor Code took effect, allowing pregnant employees to render services remotely in the event of a State of Catastrophe, public calamity, pandemic or epidemic due to a contagious disease. If the nature of the employee's duties is not compatible with teleworking, the employer must assign her to work which does not require contact with the public or third parties.

### **3.3 Back in the office**

Employees may refuse to return to work if they deem that working implies a serious and imminent risk to their life or health. In this case, the employee must communicate his/her decision to abandon the workplace to its employer as soon as possible.

### **3.4 Suspected cases**

According to Government workplace action protocol, the recommended procedure to deal with a suspected case in the workplace, is that if an employee has symptoms of COVID-19, he/she should immediately report it to his/her direct supervisor. The employee cannot continue to work on site. The employee should be referred to a health care facility: the employer must provide facilities for the employee to be safely transferred to the health care facility.

You cannot force an employee to get tested for COVID-19. This could be considered an infringement of his/her fundamental rights. However, given the employer's obligation to take all the necessary measures to effectively protect employees' life and health, you can ask employees whether they have recently travelled to a high-risk area, if they have been in contact with someone who is infected or if they are sick or have been diagnosed with COVID-19.

If the employer or employee considers that the COVID-19 infection is due to exposure in the workplace, the employer must submit a document called 'individual complaints of occupational disease' (DIEP) to the Mutual Aid Fund within 24 hours.

The employer must take all the necessary measures to effectively protect employees' life and health, updating them with information from about infection and

from the health authorities regarding the prevention and control of the virus. You must grant employees who have been in close contact with a sick employee permission to undertake preventive testing or examinations.

### **3.5 Return to work after recovery**

Employees who have been diagnosed with COVID-19 will be allowed to return to work when their medical leave has ended.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

On 1 April 2020, Law N° 21.220 on remote working and flexible working conditions came into effect. The law provides rights and obligations to employees who render remote services. They include the following:

- Employees will be covered by the work accidents and professional diseases statutory insurance.
- The employer must inform employees about the health and safety conditions associated to the work, including risks to which the employee will be exposed while rendering services ('right to know'). In this connection, Supreme Decree No.18/2020 of the Ministry of Labor and Social Security established regulations on specific health and safety

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- conditions at work for remote working employees will come into effect in October 2020.
- The employer must ensure that the employee's environment complies with all health and safety requirements but cannot enter the place where the employee renders services without his/her authorisation. The employer may require the Mutual Aid Fund to access the employee's domicile and report on safety and health conditions, but the employee's consent is always needed.
  - All tools, equipment, office supplies, elements and costs associated with performance of services by the homeworking employee must be provided/paid by the company. The employee cannot be forced to use his/her own equipment or tools.
  - Employees who can freely decide their working schedule and employees excluded from working schedule limitations, have 'the right to disconnect'. Disconnection time must be at least 12 consecutive hours in a 24-hour period, during which employees are not required to reply to communications, orders or other requirements.
  - Employers cannot make requests of employees during rest, leave or vacations.

Employees can request long-term homeworking, but any change in the employment conditions requires mutual agreement, meaning an employment contract annex must be executed between the parties. Employees will not acquire the right to work at home if they have done it for a certain time: remote work must be agreed between the parties by execution of an employment contract or annex. If homeworking is agreed after the employment relationship starts, either party may unilaterally decide to return to the previous working conditions on a minimum 30 days' notice. If homeworking is agreed at the beginning of the employment relationship both parties must expressly agree to adopt on-site working.

### 4.2 Working from another country

Chilean law applies the principle of territoriality of the law, meaning, foreign and national personnel that render services in Chile will be subject to Chilean Law.

In connection with this, the Chilean Labour Directorate (Dirección del Trabajo) has pointed out the following:

'The principle mentioned that establishes the traditional doctrine [...] that every individual who lives in the country whether they are Chilean or foreign, is subject to Chilean law with regard to their person, property and acts, of which, on the other hand, it logically leads to the conclusion that Chilean Law does not apply in the territory of another State.'

Therefore, the Chilean Labour authority or the Chilean Labour Court may conclude that an employee who is working outside Chile is subject to the law of the country where s/he is rendering services even if the employment contract states that Chilean law is the governing law and jurisdiction. In this connection, if an employee is working or wishes to work from another country, it would be important for the employer to get advice from the country where the employee is rendering services to consider immigration, local employment law, social security, tax, data privacy, health and safety measures.

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# China

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## 1. Government support for employers

The temporary governmental support measures regarding reducing the social insurance burden for employers due to the impact caused by COVID-19 ended in December 2020. No new government support is available.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Generally speaking, it is deemed lawful for an employer to ask its employees to undergo COVID-19 tests if there is a reasonable basis for doing so, such as the employees' positions are at a high risk of exposure to COVID-19. However, employers cannot compel employees to take a test if employees are not cooperative.

### 2.2 Vaccination and vaccination status in the workplace

Chinese laws and regulations keep silent in this regard at the current stage. Under the current legislation, the employer could either require vaccination as a condition of employment for candidates, and/or recommend or encourage employees to be vaccinated. However the employer does not have the right or power to force its employees to be vaccinated. In terms of vaccination status, it is legally permissible for the employer to ask employees to provide this information, provided that vaccination status will not be used as the basis for employment

decisions, including but not limited to promotion, review of title, remuneration, etc. Employers should be very cautious when asking for this information as it may bring potential discrimination disputes.

### 2.3 Incentives for vaccination

Employers can encourage employees to be vaccinated, and it is also permissible to incentivise them financially to get vaccinated, either by paying for the vaccinations or offering an incentive.

### 2.4 Dealing with refusal or inability to get vaccinated

Employees are allowed to refuse vaccination for religious, medical or other reasons. As such, the employer is unable to terminate the employment relationship of an employee who refuses to be vaccinated for these reasons; otherwise, it is highly likely that such termination decision would be held as illegal by the arbitrator or judge.

However, the employer could arrange for an employee who refuses to be vaccinated to work from home and refuse him or her entry to the workplace if it is considered necessary and reasonable to create a healthy and safe work environment for other employees who have been vaccinated. The employer could also consider changing the job duties or altering the working conditions of the employee who refuses to be vaccinated if his or her original job duties or working conditions may either expose them more to COVID-19 or increase the

risk of infecting others. However any change or alteration should be generally reasonable and proportionate.

### 2.5 Vaccination and data privacy

Because vaccination-related information inevitably contains employees' personal data, the employer must comply with laws and regulations related to personal data, in particular the Cybersecurity Law and also the Civil Code. It is mandatory for the employer to firstly obtain the employee's explicit consent before collecting and processing the vaccination related information. In addition, the employer shall, during the collecting and processing vaccination-related information, and to follow the principle of legitimate, proper and minimum necessity. The employee must be informed of the purpose of the collection of vaccination-related information, the scope of the information collected, the method of processing the data collected, the individuals or entities with which the data will be shared and accessed. This is usually done by way of issuing a privacy notice to employees.

### 2.6 Vaccination and posted workers

No specific provisions currently apply to posted workers and vaccination.



### **3. How to keep workers safe in the office**

#### **3.1 Setting up the workplace**

The employer should do its best to distribute protective supplies, provide guidance on self-protection and adopt flexible working arrangements if necessary. The employer should also regularly clean and disinfect the workplace to maintain a hygienic working environment.

#### **3.2 Vulnerable employees**

There are no specific obligations on employers in relation to vulnerable or high-risk employees.

#### **3.3 Back in the office**

Unless the employee is unable to go back to work for statutory reasons (e.g. a work-related injury, being infected with coronavirus, etc.), you have the right to request the employee to come back to work. If the employee refuses to return to work, you could take disciplinary actions according to company rules and regulations.

#### **3.4 Suspected cases**

If an employee is infected with COVID-19, you should urge him or her to get medical treatment in a timely manner and report the case to the local government. It is advisable to arrange for employees who have been in close contact with the

infected employee to work from home and pay attention to their health condition.

You can require an employee you suspect is infected not to come to work, but you must pay normal unless otherwise agreed with the employee.

You are required to notify the local health authority of the identities of employees who have been infected with COVID-19. However, there is no legal guidance on the specific format or content of this official notification. Based on our experience, a good practice is to firstly make a phone call to the local health authority to report the case, and then prepare a written notification to the authority following its instructions if requested.

You may communicate to other employees that there is a case of infection but should not disclose the infected employee's specific health situation and other personal information, which must be kept in strictest confidentiality.

#### **3.5 Return to work after recovery**

It is advisable to follow the hospital and health authority's instructions in terms of timing for return of work after COVID-19 infection depending on the employee's specific recovery situation.

### **4. Where to work**

#### **4.1 How to organise homeworking for the long term**

The employer is obliged to provide a safe working environment for all employees, including those working from home. Though there is no specific legal requirement as to how to provide a safe working environment for employees working from home, it is advisable for the employer to assess the risks of the working area and provide additional equipment required for working on a case-by-case basis.

The employer is also required to provide office supplies, equipment and support (e.g. laptop) essential for the employee to work for the employer at home. Though not legally required, it is advisable for the employer to keep in regular contact with employees to keep informed about their health and safety status.

No mandatory costs or allowances are payable for employees working from home: this is subject to mutual agreement between both parties. Employees may have an expectation that some allowances will be paid, so if you agree, both parties could agree these allowances and the payment method in writing.

An employee can make a request for long-term homeworking based on coronavirus concerns, but you have the



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right to approve or refuse this request based on business considerations.

It is not likely that employees will acquire a right to work at home based on having done so for a certain time in the context of the coronavirus crisis, unless both parties already reach an explicit arrangement relating to homeworking.

### ***4.2 Working from another country***

If the employee's working in a different country could also serve the purpose of the employment relationship, then the employer could consider accepting a request to do so. If the employer agrees to this request, then both parties should continue performing the employment contract, unless otherwise agreed by both parties (e.g. whether certain terms and conditions of the employment contract may need to change, subject to negotiation between them). The employer may also provide necessary assistance with regard to immigration matters and health and safety measures for employees working in a different country.

If the employee's working in a different country cannot serve the purpose of the employment relationship, for example, if the employee's main job duty is on-site supervision in the locality specified in the employment contract, the employer may need to communicate with the employee regarding terminating the employment relationship on a mutually agreed basis.

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# Colombia

Last updated:  
27/01/2021

## 1. Government support for employers

There is currently no government support in relation to businesses affected by COVID-19 related lockdowns.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Yes, based on the employer's legitimate interests in protecting its business and the health and safety of employees, employers can require an employee to take a COVID-19 test. This will help to verify whether the employee's health condition may constitute a danger to him or herself, co-workers, or other people related to the organisation.

It is important to note that information on health status and COVID-19 test results may be classified as 'sensitive information' as it is directly related to the employee. Before carrying out testing, we suggest obtaining a personal data authorisation from each employee and it is advisable that employees consent to be tested.

Currently, there is no government guidance requiring employers to test employees. Except in some limited circumstances, only those currently exhibiting symptoms of COVID-19 can request a free test from their Health Promoting Enterprise (EPS). If an employer wants to routinely test staff, it will need to be sourced and paid for

privately and the employer must cover the test costs.

### 2.2 Vaccination and vaccination status in the workplace

Under current legislation, employers cannot compel employees to be vaccinated. Forcing a person to be vaccinated could violate his or her constitutional rights and freedoms (e.g., right to free development of personality).

Colombian legislation provides that individuals must not be compelled to undergo any mandatory medical treatment, consent from the individual must be obtained prior to the start of any medical treatment and individuals can decide on their treatments and medication. The Constitutional Court has stated that every person is entitled to accept or refuse any medical treatment proposed after he or she has been given sufficient information to do so. This means the decision to be vaccinated must be free and voluntary and, in any event, a vaccine could only be lawfully administered provided that the individual consented to such treatment.

Employers can require employees to disclose their vaccination status to the extent employees provide their consent. However, follow-up questions about an employee's vaccine status (such as why the employee has not been vaccinated) that may be health-related inquiries can only be made when they are job related and consistent with business necessity. For data privacy aspects, see 2.5 below.

Employers should be aware of potential discrimination issues that may arise as a result of testing or requesting information about vaccination in the workplace. Requesting information related to vaccination and/or testing employees may affect those who belong to certain groups (e.g. employees with disabilities or who practise some religions). Similarly, requiring information on vaccination and/or carrying out COVID-19 tests only on certain groups could lead to claims of discrimination.

### 2.3 Incentives for vaccination

The vaccine will be free to all Colombian citizens. Nevertheless, the Government allows private entities to purchase the vaccines meaning it will be possible to pay for employees' vaccinations. Employers have a duty to manage and reduce workplace risks to their lowest practicable level under Health and Safety regulations and to safeguard employees' health. To comply with this duty employers are likely to be required to encourage employees to be vaccinated, meaning they can incentivise employees to get vaccinated. However, any distinction or benefit for those who are vaccinated must be objective, reasonable, and justified.

### 2.4 Dealing with refusal or inability to get vaccinated

Employer cannot sanction or dismiss an employee for not getting the vaccine. Although it is possible for employers to

implement other (more indirect) measures such as compelling employees to work from home if they have not had the vaccine, those measures are likely to generate legal risks for employers. Employees may argue, for example, that they have valid reasons for not wishing to have a vaccine, some of which might also relate to their constitutional rights. Thus, excluding employees in these circumstances might lead to claims of unfair treatment or discrimination in the workplace.

There is a risk that employees may decide to file an action for the protection of constitutional rights against the employer. In this case it is possible to obtain an unfavorable ruling against the employer in which a judge may order the protection of employee's constitutional rights.

Likewise, if an employer decides to terminate the employment contract because an employee is not vaccinated, s/he could claim not only unfair treatment but also unfair dismissal.

### **2.5 Vaccination and data privacy**

The General Data Protection legal framework for Colombia (the 'CGDP') establishes that consent from prior, express, informed consent of data subjects is mandatory. Data subjects must be provided specific information about the name and contact details of the data controller; rights and means to exercise them; where to find the privacy

policy; the fact that the authorisation to process sensitive data is entirely optional; the specific data that will be collected and processed especially if sensitive data is involved, and how the data will be used and for what purposes).

The CGDP defines sensitive data as information that is highly intimate to the data subject, from which discrimination is likely or has the potential to arise and includes health and medical data as examples. Collecting and processing sensitive data is generally restricted, unless data subjects (i.e. employees) provide their prior, express and informed consent, and to the extent that processing sensitive data has a legitimate purpose.

Vaccination data relating to employees may be considered 'highly sensitive'. Employers who wish to collect and/or use this information require an employee's signed authorisation for processing personal data and his or her explicit consent.

It is advisable that the employer explains to employees what data will be required, what it will be used for, who it will be shared with and for how long it will be retained. The employer must also avoid collecting more data than necessary for the purpose of keeping the workplace safe and take care when storing this highly sensitive personal data.

### **2.6 Vaccination and posted workers**

Currently there is no specific guidance on this issue and the concept of 'posting' does not exist in Colombia.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

You should implement prevention and promotion actions compliant with the Ministry of Health guidelines and recommendations, as part of the Health and Safety at Work Management System (SG-SST), in coordination with the Occupational Risk Insurance Company (ARL).

The Ministry of Health and Social Protection has adopted a biosecurity protocol for the mitigation and management of the coronavirus pandemic to minimise transmission. It is mandatory for employers, employees, and contractors, among others. According to it, each company or entity must make appropriate adjustments, with the support of its ARL, establishing strategies to ensure social distancing and adequate hygiene and protection at work.

Employers must:

- adopt, adapt and implement the protocol;
- train employees and contractors regarding the protocol;

- implement actions to guarantee continuity of activities and protection of employees, contractors and others in the facilities or workplaces;
- adopt measures for reducing exposure, such as flexible work shifts and working schedules and remote work;
- report suspected and confirmed cases to the health promotion entities (EPS) and ARLs.
- disseminate information on prevention, spread and vigilance using official communication channels;
- receive support from the ARL on risk identification and assessment with the EPS;
- request assistance and a technical assessment from the ARL to verify the measures adopted;
- provide employees with personal protective equipment required for their work tasks;
- promote the use of the Government CoronApp by employees and contractors who have smartphones application to register their health situation;

### **3.2 Vulnerable employees**

Vulnerable employees should continue providing services remotely. If this is not possible, employers must introduce special working hours to reduce their contact with other people as far as possible.

### **3.3 Back in the office**

If the employee's physical presence in the workplace is required and s/he cannot provide services remotely, the employer can require him or her to return to on-site work. The employee must not be at high-risk with a pre-existing condition or disease (i.e. cancer, asthma, autoimmune disease, heart disease, high blood pressure, obesity, etc.). The employer must comply with the capacity limit imposed by the authorities and must have adopted and implemented the appropriate biosecurity protocol. The employer must provide employees with the necessary biosecurity protection (mask, sanitiser, etc.).

### **3.4 Suspected cases**

The employee must be isolated in a special area chosen by the employer for this purpose. The employer must report to EPS, ARL, and the health secretariat to assess the employee's condition. EPS will determine whether s/he should go and stay home in preventive isolation or be transferred to a medical centre. The employee must update his/her health status through CoronApp.

You must order the employee to stay home (if this is the medical advice) and self-isolate following Ministry of Health and Social Protection instructions (14 days). Under current regulations, suspected cases must be preventively isolated until they can be tested. If the test is positive, the procedure described

below must be followed. If not, the employer may allow the employee to return to the workplace but must first verify that the employee does not have any symptoms.

Ask the employee for information to evaluate his/her risk and that his/her contacts, including individuals with whom s/he has had contact, trips, symptoms, pre-existing diseases or pregnancy status, medication and age. Immediately make a list of all individuals who have been in close contact (less than two metres for more than 15 minutes) with the employee during the last 14 days. This list must be delivered to the Health Secretariat.

Protect the employee's privacy and maintain confidentiality, taking into account the rules on protection of personal data and medical information. Monitor the employee's health status daily.

Confirmed and suspected cases must be reported to EPS, ARL, the appropriate local health secretariat and on CoronApp.

In Bogotá D.C. employees and independent contractors with symptoms must also be registered on the official website established for this purpose (<https://covid19.saludcapital.gov.co/index.php/empresas>).

Employers must inform potential contacts of an infected or suspected to be infected employee (if employees, suppliers, clients

or contractors had contact with this employee) in a timely manner, guaranteeing confidentiality.

Employees and contractors must comply with the biosecurity protocols adopted and report any infection in the workplace or in their families to the employer so the appropriate measures can be adopted. They must adopt self-care measures and report any health changes to the employer and in the CoronApp, particularly symptoms of respiratory disease. Non-compliance with the protocols may result in fines and also in criminal investigations. There are additional biosecurity protocols for specific sectors.

### **3.5 Return to work after recovery**

An infected employee can return to work after 14 days have elapsed and he/she has obtained a medical clearance certificate. Before reinstatement, the employer must review if the employee still has symptoms. If not, s/he can return to the workplace.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

In general terms, homeworking employees have the same rights and obligations as any other employee working on-site. These rights include:

- *Non-discrimination:* Homeworking employees must be treated equally in relation to those who perform similar tasks on site. Specifically, they will keep the rights to form or join trade unions, receive training and education from the employer, etc.
- *Privacy:* Although the employer is entitled to monitor performance of the employee's duties and carry out necessary supervision, the employee keeps the right to his or her privacy and intimacy.
- *Working tools:* The employee is entitled to be supplied by the employer with the necessary working tools and equipment to perform his or her duties and to be trained in the programmes required to do so. In addition, the employer must ensure proper maintenance of the equipment and tools given to the employee. The parties may exceptionally agree that the employee provides computer equipment.
- *Work schedule:* Homeworking employees should be given the time normally required to carry out their duties and should not be exposed to excessive workloads. It is important to keep in mind that all provisions on work schedules, overtime, and night work do not apply to employees who are in 'homeworking', unless the hours actually worked can be verified by the employer.
- *Connectivity aid:* Employers shall pay employees earning up to two monthly minimum statutory salaries a connectivity aid equivalent to COP 106,454 (USD 30.70).
- *Expenses compensation:* Employers should agree with homeworking employees on provision of a non-salary aid for covering expenses arising from utilities, internet connection, and other additional costs the e-worker incurs in fulfilling his or her tasks. The employer is free to determine the amount of the aid to cover these expenses, since there is currently no regulation that sets a specific percentage to be covered. For other employees who are not homeworking, but are using other remote working modalities, the Ministry of Labour has not provided guidelines for compensating expenses.
- *Health and safety:* Employers must comply with Occupational Safety and Health Management System obligations for all their employees (including those homeworking). Employers should provide the necessary equipment and tools for ensuring employees' safety and health, report any occupational accidents that occur to employees, carry out periodic occupational medical examinations, and in general, comply with the same obligations concerning industrial safety and occupational safety and health.



- *Supervision:* There is no specific method for supervising homeworking employees. Therefore, the monitoring system and the technological tools or media for it will be established by the parties (employer/employee). The employer must be respectful of the remote employee's privacy and intimacy.

To implement homeworking Colombian employers should also comply with the following requirements:

- *Written agreement:* If the individual is already an employee, the employer and employee must sign an addendum to the employment agreement expressly establishing and agreeing on conditions for remote work. If the individual is newly hired, the parties must enter a remote work employment agreement.
- *Internal rules:* The employer must cover remote work conditions in internal working regulations, including security of information and treatment of confidential information, restrictions on computer and software use, data protection, IP and any penalties for non-compliance.
- *Registration:* The employer must notify the Ministry of Labour of the number of employees working remotely.

Employees can request long-term homeworking based on COVID-19 concerns, but the employer will be able to decide whether to allow this or not. The right to work from home cannot be

acquired. Employers may unilaterally abandon homeworking when they deem it necessary, at which point employees must return to on-site working.

#### **4.2 Working from another country**

##### *Local employment law*

Under the Colombian Labour Code, all employment relationships developed in Colombia are subject to Colombian employment regulations, regardless of the nationality of the employee or employer, or the fact that the parties have entered into an employment agreement in another country. However, this is not an absolute principle: there are some exceptions where Colombian employment law has been allowed to apply extraterritorially in other countries where the employee provides his or her services.

A requirement for the extraterritorial application of Colombian law is that the employment agreement was initiated in Colombia, and subsequently executed abroad; this would be the case here. In addition, in this case, the employment agreement would be subject to Colombian law, since the employer is located in Colombia, the remote employee is executing the agreement abroad under the control of a Colombian employer, and the employment agreement is signed under Colombian law. This means that employers would have to continue complying with all obligations derived from the employment agreement.

##### *Social security*

Despite having a Colombian employment contract, if the employee will be a resident of a foreign country, contributions to the social security system are not obligatory in their entirety. Employees residing abroad are not obliged to be affiliated and to pay contributions to the Social Security System in Health as they are not living in the country, since the Compulsory Health Plan only has coverage at national level. However even if an employee is a resident abroad, s/he must be affiliated to the Social Security System in pensions, since s/he has an employment agreement governed by Colombian law.

Given the employee would not be performing his or her duties in Colombia, it could be concluded that s/he would not be an obligatory affiliate. However, the Labour Risks Administrators provide coverage abroad, depending on certain requirements. Employers may decide the most reasonable thing to do is to affiliate the employee to this system and communicate to the Labor Risk Administrator that s/he will be abroad so international coverage applies. This coverage is generally temporary.

Employers must guarantee employees' social security coverage, so the employee should be affiliated to the social security system of the country

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where s/he will perform duties and have a policy insurance with international coverage.

### *Tax*

As the employment agreement will continue to be executed abroad and salary will be paid by an employer in Colombia, the employer must apply withholding taxes on the salary of the Colombian employee, as long as they remain Colombian tax residents. Once the employee stops being a Colombian tax resident (which must be analyzed on a case-by-case basis), the Colombian employer must not apply tax withholdings on salary. The tax regulations of the country where the employee earns his/her salary should also be reviewed. Additionally, as long as the employee remains a tax resident, s/he will be liable for income tax in Colombia, on both national and worldwide income and gains.

### *Immigration*

Employers should ensure the employee has a visa or a temporary permit authorising him or her to work. Upon termination of the employment agreement, the employer should cover the employee's transfer expenses of the employee (and his/her family) to return to his/her country of origin or the last country of residence. However, this obligation may be questionable considering that, in this case, the employee is the one who voluntarily wishes to work in another country.

### *Health and Safety*

Employers must comply with their Health and Safety at Work Management System obligations for all employees including any working abroad.

### *Data privacy*

Employees (data subjects) must consent to the collection, use, storage, transfer, and processing of their personal data. Third parties with access to it should abide to the same level of compliance the collector has committed to. Transfer of personal data to other jurisdictions should also be authorised by the data subject.

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# Czech Republic

Last updated:  
25/01/2021

## 1. Government support for employers

The Government has adopted the so-called 'Antivirus' programme targeted to support employment. Under the programme, a state contribution is provided to employers in the following cases:

### *Regime A*

Under Regime A, employers can apply for a state contribution to salary compensation paid to employees due to:

- employee quarantine (ordered by a physician or public health authority) in connection with COVID-19 (employer provides 60% of employee's reduced average earnings for the first 14 days of quarantine);
- employer's operation closed or restricted by official measures adopted by the Government, the Ministry of Health, or the competent public health authorities (employer provides 100% of employee's average earnings).

The state covers 80% of salary compensations paid by the employer to employees described above (including health and social security contributions). The upper limit per month per employee will be CZK 39,000 (i.e. approx. EUR 1,429). There is no cap on the total amount.

### *Regime A Plus*

Under Regime A Plus, employers can apply for a state contribution to salary compensation paid to employees due to employer's operation having been closed or restricted by official measures adopted by the Government, the Ministry of Health, or the competent public health authorities (employer provides 100% of employee's average earnings).

As opposed to Regime A, it can only be drawn for restrictions in effect after 1 October 2020. Under Regime A Plus, the state covers 100% of salary compensations paid by the employer to employees described above (including health and social security contributions). The upper limit per month per employee is CZK 50 000 (i.e. approximately EUR 1,909). The total amount of state contribution provided under the regime A Plus may not exceed the cap of CZK 800,000 (i.e. approximately EUR 30,552), however, please note that certain other state subsidies are counted within this cap as well. After the cap is reached, the employer may still draw state contributions under Regime A above (there is no total cap, but the amount provided per employee is lower).

### *Regime B*

Under Regime B, employers can apply for a state contribution to salary compensation paid to employees due to:

- absence of a significant number of employees due to obstacles on their part (employer provides 100% of employee's average earnings);
- fall of availability of inputs (employer provides employees with 80% of their average earnings);
- decrease in demand for the employer's products and services (employer provides 60% of employee's average earnings).

The state covers 60% of salary compensation paid by the employer to employees due to the relevant obstacles, including health and social security contributions. The upper limit for this contribution per month for one employee would be CZK 29,000 (i.e. approximately EUR 1,107.5).

The Antivirus programme is approved until the end of February 2021. Any further extension is subject to Government's approval. Currently, a bill introducing a permanent programme (so-called 'kurzarbeit') is in the legislative procedure.

## 2. Testing and Vaccination

### 2.1 Covid-19 testing

As a general rule, employers may not require their employees to take a COVID-19 test. Such a requirement could be justified only in exceptional circumstances (e.g. in specific settings, such as the provision of health and social services). Otherwise, testing would have

to be mandated by law or by the competent authorities (i.e. the employee may be ordered to take a test by the hygiene station).

## **2.2 Vaccination and vaccination status in the workplace**

Currently, as a rule, employers may not require their employees to get vaccinated. Mandatory vaccination would have to be required by law. Further, employers may not require their employees to provide them with information about their vaccination status.

## **2.3 Incentives for vaccination**

Employer may pay for their employees' vaccines (although vaccines should be free for all Czech citizens, when available). It is possible to offer incentives for employees getting vaccinated but this depends on the kinds of incentives offered, as some incentives can conceivably be problematic with respect to the principle of equal treatment. Employees should never be penalised for not getting vaccinated.

## **2.4 Dealing with refusal or inability to get vaccinated**

Employees cannot be penalised for not being vaccinated, regardless of their reasons for not doing so. For the situation to change, mandatory vaccination would have to be introduced by law.

## **2.5 Vaccination and data privacy**

Unequal treatment of employees without due cause is prohibited – as the employer cannot force employees to get vaccinated, not getting vaccinated cannot be a legitimate reason for unequal treatment. As a general rule, the employers should not process employee's personal data about their health (including their vaccination status).

## **2.6 Vaccination and posted workers**

There are no specific national provisions relating to testing or vaccination for posted workers. All the aspects discussed above would probably have to be agreed upon among the parties concerned.

## **3. How to keep workers safe in the office**

The Government has implemented various measures to fight the pandemic in the Czech Republic, in particular:

- Mandatory homeworking: the Government has (temporarily) ordered employers to use telework (i.e. to allow employee to work from their place of residence) to the maximum possible extent given the nature of the work performed and the operating conditions of the employer.
- Obligation to wear masks: everyone (including employees) must wear protective face equipment (such as respirators, drapes, face masks,

headscarves, etc.) in all indoor spaces of buildings (with exception of private residences), on public transport, public transport stops and stations, inside personal motor vehicles, and in all other publicly accessible places in the built-up area of the municipality, where at least two individuals are present less than two metres apart in the same place and at the same time. There are, however, certain exceptions, e.g. employees who work in one space, such as one desk, and at least two metres apart from others.

- special hygiene rules for certain operations such as supermarkets, restaurants, etc.

Employers may, of course, adopt additional measures: as a general rule, these must be proportionate and objectively justified.

## **3.1 Vulnerable employees**

There are no special rules for vulnerable employees in connection with COVID-19. All employees are entitled to a safe working environment under the conditions set forth by applicable legislation.

## **3.2 Back in the office**

As a general rule, the employer may require an employee to return to the workplace. Working from home must always have contractual basis. The employer may then issue internal

regulations specifying the agreed upon terms and conditions of homeworking.

Please note that if the employee has been ordered to observe quarantine (and cannot leave home), s/he may agree with the employer (if possible) on working from home, but the employer cannot request the employee's return to the workplace.

Also, as long as the mandatory homeworking measure is in place, employers should call employees back to work only when the employees objectively cannot work from home.

### **3.3 Suspected cases**

If the employee concerned is neither quarantined, nor found temporarily incapable of working, s/he can continue to perform work. However, if you suspect that a certain employee might be infected with COVID-19 and you do not want such employee to be present in the workplace, the following options are available:

- You may agree on telework with the employee (however, agreement is necessary).
- In all cases, you may send the employee home and pay them a compensation amounting to 100% of their average earnings.
- In some very limited cases, you may send the employee home without compensation (e.g. where employee is clearly sick and refuses to go to see the doctor).

### **3.4 Return to work after recovery**

When a worker is found out to be infected, s/he is ordered to observe quarantine by the competent hygiene authority. For the duration of such measure, s/he is not allowed to go to the workplace. The worker then has two options:

- S/he may work from home (for salary); or
- S/he may stay at home and not work. For this time, the worker is provided with compensation of 60% of his/her average earnings paid by the employer for the first 14 days, and, subsequently, with sickness benefits paid by the State from the 14<sup>th</sup> day onward.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Homeworking must always have contractual basis (i.e. must be based on agreement between the employee and the employer). Dependent work must be performed at the expense of the employer: the employer should always reimburse the employee's costs incurred during work. The employer should ensure that the employee works in a safe environment, however, the employer may enter employee's home only with consent. The employee and the employer should therefore always agree on the terms of ensuring safety during

homeworking. Please note that employers must be very careful when considering implementation of monitoring tools: although employers' legitimate interests can be a valid legal basis for processing employee personal data collected from monitoring, this will only be permissible if the processing is strictly necessary, given the circumstance of a particular case. Intrusive ICT monitoring of employees, remote location and tracking, monitoring through social media, etc. would, as a rule, be considered unlawful.

Employees may request homeworking, however, this would always be subject to approval by the employer. As the Government has ordered employers to use homeworking to the maximum possible extent, in certain scenarios, the employer may be obliged to approve this request but only for a limited period of time, that is, until the relevant Government measure ceases to be in effect.

Homeworking is always subject to agreement between the employer and the employee. The possibility of homeworking may be agreed for a fixed term or for an indefinite term.

### **4.2 Working from another country**

A Czech employment contract must always include a provision specifying the place of performance of work by the employee. Therefore, should the employee want to work in a different



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country, this would require amendment of the contract to reflect the change of place of work. Agreement is always required: the employee is not entitled to change his/her place of work and the employer is not obliged to allow the employee to work from a place other than the one agreed upon.

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# Denmark

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## 1. Government support for employers

The Government has implemented economic support measures for Danish businesses by a wide range of different compensation schemes. Throughout the pandemic, all compensation schemes have been subject to ongoing amendment. The various schemes all contain detailed requirements. Typically, the level of compensation relates to how much a specific business or sector is affected by the situation. Danish businesses can apply for compensation for fixed costs and wages. Furthermore, self-employed individuals and freelancers also have access to compensation from the Government. An overview of the current schemes can be found [here](#). Businesses can obtain extensive guidance from the authorities through hotlines and websites.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

In November 2020 a new statutory act came into force under which employers may be entitled to require employees to get tested for COVID-19 and inform the employer about the result. This testing requirement must be justified on grounds of preventing the spread of COVID-19 or essential operational circumstances. In addition, employees and their representatives must be informed of the testing requirement in accordance with the applicable rules.

### 2.2 Vaccination and vaccination status in the workplace

There is currently no legislation under which employers can require their employees to be vaccinated. The government is offering free vaccines to all citizens according to priority groups. This currently means that vaccines are available only for certain types of critical personnel in the public sector as well as for citizens considered most at risk for severe illness if infected with COVID-19. The government strongly recommends that (almost) all citizens be vaccinated. Under the Danish Working Environment Act, employers must ensure a safe and healthy working environment for their employees and the employees must assist in complying with this obligation. It is, however, our assessment that this obligation will not justify a general requirement for all employees to be vaccinated. Under the current guidelines on COVID-19 and working environment, it is generally considered possible to fulfil this obligation without employees being vaccinated, especially at regular workplaces such as offices. Imposing a vaccination requirement presents various employment law risks, including:

- Constructive dismissal: Employees may claim that a vaccination requirement does not fall within the scope of the managerial prerogative and argue that they are entitled to consider themselves dismissed.

- Compensation for unfair dismissal: Salaried employees claiming constructive dismissal who have been employed for one year at the time of dismissal could claim compensation for unfair dismissal. Blue-collar workers may be afforded the same entitlement under individual or collective agreement.
- Discrimination claims: Employees in protected categories, e.g. due to pregnancy or religion, may claim that a vaccination requirement is discriminatory and claim compensation under the Danish Act on Equal Treatment or the Danish Anti-Discrimination Act

### 2.3 Incentives for vaccination

Generally, employers are allowed to financially incentivise employees to be vaccinated, including by paying for a vaccination.

However, currently vaccination against COVID-19 is offered for free by the government and not available to buy. As for financial incentives, it should be taken into account that not all employees will be offered the vaccine at the same time by the government. Furthermore, some employees (e.g. pregnant employees, employees with certain medical conditions or employees of a certain religion), may have a valid reason for refusing to be vaccinated. If employees are barred access from financial incentives due to protected characteristics, this could potentially

expose the employer to discrimination claims.

#### **2.4 Dealing with refusal or inability to be vaccinated**

The employer is always entitled to change the employees' duties in minor ways (within the limits of the managerial prerogative). Provided that the employer can justify a vaccination requirement, refusal to be vaccinated could be considered refusal to comply with the employer's instructions or a breach of the employees' duty to act in the best interests of the employer. In this case, the employer may be able to justify disciplinary action such as dismissal. Whether disciplinary action is justified must be assessed on a case-by-case basis, including an assessment of whether the employee's reason for refusing is reasonable or violates Danish discrimination laws, including discrimination on grounds of religion or belief, disability or pregnancy. Before considering disciplinary action, the employer should consider whether lesser measures are appropriate, such as changing the employee's duties or transferring the employee to another position. If no lesser measures are possible (e.g. due to operational reasons), dismissal may, in our assessment, be considered fair depending on the circumstances. Another measure to consider could be salary deduction for any days on which the employee cannot perform his/her duties due to not being vaccinated (e.g. while

the employer is considering whether to take disciplinary action).

However, to the extent an employer is able to justify a vaccination requirement for a certain group of employees, and provided that vaccination is available for the employee in question, the employer may be able to dismiss an employee and be successful in a discrimination case.

#### **2.5 Vaccination and data privacy**

Generally, according to the Danish Health Information Act, employers cannot ask employees (or candidates) about their general health and/or specific illnesses. Whether an employer can require employees to inform the employer of vaccinations is currently being debated and the assessment of the legality of this type of requirement may change in the coming months and new legislation may also be adopted.

If certain employees or groups of employees cannot perform their duties at all without being vaccinated or without showing proof of vaccination, the employer may be able to impose a requirement on employees to inform the employer whether they have been vaccinated or not.

The processing of any personal data, including data on vaccination, must comply with the rules and principles laid down by the GDPR (legality, transparency, purpose limitation, data minimisation, accuracy, etc.). Conducting a data protection impact assessment

(DPIA) may be considered as well. Further, special considerations occur if any transfer of vaccination data to business partners etc. is considered. The social partners have requested that the authorities clarify the situation regarding employers' duties and entitlements as regards vaccination. We expect such clarification (if any) to also include information on data protection issues, including legal basis.

#### **2.6 Vaccination and posted workers**

There are currently no specific rules or considerations on vaccination and posted workers.

### **3. How to keep workers safe in the office**

#### **3.1 Setting up the workplace**

Generally, employers must take the necessary preventive measures to ensure employees' health and safety. Employers must implement as effective measures as possible to prevent the risk of infection with COVID-19.

The Government has asked organisations to follow the specific guidelines issued by the Health Authority, the Working Environment Authority and the Ministry of Industry, Business and Financial Affairs and encourage employees to do the same. Employers must specifically inform employees of any relevant precautions that they should take based on Health Authority advice. This

obligation also applies to homeworking employees. It is recommended that employers send employees the latest version of any applicable official guidelines (e.g. by providing web links).

The 'basic advice' is social distancing (usually one metre, however currently two metres), keeping the workplace clean, providing soap and hand sanitiser, limiting physical meetings and travel. Recommended measures include organisational changes such as shift work, adapting the workplace to social distancing, limiting physical meetings by implementing virtual solutions, etc.

Employers whose employees attend external meetings should implement policies on how employees should handle situations where e.g. clients, customers or business partners are not complying with the official guidelines. The recommendation should be for the employees to stop the meeting and leave the premises and then inform their line manager or HR of the incident.

Where the Health Authority recommends the use of protective equipment, employers are required to make equipment available to employees.

### **3.2 Vulnerable employees**

The Health Authority has published guidelines for people at higher risk of severe illness if they are infected with COVID-19. There are additional rules for employees who fall within this category.

In addition to the 'regular' guidelines, employers should, for example, enable employees at higher risk to avoid frequent or long-lasting face-to-face contact and should be especially vigilant in regard to social distancing and hygiene.

A bill was adopted in May 2020 under which some employees at higher risk and employees with a co-habiting relative at higher risk can receive sickness benefits if they are granted leave from their employment based on recommendation from their doctor and due to the fact that it is not possible to take the necessary precautions at the workplace. For more details see [here](#).

### **3.3 Back in the office**

If the employer makes sure to comply with all relevant measures and guidelines from the authorities, an employee cannot (as a starting point) refuse to come back to the workplace. If the employee has specific concerns (e.g. due to chronic illness), most employers will enter into a dialogue with the employee in order to try to find a solution.

### **3.4 Suspected cases**

If an employee falls ill and suspects it may be COVID-19, s/he must self-isolate and be encouraged to undergo a COVID-19 test. The employer should clean any area that an employee suspected of being infected has been in contact with.

If the test is negative, the employee may return to the workplace. If the test is positive, the employee must self-isolate until 48 hours after symptoms have subsided. If an employee tests positive for COVID-19 but has no symptoms, s/he must self-isolate for seven days after being tested. If the test is inconclusive, the employee must be retested.

Employees suspected of being infected with COVID-19 because they are 'close contacts' of an infected person infected (e.g. a family member or a co-worker) must self-isolate and get tested. The Health Authority's guidelines on testing of 'close contacts' vary depending on, among other things, whether the contact was continuous or a single event. Generally, testing procedures will involve at least four to six days of absence from the workplace.

A formal decision to quarantine an employee can only be made by the Health Authority. However, it is generally accepted that an employer can require an employee to stay away from work or work from home to reduce infection risks, for example, if an employee has recently travelled or is suspected for other reasons of increasing the risk of spreading COVID-19.

Employees will be entitled to their usual salary if the employer prohibits them from coming to work even though it has not been confirmed that they are infected with COVID-19. If, however, the employee has taken a private trip to a

banned country even though the employee knows that s/he must self-isolate after returning home and will not be able to come to work, the employee will not be entitled to salary during the absence.

Employers are neither required nor able to make any official notification if an employee is infected with COVID-19 or suspected of being infected. Health Authority guidelines state any person showing symptoms of COVID-19 must get tested and the authorities will automatically be notified if an employee tests positive. The employer could, however, seek guidance from the Health Authority if an employee is infected.

When communicating to the workforce that an employee is infected with COVID-19, employers must comply with the Health Information Act and data protection regulation. Generally, employers can inform the workforce that an employee from a specific part of the organisation is infected but not which employee has been infected unless the employee consents. If the infected employee voluntarily informs the workforce without the employer's involvement, the employer must also make sure to register and process this information in compliance with the data protection regulation.

If an employee tests positive for COVID-19, a public corona tracking unit (Coronaopsporing) will, with assistance from the employee, contact all the

employee's 'close contacts. Under Health Authority guidelines, colleagues are considered 'close contacts' in some circumstances, for example, if the infected employee has had close face-to-face contact with a colleague at less than one-metre distance for more than 15 minutes or had physical contact with a colleague, such as a hug.

This is not an exhaustive overview: employers should encourage employees to follow Health Authority guidelines.

### **3.5 Return to work after recovery**

As mentioned above, an employee who has tested positive for COVID-19 can return to work 48 hours after the symptoms of COVID-19 subside or, if the employee never showed any symptoms, seven days after being tested. Some employers implement longer periods of self-isolation than recommended by the Health Authority. They must pay the employees' usual salary although the employee is not considered sick.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Employers can enter into a voluntary agreement with employees to change the place of work to the employee's home. This is likely to be considered a material change of the employment terms. If employees are only required to work from home temporarily due to COVID-19, this

change would generally not be considered a material change to the employment terms.

As a starting point, employees are not entitled to work from home unless otherwise specified in their employment contract, company policy, a collective bargaining agreement, or in a specific agreement with the employer. Even if homeworking has not been regulated in this way, or if the employer does include a possibility of withdrawal or revision of the right to work from home in an agreement on homeworking, it cannot be completely excluded that the employees will, at some point (depending on circumstances), acquire the right to work from home. Once this happens, disallowing working from home would be a material change to the employees' employment terms.

There is no formal legal requirement in Denmark for employers to contribute to employees' costs of working from home, whether it is a temporary or permanent arrangement. This depends on the agreement between the employer and employee (some collective bargaining agreements include rules on this). It is, however, quite common for employers in Denmark to provide employees who regularly work from home with a paid internet connection. If employers provide other office equipment, this will, as a starting point, be tax-free for employees, provided it is similar in type and appearance to that available at the office.



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It is not general practice for Danish employers to pay other utility costs.

Special rules apply to the working environment of employees working from home. The Working Environment Authority has published guidelines on the requirements for home offices, e.g. tables, office chairs, monitors, lighting, etc. The guidelines on work on computer monitors will apply if the employee on average performs work at a computer from home more than two hours a day or one day per week. Generally, the normal rules on rest periods apply to employees working from home. Employers are not allowed to inspect an employee's home working environment without consent. The Working Environment Authority will generally not conduct inspections of home offices.

The Danish Parliament is expected to pass new legislation in regard to the working environment for employees working from home in the near future.

### **4.2 Working from another country**

If, as a result of the COVID-19-situation, an employee wants to work from a country different from the country specified in the employment contract, the employer must consider several issues, including:

#### *Immigration*

If the employee is entitled to work in Denmark based on a Danish residence and work permit, the employer is advised

to make sure that the change of country does not have any negative consequences for the residence and work permit and that the employee continues to fulfil the relevant requirements. Further, given the employer's information duty, the employer may consider informing the Danish Agency for International Recruitment and Integration (SIRI) when changes are made to the employment of foreign workers. Legislation on residence and work permits in the country where the employee wants to work should also be taken into consideration.

#### *Social security*

In general, social security liabilities are initially determined by the country where work is performed. However, it is the opinion of the Danish authorities that for employees who work from home in another country than usual as a result of the COVID-19 situation, the change of workplace will have no impact on their social security status, as working from home is considered an important tool to slow the spread of COVID-19.

#### *Tax*

Employees might find themselves in a new tax situation, so potential tax consequences should also be taken into consideration.

#### *Data privacy*

The Danish Data Protection Agency recommends employers have guidelines regarding employees' homeworking. The Agency also recommends employees

continue to use the employer's central case management system and designated secure access to subject systems (e.g. VPN). If an employee performs work from a non-EU country, special consideration should be paid to ensure that such arrangement does not jeopardise the employer's GDPR compliance.

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# Estonia

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## 1. Government support for employers

Various government measures are in place or planned to support businesses affected by the COVID-19 crisis. Labour costs are currently reimbursed by the Unemployment Insurance Fund to those employers in Harju County and Ida-Viru County whose activities have been significantly disrupted in the period from 28 December 2020 to 17 January 2021 due to extraordinary circumstances. A company, a branch of a foreign company, a non-profit association, a foundation or a self-employed person must meet certain criteria in order to receive support (*inter alia*, operate in a sector affected by restrictions, such as accommodation and catering establishments, sports facilities, hobbies, in-service training, or culture).

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

You are entitled to require employees to undergo a medical examination as you are obliged to ensure a safe working environment for all employees. In general, the need for a COVID-19 test is decided by a doctor. In certain cases, you may request that the employee takes a COVID-19 test or provides you with a proof of a negative test result, however, the employee may refuse to comply. In this case, you may be entitled to refuse to let the employee to work. The circumstances of each individual case must be assessed.

### 2.2 Vaccination and vaccination status in the workplace

If the results of the risk assessment show that the working environment is affected by a biological hazard (e.g. COVID-19), you must take measures to mitigate the hazard, taking into account the infectiousness of the hazard. If vaccination is particularly important and other measures are not effective enough to protect the health of the employees or customers, vaccination may be justified. You are obliged to ensure the immunisation of employees in work areas where there is a risk of becoming infected with a communicable disease.

However, employees are not obliged to get vaccinated. In Estonia, vaccination is voluntary. If an employee refuses to get vaccinated and you have found vaccination necessary to ensure a safe working environment, you may be entitled to refuse to let the employee work, offer the employee other work or to terminate the employee's employment contract (e.g. if it is not reasonably possible for you to reorganise the work or to take other measures to mitigate the risk effectively and the risk of transmitting the virus is high) as it is your obligation to ensure a safe working environment for all employees.

Considering the above, you may request information from employees on whether they have been vaccinated, presuming that all personal data protection related requirements are followed. Vaccination

status is health data which must be processed in accordance with Article 9 of the GDPR, see below. If an employee refuses to provide information on his or her vaccination status, you may be entitled to refuse to let the employee to work, reorganise his or her work, offer other work or to terminate the employment, if you have found the vaccination necessary.

### 2.3 Incentives for vaccination

Vaccination against COVID-19 disease will be free for everyone in Estonia in 2021. You may offer employees an incentive for getting vaccinated if there will be costs related to vaccination.

### 2.4 Dealing with refusal or inability to get vaccinated

If an employee has religious or other objections to vaccination or cannot be vaccinated for medical reasons and you cannot mitigate the risks by other measures, reorganisation of work must be considered. You must also offer another work for the employee where the risk to the employee's health and the health of other employees and customers is lower. If the above is not possible, you may be entitled to terminate the employee's employment contract. The circumstances of the individual case must be assessed.

If an employee refuses to get vaccinated due to his or her religious beliefs and you cannot mitigate the risks by other

measures, you should explain to the employee that the reorganisation of his or her work or termination of employment as appropriate is necessary in order to protect the employee's health and the health of other employees and customers as s/he cannot be vaccinated (and not because of his or her religious beliefs, which could be considered discrimination).

### **2.5 Vaccination and data privacy**

Data related to vaccination status of the employee are deemed to be personal data belonging to special categories. Therefore, whilst processing this information, the limitations and requirements stipulated in Article 9 of the GDPR must be considered.

### **2.6 Vaccination and posted workers**

There are no specific provisions relating to testing or vaccination for posted employees. The Estonian Occupational Health and Safety Act must be applied to an employee who has been posted to Estonia even when it is less favourable to the posted employee than the provisions of a foreign law.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

In order to ensure a safe working environment and prevent employees from falling sick, you should take appropriate

measures, including providing employees with necessary hygiene products, disinfectants and personal protective equipment, if necessary, reminding employees of elementary hygiene procedures, and minimising physical contact between employees and also between employees and customers (including avoiding meetings and supporting working from home where possible, etc). You should provide employees with instructions necessary in order to avoid the spread of the virus in the organisation. It is also important to ensure cleaning of frequently used rooms, objects and surfaces and to avoid meetings and business trips.

### **3.2 Vulnerable employees**

There are no separate rules for vulnerable employees or groups. You must take necessary measures to maintain a safe work environment for vulnerable populations. If you are not able to provide employees from vulnerable populations with a safe working environment, you must maintain their average remuneration during the period the employee refuses to return to on-site work.

### **3.3 Back in the office**

If you have ensured the working environment is safe, employees (including those from vulnerable populations) may not refuse to come to work.

### **3.4 Suspected cases**

If an employee has fallen sick, you should immediately send the sick employee home. You should ask other employees to monitor their health and to remain at home if any symptoms occur. In addition, you should carry out effective cleaning and disinfection at the workplace.

In order for you to ensure safe working environment, you are entitled to require that an employee undergoes a medical examination or gets advice as to his or her health status. You may also require an employee who is suspected to be infected not to come to work. In this case you must maintain his or her average remuneration during the period you refuse to allow such employee to work.

There is no specific requirement for the employer to report coronavirus cases to the authorities: this is done by healthcare service providers.

You should inform other employees about the infection of the personnel. It is, however, only justifiable to disclose the necessary information to the minimum extent. The name of the infected employee should not be disclosed to other employees without justified reason, e.g. if it is necessary to prevent further infection. You should also inform the infected employee of the information that will be shared with other employees.

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### **3.5 Return to work after recovery**

Individuals diagnosed with the coronavirus are prohibited from leaving their residence or permanent place of stay until their recovery. This means, an employee may return to work after s/he has made a recovery. Whether a person has recovered is decided by a physician.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

The Estonian Occupational Health and Safety Act applies also to remote work, which means that you are responsible for the work safety of any employee who works from home and you are obliged to organise a risk assessment of the home working environment. According to the recommendations of the Labour Inspectorate, employers must instruct the employees on how to furnish the workplace so that it is safe, on taking breaks, etc. As usual, you are also obliged to keep a record of the employee's work and rest time and to investigate all occupational accidents.

You are required to cover work-related costs and consequently, employees working from home may ask, for example, for the costs of the Internet connection to be reimbursed to the extent that these costs occurred or have increased in connection with working from home. As the regulation is unclear regarding compensating costs of setting

up a home office, we recommend regulating this issue by clear agreement with an employee.

Employees (including those from vulnerable populations) cannot demand working from home if the employer ensures safe work environment. According to the law, an employee may work outside his or her contractual place of performance of work, including at the employee's home, based on an agreement between employer and the employee. If it has not been agreed that working from home is temporary and only for specified term, the place of performance of work can only later be changed with the employee's consent.

### **4.2 Working from another country**

If an employee wishes to work in a different country to that specified in his or her employment contract as a result of COVID-19, the employer must assess which country's law applies in terms of immigration, local employment law, social security, tax, data privacy, health and safety measures etc. Additionally, the employer needs to consider if the employee's activity could create a permanent establishment for the employer in that country, and hence an income tax risk.

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# Finland

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## 1. Government support for employers

An Act and Decree on Support for Business Costs entered into force on 15 December 2020. The application period is now open until 26 February 2021. All companies whose turnover has decreased by at least 30% because of the COVID-19 pandemic can apply for support. The Government has issued a decree on sectors that may apply for support without having to submit further explanation. These sectors include for example tourism and leisure activities. The purpose of the support for business costs is to reduce the number of companies that go bankrupt due to the coronavirus crisis.

## 2. Testing and vaccination

### 2.1 COVID-19 testing

An employer may not require an employee to take a COVID-19 test, since testing is always, regardless of the situation, voluntary. However, the employer may require the employee to show a negative test result before entering work premises. Requiring a negative test result must be based on risk evaluation and the testing practice must be handled collaboratively. A negative test result may be necessary, for example, if an employee has recently returned from abroad. However, a requirement for a negative test result must have some factual basis. If a negative COVID-19 result is required, the

employer primarily bears the costs of this testing. Official information on testing available [here](#).

### 2.2 Vaccination and vaccination status in the workplace

In Finland, vaccination is voluntary and no employer, including in the healthcare sector, may require employees to be vaccinated. Vaccination status is considered personal health information, which may only be disclosed or processed with the employee's consent. With consent, this information may be processed only to the extent where it is necessary for the employment relationship. The employee may not be required to disclose personal health information. Further, all individuals enjoy right for personal freedom and physical/bodily integrity that are basic rights protected by the Constitution of Finland. Therefore, one cannot be forced to be vaccinated.

Under the s48 of the Infectious Diseases Act (1227/2016), a person with inadequate vaccination protection may only work with patients, who are susceptible to the consequences of infectious diseases, in social and health care units on special grounds. Employers have the right to process information related to this with the employee's consent. However, as the COVID-19 vaccine is not currently included in national vaccine programme as a

mandatory vaccination this does not apply.

### 2.3 Incentives for vaccination

COVID-19 vaccination is free in Finland. However, employers may offer to pay their employees' vaccination e.g. through occupational health care.

Further, the employer can encourage the employees to be vaccinated. Due to personal freedom and physical/bodily integrity and as an employer must treat all employees equally, it is not possible to incentivise or take any similar actions for taking a vaccination.

### 2.4 Dealing with refusal or inability to get vaccinated

As the vaccination is not mandatory in Finland, an employee can voluntarily choose not to have the COVID-19 vaccination without the decision having any effect on his or her employment relationship.

### 2.5 Vaccination and data privacy

Vaccination status is considered to be personal health information, which may only be disclosed or processed with the employee's consent. With consent, this information may be processed only to the extent where it is necessary for the employment relationship. The employee may not be required to disclose personal health information.



Further, the employer may not process the health information in a way that the employee is being discriminated against due to his or her health status.

### **2.6 Vaccination and posted workers**

There are no specific provisions relating to testing or vaccination for posted workers. The following applies to all employees: an employer may require an employee to show a negative test result before entering the workplace. This requirement must be based on risk evaluation: a negative test result may be necessary for example if an employee has recently returned from abroad.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

The official instructions and gathering restrictions should be followed if the employer requires employees to perform work at the workplace.

You should favour work arrangements that decrease close contacts and other possible risk factors. You should also ensure that all employees are aware of good hygiene practices as recommended by the Finnish Institute for Health and Welfare. Plan and prepare in advance for a situation where a growing number of employees get sick, and how remote work and extra staff can be organised. You should keep employees informed of the workplace strategy against

coronavirus and instruct any employee with symptoms to contact occupational health care.

The Finnish Institute for Health and Welfare recommends face masks in certain situations to protect others. However, this recommendation does not apply to working communities. At a workplace, the need for face masks is determined by the employer's risk assessment. Face masks may be necessary in situations where it is impossible to maintain a safe physical distance, the duration of close contacts is more than 15 minutes and others need to be protected from the mask user's respiratory secretions. Following a risk assessment, if the employer deems respirators and face masks necessary, the employer must supply protective masks and oversee their use.

Employer can advise employees to download the Koronavilkku app to their mobile phones. Koronavilkku is a contact tracing app produced by the Finnish Institute for Health and Welfare. The app can be used to reach app users who have been potentially exposed to coronavirus and help them to act in accordance with the valid guidelines and to contact the healthcare provider where necessary. The use of Koronavilkku App is voluntary.

### **3.2 Vulnerable employees**

There are no separate rules for vulnerable employees or vulnerable

groups. However, the employer must assess whether there are employees, whose risk of being infected with coronavirus at work is elevated compared to the rest of the population and ensure their health at work.

If the risk of infection is significantly elevated, the employer must take occupational safety and health measures. The primary measure to prevent employee exposure is to avoid social contact or limit the number of contacts. If social contact cannot be avoided due to the nature of the work, it must be assessed if the risk can be reduced sufficiently with protective solutions. In the assessment, the employer's obligation is, together with occupational health care professionals, to assess how an employee who is a member of a risk group can work safely. If it is not possible to use protective measures to reduce the risk at work sufficiently, the employee should be given other duties that do not have a similar risk of infection.

### **3.3 Back in the office**

Even during a pandemic, employees have an obligation to work in accordance with their employment contract. This means employers can demand employees return to work. However, remote work is still strongly recommended.

### **3.4 Suspected cases**

If there is a suspected case of coronavirus at the workplace, the sick employee should be advised to leave the workplace and contact the occupational or public health care provider by a phone or online service. The person with a suspected coronavirus infection should not go directly to see the doctor. If the employee falls ill during a workday, she/he should be isolated from the other employees. In addition, the area where the employee has been during the workday should be isolated and comprehensively cleaned. Further, employers should assess whether any other employees may have been exposed to the virus. The employer does not have an official notification obligation. The occupational health care service will make the official notification.

If there is a suspicion that an employee may be infected, the employer may require that the employee who is suspected to be infected to stay home. In this situation, the employer must pay the employee her/his normal salary. If the employee is later diagnosed with COVID-19, sick pay is paid according to the general rules and rules on quarantine should be observed.

If an employee is diagnosed with COVID-19, the employer may not, as a rule, name the employee in question. The employer can inform other employees of the infection or potential infection only in general terms and instruct them to work

from home. However, if this information would lead to revealing the identity of the infected person at the moment of informing others or thereafter, it should not be communicated to other employees by the employer. In this case, the Finnish health authorities are responsible for contact tracing the employees in person, if they have been exposed to coronavirus. Taking into account the strong protection for employees' privacy in working life, it is important that the employer advises and recommends its personnel to download the Koronavilkku tracing app.

An employee's health data may only be processed by people whose job description includes this processing. As provided by the Act on the Protection of Privacy in Working Life, the employer is permitted to process data concerning the employee's state of health only in a few situations detailed in s5 of the Act on the Protection of Privacy in Working Life (e.g. processing is required for the payment of the wages for the period of illness or other, corresponding health-related benefits or to determine whether the employee has a justified reason for absence). The employer and any personnel processing data concerning state of health on behalf of the employer are subject to a non-disclosure obligation and may not disclose the employee's health data to third parties even with employee's consent.

### **3.5 Return to work after recovery**

After an employee has been diagnosed with COVID-19, s/he should remain home at least ten days. If the employee still has symptoms on the tenth day or after that, she/he should stay home until s/he has been without any symptoms for at least two days. However, if the employee works in the health care sector, the employee should follow the employer's specific guidelines.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Remote working is strongly recommended in Finland due to COVID-19. However, organising homeworking is voluntary for the employer and employees. Employees are allowed to request long-term homeworking based on their concerns about COVID-19 but do not have a right to demand it, and some work tasks require employees to be at the employer's premises, which makes homeworking impossible. An initiative for remote working may come from either employer or employee. Even in these exceptional circumstances, remote working is based on cooperation between the employer and employees.

Employers should ensure that all employees, and particularly those who are new to remote work are adequately instructed and supported and possibly arrange events in which experiences and

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good practices can be shared. If the work is fully performed at home, the conditions should be agreed in more detail in the contract of employment or a separate remote working policy. This agreement may include specifications on the workload, times, and dates, primary location and tasks of remote work. The primary location of remote work should be the employee's home or a similar location. The employer should also provide instructions on the essential programmes and i.e. privacy policy.

In general, both employee and employer have all the obligations under the employment contract regardless of whether the work is performed remotely or at the employer's premises. This means, for example, that contractual working hours should be observed and the employer should provide the employees with the tools needed to perform their duties.

Regardless of where the work is performed, the employer is obliged under the Occupational Safety and Health Act to ensure that the work is performed in safe and healthy circumstances and environment. There is a special emphasis on this when the remote work is performed for a longer term. However, employee's home enjoys constitutional domestic peace hence the employer may not examine these premises. For that reason, it is important that the employer and the employee cooperate in organising homeworking. The employer may not monitor working as it is

prohibited also at the employer's premises.

In Finland, the terms and conditions that are not defined/included in an employment contract may become terms of the employment due to custom and practice so that it is no longer possible to change them unilaterally. This is, in effect, a course of conduct over a period of time by which the parties have, by their behaviour, demonstrated that they have agreed to the change: i.e. they have operated under the changed term without protest. Therefore, when work from home has continued for a longer period, it may become the employees' right, which cannot be altered only by the employer. To avoid this, it is recommended that employers clearly tell employees that remote work is in place for a certain period, e.g. for the duration of the pandemic.

### **4.2 Working from another country**

There may be a great variety of consequences for an employee and for the employer if an employee works from a different country, depending on e.g. how long the work is performed, is the employee posted employee etc. For example, in order to be able to work remotely from a different country, the employee may need to obtain a residence or work permit, depending on the local legislation.

Further, this may impact on taxation of salary and

The consequences should be assessed for each individual situation separately. In order to avoid any surprising obligations, it is important that the employee and the employer agree together how the work is performed in a different county.

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# France

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## 1. Government support for employers

Financial assistance measures are provided to help companies affected by the lockdown restrictions. Various measures were taken to support businesses to face past lockdown (exemptions from social security contributions, postponement of payment of contributions for independent workers, loans guaranteed by the state, financial assistance, and a partial activity system contributing to part payment of salaries for employees forced to stop to work...).

The French Government put in place support measures in its 'France recovery' plan. They include a decrease of production taxes from 1 January 2021; measures to strengthen funds for small and medium companies (with loans and others financial measures) and measures to increase training opportunities and hiring, in particular for young workers.

A new long-term partial activity mechanism has recently been implemented. It offers the possibility for a company facing a lasting reduction in its activity to reduce employees' working hours up to 40%, and to receive an allowance from the State for the hours not worked in return for commitments, particularly in terms of safeguarding of employment.

Specific measures have also been announced by the Government for the curfew period subject to certain

conditions (exemption from social contributions, solidarity fund, etc.).

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

There is currently a discrepancy between the position of the French government and the position of the French DPA (CNIL) concerning COVID-19 testing.

Initially, any COVID-19 testing (including private COVID-19 testing) was prohibited by the French government, as indicated in its [National Health Protocol for companies to ensure the safety and health of employees dated 24 June 2020](#). The French DPA has adopted a similar position since the beginning of the health crisis in 2020, as indicated in its last position dated 23 September 2020.

However, the French government's position has recently evolved: COVID-19 testing organised by employers is no longer prohibited subject to the strict conditions indicated in its [National Health Protocol for companies to ensure the safety and health of employees dated 6 January 2021](#). Given this, employers may not force employees to get tested and can only propose COVID-19 testing to their employees on a voluntary basis.

Additionally, pursuant to the current position of the French government, COVID-19 testing must:

- Be performed using one of the 'fast tests' authorised by the French government: these are 'antigenic' tests that can be performed in the nose, or salivary tests that do not need to be analysed in laboratories. Serological tests are still not authorised.
- Be fully financed by the employer.
- Respect medical confidentiality: no results may be communicated to the employer (or its employees) as specified by the French government: practically speaking, employers may only receive the medical opinion, if any, issued by the employee's general practitioner or the occupational health doctor finding that the employee can or cannot return to work (without indicating whether the employee is or was infected with the COVID-19 virus).

Additionally, in our opinion companies should apply certain complementary measures to mitigate potential risks concerning the implementation of COVID-19 testing: as indicated above, the current position of the French government is not fully consistent with the position of the French DPA. Consequently, the compliance of the French government's position with the GDPR could be questionable, especially since the National Health Protocol issued by the French government has no binding legal value.

Therefore, in our opinion it would be necessary to involve the occupational

doctor and to inform and consult the staff representatives (the Social and Economic Committee) on this project before implementing COVID-19 testing.

### ***2.2 Vaccination and vaccination status in the workplace***

Employers cannot make it a mandatory health and safety requirement for employees to be vaccinated and cannot require employees to disclose their vaccination status.

### ***2.3 Incentives for vaccination***

The employer could potentially encourage employees to be vaccinated; however, this could only be envisaged in close collaboration with the Social and Economic Committee, if any, and the occupational doctor.

### ***2.4 Dealing with refusal or inability to get vaccinated***

To date, there is no legal requirement to be vaccinated in France. Should the law provide for such an obligation (which is unlikely at this stage), it would be necessary to verify whether medical, religious or philosophical beliefs are not an exception to the obligation to be vaccinated. If so and provided that the vaccination does not pose a risk to the employee's health (this point would have to be verified with the occupational doctor), the employer could require the employee to be vaccinated. If the employee refuses, the employer could prevent the employee from returning to its

premises or impose a disciplinary sanction (warning or dismissal). However, the employee could challenge this measure before the Labour Court (and obtain damages and/or annulment of the measure) on the grounds that it would be discriminatory, and it would be up to the judges to determine whether the measure was justified.

For employees, who cannot get vaccinated for medical or disability reasons, employers should contact the occupational doctor to confirm that the employee can continue to carry out his/her functions and/or to verify whether adjustments or additional measures could be envisaged to limit the risk of contamination for this employee.

### ***2.5 Vaccination and data privacy***

The French DPA has indicated that processing of data related to whether employees are vaccinated is prohibited under the protection of medical secrecy at the workplace. It stated:

'employers may therefore only process data that is strictly necessary to meet their legal and CBA obligations, i.e. necessary to take organisational measures (remote work, orientation to the occupational doctor, etc.), training and information, as well as certain occupational risk prevention actions. For this reason, the employer can only process data related to the date, the identity of the person, the fact that the person has indicated that he/she is

infected or suspected of being infected, and the organisational measures taken. If necessary, the employer will be able to communicate to the health authorities having the competence to do so, the elements necessary for possible healthcare for the infected person. In any case, the identity of the person likely to be infected must not be communicated to other employees.'

Therefore, employers may not keep track of employees who are vaccinated and could not disclose the names of those who do not wish to be vaccinated. All information related to vaccination would be collected and kept within the occupational medicine services.

### ***2.6 Vaccination and posted workers***

There are currently no specific provisions relating to vaccination and posted workers.

## **3. How to keep workers safe in the office**

### ***3.1 Setting up the workplace***

As described above, employers are advised to implement full-time remote work wherever possible. Where this is not possible, the provisions described below apply.

The government published a national protocol to ensure the health and safety of employees in companies, updated on 6 January 2021. Since 1 September, a



COVID-19 responsible person (réfèrent) should be appointed to ensure the implementation of the measures defined and to inform employees. These recommendations are summarised below.

#### *Hygiene and physical distancing measures*

A physical distance of at least one metre must be complied with between each employee. Other examples of good practices cited include, among others, setting up a maximum density in work premises (e.g. 4 m<sup>2</sup>), drawing up circulation plans and modifying workers' hours to avoid groupings and crossovers.

#### *Mask wearing*

In principle, wearing of masks is mandatory within organisations. Adaptations to this general principle may be organized by companies to meet the specificities of certain activities or professional sectors after conducting an analysis of the risks of Covid transmission and the prevention measures to be implemented. They must be the subject of regular discussions with the employees or their representatives, in order to respond to the need to inform and be informed to regularly monitor the application, potential issues and necessary adaptations within the company.

Workers alone in a dedicated office are exempted from wearing masks. Likewise, workers in workshops do not have to

wear masks as long as specific ventilation conditions are complied with, the number of individuals present in the work area is limited and the workers wear protective visors and respect the greatest possible distance between them. For outdoor workers, masks should be worn in case of grouping or inability to maintain a physical one-metre distance.

#### *Prevention of contamination risks*

The employer should establish procedures for regular cleaning and disinfection of objects and areas that workers are likely to touch throughout the company's premises. Workspaces and public reception areas must be regularly ventilated.

In addition to the national protocol, specific guidelines have been set since March 2020 for each type of industry/activity, giving recommendations on adapting work in the context of COVID-19. However, the most recent national protocol must prevail.

#### *Teleworking*

During the application of curfews, teleworking is strongly recommended by the government, when possible and especially when an employee is vulnerable or lives with a vulnerable person (see below).

### **3.2 Vulnerable employees**

Employers must pay particular attention to workers presenting risks of serious forms of COVID-19. For these people,

homeworking is preferable when possible and they can even be placed in partial activity if necessary on the basis of a medical certificate. This also applies to workers residing with an at-risk person, however, for the latter, the partial work placement scheme was discontinued on 1 September.

When homework cannot be granted, additional protective measures should be put in place, such as individual provision of a surgical mask by the company to the worker, who should wear it continuously from the moment he/she leaves his/her home until he/she returns home. Particular vigilance with regard to regular hand hygiene and adapting the workstation layout are also recommended.

### **3.3 Back in the office**

Currently the government has stated that employers should implement remote work wherever possible for five days out of five.

For employers for whom remote work is impossible to organise, requesting employees return to work is possible. However, 'forcing' employees to return to work might expose the employer to potential liability if someone gets infected at work (pursuant to the employer's obligation to ensure employees' health and safety). Besides, some employees might have particular vulnerability or might refuse to come to work, in

particular if the employer cannot ensure safety at work.

The fact that an employee is concerned about COVID-19 cannot force an employer to place him or her on homework if his/her functions cannot be carried out remotely and all conditions to ensure safety at work are in place. However, the employee can always ask his/her employer, who will have the option of granting the request or not.

### **3.4 Suspected cases**

Employers must draw up a preventive procedure for the management of symptomatic workers. It should comply with the following:

- Isolate the person in a dedicated and ventilated room.
- Contact the company health professional or the COVID-19 referent.
- If symptoms are mild, call the occupational doctor or ask the worker to call his or her personal doctor for a medical opinion. If the doctor confirms the absence of severity, arrange for the worker's return home. If there are signs of severity, call the emergency medical services.
- Contact the occupational health service to ask instructions, including to organise the cleaning and disinfection of the workstation and follow-up of workers who have been in contact with the symptomatic person.

Employers should invite employees suspected to be infected not to come to work, to consult a doctor without delay, to get tested and to isolate themselves while waiting for the results.

Employers can make temperature checks at the entrance to the workplace, although this is not recommended by the government. The employee may refuse to submit to temperature checks. If the employer, upon such refusal, does not allow the employee access to his/her position, the employer may be required to pay the employee the wages for the lost workday.

However, it still seems possible to impose homework on an employee suspected to be infected to guarantee the protection of all workers. In any case, if the employer suspects an employee of being infected at work, it must follow the procedure described above (isolate the person, contact a health professional, arrange for the worker to go home or call the emergency services and contact the occupational health service).

The employer needs to contact the occupational health service if there is a suspected or confirmed case and may also inform employees, but no official notification is required.

If the symptomatic worker is confirmed to have COVID-19, the physician treating him/her and the health insurance platforms will identify and take care of workers who have been in contact. Some

workers may then be placed in a seven-day period of sanitary confinement.

### **3.5 Return to work after infection**

According to Labour Ministry guidelines from the end of July, a return to work is not subject to a medical opinion, although this is recommended. Return seems possible after a minimum of eight days after the appearance of symptoms and 48 hours after the disappearance of any clinical signs.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

In exceptional circumstances, such as COVID-19, employers can impose homework on employees without their agreement. Otherwise, in the longer term, homeworking is usually set by collective agreement or by teleworking policy after consultation with employee representatives. Employers can provide for full-time homework or alternation between homework and on-site work

The employee will have to respect working hours set by the employer, and his/her break times will remain unchanged. The employer must ensure compliance with the employee's right to disconnect.

Except in exceptional circumstances, it is usually requested that the employer guarantee the employee a workspace

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allowance is generally negotiated and provided.

The employee's usual rights are maintained, in particular with regard to catering (e.g. meal tickets.). In the event of an accident while homeworking, the employee is covered by the legislation applicable to accidents at work.

COVID-19-related measures constitute homework in exceptional circumstances and allow employers to ask employees to return to the company if the conditions for resuming work comply with health instructions. Other than in exceptional circumstances, the possibility for home working is strictly regulated by the French Labour Code and company policy. In theory, the fact that an employee has been exceptionally placed on homework should not entitle him/her to homework indefinitely. However, in practice, this certainly reinforces the increasingly recurring demand to extend remote work, at least partially.

### **4.2 Working from another country**

If an employee normally employed in France is 'stuck' working outside of France by COVID restrictions, teleworking should be considered when possible. If teleworking is not possible, consideration could be given to using vacation or placing the employee on a paid activity exemption.

If an employee wants to leave France to work abroad after the health crisis, it will be necessary to enter into an amendment

to his or her employment contract to determine the conditions of future employment and, in the event of the employee's installation over a long period, the s/he should in principle be subject to the law applicable in the country where s/he will perform duties. If the employee wishes to come and work in France, it would certainly be necessary to conclude an amendment to his or her employment contract to determine the conditions of future employment in France. Depending on the country of origin, the employee may be subject to an obligation to produce a test and/or to quarantine measures to ensure that s/he is not infected with the COVID-19 virus. For the rest, the employee should be subject to the 'classic rules' of French law in terms of immigration, local employment law, social security, tax, data privacy, health and safety measures.

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# Germany

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## 1. Government support for employers

The federal government introduced several support mechanisms for business. Amongst them are so-called December Aids (Dezemberhilfen), interim aids I - III (Überbrückungshilfen I - III) for self-employed individuals and small and medium-sized enterprises whose revenues have fallen substantially during the pandemic and/or who have been affected by short-time working. The Überbrückungshilfen will cover up to 75% of the turnover of the month prior to the month for which they were granted. Further, a substantial Economic Stabilisation Fund has been set up which provides German companies across all sectors with stabilisation measures in the form of guarantees and warranties to strengthen their capital base and overcome liquidity bottlenecks. Tax breaks, easier access and a prolongation of short-time working allowances are also amongst the support mechanisms.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Employers are required to ensure that certain employees do not report to work unless it is determined from an occupational health perspective that they do not pose a safety risk to themselves or others. Therefore, measures including mandatory COVID swab tests may be reasonable and proportionate to protect employees' health. If they refuse to get

tested, employers may consider sending them on gardening leave without pay. If the employee can ultimately no longer be deployed because of his or her refusal to be tested, termination of employment may also be considered as the ultimate consequence. However, case law on these questions is only beginning to form, and heated public debate continues.

### 2.2 Vaccination and vaccination status in the workplace

In Germany, COVID-19 vaccinations are not compulsory, and the federal government has announced that it will not introduce compulsory vaccination in the future. Since a vaccination interferes with the employee's right to physical integrity, employers cannot force their employees to be vaccinated. This may put employers in a dilemma, as the employer is also obliged to ensure the best possible health protection for employees. Especially in working environments with a particularly high risk of infection (e.g. in hospitals or care facilities), or where protective precautions cannot be maintained, vaccination is the most effective method of health protection. Therefore, a refusal to get vaccinated might have consequences, up to and ultimately including termination of the employment relationship. If the employee can no longer be deployed due to his or her lack of vaccination protection, reassignment must be considered. If this is not possible or not deemed reasonable, a termination might be considered. Therefore, although

vaccination is not compulsory, there may nevertheless be employment law consequences if employees refuse to be vaccinated.

The same applies to asking about employees' vaccination status. According to current regulations, the disclosure of information about vaccination status typically cannot be required (as this is specially protected health data under GDPR) unless this is e.g. required to conduct the employment relationship. In some fields (e.g. hospitals, care facilities), the employer may even be legally obliged to verify employees' vaccination status. If the employer is unable to ascertain whether the employee in an existing employment relationship has been vaccinated, the employer may consider exempting the employee from work without pay in the interests of health protection. A termination might ultimately be considered if the employee can no longer be deployed due to his or her lack of vaccination protection.

### 2.3 Incentives for vaccination

A vaccination incentive can be a suitable and effective way to achieve the most comprehensive vaccination protection possible for employees. It should be noted that the introduction of this type of special payment may be subject to co-determination and must be measured against the general principle of equal treatment. A vaccination incentive would therefore have to be granted in such a manner that no employee is

placed at an objective disadvantage. Distinguishing between 'regular' full-time employees and part-time employees, mini-jobbers, working students, etc. will therefore not be feasible, since the employer benefits from the vaccination of all employees, regardless of their status and degree of employment.

Payment of the vaccination incentive should only be initiated upon presentation of proof of vaccination. If the vaccination is offered and carried out by the employer itself (for example, by the company medical service), proof of vaccination may also be collected by the employer. If, on the other hand, the employee is vaccinated by an external provider, a vaccination certificate issued by this provider must be submitted. An obligation on an employee to present a complete vaccination record will generally not be justified for reasons of data protection. The same applies to the storage of the vaccination certificate in the employee's personnel file. Before practical implementation, employers should first think through the prerequisites of any incentive, its amount and payment modalities in detail before rushing to communicate it to employees.

#### ***2.4 Dealing with refusal or inability to get vaccinated***

The employees' fundamental right to freedom of religion and beliefs must be respected in the employment relationship. It is the employee's free decision to refuse vaccination for religious reasons or

because of his or her belief (provided that this indeed mandatorily prohibits vaccination). However, the employer has a legitimate interest in ensuring that, as far as possible, only vaccinated employees are deployed.

As a consequence, employers should consider whether a reassignment is possible and if that is not the case, a termination may be considered. If employees cannot be vaccinated for medical reasons, attempts must be made to allow the employee to continue employment (although under modified conditions). Otherwise, a potential dismissal could be regarded as discriminatory. However, as a last resort, a termination may still be possible.

#### ***2.5 Vaccination and data protection***

As described above, an obligation on an employee to present a complete vaccination record will generally not be justified for reasons of data protection. The same applies to the storage of the vaccination certificate in the employee's personnel file.

#### ***2.6 Vaccination and posted workers***

There are no specific legal requirements regarding vaccinations and testing of posted workers. The rights and obligations of the receiving employer depend on the contractual arrangement between the three parties (e.g. dormant original contract plus posting agreement,

or simultaneous contracts) and the applicable law.

However, it should be noted that many countries do not currently permit entry into their territory, or permit entry only upon presentation of a negative COVID-19 test. In many cases, therefore, entry will not be possible if no test result (or in the future possibly also proof of vaccination) can be provided. The posting agreement should therefore include a provision on the possible course of action in the event that the posting is not possible due to Covid-19 related entry restrictions.

Expenses incurred for COVID-19 tests or vaccination are to be covered by the contractual employer.

### **3. How to keep workers safe in the office**

#### ***3.1 Setting up the workplace***

The German Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales) has adopted a SARS-CoV-2 Occupational Safety and Health Standard ('SARS-CoV-2-Arbeitsschutzstandard') as well as a SARS-CoV-2 Occupational safety rule ('SARS-CoV-2 Arbeitsschutzregel') which set out feasible guidance on potential measures that employers can implement in order to ensure compliance with the statutory health standards. While there still is no mandatory rule that offices must



be closed, employers are firmly requested to enable remote working wherever feasible.

Generally, two clear principles apply to office work:

- Where there is doubt whether the minimum physical distance of 1.5 metres can be observed, face masks covering the wearer's mouth and nose must be provided to and worn by employees. In some Federal States, a general obligation to wear face masks in offices applies.
- Employees with breathing symptoms or with an elevated temperature should not be allowed on work premises. Employers must establish a procedure (such as in an infection emergency plan) for managing any suspicious cases (see below).

Measures such as ramping up hygiene levels, cancelling unnecessary personal meetings and restrictions on business travel should be considered as well as rearranging workplaces in order to observe the set physical distance of 1.5 metres. Where necessary, the installation of (transparent) dividers (especially in places frequented by the public), working from home etc. should be considered. External visitors should be asked about potential risk factors, and this should be communicated to employees to create an atmosphere of managed risk.

Please note that occupational health and safety generally depends of the specific situation and circumstances of the individual business. Therefore, there is no 'one size fits all' solution. Rather, relevant occupational health and safety measures need to be assessed and implemented on a case-by-case basis considering each business's individual situation.

### **3.2 Vulnerable employees**

Employers need to consider the specific risks for vulnerable employees and take appropriate measures to protect them (s3(6) and 5(4) of the SARS-CoV-2 Arbeitsschutzregel). This has to be done on a case-by-case basis.

### **3.3 Back in the office**

Companies are obliged to develop and implement a hygiene concept based on the current risk assessment and company pandemic planning. In doing so, it is important to avoid unnecessary contacts within the workforce and with customers, to adhere to general hygiene measures and to minimise the risk of infection in the event of necessary contacts through special hygiene and protective measures. In addition, companies are encouraged to allow homeworking wherever this is feasible. However, employers can require employees to return to on-site work, at least in most cases. The right to issue instructions gives the employer the right to determine the place of work, which is usually the office. Employees have no right to stay at home as a preventive

measure if they are afraid of infection and there is no general right to work from home. However, if, at the beginning of the pandemic, employees reached a binding agreement with their employer to work from home for six months, for example, the company is also bound by that. This is also the case if the employee has young children who need care and no child care is available. As child care and schools are generally open again in Germany, this should only apply in exceptional circumstances.

### **3.4 Suspected cases**

Send sick employees home immediately and notify the authorities and any potential contacts. Consider a (partial) closure to pre-empt authority-mandated full closures.

Employees must inform you if they are infected or have recently travelled to a high-risk area based on their duty to prevent damage to you and their colleagues. This includes providing information about close relatives or other contacts who are ill or about private trips to official risk areas. An employee would be in breach of their contract and risk severe consequences (from contractual sanctions to damage claims) if they do not tell you they are infected.

There is no general notification obligation for employers. Only the heads of community bodies (e.g. kindergartens, schools or care facilities for elderly

people) are obliged to report authorities in the event of an infection in their facility.

Employees with relevant symptoms should contact their primary care physician or call the national/local COVID-19 hotline. The doctor will assess whether further care is required and if a test is necessary. If the test is positive, the doctor as well as the test center are obliged to notify the local health authorities, who will then get in touch with the infected employee.

Employers should specify procedures in a company pandemic plan in the event of a confirmed infection for identifying and informing individuals (employees and, where applicable, customers) who are also at risk of infection through contact with the infected individual.

Generally, you should draw up emergency action plans, including communication with employees to avoid spreading panic. A single case of infection does not entitle all other employees to refuse work and still be paid. You have a duty to inform employees about risks of infection and illness, especially if there are concrete risk indications. In an 'unforeseeable emergency', employees are obliged to work overtime based on their general duty of loyalty.

### **3.5 Return to work after recovery**

Employees may return to work after the quarantine order imposed by the local

health authority has been lifted, provided they are not still unfit for work (e.g. still suffering from the effects of the infection). Before resuming their activities, returning workers must be given information on the protective measures taken as a result of the COVID-19 episode. In the event of an incapacity to work of more than six weeks in the last twelve months, the employer must also offer the affected employee company integration management in accordance with the German Social Code (§167 (2) SGB IX, see also 5.5 SARS-CoV-2 Arbeitsschutzregel).

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

The employer generally has the right to unilaterally order the activity to take place at the office if there is no conflicting agreement which guarantees the employee the right to work from home. The employee is generally not entitled to continue working from home. This right would not arise from a company practice either. In view of the high infection rates, the German Federal and States governments are currently urging companies to make teleworking or mobile working possible, wherever this is feasible. However, there is no general right for employees to work from home.

A legal right to working from home has been the subject of intense political discussion in Germany, but all draft Acts to this effect have been rejected so far.

Employees are currently not allowed to move to remote work without the employer's consent. This would only be possible if the employer does not sufficiently comply with its obligations under §618 of the German Civil Code (BGB) regarding public law employment protection standards. In this case, the employee might have a right to refuse to work in the office. If, for example, the employer does not comply with the recommended hygiene standards or cannot guarantee a minimum distance between the employees, relocation of the activity to the home office without the employer's consent could be conceivable within narrow limits (e.g. in the event of serious or persistent infringements which may cause lasting damage to the employee).

Even when working offsite, it is the employer's responsibility to take measures for occupational health and safety in accordance with the provisions of the Occupational Health and Safety Act. The concrete measures which the employer must take depend on the circumstances of the individual case and vary by mode of homeworking: (remote working (without a fixed workplace) or teleworking with a fixed workplace at home). The measures are mainly limited to instructions on occupational health and safety (e.g. ergonomic design of the workplace, information regarding interruptions of screen work for changes of activities and work breaks, etc.) for remote working, but are much more

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comprehensive when true teleworking is concerned.

Employees, even if they work from home, must comply with the maximum limits on working hours, break regulations and rest periods. The employer is responsible for this and must enforce the relevant provisions. However, monitoring by the employer in the home office is only possible to a very limited extent. The employer should therefore delegate its duties to document daily working time to the employee. If the employee procures work equipment for working from home at his/her own expense, s/he may have a claim for reimbursement against the employer. This depends on the reasons for which working from home has been set up and what expenses are involved.

### **4.2 Working from abroad**

If the employee works from another country permanently, there is a risk that this might create a permanent establishment. Section 12 of the Levies Ordinance (Abgabenordnung) is decisive for defining a permanent establishment. According to this provision, any fixed place of business or facility that serves the activities of a company is to be understood as a permanent establishment. It is not necessary that the facility, installation, etc. belongs to the company; it is sufficient that it is available for the company's purposes. Qualification as a permanent establishment would result in tax liability under German law and the obligation to pay social security

contributions. Practical examples show that such cases often lead to significantly increased wage cost if employers have not properly assessed permanent establishment risk.

Furthermore, the employee has to hold a residence permit for the country in question allowing him or her to work. Depending on the country, certain legal requirements such as data protection law might deviate (e.g. if the employee is permanently working in Germany, the GDPR applies).

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# Hong Kong

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## 1. Government support for employers

Whilst Hong Kong has so far avoided lockdowns, in April 2020, the Hong Kong government launched a series of measures including the Employment Support Scheme to support employees and businesses and to ease the financial difficulties arising out of the coronavirus pandemic. Under the Employment Support Scheme, the government provided subsidies to eligible employers for up to six months (from June to November 2020) to cover 50% of salaries capped at HKD18,000 (i.e. HKD 9,000 per month) for each employee, on the condition that the employer undertook not to implement any redundancies and to spend all subsidies on paying wages to their employees. If any redundancies took place during the subsidy period, penalties were imposed and if employers failed to use all subsidies to pay wages, the government clawed back any unspent balance of the subsidy.

The Hong Kong government has not extended this Scheme past November 2020 but has instead provided various subsidy schemes to specific industries that have been hard hit by the pandemic and directly affected by the government's social distancing measures.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

There is no statutory right under Hong Kong law for employers to require

employees to undertake any medical tests, including COVID-19 tests. Therefore, although employers may ask employees to undertake a COVID-19 test, they cannot compel employees to do so if they refuse.

If the employment contract contains an express provision allowing the employer to direct an employee to attend medical examinations, the employer may potentially rely on this contractual clause to require the employee to undergo a COVID-19 test.

In the absence of any contractual right to compel an employee to undergo a test, an alternative basis is to treat a requirement to undergo the test as a 'lawful and reasonable' direction by the employer. Under common law, an employee is under a duty to obey lawful and reasonable directions by the employer. Given that employers are legally required to take reasonable care of their employees' health and safety under common law and the Occupation Safety and Health Ordinance (OSHO), requiring employees to undertake COVID-19 tests could potentially be considered a 'lawful and reasonable' direction if, say, for example, employees are required to attend the workplace. If an employee refuses to undergo testing, an employer may consider taking disciplinary action for the refusal to obey a lawful and reasonable direction. However, whether disciplinary action can be justified is highly fact-sensitive and would depend

on whether testing is deemed necessary in the circumstances.

It should be noted that if the Centre for Health Protection identifies an employee as part of a high-risk group or as a close contact of a confirmed case, the employee will be required by the government to undergo mandatory testing.

### 2.2 Vaccination and vaccination status in the workplace

As mentioned above, employers are legally required to take reasonable care of their employees' health and safety under common law and the OSHO. However, it is not clear whether requiring employees to be vaccinated would be considered a 'reasonable' step for employers to take to ensure employees' health and safety. Whether implementing such a requirement would be considered reasonable will be highly fact-dependent and will depend on factors such as the risk associated with any particular workplace.

Requiring employees to inform employers of their vaccination status could potentially be considered a 'lawful and reasonable' direction, depending on the circumstances. If employees do inform employers of their vaccination status, the employer should ensure that they comply with the Personal Data (Privacy) Ordinance as such information would constitute personal data, see 2.5 below.

### **2.3 Incentives for vaccination**

The Hong Kong government has announced that it will be launching in phases its territory-wide COVID-19 Vaccination Programme shortly to offer all Hong Kong residents COVID-19 vaccinations on a voluntary basis free of charge. Employers may incentivise employees to participate in the Vaccination Programme, but they cannot compel employees to do so if they refuse.

### **2.4 Dealing with refusal or inability to get vaccinated**

As mentioned above, employers are legally required to take reasonable care of their employees' health and safety. If requiring employees to be vaccinated would be considered a 'reasonable' step for employers to take to ensure employees' health and safety, but an employee refuses or objects to be vaccinated for medical reasons, proceeding to dismiss an employee on this ground may open the employer up to liability for indirect discrimination under the Disability Discrimination Ordinance. If it is indeed reasonable for employers to require vaccination, a more reasonable response to an employee's refusal or objection to being vaccinated for religious, medical or other reasons would be to change the employee's place of work and/or duties accordingly. Such change should be undertaken with the employee's express consent as it would

constitute a change to the employment terms.

Hong Kong anti-discrimination law protects the characteristics of sex, pregnancy, marital status, disability, family status and race. In requiring employees to undergo vaccination, employers should take care not to discriminate against employees on the basis of these grounds.

### **2.5 Vaccination and data privacy**

If employees do inform employers of their vaccination status, the employer should ensure that they comply with the Personal Data (Privacy) Ordinance as such information would constitute personal data. In particular, the employer must inform employees that the purpose for collecting the data is to ensure health and safety in the workplace, and use the data collected solely for this purpose. The employer must also inform employees of the classes of person to whom the data may be transferred, and their right to request access to this data. Moreover, the employer must take precautions to protect the data from leakage or unauthorised access, and only retain the data for a period that is reasonable and necessary with regard to the purpose.

### **2.6 Vaccination and posted workers**

In Hong Kong, there is no equivalent concept of a 'posted worker' similar to that in the EU. However, in relation to employees being seconded on a temporary basis to another country, there

are no specific provisions in this regard in force in Hong Kong. It will be for the parties involved to determine the arrangements for any testing or vaccination.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

As previously mentioned, an employer has a duty to take reasonable care of employees' safety and health and to provide and maintain a safe place of work for the employees in all circumstances.

In addition, the Centre for Health Protection has issued a [Guideline](#) to help prevent COVID-19 in the workplace. Although this Guideline does not have the force of law, employers are encouraged to follow it to the extent possible. Following the Guideline may help to demonstrate that employers have discharged their duty of care under statute and under common law.

It is therefore prudent for employers to implement various measures such as temperature checks, physical distancing, ensure the use of protective equipment such as face masks, quarantine measures in relation to employees whose family members or close contacts are infected, etc.



### **3.2 Vulnerable employees**

There is no definition of 'vulnerable' employees in Hong Kong, and therefore there are no separate rules for so-called 'vulnerable' groups.

### **3.3 Back to the office**

Generally speaking, an employee must comply with his or her employer's reasonable instructions. Therefore, unless there is a valid basis for refusing to attend the workplace or s/he thinks the workplace is dangerous or hazardous to his or her health, an employer could mandate its employees to return to workplace, and a refusal to comply with the instruction to return to workplace may amount to a breach of contract.

However, employees may lawfully refuse to return to the workplace if they reasonably fear for their health and safety. This may be the case where it has been confirmed that another employee contracted the virus, but the workplace has not since been professionally cleaned or disinfected.

### **3.4 Suspected cases**

There is no legislation nor guidance the employer is required to follow in terms of practical measures. We recommend that the employer should direct the concerned employee not to attend the workplace until they obtain medical clearance.

Bearing in mind the employer's obligation to provide a safe workplace, we recommend that all employees who have been in close contact with the suspected person should be directed to work from home for at least two weeks. Employers should also clean and disinfect the workplace.

The employer can require an employee not to come to work until s/he obtains medical clearance if it suspects s/he is infected.

There is no express obligation to notify government authorities that an employee has tested positive. However, employers should cooperate with the Department of Health if investigation is conducted to trace contact.

If an employee contracts or suspects having contracted COVID-19 by accident arising out of and in the course of their employment, the employer is required to notify the Labour Department of the 'injury', to allow the employee to bring a potential claim under the Employee Compensation Ordinance.

Employers should act promptly as soon as they learn there is a confirmed case, and communicate in an open and transparent manner. However, employers should not disclose the identity of the infected employee to avoid any breaches of the Personal Data (Privacy) Ordinance. Employers should give assurance that they will take all reasonable steps to maintain a safe and healthy workplace for

employees and list out the steps that will be taken to clean and disinfect the workplace. Employees should be reminded to assess their own potential COVID-19 symptoms daily.

### **3.5 Return to the work after recovery**

There is no formal procedure to be followed by employers in Hong Kong. We recommend that an infected worker should only return to work if he/she satisfies the [discharge criteria](#) set out by the Centre for Health Protection (i.e. two negative test results or a positive test result for SARS-CoV-2 antibody, and that his or her clinical conditions have improved and s/he does not have a fever).

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

'Workplace' is defined broadly under the OSHO to include 'any place where employees work' with limited exceptions and which can include the employee's home if they are working from home.

*Rights under the Employee Compensation Ordinance:* Under the Employee Compensation Ordinance, employers are liable to pay compensation to an employee who suffers a personal injury by an accident which 'arises out of and in the course of employment'. Therefore, if an employee sustains injury in the course of work when he/she is

working from home, employers may be liable to pay compensation to the injured employee. Although this issue is yet to be tested in the Hong Kong courts, there are a few Australian authorities affirming the position that employers are liable to pay compensation to employees who sustain injury in the course of work while working from home.

In the circumstances, employers must both provide an adequate system and ensure that employees follow it, through management, instruction, incentivisation and ultimately, discipline.

*Provision of Equipment and Reimbursement:* With respect to the provision of equipment (such as a computer or printer), employers could either provide necessary equipment to employees, or allow employees to use their own equipment at home.

Further, employers should reimburse employees for the business and operational costs incurred as a result of working from home (especially when the employment contract provides so), and failure to do so may leave room for an argument by the employee that the employer is either in breach of the employment contract, or that the costs incurred, if not reimbursed, would be an offset against earned wages, and therefore result in deduction of salary. If so, the employee may have potential claims for constructive dismissal and/or unreasonable variation of employment terms.

Employees do not have the legal right to request long-term homeworking. Therefore, unless there is a valid basis for refusing to attend the workplace or an employee thinks the workplace is dangerous or hazardous to his/her health, employers could refuse a request, and a refusal to comply with the instructions to return to workplace may amount to a breach of contract.

Provided that an employer has taken reasonable measures to provide for the health and safety of its employees, in the absence of any specific grounds for refusing to return to work other than general concerns about the presence of the virus in Hong Kong, an employer can legally require an employee to attend the workplace, and it is unlikely that the employees' requests to work from home permanently based on concerns about coronavirus would be allowed.

Note that we think it is unlikely that employees will acquire the right to work at home, even if they have done it for a certain period of time.

#### **4.2 Working from another country**

*Immigration:* Employers should take into account whether an employee has the right to work in the relevant jurisdiction. Employers may also need to consider any issues that could arise on the employee's return to Hong Kong, for example, whether there are any restrictions on entering Hong Kong.

*Employment law:* Employers would need to continue to comply with their obligations under the employee's Hong Kong contract (e.g. provision of salary, annual leave, holidays, sick leave allowance, etc). An employer would also need to be cautious as to whether local employment laws and regulations of the host country would also apply to the employee. Generally speaking, the longer an employee works in a different country, the higher the risk of the employee acquiring rights in that country. This may include minimum wage restrictions, paid annual holidays, statutory maternity or paternity entitlements and rights on termination. As previously mentioned above, if an employee suffers a personal injury by accident which 'arises out of and in the course of employment', the employer may be liable to compensate the employee. This would apply regardless of whether he/she is performing his/her duties in Hong Kong or abroad. Employers should also ensure that they comply with any local health and safety requirements.

*Social security:* Whilst Hong Kong does not have a social security system, most employers and employees are required to make contributions to a mandatory provident fund (MPF) which is a regulated privately managed retirement fund. Where mandatory contributions are being made to an MPF, arrangement for the employee to work abroad will not affect the contributing obligations of the employer or the employee.

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*Tax:* The host country may have taxing rights over the employment income that the employee earns while physically working in that country. However, if there is a double taxation treaty (DTT) between Hong Kong and the host country, the employee will be subject to income tax of the host country only if certain conditions are satisfied. The DTTs that Hong Kong has entered into typically grant taxing rights on employment income to a host country when an employee is present in that host country for 183 days in any 12-month period. The employee would also generally remain subject to salaries tax in Hong Kong if their employment is considered to be 'Hong Kong employment'. Whether the employee would fall under 'Hong Kong employment' is determined by the Inland Revenue Department and they will consider various factors, such as where the employment contract is negotiated, concluded and enforceable; where the central management and control of the employer is; and where the employee's remuneration is paid.

*Data Privacy:* There are currently no restrictions on the transfer of personal data outside of Hong Kong, as the cross-border transfer restrictions set out in section 33 of the Personal Data (Privacy) Ordinance (PDPO) have not yet come into force. However, the Privacy Commissioner has published non-binding best practice guidance that encourages compliance with section 33 of the PDPO, which prohibits the transfer of personal data to a place outside Hong Kong *unless*

at least one condition from a list of conditions is met. One such condition is that 'the individual has consented in writing to the transfer'.

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# Hungary

Last updated:  
21/01/2021

## 1. Government support for employers

Currently, the following government support is available for employers and employees in Hungary:

Small and medium-sized entrepreneurs pay only 50% of the applicable local business tax.

*Sector specific tax reliefs:* employers shall not have to pay social contributions with regard to their employees in the following sectors:

- restaurants, drinks and catering services.
- organisation of events, conferences;
- theatres, live performers and performance services;
- museums, and art institutions;
- operation of botanical gardens, zoos, environment conservation areas;
- operation of theme parks;
- sport and free time entertainment services;
- hotels, accommodation and camping services;
- travel agencies;
- passenger transportation.

*Sector-specific wage subsidy:* the Government implemented a non-repayable subsidy for employers in the sectors listed above. This can be requested for a maximum of three months, the subsidy cannot exceed the gross wage of the supported employee, or a maximum of HUF gross 241 500

(approx. EUR 670) per month. The subsidy is granted on the conditions that the employer pays the wages of the supported employees and does not terminate their employment through dismissal or mutual agreement at least until 28 February 2021.

*Research and development wage subsidy:* employers in the research and development sector may request a wage subsidy for highly trained employees (e.g. researchers, engineers, programmers, etc.) for a maximum of three months, up to a maximum of HUF gross 318 920 (approximately EUR 886) per month. The research and development wage subsidy may be requested on the condition that the employer does not terminate the supported employees' employment relationship in the supported three-month period.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

As a general rule, employees cannot be required to undergo COVID-19 testing, however, there are two exceptions:

- if infection is suspected in an individual case based on the report of an employee, or on consideration of all the circumstances (i.e. the employee clearly appears to be sick or has a fever); or
- if on the basis of the employer's health and safety risk assessment, the employer finds it absolutely

necessary for certain jobs, particularly affected by exposure to the disease.

In either case, the employer may only call for tests to be carried out by healthcare professionals or under their professional supervision and the employer is only entitled to be informed about the results of these examinations.

### 2.2 Vaccination and vaccination status in the workplace

In Hungary, COVID-19 vaccination is currently voluntary and the employer cannot make vaccination a mandatory health and safety requirement. The minister of human resources has competence to make a vaccine mandatory through their decrees. Employees shall inform their employers of their vaccination status as part of their obligation to cooperate under Hungarian employment law (the Labour Code), since vaccination could be an important information for the employer from the perspective of health and safety and the general operation of the employer. The Hungarian Data Protection Authority has also confirmed that employees' general obligation to cooperate includes the obligation to report information relevant to workplace health and safety, including infectious diseases and vaccination. Job applicants must not be asked whether or not they have been vaccinated.

### **2.3 Incentives for vaccination**

Vaccination is funded by social security and employers must not offer any kind of incentive for getting vaccinated, since it could result in discrimination against the employees who object to vaccination or cannot be vaccinated.

If vaccination became commercially available and according to the employer's health and safety risk assessment it would be recommended for the employees to be vaccinated due to their high chance of exposure, the employer can offer to pay for their vaccination and provide the employee with all information regarding the vaccine, including all possible positive and negative effects. Even in this case, it is the employee's voluntary decision to accept or refuse vaccination.

### **2.4 Dealing with refusal or inability to get vaccinated**

Generally, termination of an employment (or dismissal) cannot be based on a lack of vaccination. In addition, in accordance with discrimination legislation, non-vaccinated employees cannot be denied entry to the workplace.

In exceptional cases, differential treatment may not infringe the rules of discrimination: It is possible to treat an individual differently on the basis of a protected characteristic if it is an occupational requirement because of the nature or context of the work. The employer must prove that applying the

requirement is a proportionate means of achieving a legitimate aim. For example, if the employee works in a customer-facing position, or another position requiring close contact (e.g. teachers, healthcare professionals), preventing infection of the customers, children or patients may be a legitimate aim to be achieved by change the employee's duties or working conditions.

Employers must refrain from both direct and indirect differential treatment which would have a detrimental effect on non-vaccinated employees (e.g. termination of an employment cannot be based on a lack of vaccination).

### **2.5 Vaccination and data privacy**

Employees' vaccination status is data related to health, i.e. a special category of personal data (sensitive data), which is also protected by data privacy laws in addition to discrimination legislation. If the employer collects employees' vaccination data, it must implement additional data security measures appropriate for the protection of sensitive data (e.g. encryption) and keep the vaccination data confidential. In particular, the employer must not disclose to other employees whether or not an employee is vaccinated.

### **2.6 Vaccination and posted workers**

According to Hungarian employment law, occupational safety legislation of Hungary apply to posted workers even if the worker is employed under the laws of

another country, as a result, the rules explained above shall also apply to any workers posted to Hungary. Therefore, testing and vaccination of employees prior to posting will be determined by the rules applicable in the posting employer's country, and during the posting the rules applicable in the receiving employer's country.

The receiving employer may ask for testing or vaccination information, however, local data privacy legislation may restrict transfers of personal data, therefore, employers should consider the local law applicable in their countries.

Currently, there are no legislative sanctions for failure to test or vaccinate.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

Employers are required to provide general information on the infection (symptoms and mode of spreading) and the preventive measures implemented.

Employers must also review their occupational safety risk assessments with regards to COVID-19 if they have not already.

Employers should implement all possible measures to prevent the spread of the infection, including social distancing, providing protective equipment and disinfectants, reviewing hygiene rules,



regular cleaning of the workplace and implementing plastic barriers between employees or customers. It is also recommended employers implement a questionnaire for employees regarding their travel abroad and possible contact with infected persons.

### **3.2 Vulnerable employees**

There are no specific separate rules for vulnerable employees or vulnerable groups in the Hungarian occupational safety legislation or guidelines. Employers may introduce additional measures at their own discretion to protect vulnerable groups of employees.

### **3.3 Back in the office**

If the employer has fulfilled all obligations related to providing a healthy and safe workplace, employees can be ordered to return to their original workplace stipulated in their employment contracts.

### **3.4 Suspected cases**

If someone feels sick, they should call and inform the employer. Immediately order the employee to stay away from work and contact their local GP. If they become sick in the workplace, order them to phone the organisation's doctor who will take the necessary treatment measures. The employer can require employees to report if they are experiencing any symptoms or whether they have taken trips to infected countries

or been in contact with an infected person or with someone who has arrived from a high-risk country, even if they have no symptoms. An employee cannot refuse to tell the employer if they are infected. The employer can require an employee to go for examination from the organisation's doctor, who will decide the next step: acting on this is mandatory for the employer and the employee.

An employer may instruct an employee suspected to be infected to work from home if it is possible. If the employee cannot work from home, the employee can be put on paid leave.

The employer should report the case to National Epidemic Agency giving the name of the doctor who treated or examined the affected employee.

The fact that there has been an infection can be disclosed to other employees, without disclosing the identity of the infected individual.

The employer should work out a communication system, set up a hotline and provide employees with key, regularly updated information on the epidemic and what to do. Contact the organisation's doctor to clear and agree the tasks, such as frequency of medical examinations.

### **3.5 Return to work after recovery**

After contacting the general practitioner or another healthcare professional, the

infected worker should wait until the National Epidemic Agency imposes home or hospital quarantine and may only return to work once the quarantine is lifted by written official order.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

The rules on remote working or working from home have been amended for the period of state of emergency declared in Hungary. A state of emergency was declared on 4 November 2020, and will last at least until 8 February 2021, however it could be extended. The rules during the state of the emergency are as follows:

- The parties may freely deviate from the rules of remote work set out in s196 of the Labour Code upon their agreement.
- Further, the strict occupational health and safety requirements do not apply during the state of emergency. Employers are merely obliged to inform employees of the applicable occupational health and safety requirements the employees' workplaces have to comply with.
- A monthly cost reimbursement not exceeding 10% of the minimum wage (HUF 16 100, approximately EUR 45), may be paid without any documentation or invoices. For higher reimbursement, the costs must be

substantiated by the employee. [Gov. Decree No. 487/2020 (XI.11.)].

After the state of emergency, the general rules of the Labour Code will apply, according to which:

- The employer covers all expenses incurred in connection with the performance of work from home, if properly substantiated by the employee, unless the parties agree e.g. on a flat rate.
- Further, the employer must assess the safety of the home workplace (risk assessment).

Under the Labour Code the parties must definitely agree on remote work in the employment contract. Therefore, if the parties intend to continue working from home for a long term, after the state of emergency as well, totally or partially, an amendment to the employment contract is needed.

Employees may request long-term homeworking; however, this requires a bilateral agreement to amend the employment contract. This means employers cannot be forced to alter their operations and implement long-term homeworking.

Employees cannot acquire the right to work from home if the ground for homeworking was the temporary epidemic situation or state of emergency. In these circumstances, there is no mutual intent to amend working

conditions for a longer period of time. If the homeworking were to continue after the end of the epidemic or state of emergency situation, that might result in the employee acquiring the right to work from home.

#### **4.2 Working from another country**

The employer must first consider the currently effective travel restrictions in the country specified in the employment contract and the country where the employee wishes to work, as these restrictions could affect both whether or not the employee can enter the destination country and whether or not the employee could return if his or her presence is required in the country specified in the employment contract.

Applicability of local employment law depends on the legislation of the destination country. If the employee wants to work in another country within the EU, all circumstances must be assessed to determine if local employment law applies. The place of work is only one of the circumstances among others, for example, choice of law provision in employment contract, work language, reporting lines etc. Assuming that only the place of work changes within the EU and all other working conditions remain unaltered, the employee may continue to work under the employment law applicable in the employment contract. However, even in this case, certain minimum local legal requirements (e.g. occupational safety legislation)

might apply to the employee, so the employer must consider if there are any minimum requirements in the destination country. Outside the EU, determining applicable law would depend on the local legislation of the destination country.

The employer must also consider the employee's current social security insurance. If an employee wishes to work in a different country and is not posted to the destination country, the parties may agree that it is the employee's obligation to ensure their social security in the destination country. Otherwise, if the employee is not insured in the destination country, the employer should consult an expert on local social security rules to determine its obligations in the destination country. It is also possible for the employee to temporarily remain insured in the country specified in the employment contract. The employer must consider the local legal limitations according to which the employee may fall under local social security after a certain time.

Tax residency may only be determined in accordance with the applicable double tax treaty between the destination country and country specified in the employment contract and may only be assessed on an individual basis. If the employee is a foreign tax resident and his or her stay in Hungary exceeds 183 days within a 12-month period, the employee's income will be subject to Hungarian Personal Income Tax, therefore the employee's stay in the destination country might also be

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important from a tax legislation perspective.

The employer should also consider that data privacy legislation may differ to some extent even within the EU, in accordance with the derogations made possible by the GDPR (e.g. the rules of processing special categories of personal data). It is recommended employers consult with an expert on local data protection regulation to ensure that the employee's work performance does not constitute data processing which is restricted in the destination country. If the destination country is outside the EEA, any personal data stored by the employee in the destination country would be considered a data transfer to a third country and would require an appropriate safeguard under the GDPR.

For the provisions of occupational health and safety, local legislation might apply, so the employer should consult with an expert on the local rules to determine its obligations in the destination country.

This is a complex issue and these elements must be investigated on a case-by-case basis.

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# Italy

Last updated:  
26/01/2021

## 1. Government support for employers

At the time of writing the Government is still offering support (wage supplementation fund and exemption to the payment of social security contributions) to all businesses and workers that suffered or are still suffering from the economic crisis due to COVID-19. Bars and restaurants, as well as businesses and workers affected by new lockdown measures will receive an additional extraordinary support. The wage supplementation fund may be extended and empowered for the upcoming months for the activities and workers that may be affected by new lockdowns. The emergency period has been extended until 31 april 2021.

Dismissals for economic reasons (individual or collective) are still prohibited until 31 March 2021.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

As a general rule, the employer is responsible, for the respect of health and safety protocols and laws in the workplace and ensuring a safe workplace for all employees. However, the employer cannot directly require an employee to take a COVID-19 test. It is up to the firm or plant's doctor, who has to report to the employer all the necessary measures to protect the employees' health and safety, including potentially prescribing and requiring employees to take COVID-19

tests, should this measure be considered necessary (and useful).

### 2.2 Vaccination and vaccination status in the workplace

Scholars are discussing this topic and right now there is not a clear position from the Government. Note that currently the vaccine is not mandatory by law for the Italian nationals.

In view of the position described at 2.1 above, if the competent doctor for the organisation considers vaccination a necessary measure to prevent the spread of COVID-19 in the workplace, then it can be mandatorily requested employees get vaccinated; in particular, where the vaccination is requested to ensure protection for the health services and fragile patients (i.e. hospitals, doctors, nurses, etc.)

If employees refuse vaccination, there are possible outcomes under discussion concerning the employment contract. We believe that in the event of refusal, there is a possibility to change the employee's duties of the employee, to suspend the employee from work and salary and as a last resort, to terminate the employment contract where the employee's absence is not a viable option.

Employers can require employees to disclose their vaccination status through the competent doctor who will process the vaccination information data ensuring respect for the employees' privacy. No

provisions have been issued by the Privacy Authority to date.

### 2.3 Incentives for vaccination

At the moment, vaccines for COVID-19 are publicly administered and free of charge in Italy. The Government is planning a wide vaccination programme based on priority for different groups (such as doctors, elders, the disabled, teachers etc.). For this reason, it is not currently possible for employers to buy or pay for vaccination for employees. When the vaccine will be available on the private market, it is in theory possible for the employer to pay for the vaccination for employees.

### 2.4 Dealing with refusal or inability to get vaccinated

As a general rule, if the competent doctor requires the vaccination of employees of the organisation as a necessary measure to prevent the spread of the virus and to protect the health and safety of employees in the workplace, refusal to get vaccinated may be considered evidence the employee is unable to perform their working activity and disciplinary measures may be taken by the employer.

If an employee cannot be vaccinated due to health conditions, his or her dismissal would only be possible if there no other solutions to apply, the employee cannot be relocated to other duties and the vaccine is needed to perform duties. If an

employee cannot be vaccinated due to religious beliefs, it is advisable to consider, where possible, putting the employee on permanent 'smart' (i.e. remote) working or to change his or her duties. Dismissal must be considered as a last resort and it must not constitute discrimination on the grounds of religious belief or for other reasons. Dismissal of a non-vaccinated employee may be risky and unpredictable for the above reasons since there are no precedents on the issue.

### ***2.5 Vaccination and data privacy***

As with any employee health issue or condition, information should be carefully processed in order to guarantee his or her privacy and non-discrimination. All data concerning the vaccination of employees should be processed by the competent doctor who will report to the employer on the employees' ability or otherwise to work, in compliance with the organisation's health and safety protocol.

### ***2.6 Vaccination and posted workers***

As a general rule, the host company is responsible for the health and safety of posted employees in the workplace and, therefore, during COVID-19 pandemic, should take all necessary measures to prevent and protect these employees from the spread of the virus.

Prior to a posted worker beginning his or her working activity, the competent doctor of the receiving company should arrange

a medical visit with the employee and request him or her to take all necessary measures required in the host company workplace such as vaccination or testing. The host companies may request the sending company doctor to access the posted worker's medical information to check whether s/he meets all the medical requirements for performance of the new working activity. Secondment of employees to countries considered not safe in the context of the COVID-19 pandemic must be carefully evaluated: the doctor must evaluate if the employee is fit to travel and work in the receiving country and potentially, require vaccination if possible. Health and Safety protocols must be strictly applied in both companies.

## **3. How to keep workers safe in the office**

### ***3.1 Setting up the workplace***

Employers should sanitize the workplace and working activities to comply with the required social distancing and hygiene measures. In particular:

- Prevent entrance to the workplace for anyone with symptoms or a temperature above 37.5°C.
- Provide hand sanitisers through dispensers located around the workplace.
- Keep employees informed about procedures, health and safety measures and your flexible working and leave policies.

- All employees sharing the same spaces in the workplace must use masks and all necessary individual protection measures.
- Organise staggered entrances and exits to the workplace.
- Enforce fixed quotas of people in work spaces.
- Use rotation and shifts to reduce gatherings.
- Impose a limit on time permitted in common areas.
- Meetings between colleagues are only allowed in urgent cases and following strict protocols.
- No training is allowed other than via distance learning.
- If an employee in the contractor workforce tests positive, the contracting company must immediately give notice to the client to collaborate with the public authorities to implement any instructions given.
- The client must inform the contractor about security protocols adopted in the workplace and monitor employees' (and even third parties') compliance with these.
- Companies may sanitize private buses or alternative transfer measures order to help employees in need of public transport (to be avoided when possible).
- Set up an internal committee with unions and health and safety representatives to monitor the



application of the measures adopted.

### **3.2 Vulnerable employees**

Some categories of employee (e.g. disabled individuals or people who are particularly weak or vulnerable due to previous certified sicknesses) have the right to work from home when possible and are subject to exceptional health surveillance by the Company's doctor and employer, meaning that specific health and safety measures should be taken to protect them.

### **3.3 Back in the office**

If an employee has no COVID-19 symptoms and is not part of a 'vulnerable group' s/he cannot refuse to come back to work in the office (though office conditions must of course comply with all health and safety rules). Any refusal to come back to work in the office may be subject to disciplinary actions from the employer.

### **3.4 Suspected cases**

If an employee shows symptoms at work, the employer must isolate him or her. As a precaution, all staff who had close contact with him or her (i.e. physical contact or presence for more than 15 minutes in the same place at less than two mt distance) can be put on home leave for 14 days. Call the public emergency numbers, ask for

assistance and wait for instructions. Monitor the situation with the Health and Safety company doctor and wait for COVID-19 test results. The employee will be on sick leave if certified. In critical regions and in companies where employees test positive for COVID-19, employers must put in place more rigorous specific sanitisation of the workplace (according to the Minister of Health message 5443 of 22 February).

Monitoring by the Labour Inspector will be rigorous and regular. Failure to apply these measures will entail financial sanctions up to suspension of activity for violations. The Government and labour authorities have made it clear that employees who have contracted the virus in the workplace will be considered absent because of a workplace 'accident' and not because of 'illness', meaning the employer is responsible for demonstrating that all appropriate preventive measures were in place.

You can require an employee you suspect is infected not to come to work, but s/he has the right to continue receiving his/her normal pay.

Public authorities will inform the employer through an INPS (national social welfare institution) declaration of their duty to notify the infection and the absence from work for a certain defined time. Privacy on the infected person's identity must always be respected.

Following public authorities' and the company doctor's instructions, the employer must identify the list of the infected employee's close contacts in the workplace and require them to self-isolate.

The employer should communicate to the workforce, in cooperation with the company doctor, that an infection has been identified in the workplace and that all the employees that may have been infected should be put in home isolation for 14 days. Privacy on the infected person's identity must always be respected.

### **3.5 Returning to work after recovery**

After two negative COVID-19 test results, the employee is considered COVID-free, receives a medical certification to prove it and may return to work. On the employee's return to work, s/he must show the medical certificate to the Company's doctor and will need to undergo a medical visit to check his/her fitness come back to work.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Starting from March 2020, the Government instructed companies to use a simplified form of smart working which does not need any individual agreement between employer and employee, only a simple communication to the employee

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and to the Ministry of Labour. The employee should be instructed about health and safety rules on smart working and be given with the INAIL note on the prevention of risks. This simplified form of smart working will be in place until 31 March 2021.

In accordance with the individual agreement/unilateral provisions (until 31 March 2021), employers can provide employees with the necessary devices such as a personal computer (PC) and a mobile phone to be used in full compliance with health and safety guidance. It is recommended organisations have a corporate smart working policy regulating the provision of working equipment for employees and what expenses the organisation is willing to pay. The policy should also cover how the loss of the employer's confidential information can be avoided and should address methods used by the employer to monitor smart workers, whilst respecting their privacy (e.g. by having and respecting a privacy notice).

The employer must ensure health and safety and deliver health and safety guidance. When carrying out smart working, employees can freely choose the place from which they work: the employee is required to cooperate in the implementation of safety measures to address the risks associated with the working outside the employer's premises. Only the vulnerable employees described at 3.2, above, have the right to smart working during the COVID-19 pandemic.

For other employees, and until 31 March 2021, it is up to the employer to decide unilaterally which employees can be put on smart working and for how long. By April 2021, if no extensions are made, employers and employees should sign individual agreements to regulate the conditions of smart working.

Employees will not acquire a right to work at home merely based on the fact that they have done so for a certain time in the context of the COVID-19 crisis.

### 4.2 Working from another country

Generally, we advise companies to have a clause in their smart working policies to require a written approval from the employer should the employee want to work in a different country. This is in order to avoid 'unpredictable' problems related to this issue (mainly insurance, social security and tax issues).

When an employee requests to work from a different country, the employer should consider the following:

- Whether the country in which the working activity is performed is an EU member state or not. In the second case, immigration procedures should be followed.
- Length of the stay: the more the employee spends time into the new country without coming back or without having many connections with the original country, the higher the risk that the new country's employment law may apply.

- Social security: as above, it depends on the length of the stay and in the event of a long stay abroad, the employee may be requested to pay his or her social contributions in the new country (based on the territoriality principle and no habitual place of work).
- Tax issues: in the event of a long stay, notification to the competent tax authorities in the country of residence can be required. Double taxation issues must be evaluated. The employer could run the risk of a permanent establishment if the employee is carrying out structured activity in a different country.
- Data privacy: if the new country is outside the EU, GDPR rules on the data processing should still be respected.

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# Japan

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## **1. Government support for employers**

The government provides an employer with financial subsidies if they continue pay employees' salary during their leave for suspension from work due to Covid-19 pandemic. The maximum amount per day is JPY 15,000/day. If the employees are not paid during such leave, the government pays 80% of the salary for the employees working at medium and small-sized companies.

## **2. Testing and Vaccination**

### **2.1 COVID-19 testing**

Employers can request employees take a COVID-19 test, but this must be on a voluntary basis.

### **2.2 Vaccination and vaccination status in the workplace**

Employers cannot make it a mandatory health and safety requirement for employees to be vaccinated or for them to disclose their vaccination status.

### **2.3 Incentives for vaccination**

Employers can pay for employees' vaccinations and offer incentives for vaccination.

### **2.4 Dealing with refusal or inability to get vaccinated**

An employer cannot dismiss an employee who has religious or other objections to

vaccination or cannot be vaccinated for medical reasons, or who refuses to be vaccinated. However, it is possible to prevent an employee who has not been vaccinated from coming to work, change their duties or otherwise alter their working conditions if the employer has a valid business reason to do so. Treating employees who have not been vaccinated unfavourably without valid business reasons may be considered unreasonable discrimination which may trigger employer's liability.

### **2.5 Vaccination and data privacy**

Any information on employee-related vaccination is protected personal information under the Personal Information Protection Law of Japan.

### **2.6 Vaccination and posted workers**

There are no specific provisions relating to vaccination of workers posted to Japan.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

An employer owes a general obligation to keep a work place safe and therefore failure to take appropriate possible actions may cause employer held liable for damage suffered by employees.

### **3.2 Vulnerable employees**

There are no specific rules for vulnerable employees or groups, but employers must take appropriate action depending upon vulnerability of employees under the general obligation described above.

### **3.3 Back in the office**

You can require an employee to come back to the workplace, however, an employee may be allowed to refuse to comply with it if s/he has a valid reason, such as vulnerability due to his or her health condition.

### **3.4 Suspected cases**

You can require an employee you suspect is infected not to come in to work. An employer can require that its worker who is confirmed to be infected can only return to work when a PCR or other reliable test certifies him or her negative.

## **4. Where to work**

### **4.1 How to organise homeworking in the long term**

An employer cannot force an employee to work from home without the employee's consent. Health and safety requirements imposed on an employer during home working are same as those during work for office-based work. Employees are not entitled to request long-term homeworking based on concerns about

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COVID-19 and employees who work from home for a certain time will not acquire the right to work from home.

#### ***4.2 Working from another country***

An employee does not have the right to request his or her employer accept the employee working from a country other than the one specified in his or her employment contract.

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# Kazakhstan

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## 1. Government support for employers

To support business, the state is maintaining its programme of tax advantages and credits with reduced rates.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

To avoid any threat to life and health of coworkers, an employee must warn an employer if s/he has any symptoms of COVID-19. The employee must also immediately inform the employer if his or her health condition deteriorates.

Employers can send employees for medical check-ups.

However, an employer cannot compel an employee to take a COVID-19 test if the employee does not provide his or her consent. In case an employee is suspected to be infected, an employer may limit his or her presence in the work premises and ask him or her to isolate at home. An employer is obliged to exercise internal control over labour safety and health.

Information, which includes personal data, may only be transferred with the owner's consent and is protected by law. You cannot obtain any information about an employee's movements or activities (during off-duty hours) without his or her

consent. Any illegal use of personal data entails administrative and criminal liability.

### 2.2 Vaccination and vaccination status in the workplace

As of 18 January 2021, vaccination against COVID-19 is voluntary in Kazakhstan. Kazakhstan citizens have the right to give informed consent to, or to refuse, treatment and other medical interventions, including preventive vaccinations (subparagraph 18 of paragraph 1 of Article 77 of the Health Code). Therefore, employers cannot make vaccination against COVID-19 a mandatory health and safety requirement and cannot require employees to disclose their vaccination status. According to official statements, the government itself as the largest employer in the healthcare system is not making vaccination mandatory. We do not exclude that the legal requirements may change in the future when the vaccine becomes available free of charge to all segments of population.

### 2.3 Incentives for vaccination

If an employee voluntarily agrees to get the vaccine against COVID-19, an employer has the right to pay for the vaccination at its discretion. Employers are not prohibited from offering incentives to employees for getting vaccinated.

### 2.4 Dealing with refusal or inability to get vaccinated

The Labour Code contains an exhaustive list of 25 grounds, under which an employment contract can be terminated at the initiative of an employer. An employer cannot dismiss an employee who refuses to be vaccinated and cannot prevent an employee who has not been vaccinated from coming to work, change his or her duties, or otherwise alter his or her working conditions.

### 2.5 Vaccination and data privacy

Personal data relating to vaccination and containing information about health of an individual and medical services provided, which are recorded on electronic, paper or other tangible media, are considered as medical personal data under Kazakhstan legislation. An individual is the owner of medical personal data. Medical personal data may be transferred to third parties subject to consent of an individual. The specifics of protection of electronic information resources containing medical personal data are regulated by Kazakhstan legislation on digital information.

### 2.6 Vaccination and posted workers

There are no special provisions related to testing or vaccination for posted workers. The conditions for sending workers on business trips are determined by labour law, collective agreements or in the



employer's internal rules. There are special requirements for industrial plants and production facilities, including those working on a rotational basis, for the period of introduction of restrictive measures, including quarantine. Posted workers arriving in Kazakhstan by international air flights must have a COVID-19 test certificate with a negative result. Without this certificate, foreign citizens will not be allowed to board an aircraft, and Kazakhstan citizens, once they arrive in Kazakhstan, are sent for a seven-day quarantine unless they have obtained a negative test result.

### **3. How to keep workers safe in the office**

#### **3.1 Setting up the workplace**

The sanitary norms provide for individual requirements for certain types of activities, which become stricter, depending on the risk of employees contracting COVID-19. There are requirements, which must be complied with by employers, and employees must also wear masks, use sanitisers and comply with social distancing requirements.

#### **3.2 Vulnerable groups**

There are no separate rules for vulnerable employees. According to the general rules, individuals older than 65 are not recommended to go outside unless there is an urgent need to do so.

#### **3.3 Back in the office**

An employer can require an employee to come back to work if the place of work specified in an employment contract is the employer's office and the employer's activities are permitted and carried out in accordance with sanitary requirements.

#### **3.4 Suspected cases**

In the event an employee is suspected to be infected, s/he must be isolated at home quarantine, and stays isolated until s/he receives a negative COVID-19 test result. If an employee has any symptoms of COVID-19, an employer may send him or her for a medical examination. If the employee is admitted to work based on these medical examination results, the employer has no right to interfere with the employee's performance of his or her working duties.

No official form of a notice is stipulated where there is a suspected or confirmed COVID-19 case; employers should apply to a medical organisation (hospital, doctor) or to the sanitary and epidemiological control authority. Employers can communicate information about an infection at the organisation as long as they ensure the personal data of the infected employees are kept confidential.

#### **3.5 Return to work after recovery**

An employee can be readmitted to work if s/he has a 'closed' medical sick leave

certificate from a medical organisation, which confirms that the s/he has completely recovered.

### **4. Where to work**

#### **4.1 How to organise homeworking for the long term**

In order to organise homeworking, Kazakhstan legislation provides for a remote work regime. Where remote work is introduced, an employer must provide an employee with communication facilities and bear the expenses associated with the installation and maintenance of these facilities. In the event the employee uses his or her own communication facilities on a permanent basis, the employer must reimburse the employee for these costs: the amount and payment procedure should be established by an agreement between the parties. If agreed upon between the parties, the employee can be compensated for other expenses associated with working for his or her employer (electrical energy, water supply and other costs).

The procedure for compliance with labour safety and health requirements by remote employees, as well as for ensuring safe performance of working duties, is determined by the employer's internal rules.

Please note that neither an employee, nor an employer can compel the other to start using remote work. Transition to a

remote work regime is reached by way of a bilateral agreement executed as a supplementary agreement to an employment contract. The rights and obligations of the parties are similar to those under the normal on-site working regime, however, with certain specific differences.

Where the employer's activities are permitted and carried out in strict compliance with the sanitary rules, an employee cannot demand to continue to work remotely. However, this is allowed subject to the parties' agreement. Employees will not automatically acquire the right to work from home if they have done so for a certain time during the COVID-19 pandemic: this is only allowed if agreed upon with an employer.

#### **4.2 Working from another country**

The place of work should be specified in an employment contract, and it cannot be changed unilaterally. As a general rule, employees in Kazakhstan are hired to work in Kazakhstan. Unlike the EU, it is rare for a Kazakhstan employer to have business in other countries. Therefore, in most cases, the employer cannot satisfy an employee's desire to work in a different country for objective reasons. Even if the employer has an opportunity to send the employee to work in a different country, the employer is not obliged to do so. In this case, the employee can be sent to work in a different country at the discretion and with consent of the employer.

According to recent amendments to the Labour Code, the Code covers employees, employees of a sending party, employers and a host party located in Kazakhstan, including branches and/or representative offices of foreign legal entities that underwent record registration, unless otherwise provided for by the Kazakhstan legislation and international treaties ratified by Kazakhstan. If an employee is 'stuck' outside Kazakhstan as a result of the COVID-19 pandemic, it will be necessary to analyse each specific situation taking into account the citizenship of the employee, country where s/he is carrying out activities and other legally important specifics to determine whether Kazakhstan legislation or international treaties ratified by Kazakhstan will apply to the regulation of labor relations with this employee.

Personal data should be mainly stored in Kazakhstan in any form and on any medium. Personal data may be transferred to other states subject to compliance with requirements on personal data database localization, ensuring appropriate personal data protection and obtaining the consent of individuals with respect to personal data transfer (including cross-border transfer) and distribution. The Kazakhstan legislation provides for administrative and criminal liability for violation of personal data protection measures, as well as for illegal personal data processing. An individual is considered as a non-resident if s/he is stays in Kazakhstan for

less than 183 calendar days over any consecutive 12-month period ending in the current tax period. In this case, the Kazakhstan employer must only withhold from the salary of employee individual income tax.

An individual is recognised as a resident (permanently residing in Kazakhstan) for a current tax period, if s/he stays in Kazakhstan for at least 183 calendar days over any consecutive 12-month period ending in the current tax period. In this case the Kazakhstan employer must withhold from the salary of employee individual income tax, mandatory medical insurance contributions and deductions stipulated by Kazakhstan legislation.

Employment contracts with Kazakhstan non-residents are not allowed to be executed (with certain exceptions) until the non-resident obtains a work permit, independent job placement permit or labour immigrant permit issued by internal affairs authorities.

Foreign nationals temporarily staying in Kazakhstan must leave the country before expiration of their visas. The term of temporary stay of foreigners arriving in Kazakhstan under the visa-free regime cannot exceed 30 (90 for citizens of Eurasian Economic Union states) calendar days from the date of crossing the Kazakhstan state border unless any other procedure is established by international treaties or by the Kazakhstan Government (e.g. for working citizens of Eurasian Economic Union

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member states, according to the Eurasian Economic Union Treaty, the term of temporary stay is determined by the term of an employment contract or civil agreement).

Immigrants with executed temporary residence permits must leave Kazakhstan before the term of the permit expires. In exceptional cases (emergency situations of social, natural or man-made nature, or the announcement of a state of emergency in connection with a clear threat of a natural disaster or a large-scale accident with interruptions to transport) the term of stay is extended for the period needed to organise departure, but for no more than 30 calendar days.

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# Latvia

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## 1. Government support for employers

The law provides a number of support measures for businesses. Those relating to employment are listed below:

- Companies in the tourism sector that meet the criteria stated in the regulations will be able to receive support of 30% of the mandatory state social insurance contributions made in 2019. The maximum support for one company or group of companies is EUR 800,000. The deadline for submission of applications for receiving support was 30 September 2020.
- Export companies that meet the criteria in the regulations will be able to receive support of 25% of the mandatory state social insurance contributions made in 2019. The maximum support for one company or group of companies is EUR 800,000. The deadline for submission of applications for receiving support was 30 September 2020.
- Affected businesses can apply for idle time compensation which will be paid to employees. This amounts to 70% of their average gross monthly salary for three months (in August, September, October 2020), but starting with 1 January 2021 the compensation amount must amount to no less than EUR 500 and no more than EUR 1000 for a full month.. In addition to the downtime allowance, the State Social Insurance Agency will also grant a supplement of EUR

50 for each dependent child under the age of 24, for which the employee is subject to personal income tax relief. Moreover, the employer may pay its employees the difference between the downtime allowance and the full salary received so far.

- Affected businesses can apply for salary subsidies for employees who work part time. These will be up to the amount of their average gross monthly salary for three months (in August, September, October 2020), but not more than EUR 500 per month per employee. At the same time, the employer is obliged to pay the employee the difference between the amount of subsidies received and the amount of salary, thus ensuring that the employee receives 100% compensation. Applications for December can be submitted until 15 January, and for January until 15 February.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

The employer is entitled to send an employee for a mandatory health examination, but not to require him or her to take a COVID-19 test. A general obligation on all employees to provide a negative coronavirus test would be considered as excessive.

### 2.2 Vaccination and vaccination status in the workplace

As long as the vaccination is voluntary, employers cannot make it a mandatory health and safety requirement for employees to be vaccinated and employees cannot be required to inform their employer of their vaccination status.

### 2.3 Incentives for vaccination

COVID-19 vaccination is free of charge in Latvia. If in the future there will be fees applicable to vaccination, employers can pay for employees' vaccinations. Employers cannot offer employees an incentive for getting vaccinated, but employers can encourage their employees to get the vaccination and provide their employees with relevant information.

### 2.4 Dealing with refusal or inability to get vaccinated

Employers cannot dismiss an employee who refuses to be vaccinated or alter their working conditions if an employee refuses to be vaccinated. Currently, employers have an obligation to ensure the option for remote work for employees if the specific nature of the work allows it.

If an employee has religious or other objections to vaccination or cannot be vaccinated for medical reasons, this cannot be considered as a basis for different treatment. In a dispute where an employee demonstrates facts indicating

direct or indirect discrimination on any grounds, the burden is on the employer to prove that any differential treatment was based on objective, non-discriminatory grounds.

### **2.5 Vaccination and data privacy**

Information regarding employees' vaccinations would need to be processed by an employer strictly in accordance with the GDPR. The employer must have a legal basis for processing such data by reference to Articles 6 and 9 GDPR. Employee consent is unlikely to constitute a valid legal basis for collecting information relating to vaccination, as in practice employees may not have any real choice in the matter.

### **2.6 Vaccination and posted workers**

If a COVID-19 test or vaccination is required to enter and work in a host country, the posting employer is responsible for ensuring the employee is tested or vaccinated prior to a posting. The receiving employer can only ask for testing or vaccination information if COVID-19 test or vaccination is required to work in host country.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

There are no special regulations in place for employers who are restarting operations apart from the general

obligation to ensure social distancing of two metres, where possible, to ensure personal protective equipment is provided to employees for work on site which is necessary for the performance of work duties.

Employers must appoint a person responsible for the introduction of measures to limit the spread of COVID-19 at the workplace.

It is recommended you arrange gatherings and meetings remotely, encourage employees to regularly ventilate the premises and use hand sanitiser. Employers can introduce various measures at their own discretion, such as mask wearing.

### **3.2 Vulnerable employees**

Employers are liable for ensuring a safe working environment for all employees, so if there are any vulnerable population groups, adequate safety measures should be ensured, but the law does not mandate specific measures).

The general rule is that a pregnant woman can consult a doctor, who after assessing the pregnant woman's health, may order sick leave or issue a statement prohibiting the pregnant woman's employment.

### **3.3 Back in the office**

Employers have an obligation to ensure that employees have the possibility of working remotely for employees if the special nature of the work allows it.

Generally, employees cannot refuse to come back to work unless there are clear indications that the working environment is not safe. Disciplinary measures could be applied to employees who refuse to return to work.

### **3.4 Suspected cases**

The general rule is that the employer is liable for ensuring a safe working environment for employees. Employers are entitled to send an employee for mandatory health examination. An employee must inform the employer about contracting COVID-19 or being in contact with a person who has contracted it. Likewise, an employer has the right to ask for this information.

In the event of a suspected case of COVID-19 in the workplace the employee should leave the work premises immediately. If this is not possible, he/she must self-isolate in a separate room from other employees until it is possible to leave. The employee should contact his/her family doctor. The emergency medical services may be called if necessary.

Rooms, surfaces and common areas should be disinfected, paying particular attention to the rooms in which the employee was present.

Employers must take measures to ensure occupational health and safety of employees and clients, not allowing anyone who tested positive for COVID-19



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come or stay in workplace premises. COVID-19 patients are issued sick leave certificates until their recovery.

There is no obligation on the employer to report to public health authorities, as data on positive COVID-19 cases is automatically transferred to the Centre for Disease Prevention and Control. Upon request, employers should provide the Centre for Disease Prevention and Control with extensive and accurate information about employees, customers and other possible contacts.

The employer must inform other employees who were in contact with a person that has tested positive for COVID-19 of that fact on a no-name basis and arrange a test for them.

### **3.5 Return to work after recovery**

If the infected employee has not had symptoms of COVID-19, s/he can stop strict isolation and return to work after receipt of a doctor's statement on the tenth day after the onset of the disease. However, if the individual had symptoms of COVID-19, they can receive a doctor's statement of fitness to work on the tenth day, if at least three days have passed since symptoms disappeared. If a person has a severe case of COVID-19 infection, they can receive a doctor's statement of fitness to work on day 20 following the onset of the disease, if at least three days have passed since symptoms disappeared. Until then the employee remains on sick leave.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Employer should compensate the costs related to remote work if the employee experiences additional costs related to his/her work, including the acquisition, installation and use of work equipment. However, the amount of compensation and the terms and conditions for payment, as well as other rights and obligations of employee and employer should be determined by agreement between the parties.

At least until 7 February 2021, if the special nature of the work allows working remotely, the employee has the right to refuse to return to the workplace. If the employee is not able to perform work duties at home, provided that all safety measures in the workplace are ensured, the employer can request employees to return to the workplace.

### **4.2 Working from another country**

#### *Immigration*

Travel restrictions and self-isolation requirements should be considered. *Local employment law, social security, tax, data privacy*

In this case employment rules, data privacy, health and safety measures remain subject to Latvian law.

#### *Social security, tax*

The social security contributions and taxation of salary earned from working abroad depends on an individual's residency status and is subject not only to Latvian law but also to international treaties.

In general, the fact that some employees work from another country (and possibly sign some contracts or carry out sales activities in another country) can create permanent establishment for a Latvian company abroad. However, according to the OECD guidance, an exceptional and temporary change of the location where employees work because of the COVID-19 crisis, such as working from home, should not create new permanent establishment for the employer. It would, however, be important to demonstrate that the work from abroad was indeed caused by the restrictions imposed due to the COVID-19 pandemic.

#### *Health and safety measures*

As to safety measures, the employer is obliged to conduct a work risk assessment in the place the remote work is taking place. This rule applies regardless of the location of the employee. The employee is obliged to cooperate with the employer during the risk assessment process. Risk assessment can be done remotely. The employer should inform, instruct and train employees who work remotely on health and safety issues and how to deal with the identified risks safely.

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# Luxembourg

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## 1. Government support for employers

The Government is supporting companies affected by the crisis through various aids, in particular:

- Short-time working has been adjusted to benefit, under certain conditions, to companies in the Horeca, tourism and event sectors (companies in vulnerable sectors) as well as companies affected by the crisis until 30 June 2021.
- State aids are also provided in particular for companies who are facing difficulties due to the crisis or in vulnerable sectors, on condition for certain aids of not making economic redundancies, or to resort to it only to a limited extent.
- Increased flexibility in payment of social security contributions (self-employed, very small enterprises, SMEs and large enterprises) applied until 31 December 2020.
- the reimbursement of employers' participation in the financing of employees' illness is increased from 80% to 100% for periods of isolation / quarantine due to covid-19, with retroactive effect to 1st July 2020.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

You cannot require an employee to be tested, nor to give a negative test result in order to allow him or her to come or return to work and to be paid.

### 2.2 Vaccination and vaccination status in the workplace

You cannot require employees to obtain a COVID-19 vaccination, even on the basis of the employer's obligation of health and safety at work. This would be an infringement of the employees' fundamental right to privacy and physical integrity.

Currently, there is no law covering the possible employer's right to require an employee to obtain a COVID-19 vaccination (notably as a condition of entry into the workplace).

In the absence of a law authorising employers to require employees to be vaccinated against COVID-19, any decision of the employer based directly or indirectly on the employee's COVID-19 vaccination status should be considered as a prohibited discrimination based on the state of health of the employee and should then give rise to compensation and penal sanctions.

### 2.3 Incentives for vaccination

The law does not prohibit employers prompting or recommending employees to be vaccinated, and to this end, the employer could in particular offer to cover the costs of vaccination for employees, on a voluntary basis and in compliance with privacy and medical secrecy. However, offering an incentive for getting vaccinated must not constitute an illegal discriminatory measure: if it consists in

granting an advantage based on the sole fact of being vaccinated, then it is a discriminatory measure linked to the state of health, contrary to the principles of non-discrimination and respect for private life and medical secrecy.

### 2.4 Dealing with refusal or inability to get vaccinated

You cannot dismiss an employee who refuses to be vaccinated in the absence of a law authorising employers to require employee's vaccination against COVID-19. Any such dismissal would be considered void.

In addition, you cannot prevent an employee who has not been vaccinated from coming to work, change their duties or otherwise alter their working conditions.

This would be an infringement of the employee's fundamental right to privacy and of the principle of non-discrimination.

### 2.5 Vaccination and data privacy

The CNPD (Luxembourg data protection authority) has recalled that the results of medical, serological or COVID-19 screening tests are subject to medical confidentiality: a healthcare professional can only inform employer whether or not an employee is able to work. The latter may therefore only process this

information and no further information concerning the health of the employee, in line with the procedures for other sick leave. In particular, employer cannot compile files or treatments relating to health data linked to COVID-19 even if an employee informs his employer voluntarily that he has been tested positive for COVID-19.

### **2.6 Vaccination and posted workers**

There are currently no specific provisions relating to COVID-19 vaccination and posted workers.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

- You must take measures to protect employees' health and safety and improve conditions to tackle the epidemic:
- Avoid COVID-19-related risks to employees' health and safety, and assess any risks that cannot be avoided. Based on these assessments, determine what measures you can take to reduce risk to employees.
- Inform and train employees, in collaboration with staff representatives, about health and safety risks, precautions, protective equipment and clothing, and hygiene. Signs must be posted, pointing out risks and preventive measures during the epidemic.

- Workstations and other areas in which employees work should be arranged, cleaned and disinfected to minimise risk, and protective equipment must be provided to ensure the protection of employees.
- Employees must be provided with appropriate bathroom facilities, with access to running water, soap, and disposable paper towels, or disinfectants.
- Ensure that employees respect appropriate physical distances; or failing this, ensure that employees wear masks or other face coverings;
- if necessary, provide other personal protective equipment.

### **3.2 Vulnerable employees**

There are currently no specific rules for vulnerable employees or vulnerable groups. However, according to the health recommendations currently in place, you must especially protect vulnerable people (i.e. people over 65 years of age or those who already suffer from a disease, namely diabetes, cardiovascular disease, chronic respiratory diseases, cancer, immune weakness due to disease or therapy, massive obesity) within the company, in particular by keeping them as far away as possible from other employees. It is recommended that you invite these individuals to contact their doctor, to establish a solution that best protects their health.

To this end, a vulnerability certificate may be drawn up by the employee's doctor. This does not constitute a certificate of incapacity for work but is given to you and to the occupational health practitioner, so that you will adjust the work of the employee concerned (staggered working hours, work station without exposure to the public, special norms, etc.) or remove him/her latter work to preserve his/her health and safety.

### **3.3 Back in the office**

An employee cannot refuse to come back to work if you took the appropriate measures to protect the health and safety of employees, set out below.

### **3.4 Suspected cases**

According to Government recommendations, in the event of a suspected COVID-19 case in the workplace:

- The employee must remain at home. In case of persistence of symptoms, he/she should consult a doctor (phone or video) or go to the nearest Advanced Care Centre.
- The employer must follow the Health Directorate's recommended isolation protocol before reintegrating an employee who presents an infection risk in the workplace.
- if an employee begins to experience symptoms in the workplace, the employer must have a procedure for

isolating him/her in a room or require him/her to wear a surgical until evacuated from the workplace.

- Individuals who have been in high-risk contact with a person who has tested positive for COVID-19 will be contacted by the Health Directorate.

Since you have a legal obligation to ensure safety and health to your employees, it is recommended you also implement precautionary measures such as informing employees there is a potential case of COVID-19 (see below) and reminding employees of their obligation to immediately inform the employer or the health and security delegate in the event of immediate and serious danger to health and security.

The CNPD (Luxembourg data protection authority) recommends employers raise awareness and invite their employees to provide individual feedback to the employer or competent health authorities regarding possible exposure. They should facilitate transmission of information by setting up, if necessary, dedicated channels to guarantee data security and confidentiality, promote remote working and encourage recourse to occupational medicine.

Employers should refrain from collecting information on possible symptoms experienced by employees in a systematic and generalised manner, or through individual inquiries and requests. Employers cannot compile files about their employees' body temperatures, or

about certain pathologies (comorbidities) that might constitute aggravating factors in the event of a COVID-19 infection. Neither is it up to them to carry out their own investigation or implement contact tracing measures.

You may require an employee suspected of infection not to come to work. Nevertheless, it would be advisable to propose the employee teleworks, or invite the employee to contact a doctor without delay. You cannot suspend the employee's remuneration or require him/her to take leave in order to stay at home, since it is your decision not to allow him/her to come to work.

The Director of Health has been authorised by law to issue isolation orders to people who test positive for COVID-19, and quarantine orders to people with high risk of becoming infected after being in contact with a person positive for COVID-19. These isolation / quarantine orders can be used as a certificate of incapacity for work.

You should communicate infection information to the workforce in compliance with employees' rights to privacy and medical secrecy, in particular without specifying the identity of the infected employee.

### **3.5 Return to work after recovery**

An infected worker may return to work after following the isolation protocol recommended by the Health Directorate

(ten days after being tested positive at condition that he has been symptom-free for 48 hours). You cannot require an employee to be tested, nor to give a negative test result in order to allow him/her to return to work and to be paid. In any case, an employee should return to work when his/her medical certificate ends.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Remote work is regulated in Luxembourg by a Convention of 15 December 2015 which has been modified to go rise to a new Convention signed on 20 October 2020 (the 'Telework Convention'). As per this new Telework Convention, which is in process of entering into force, homeworking can be implemented by mutual agreement between the employer and the employee.

Occasional teleworking is now provided for by the new Convention in particular to deal with unforeseen events. Occasional teleworking can be organised in a faster and simpler way than regular teleworking.

The methods of setting up regular teleworking are also simplified and can be defined either by mutual agreement between the employer and the employee, or at the company level by agreement or an internal regulation, in compliance with the competence of staff delegation.



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Whether teleworking is occasional or regular, the employee's rights and obligations are the following, in particular:

- The employee receives, in the same way and at the same rate as the other employees of the company, the current information that the employer, or the staff representative, circulates in the company.
- The employee benefits from the same rights and is subject to the same obligations under applicable legislation and collective bargaining agreements as comparable workers on the company's premises.
- The employee must be informed on data protection and, in particular, on any restriction related to the equipment use (internet, email, etc.) and sanctions which apply if any.
- The employee has a right to privacy and to disconnect under the same conditions as those applicable to traditional workers.
- The employee must be informed on the company's safety and health policy.

The Convention on telework does not specify the reasons for regular homeworking. Regardless of whether an employee's homeworking request is based on COVID-19 concerns, the employee must request the employer's agreement to work remotely on an occasional or regular basis.

The pandemic has made homeworking one of the main social themes of the post-COVID-19 era. A petition has been filed for a 'right to telework' in Luxembourg law and debated in the Chamber of Deputies on 19 October 2020. However, the 'right to telework' has not been retained and is still not applicable in Luxembourg. Teleworking is based on the agreement of the employer and the employee, and the latter does not acquire a right to work at home because s/he worked at home for a certain period, in particular during the COVID-19 crisis.

### 4.4 Working from another country

Some temporary derogatory measures apply for French, Belgium and German cross-border employees who usually work in Luxembourg but carry out their activity in their country of residence by teleworking due to the COVID-19 pandemic:

- Until 30 June 2021, teleworking days from home due to the COVID-19 crisis are not taken into account for the determination of the social security legislation applicable, so that the overtaking of the threshold of 25% provided for in the European legislation does not lead a change of affiliation for the employee concerned.
- Until 31 March 2021, teleworking days from home due to COVID-19 crisis are not taken into account for calculating the tolerance threshold applicable in tax matters (29 days for

France, 24 days for Belgium and 19 days for Germany).

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# Mexico

Last updated:  
27/01/2021

## 1. Government support for employers

At the time of writing, the Government has not announced any financial aid to support employers and no support is expected if businesses are subject to a new lockdown order. Of course, this may change depending on the situation but there is no sign of it currently.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Employers are legally allowed to ask employees to undergo medical examination and employees are bound to comply. This includes requirements to undertake COVID-19 tests on a random basis if needed, rather than applying the requirement to everyone. However, where tests are conducted on a random basis, employer must ensure that those employees who are selected for testing are not deselected on discriminatory grounds.

Testing may be made mandatory and refusal may be construed as a ground for dismissal if hard evidence of refusal is collected.

### 2.2 Vaccination and vaccination status in the workplace

Employees cannot be legally required to get any kind of vaccine. This applies to the COVID-19 vaccine as it does to the influenza or any other type of vaccine and

applies in the current pandemic scenario and even prior to it.

Employers can certainly issue a recommendation to get the vaccine or even encourage employees to do so by outlining any known benefits, but employees cannot be forced to get it and it cannot be made a condition of employment.

### 2.3 Incentives for vaccination

Employers can offer incentives for vaccination, taking into consideration our previous comments.

### 2.4 Dealing with refusal or inability to get vaccinated

Religious belief is one of the main reasons why employees cannot be forced to get vaccines.

There may also be some medical concerns as some people may have secondary adverse reactions to the vaccine that could potentially put the employer at risk if they were forced to take it. Employees cannot be dismissed if they refuse to get the vaccine and entrance to the workplace cannot be refused or restricted for this reason.

Of course, this may change if new guidelines or orders are issued by the government to allow employers to require getting the vaccine.

### 2.5 Vaccination and data privacy

Where tests are conducted (see 2.1 above), personal data from these tests should not be retained for purposes other than permitting entry into employer's facilities.

### 2.6 Vaccination and posted workers

Vaccination cannot be made a term or condition of employment. However, the receiving employer can make employment contingent on the employee getting tested.

No legal obligation to have employees tested or vaccinated to secure employment.

Of-course this may change if new guidelines or orders are issued by the government to allow employers to require getting the vaccine.

## 3. How to keep workers safe in the office

### 3.1 Setting up the workplace

Businesses allowed to reopen must follow the following sanitary measures:

- Enforce social distancing of at least 1.5 m (6 ft).
- Implement staggered work schedules to avoid overcrowding spaces.
- Monitor use of face masks to all employees, and protective glasses or face shields for employees with direct contact with clients or the public in general, entrance controls with temperature checks, among others.

Employer must provide all required protective equipment.

- Make available soap and water and 70% alcohol-based gel.
- Instruct employees to cough or sneeze using a disposable tissue or in the inside of their elbow, as well as to avoid spitting and if necessary, use a disposable tissue, put it in a plastic bag, tie it and throw it away and then wash their hands.
- Clean and disinfect surfaces and objects in the workplace including company transportation, meeting venues, etc.
- Ventilate and allow sunlight to enter. Anyone with flu, fever or joint pain that persists for more than a week should see a doctor.
- For companies with activities in Mexico City with 100 or more employees, COVID-19 tests must be administered every week to at least 3% of the total headcount working at the facility. Please note this only applies to Mexico City.

### **3.2 Vulnerable employees**

Vulnerable employees cannot be required to return to the workplace during a red, orange or yellow classification. These employees can be required to work from home if their activities allow it. Vulnerable employees are considered those aged over 60 or with a diagnosis of high blood pressure, diabetes, heart or lung disease, immunosuppressive illnesses such as HIV or cancer, and pregnant / lactating

women regardless of whether their work activity is considered essential or not.

### **3.3 Back in the office**

Employees working in essential businesses or those now open under the epidemiologic traffic light system must return to work and the employer must observe certain sanitary measures to keep employees safe, including having a sanitary protocol in place. This means that employees of business that are allowed to open are legally bound to return to their activities and can be forced to come back to work, unless any of these employees is considered amongst vulnerable population. Given that employees are legally bound to return to work, any employee with more than three unjustified absences or who do not comply with the sanitary measures in place may be subject to disciplinary actions which could lead to termination for cause.

### **3.4 Suspected cases**

In the context of the COVID-19 pandemic and in accordance with the regulations of Social Security Law, when an employee is diagnosed as having symptoms of COVID-19 by a hospital or medical institution affiliated with the Mexican Institute of Social Security (IMSS), she/he must answer a questionnaire and if the result qualifies her/him as a probable COVID-19 case, the institution will prescribe a COVID-19 test. If the test result is positive, a relative of the

employee can deliver that information to the IMSS Clinic which will issue a sick leave certificate of disability. For more detail on the sick leave procedure, see here

<https://theword.iuslaboris.com/hrlaw/insights/what-happens-when-an-employee-has-suspected-covid-19-in-mexico>.

It is important to consider that employers are legally allowed to ask employees to undergo any medical examinations to determine whether they have been infected with COVID-19 and employees are legally obliged to undergo these examinations. Refusal may be construed as a ground for dismissal. Employees can certainly be asked at any time whether they have recently travelled to a high-risk area or whether they have been in contact with an infected person. Employers can prevent an employee they suspect of being infected from attending work, but must continue to pay him/her in full until COVID-19 infection is confirmed by IMSS.

There is no legal obligation to inform employees about infections in the workplace. This can be done at the employer's discretion, but it has not been common practice to do so or to disclose the name of the infected employee to the workforce.

### **3.5 Return to work after recovery**

The employee must return to work once the period set out in his/her sick leave certificate is completed.

## 4. Where to work

### 4.1 How to organise homeworking for the long term

For the duration of the pandemic, employees are entitled to their full salary and benefits and to receive necessary work tools for their activities. Terms and conditions of the arrangement should be put in writing and may include reimbursement of expenses such as electric bill or internet services, or a temporary or one-time extraordinary bonus to cover for these expenses during the temporary arrangement.

Employees can and should remain home based if there is a quarantine in place. As soon as the pandemic is over employees will have the right to request the extension of the arrangement and the employer the ability to comply with their request or to ask them to return to in-person activities. This should be clearly established in the home-office agreement. If continued homeworking is allowed, terms and conditions of the arrangement should be put in writing. Is it not likely that employees will acquire the right to work at home if they have done it for a certain time by law. However, having clear terms and conditions for the home office arrangement is important.

On 11 January 2021, a bill that amends the Mexican Federal Labour Law was published in the Federation's Official Gazette to regulate telework, remote

work and home office arrangements. The law became enforceable on 12 January 2021 and its provisions are fully binding for all employers and eligible employees in Mexico.

Following an overview of the most relevant aspects of the new legal framework:

- 'Telework' is defined as the performance of remunerated activities in locations other than the employer's workplace.
- In-person presence at the workplace is not required. Information and communication technologies must be primarily used for contact between the employer and the employee and for supervision of the latter's activities.
- 'Telework' is when at least 40% of employee's activities are performed outside of the workplace. It is not considered telework if these are undertaken in a different location on an occasional basis.
- Teleworkers must enjoy the same employment rights as those who provide their services in person at the workplace, including being enrolled in the Mexican Social Security system.
- Terms and conditions must be agreed in writing through the execution of an employment contract or an addendum to an already existing one.
- Telework provisions must be included in collective bargaining agreements (if applicable) in the event most of the

unionised workforce works remotely. In the absence of a CBA, provisions related to telework must be included in the internal work regulations.

- There are new special obligations on both employers and employees.
- The employee's right to revert from telework to in-person work must be always guaranteed.

The following special obligations apply to employers:

- Provide, install, and maintain necessary equipment, work tools and supplies necessary to perform telework activities, such as computer equipment, mobile devices, ergonomic chairs, printers, lamps, among others.
- Keep a record of equipment, work tools and supplies delivered to employees.
- Assume costs related to telecommunication services (internet) and a portion of the electricity bill. The new provisions do not include specific rules on how to calculate the payment of these expenses or costs. This implies that a fixed amount or other alternatives may be agreed upon between employer and employee.
- Implement mechanisms that preserve the security of information and data used by employees and guarantee the employee's right to privacy which may include restricting the use of cameras to work-related activities only.

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- Respect the right to disconnect at the end of the workday.
- Implement training courses and advice channels for employees to guarantee adaptation and learning the adequate use of information technologies.
  - The following special obligations apply to employees:
    - proper care, storage and conservation of the equipment, work tools and supplies provided by the employer;
    - observe provisions on safety and health at work;
    - protection and confidentiality of the information used to perform their duties.

The Ministry of Labour and Social Welfare has a period of 18 months from 12 January 2021 to prepare and publish an Official Standard (NOM) that will govern obligations in terms of safety and health for telework activities. When published, the NOM is expected to specify and clarify terms and conditions to determine work-related risks, among other related provisions.

### **4.2 Working from another country**

Allowing an employee to work in a different country is entirely at the employer's discretion.

If allowed and assuming that a local Mexican entity will remain the direct employer of the individual, the employee

must remain enrolled for social security purposes and the employer retains the obligation to withhold and remit income tax from employee's salary.

A data privacy transfer agreement should be executed with any foreign entity for the collection and transfer of employee's personal data.

For all legal purposes, the employee would remain fully employed in Mexico and eligible to Mexican employment related benefits.

A common practice under this scenario is that the employee resigns in Mexico to be hired by a third-party entity or that the employment relationship is suspended while the individual works abroad.

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# Netherlands

Last updated:  
21/01/2021

## 1. Government support for employers

The support of the Dutch government continues to focus on companies and employers affected by the consequences of the COVID-19, the lockdown being one of them. In relation to the continued salary payment by employers to its personnel, this support (the NOW scheme) is linked to a certain percentage of loss of turnover. The NOW scheme which started during the first lockdown in March 2020 was recently extended for a third period, which means government support for employers will continue until (at least) 30 June 2021. Recently the (now outgoing) Government announced an additional support package following the extension of the current lockdown. What this support package will look like, will be announced imminently, after consultation of trade unions and employers' organisations.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Employers cannot require an employee to take a COVID-19 test. Offering a test or encourage (quick) testing is possible, especially if the nature of work requires permanent employability (on location) and/or creates a higher risk to contamination, like health care functions.

The cooperation of the employee should be completely voluntary. However, in order to comply to the health and safety regulation employers should at least point

out the urgent advice of the Dutch government to stay at home and take a (preventive) COVID-19 test in the event of COVID-19-related health issues. Employers could also deny access to the working place to employees, if he notices such health issues, send them home, urge them to take a test and to share the outcome with the company doctor to establish their entitlement to continued salary payment.

Pursuant to the GDPR the employer is not allowed to register medical information from employees. As a consequence, it cannot ask employees about their health, whether they have (COVID-19-related) health issues or carry out COVID-19 testing itself. Only a (company) doctor is allowed to inquire about an employee's COVID-19 status, which the employee is obliged to answer ([see information](#) of the Dutch Data Protection Authority (DPA)).

### 2.2 Vaccination and vaccination status in the workplace

At this stage there is no statutory basis for a mandatory vaccination, neither for health workers nor for other employees. In the event of a higher occupational risk of being exposed to the virus, vaccination could be considered necessary to comply with health and safety requirements. This could apply for example to some healthcare workers, who have a higher occupational risk of being exposed to the virus and therefore of infecting themselves, colleagues and patients.

Then the employer could potentially ask employees to get vaccinated, but at this stage it cannot oblige them to do so. If the employer encourages COVID-19 vaccination, employees have to be fully informed about the advantages and disadvantages.

If employees are merely exposed to the general risk of infection in the Netherlands, employers do not have the obligation to have all or a certain percentage of employees vaccinated. In this case encouragement isn't mandatory, but is still allowed, for example by emphasising the importance of vaccination and actively pointing employees to the information provided by the government.

Nonetheless, employers remain obliged to comply with the instructions of the National Institute of Public Health and Environment ('RIVM') and where appropriate, continue to provide the collective and personal protective equipment and measures. We recommend employers actively inform the employees on the vaccination information available from the Government and the RIVM to comply with their duties under the Health & Safety Act, without proactively encouraging employees to get the vaccine to avoid possible liability claims.

Making vaccination a mandatory health and safety requirement, or promoting vaccination by means of a bonus payment, see below, could have more



effect on employees with a certain religion or belief, political affiliation, and probably nationality or race, etc., because the refusal to vaccination could be related to these characteristics. These measures will then result in (indirect) discrimination, which is only permitted if vaccination serves a legitimate purpose and is a proportionate and necessary means of achieving that purpose. For employees with a higher occupational risk of being exposed to the virus this indirect discrimination could potentially be legitimate, but for employees who are only exposed to the general risk of infection in the Netherlands it won't.

### **2.3 Incentives for vaccination**

The vaccine is free of charge so there is no need for an employer to pay for this. Some employers are already offering an incentive to employees if they get the vaccine. Whether or not this is allowed, however, is questionable. It could well be considered a form of discrimination or unequal treatment. Moreover, if the vaccine causes side effects to employees' health it may give rise to employer liability.

### **2.4 Dealing with refusal or inability to get vaccinated**

An employee is entitled to refuse to be vaccinated. Nevertheless, if the employee may be expected to behave as a 'good employee' and take into account the justified interests and reasonable requests of his or her employer.

Therefore, if the refusal leads to a significant health and safety risk for the employee, colleagues or third parties, the refusal could potentially be a reason for dismissal. We stress that this will only be possible under highly specific conditions and circumstances, such as the nature of employee's work, his or her function, the severity of COVID-19 and infection risk and the proven effect of the vaccine.

If these conditions make refusing vaccination a significant risk for workplace health and safety, the employer is allowed to prevent the employee from coming to work. If an employee can't work from home, the employer should nonetheless continue to make salary payments. Before dismissing the employee because of an unworkable situation, the employer should first try to relocate the employee to another function or change his or her duties. If that isn't possible dismissal could potentially be considered.

### **2.5 Vaccination and data privacy**

Employers cannot require employees to disclose their vaccination status due to the GDPR. Employers are not allowed to register vaccination data, even if employees voluntarily provide it. Because of the authority relationship between employer and employee it will be assumed that the consent of the employee was obtained under pressure.

### **2.6 Vaccination and posted workers**

There are no specific provisions in Dutch labour law relating to testing or vaccination for posted workers. The receiving employer will be considered as the employer for the posted workers under the Dutch health and safety regulations. Therefore, all the provisions above regarding COVID-19 testing and vaccination which are based on these health and safety regulations will also apply to the receiving employer.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

The instruction and strong governmental advice remains that people should work from home if and when possible. Where this is not possible, employers reopening must do so observing their statutory general duty of care, which means you must ensure employees have a safe and healthy (work) environment. As of 2 December 2020, temporary additional requirements to the general duty of care entered into force for the purpose of controlling COVID-19 transmission. Based on this provision, employers are must provide for adequate hygienic facilities, provide employees with effective information and training on controlling COVID-19 in the workplace and adequately monitor compliance with the necessary measures and facilities.

In addition, the RIVM provides general advice regarding safety and hygiene. Employers should obtain sufficient information from the RIVM and act accordingly. This includes giving proper instructions on regularly washing hands, coughing or sneezing into the elbow, only using paper towels, maintaining distance, plastic shields between tables, etc. If an employee feels unwell, you should instruct him or her to stay at home and work remotely if possible. The use of an (unofficial) face mask is not mandatory for non-medical professions and it is for the employer to decide if masks should be worn at work.

Most importantly a policy must be implemented to secure the social distancing is observed by employees toward their colleagues and customers. Employers must enable employees to work at least 1.5 metres apart. If this is not reasonably possible, other protective measures such as the installation of acrylic glass walls/panels should be taken.

Depending on the type of business, other measures may be required, such as:

- limiting business trips to where strictly necessary for compelling business reasons;
- Providing employees with up-to-date information on the governmental measures and how these are implemented;

- providing sufficient hygiene products and, if necessary, protective products;
- making sure that frequently touched objects and surfaces are cleaned sufficiently;
- assessing whether certain (groups of) employees have a higher risk of contamination and taking additional measures, if necessary;
- ensuring employees follow the instructions and act on it if they do not.

Employers as well as unions are have prepared COVID-19 protocols on a sector level. We strongly recommend you include COVID-19 protocols in the RI&E risk assessment and evaluation that all employers are obliged to have in place, or, where applicable, in health and safety documentation and that these are submitted to the Labour Inspection for approval. You should verify whether a COVID-19 protocol is in place in your industry: if so, this needs to be observed.

### **3.2 Vulnerable employees**

There are no specific rules or obligations on employers relating to vulnerable employees.

### **3.3 Back in the office**

Employers can in principle require their employee to return to the office; COVID-19 does not give employees the right to work from home but current strong

government advice is to work from home and should be observed.

Employers need to keep in mind that they have a duty of care towards their employees. Employers must guarantee a safe working environment where employees' health and safety is not at risk. By forcing employees to work in the office, employers are at risk of violating their duty of care. This could potentially lead to liability for all damages incurred by the employees who are infected with COVID-19. This is therefore not only a risk for the employee's health and safety, but also a big liability and thus financial risk (also over years to come) for employers and may easily be prevented by allowing the employees to work from home, at least partially. Furthermore, there is the long-term illness salary payment obligation to consider.

### **3.4 Suspected cases**

If an employee is infected by the COVID-19, s/he must be sent home immediately. Everyone in the Netherlands is encouraged to take a COVID-19 test if they have any symptoms. Until they receive the results of the test, they must quarantine. For the rest, normal sickness rules apply, such as involving the company doctor.

If a suspicion arises that an employee has been infected with the COVID-19, you are not allowed to (medically) test an employee. However, as part of your duty of care, you may refuse them entry to the

office in order to guarantee a safe and healthy working environment for all other employees.

If an employee is infected by the COVID-19, this will be determined by the municipal health service (GGD). They will then inform anyone who has been in contact with that person. The employee must inform the employer themselves in order to report sick and it is advised for the employer to contact the GGD subsequently for further guidance. No other official notification is required.

As employer you must inform the other employees about measures taken with regard to infected employees (on a no-name basis). All employees who have been in direct contact with infected employees during the incubation period, should be sent home to work remotely, provided their home office meets the health and safety requirements. If an adequate home office is not available, you could be forced to send the employee home without any obligation to work but with pay, for example for the quarantine period.

### **3.5 Return to work after recovery**

An infected employee can only return to work when they are no longer experiencing any symptoms for a period of at least 24 hours. Additionally, employees must follow all instructions and guidelines imposed by the GGD.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

You have the same obligations towards an employee working from home as you do for employees working in the office. That means that you have to provide for a safe and healthy working environment for employees working from home. Clear instructions on the home office, the equipment used, ergonomics but also instructions on the psychosocial workload aspect are to be put in place and communicated clearly to the employees concerned. You may be required to pay for any adjustments necessary for the employee to work safely from home, for example if a new desk and/or office chair is required, whereby tax implications are to be considered.

You are also to make sure that there is no increased risk of a data breach and as such see to proper IT protection being put in place.

Various expenses that are currently paid free of tax are to be monitored carefully. For example, the fixed tax-free commuting allowance cannot be continued free of tax after 1 February 2021; however, given the continued lockdown it may well be that the Tax Authority extends this period further. As this is yet to be decided, it is strongly advised you continue to monitor these developments.

Employees can request long-term homeworking regardless of COVID-19 however employers are not obliged to grant this request. Employers do, however, have a duty to seriously consider such requests. If an employer has taken all necessary measures to ensure the safety of employee in the office, however, employees will not be entitled to work from home long term if the employer does not grant permission. It does not seem likely employees will acquire the right to work at home if they have done it for a certain time. There has been a recent ruling in a case where an employee asked for the right to permanently work from home, while the employer asked the employee to return to the office. The employer won this case, because the court found that employers cannot be forced to allow employees to work from home long term. It seems likely that even though an employee may have worked from home continuously for several months due to COVID-19, the employee will not be able to acquire the right to work from home. A legislative proposal is currently pending on the topic however, that would limit the right of an employer to deny a request for working from home should it be implemented.

### **4.2 Working from abroad**

In terms of immigration, the employer should consider that a person with a residence permit for the Netherlands may only be abroad for a certain period of time, depending on the conditions of the residence permit. Note that during this

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period the conditions of the residence permit should still be met. If the residence exceeds the permitted maximum, the employee's main residence may be relocated, and the permit may be withdrawn or not extended ([see information](#) Immigration and Naturalisation Service (IND)). If the maximum period of residence abroad is exceeded or if there are any other relevant changes that affect the residence permit conditions (i.e. salary), this should be reported to the IND.

In terms of local employment law (including health and safety measures/data privacy), the employer should consider that if working abroad gets a more permanent character, pursuant to European treaties, the local employment law will be applicable with its own specific requirements. There are, in addition, some mandatory rules that must be complied with regardless, for example the working hours act and the minimum wage act in the Netherlands. These mandatory overriding laws differ between countries, even within the EU and should be considered carefully case by case.

As for tax and social security laws, the Netherlands appears to have taken the European approach to consider the time spent in a different country due to COVID-19 as if it was spent in the pre-COVID-19 country.

In relation to working from abroad in border regions due to the COVID-19 crisis, the Dutch government concluded a

temporary tax and social security treaty with Germany and Belgium ruling that home working days may be treated as days worked in the country where you would have worked under normal conditions, provided that these home working days are taxed in the other country.

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# Peru

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25/01/2021

## 1. Government support for employers

The government has indicated that companies can apply for a loan through the 'Reactiva Peru' programme if they need it and also can request authorisation to use 'perfect suspension' of employees, that is, where the employment contract remains in force but neither party is obliged to perform its obligations (work, pay) under it. Currently perfect suspension can be used until 5 April 2021. A subsidy has also been approved to be granted to employers who hire new employees for six months, but publication of the accompanying regulation is pending.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Employer must have COVID-19 tests conducted for the employees who have very high- and high-risk occupations in relation to contact with the virus.

### 2.2 Vaccination and vaccination status in the workplace

Currently, there is no law that makes vaccination mandatory, so employers cannot make it a mandatory health and safety requirement for employees to be vaccinated. They can, however, create campaigns to communicate the benefits of the vaccine.

## 2.3 Incentives for vaccination

Since there is no mandatory law to force citizens to get vaccinated, employers can pay for employees' vaccination, but are recommended to draft a policy for that. Collection, processing and/or storage of vaccination certificates could be considered a medical record (sensitive information), meaning security measures must be accredited.

## 2.4 Dealing with refusal or inability to be vaccinated

There is no mandatory law to force citizens to have a vaccine, but it should be indicated for occupations that are exposed to contact with the public. For occupations where employees can still work remotely, we do not see any justification for forcing employees to get vaccinated. Employer cannot require an employee with an ethical, religious, medical or other objection to the COVID-19 vaccine to get vaccinated in order to keep their job. Individuals are protected under the Peruvian Constitution against any kind of discrimination based on origin, race, sex, language, religion, opinion, economic basis and any other nature.

## 2.5 Vaccination and data privacy

Please bear in mind that the collection, processing and/or storage of vaccination certificates could be considered as a medical (sensitive information), meaning security measures must be accredited.

*Physical records:* Any list or copy of physical certificates must be required only for the purpose of public interest or for health reasons. Please note that this requirement only applies while the Sanitary Emergency is still in effect. Medical records should only be accessible to doctors or health specialists to maintain the confidentiality of this information. The employer will also have to comply with the right of information, providing its employees with the following information:

- Identification of the data collector, data processors (if applicable), and of the data bank where the information will be stored (please note that registration of data banks is mandatory in Peru).
- Specific purpose and uses.
- Data retention term.
- National and cross-border flows.
- Simple ways to exercise ARCO (access, rectification, cancellation and opposition) rights.
- Security measures to be applied.

*Digital Records:* For digital records, employers must include a privacy policy in addition to the applicable terms and conditions, which must contain the information in the bullet points above. Please note that the local Data Protection Authority consider hosting providers as international recipients and as a cross-border flow which must be communicated to the Authority; these providers must be fully identified.



## **2.6 Vaccination and posted workers**

If a posted worker performs a high-risk or a very high-risk job then a COVID-19 test must be done. If there is a medium or low-level risk, then the employer can assess whether the worker should be tested. An obligation to send employees who have been tested can be agreed in the contract between the sending and host organisation.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

Employers must create a plan to guarantee the safety and health at work of employees.

Prior to the start of daily work, the workplace including environment, furniture, equipment, tools, stationery, among others must be cleaned and disinfected. Security and protection measures for cleaning personnel must be implemented, and disinfectants appropriate for the characteristics of the workplace and the type of activity carried out made available.

Identify the risk of exposure to COVID-19 of each job, in accordance with article 6.1.24 of the Guidelines, referred in Ministerial Resolution N° 972-2020-MINSA. The categories are:

- Very high-exposure risk jobs are those with high potential for exposure or direct contact to known or suspected sources of COVID-19 during specific medical, post-mortem, or laboratory procedures.
- High-exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19.
- Medium-exposure risk jobs include those that require frequent and/or close contact (i.e. within one metre) with people who may be infected with COVID-19, but are not known or suspected of carrying COVID-19.
- The lowest exposure risk (precautionary) jobs are those that do not require contact with people known or suspected to be infected with Covid-19, which do not involve frequent close contact (i.e., within one metre) of the general public. Workers in this category have minimal work contact with the public and other coworkers.

Complete a COVID-19 symptom sheet for each worker and conduct temperature checks on entering the workplace.

Require a COVID-19 test for employees who rejoin Very High- and High-Risk jobs and identify actions to be taken when a suspected case is identified in Low and Medium Risk workers.

Mandatory hand washing and disinfection: the employer must ensure the appropriate number and location of

hand washing points or alcohol gel dispenser, for free use. One of these points must be located at the entrance to the workplace for washing and disinfection prior to the start of work activities.

Implement collective preventive measures: such as adequate ventilation of the working environment, cyclical renewal of the volume of air, mandatory one-metre distance between employees, cleaning and disinfection of footwear before entering common areas of the workplace, among others. In camps, a 1.5-metre distance between beds must be maintained.

Employers must ensure the availability of personal protective equipment and implement measures for its correct and mandatory use.

Surveillance of employee health in the context of the COVID-19 national health emergency: including body temperature checks at the start and end of the workday, COVID-19 testing for workers who register body temperature of over 38°C.

### **3.2 Vulnerable employees**

Employers must adopt measures for the reinstatement of workers with risk factors (over 65 years, heart problems, high pressure, weight problems, among others). High-risk employees must remain in quarantine until 5 March 2021; if the company wants the employee to return to

work before that time, this must be authorised by the occupational doctor and there must be a signed agreement between the employee, occupational doctor and employer.

### **3.3 Back in the office**

Employers can require employees to return to on-site work, but only if the company is allowed to operate because it provides essential services or was included in one of the reopening phases. This only applies if the company has a prevention plan for COVID-19 in place and if the job position must be performed in the office. Continuation of remote work is recommended, if it is possible.

### **3.4 Suspected cases**

The following measures must be taken:

- refer the employee to a health facility for appropriate treatment.
- ensure evaluation by the person in charge of health at work to identify potential contacts.
- communicate with the health authority to follow up on any cases.
- provide material and information on preventing Covid-19 infection and hygiene measures and care that should be taken at home;
- put any worker with a suspected or confirmed case on medical leave during the required isolation time.

For suspected cases, discharge occurs 14 days after the onset of symptoms and in close contacts, discharge occurs 14 days from the first day of contact with the confirmed case.

Employers must notify SUNAFIL (the Labour Authority) and the Health Authority in the event of a case of COVID-19 infection in the workplace.

The main information measures are as follows:

- Provide information and training on COVID-19 prevention and protection including social distancing, use of masks and hand hygiene.
- The use of masks is mandatory during the working day. The type of mask or respiratory protector depends on the risk level of the job, in accordance with current regulations.
- Raise awareness of the importance of early reporting of symptoms of COVID-19.
- Provide means to respond to workers' concerns regarding COVID-19.
- Permanently educate employees in preventive measures to avoid infection in the workplace, the community and at home.
- Educate employees on the importance of avoiding stigmatisation and discrimination in relation to COVID-19.

### **3.5 Return to work after recovery**

For an asymptomatic patient with a confirmed COVID-19 diagnosis, epidemiological discharge will be given 14 days after a serological laboratory test that confirmed the diagnosis, without the need to repeat the test. For asymptomatic patients with a confirmed COVID-19 diagnosis, epidemiological discharge will be given 14 days after the positive swab test, without the need to repeat the test. For patients with a confirmed COVID-19 diagnosis who present symptoms, discharge will be given 14 days after the onset of symptoms. Note that this period can be extended according to the criteria of the treating physician. The patient must be asymptomatic for at least three days.

In the case of moderate or severe patients (hospitalised), with a confirmed COVID-19 diagnosis, discharge will be established by the treating physician. The employee's reinstatement is carried out according to the evaluation of health and safety at work conducted according to current regulations.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

All employees working remotely have the same rights as employees who go to the workplace. The only exception is that they are not entitled to the provisions

specific to employees who go to the workplace.

The employer must:

- Not alter the nature of the employment relationship, remuneration, and other economic conditions.
- Communicate with the employee about the implementation of remote work, its duration, the means for its development and responsibility for providing it, applicable health and safety conditions at work, among others.
- When the means for working remotely (computer, phone, etc.) are provided by the employee, the parties may agree to compensation for additional expenses derived from the use of these means.
- Communicate about the assignment of work to the employee, mechanisms for monitoring and reporting work carried out during the working day, if applicable, through the use of virtual methods.
- Prioritise and apply remote work for workers considered to be in the risk group by age and clinical factors.

Employees also have the right to digital disconnection of their work devices during rest periods and vacations. This also applies to employees who are not under direct supervision.

The nature of the employment relationship, remuneration and other conditions must not be affected unless these are linked to assistance provided to

the employee. Employees have the right to be informed of the company's decision to apply remote work and of the measures, conditions and recommendations for safety and health at work. Employers must assign tasks to employees and implement monitoring. Employers must provide facilities for access to platforms that allow work and must train employee in the use of systems if they are different from the ones used previously.

Employees must:

- comply with the rules on information security, protection and confidentiality of data; as well as keeping confidentiality on information provided by the worker.
- comply with the safety and health measures at work communicated by the employer.
- be available during the working day;
- fulfill instructions given within the working day;
- participate in any training programmes the employer indicates they should follow;
- inform the employer of any flaws in remote work, to promote continuity;
- not delegate any functions without authorisation.

Currently, homeworking is in place up to 31 July 2021 due the status of the pandemic in Peru. After that, employers can order employee to go back to the office.

Employees can request long-term homeworking because of COVID-19 concerns, but whether this is permitted will depend on the employer's requirements and the kind of work performed. Employees will not acquire the right to work from home based on doing so during the COVID-19 crisis because in this specific case they are doing so because of the application of a regulation stating that employers can change the place in which employees work for the duration of the official health emergency until 31 July 2021 in order to prevent the spread of COVID-19. Employees can request to be placed on 'telework' from August onwards. Different provisions apply to telework than to homeworking.

#### **4.2 Working from another country**

If a Peruvian employee is working in different country due COVID-19, then the employer can still pay his or her salary and labour benefits into the employee's Peruvian bank account.

For tax considerations, keep in mind the following:

- There is a risk of a finding of a Permanent Establishment for the organisation in the country where the employee will provide the services.
- There may be changes in the employee's tax residence status.
- Taxation of the income obtained by the employee and the employer for the services rendered from the

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country where the employee is located may be different.

There will also be immigration and data privacy considerations depending on which country the employee is in right now.

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# Poland

Last updated:  
27/01/2021

## 1. Government support for employers

The government is already offering support to businesses that are in a difficult economic situation. This includes financial assistance or loans on very favourable conditions, as well as exemptions from paying public contributions.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

As a rule employers cannot require employees to get tested for COVID-19 or disclose their COVID-19 status, but in certain situations it can be justified, such as when employees have visible symptoms or work in a job position where there is a high risk of transmission to other people. This issue must, however, be approached with caution, because the Polish Data Protection Authority is of the opinion that health and safety obligations are not a sufficient legal ground for COVID-19 testing or even temperature monitoring. In practice many employers fund tests for their employees and require information about their results relying on their health and safety duties as a ground for processing the special category data in these circumstances.

### 2.2 Vaccination and vaccination status in the workplace

As a rule, employers cannot make having the COVID-19 vaccine a mandatory health and safety requirement for

employees or require them to disclose their vaccination status. However, in certain job positions where due to the nature of work/scope of duties the employer has identified higher risk of exposure to SARS-COV-2, employees should be informed about this and the employer should recommend them to get vaccinated and can require information about employees' vaccination status. Employees who choose not to take vaccination, despite employer's recommendation, cannot be terminated, however, they may not be entitled to claim damages (neither from the state health insurance nor from employer) for becoming infected at work (although they would still be entitled to sick pay).

### 2.3 Incentives for vaccination

Employers can pay for employees to get vaccinated or offer incentives to do so. There are some doubts if granting benefits to vaccinated employees would breach the antidiscrimination rule: offering benefits to vaccinated employees can lead to discrimination claims unless employer proves that being vaccinated provides a justified and objective reason for being treated in a different manner. It is, however, possible to find justified and objective reasons for different treatment of employees in this case.

### 2.4 Dealing with refusal or inability to get vaccinated

As a rule it would not be possible to terminate employees who refuse or

cannot be vaccinated. It would, however, be justified to move them to safer workplaces (without changing their duties significantly), request them to work from home if possible, or to apply stricter rules on health and safety while in the workplace. Only if this would not be possible can the employer consider changing the employee's contractual duties/working conditions, however this should be assessed on individual basis.

### 2.5 Vaccination and data privacy

Employers should bear in mind the provisions of the GDPR relating to data about vaccination which constitutes health information and qualifies as special category data. Employee consent for processing may not be a sufficient legal basis for processing in most cases, especially given that under the Polish Labour Code this data can only be processed if provided by employee upon his own initiative. Only for certain job positions, where there is a high exposure to SARS-COV-2 employer may be able to justify processing with health and safety obligations. In any case employer's approach to processing of the data in question must be reasonable and proportionate. Transparency is also very important.

### 2.6 Vaccination and posted workers

There are no specific provisions relating to testing or vaccination for posted workers. As a rule, if due to high exposure to certain disease in the country



or work environment where the posted employee is going to work the risk of infection is significant, the posting employer should take all steps necessary to ensure the health and safety of the posted worker including vaccination. For COVID-19 this would probably not be the case for most countries or job positions. As a result, the receiving employer would be responsible for the posted worker's health and safety in its workplace in accordance with general rules applicable in the host country. General sanctions for failure to apply appropriate health and safety measures apply.

### **3. How to keep workers safe in the office**

#### **3.1 Setting up the workplace**

You should provide employees with proper personal protective equipment (disposable gloves or hand sanitiser). You should also promote regular and thorough hand washing in the workplace and provide instructions on what to do if someone shows signs of coronavirus infection. You must also ensure a distance between employees' workstations of at least 1.5 metres, unless this is not possible due to the nature of the activity carried out.

The National Labour Inspectorate has published some guidelines for employers (in Polish). Useful general information can be also found on General Sanitary Inspection website.

#### **3.2 Vulnerable employees**

There are no separate rules for vulnerable employees or vulnerable groups.

#### **3.3 Back to the office**

You can request employees work from the office and if all relevant health and safety measures have been implemented in the workplace, employees cannot refuse to do so. An unjustified refusal can be a reason for termination of employment.

#### **3.4 Suspected cases**

There is no official procedure for dealing with suspected cases of coronavirus in the workplace, however the authorities have announced some recommended actions if there is a suspected case. The employer must request the suspected employee to inform the Sanitary and Epidemiological Station about his/her coronavirus symptoms. The Station then decides on further steps; usually they decide to quarantine the employee. If the employee declines to inform the Station, the employer is permitted to do so. The employer may also request the potentially infected employee or other employees who had contacts with him/her to work from home. The workplace should be disinfected and the employer must inform the office building manager that there is a suspected coronavirus case.

The employer must inform the nearest department of the Sanitary and Epidemiological Station if there is a suspected case of coronavirus in the workplace. There are special phone numbers and helplines.

There is no official procedure for communicating infection information to the workforce. The employer is free to decide how to do so. In each case, the employer should ensure that GDPR provisions are followed which means that personal data of the employee who is suspected of having coronavirus should not be revealed to the whole workforce.

#### **3.5 Return to work after recovery**

An infected worker can return to work after recovery or after ten days of quarantine. If the employee's absence due to the illness lasts longer than 30 days, the must undertake a medical examination to establish whether he/she is fit for work.

According to the National Labour Inspectorate, employers are not authorised to independently assess the health of the employee. Not allowing an employee to work, due to potential coronavirus infection may expose the employer to charges of harassment or bullying. However, the employer can require the employee to work remotely for a specified period.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Employees enjoy the same rights or obligations as they normally would. No special obligations or rights have been imposed or awarded. In particular, the issue of employees' expenditure on utilities has not yet been regulated by law.

Employees can request to work from home or remotely long term. However, the employer is not bound by the employee's request. Ordering remote work to prevent COVID-19 infections is possible statutorily for up to three months after the end of epidemic.

The issue of working from home is a matter of 'organisation of work' and this can be unilaterally decided by employers. It is not an employment-related right that can be acquired by employees based on the fact that they may have worked from home for a certain period.

### **4.2 Working from another country**

#### *Immigration*

All EU foreign nationals are exempted from visa, work permit or residence permit obligations in Poland. Disregarding the purpose of stay, they only have to register their stay within three months after arrival.

Generally speaking, all non-EU foreign nationals are not exempt from the above obligations, so they are required to have a right to work and live in Poland. Poland does not issue dedicated visas for the purpose of remote work, so a foreign national must seek for different grounds to legalise his or her right to stay.

#### *Local employment law*

Rules applicable to an employee working remotely for a Polish company might depend on the local employment law.

Similarly, Polish employment law may grant protection to the employees working remotely from Poland. Local employment law will apply with regard to selected aspects and only when it is more favourable than the 'native' legal provisions. These are provisions that protect the employee, e.g., with respect to health and safety issues, vacation time, and minimum daily and weekly rest periods.

In Poland these aspects are work and rest periods; the number of annual holidays; minimum rates of pay; health and safety; protection of pregnant women or those who are on maternity leave, employment standards for youths and children; equality and anti-discrimination; and business trip costs. These are the minimum standards that shall be applicable in accordance with the Polish law, regardless the term of staying in Poland and the law applicable to the contract.

#### *Personal income tax*

Under Polish law, an individual has a place of residence in Poland if s/he spends more than 183 days in Poland in calendar year or has a centre of economic or personal interests in Poland ('centre of vital interest'). Individuals who do not have a place of residence in Poland are generally obliged to pay Polish tax only on their income sourced in Poland (this is referred to as 'limited liability to Polish taxation'). Income from work physically performed on the territory of Poland should be considered as income sourced in Poland.

However, Double Tax Treaties conducted between Poland and other countries (hereinafter: DTTs) should be taken into consideration. Most DTTs provide that remuneration derived by a Polish non-resident (consequently tax resident in their home country) in respect of employment exercised in Poland shall be taxable only in the tax residency country if certain conditions are met. If these conditions are met, neither individual nor employee have Polish personal income tax obligations arising from work performed in Poland.

However, if an individual who performs work remotely from the territory of Poland is to be considered as a Polish tax resident or any of the conditions is not met the individual will become subject to Polish taxation.

If the individual is from a country with which Poland has not concluded a DTT,

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in general s/he will be subject to Polish taxation from the first day of work performed in Poland. This should be always discussed also with home country advisors.

Some corporate income tax aspects, i.e. whether a permanent establishment is created by the fact of a remote working employee should be also analysed.

### *Social security*

The social security position of an individual working remotely from Poland differs depending whether the individual is from the EU, from a country with which Poland has concluded a social security agreement (for example: US, Ukraine, Canada, Turkey, Australia, Israel, etc.) or a third country.

According to EU regulations, an employee should be subject to social security only in one country and this is, in principle, the country in which s/he performs work. However, if an A1 certificate is obtained in home country, no social security will be due in the country where remote work is being performed. Further details regarding the process for obtaining an A1 should be discussed with local advisors.

If for some reason the 'home' social security authorities do not issue an A1 certificate the individual will be subject to the social security scheme of the country in which they are working.

If there is a social security agreement in place, its need to be analysed and no general comments can be made. An individual from a country with which Poland has not concluded a social security agreement, will in general be subject to Polish insurance from the first day of work performed in Poland. This should be always discussed also with home country advisors.

### *Data privacy*

The GDPR is applicable in Poland. The GDPR applies to the processing of personal data in connection with the activities of a business unit of a controller or processor in the EU, regardless of whether the processing takes place in the EU. If an employer has organisational units in the EU, the GDPR applies.

It also applies to the processing of personal data of data subjects residing in the EU by a controller/processor with no organisational units in the EU, if the processing activities involve, among others, the monitoring of their behaviour, where this behaviour occurs in the EU. It should therefore be determined whether a foreign employer (with no organisational units in the EU) is monitoring its employee, i.e. whether the foreign employee is observed online. This may be relevant if the employer wishes to control an employee's remote working.

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# Portugal

Last updated:  
26/01/2021

## 1. Government support for employers

Several measures have been approved by the government and are currently in force aiming at supporting individuals and companies, notably legal regime that applies to the gradual activity relaunch benefit for companies in a crisis situation, and a relaunch of the simplified lay-off regime as result of the new general lockdown in operation from 15 January 2021 (see 3.1 below).

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Given the seriousness of the situation, asking employees if they are infected does not in principle constitute a breach of employers' obligations. You cannot, however, require an answer to these questions, or require an employee to get tested for COVID-19.

### 2.2 Vaccination and vaccination status in the workplace

In principle, employers cannot require employees to get the COVID-19 vaccine as a mandatory health and safety requirement or require them to disclose their vaccination status. Currently, we are not aware if vaccines will be compulsory or not. In any case and given the seriousness of the situation, asking employees about their vaccination status in principle not constitute a breach.

## 2.3 Incentives for vaccination

You can encourage employees to get vaccinated. In principle, vaccines will be paid for by the state.

### 2.4 Dealing with refusal or inability to get vaccinated

In principle, employers cannot dismiss an employee who refuses to be vaccinated or prevent an employee who has not been vaccinated from coming to work, change their duties or otherwise alter their working conditions. They cannot segregate employees based on their vaccination status.

### 2.5 Vaccination and data privacy

Employers may not force employees to disclose information about their vaccination status (information may be requested, as for COVID-19 tests).

### 2.6 Vaccination and posted workers

There are no specific provisions or regulations in prospect relating to posted workers and vaccination.

## 3. How to keep workers safe in the office

### 3.1 Setting up the workplace

#### *State of emergency*

Portugal is currently under a state of emergency, valid for an initial period of 15 days from 15 January 2021 and a general

lockdown regime is in force. Although schools remain open, the following restraining measures are in place:

- compulsory confinement in health institutions for those who are infected or ill;
- a special protection duty for vulnerable individuals, such as those who are over of 70 years old (restrictions to their freedom of movement);
- general duty of home confinement (in general terms, movements are limited to those strictly necessary, e.g. acquisition of essential utilities and for the performance of a professional activity).

All businesses requiring the physical presence of customers/ clients are generally closed with the exception of supermarkets, fuel stations and pharmacies, but with capacity restrictions. Restaurants are only be allowed to sell 'take away' or for home delivery. Public services are to be reduced to 'the essential'. All leisure/ cultural services and institutions must remain closed: this covers libraries, cinemas, theme parks, clubs, gyms etc.

Among the various measures imposed, those related to the mandatory home working regime are set out below:

- Homeworking must be adopted regardless of the employment relationship, whenever the duties

- allow it and the employee has conditions to perform it.
- No agreement between the employer and the employee is required.
- Regardless of the number of employees or the location of its premises, this obligation applies to all companies.
- Homeworking is not mandatory for employees working in essential services, as well as to employees integrated in pre-school education facilities of the social and solidarity sector and to educational and training offers in basic and secondary education.
- The employer must provide the employee with the necessary equipment and working tools for the provision of remote work. When this is not possible and the employee agrees, homeworking can be carried out using the employee's own means, the employer being responsible for programming and adapting them to the provision of the required work.
- Employees working on a remote work regime have the same rights and duties as any other employee, without reduction in pay, particularly with regards to normal working hours limits and other working conditions, health and safety and repair of occupational injuries or occupational disease and maintaining the right to be paid any meal allowance that was already due.
- Failure to comply with the adoption of the homeworking regime is considered very serious misconduct

and may lead to fines varying between EUR 2,040 and EUR 61,200.

#### *Measures for workplaces that remain open*

When the adoption of homeworking is impossible, the employer should adopt the remaining measures, notably staggering working hours and organising working times. For workplaces that remain open to staff, the following rules apply.

Provide tissues and hand-sanitiser and encourage their regular use. Encourage staff to wash their hands or use hand sanitiser on arrival in the workplace after using public transport and after coughing or sneezing. Use posters and other visual material, to make the message more effective. Regularly clean frequently touched communal areas (door handles, kitchens, toilets, keyboards, phones and desks).

You should assess:

- Activities that are indispensable to maintain the company running.
- Essential resources (raw materials, suppliers, logistics) to keep the organisation running and to satisfy clients' basic needs.
- Staff required to guarantee the above. Consider training additional staff to replace them if they cannot come to work.

- Staff that have higher risk of infection.
- Activities that may use alternative forms of work (telework, videoconferences, teleconferences and client's remote access).

### **3.2 Vulnerable employees**

Immuno-suppressed employees, employees suffering from chronic conditions and disabled employees (with more than 60% of disability) are entitled to work remotely if the nature of the tasks performed is compatible with this type of work. In addition, remote work is mandatory when the premises and the working organisation do not meet the recommendations enacted by the Health and Labour Inspection Authorities, if and when the nature of the tasks performed are compatible with this type of work.

### **3.3 Back in the office**

Given the current lockdown, employees cannot be required to return to on-site work.

### **3.4 Suspected cases**

If your business is open or will be permitted to reopen, you should create contingency plans addressing the potential effect of an infected employee on the organisation, how to deal with a possible infection case and what to do if there is an infected person in the organisation. Share these plans with



employees and provide them with relevant emergency contacts.

If someone falls sick with COVID-19:

- clean and disinfect the 'isolation' area where the infected person was kept;
- reinforce cleaning and disinfection, especially in areas frequently used by the infected person, their work area and materials and equipment used by them;
- store the confirmed case's personal belongings and all the material used in the isolation area (gloves, masks, tissues, etc.) in a plastic bag, to be closed, segregated and sent to an authorised operator licensed to treat hospital biological hazard residues.

Since May 2020, Portuguese law expressly foresees the possibility of body temperature monitoring being carried out directly by employers. Monitoring of employees' body temperature can be carried out by employers, for the purpose of allowing access and presence in the workplace, and access to company's premises can be denied to employees with a temperature higher than normal.

In addition, in view of the recent state of emergency declaration, body temperature monitoring may also be carried out for access to, public services, schools and transportation, among others.

Given the seriousness of the situation, asking employees if they are infected should, in principle, not constitute a

breach. You cannot, however, require an answer to these questions, or require an employee to get tested for COVID-19. In view of the above, our advice in the event of a suspicion of infection is to allow employees to come to work, immediately put them into isolation and adopt the procedures in the contingency plan.

If an employee has symptoms, he or she must contact the National Health Services helpline. If symptoms are considered a potential COVID-19 situation, but the health services do not confirm infection, the employee must inform you and you must inform the medicine at work services. If symptoms are considered a potential COVID-19 situation, and the health services confirms the infection, the Health Authority will inform you.

The employer should inform the remaining workforce of the confirmation of the infection and the fact that the Health Authority is involved, notably for the purposes of monitoring employees that were exposed to the virus.

### **3.5 Return to work after recovery**

An infected employee can return to work after obtaining a medical certificate of ability to work. The employee should provide the employer with this information prior to restarting work, without prejudice to the other measures mentioned above relating to monitoring employees' health.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

See 3.1 on the specific rules for homeworking during the state of emergency.

The employer is bound to ensure that the employee is able to perform his/her tasks in good conditions, notably in terms of safety and health. The employer is bound to respect the employee's privacy. The Portuguese Data Protection Authority (CNPD) has issued guidelines on the rules regarding remote monitoring of employees on homeworking, and on the possibility of companies directly monitoring employees' health data and risk behaviours.

Regarding homeworking, the CNPD has clarified that it is not lawful to use remote surveillance, notably software, to monitor and record employee performance, working hours, inactivity time, visited web pages, the real time location of a terminal or the usage of peripheral devices (i.e. mouse and keyboard), among others. If employees are not part of the risk groups described above, homeworking will always be subject to agreement between employer and employee. It is unlikely that employees could acquire a right to work from home based on having done so for a certain time, since this is an extraordinary situation.

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#### **4.2 Working from another country**

First of all, situations like the one described will be subject to agreement between employer and employee since a change of the working place cannot be unilaterally imposed by an employee. The situation would be different in the event of a temporary change of the workplace in cases where employees cannot return to their home countries due to the pandemic.

In any case, immigration aspects should always be taken into account when an employee is working in a country different from his home country. Considering the territoriality principle, employers should pay attention to local employment and health and safety mandatory laws and tax residence status.

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# Romania

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## 1. Government support for employers

Government support for technical unemployment currently applies only for activities suspended according to an official list or following the decision of the Public Health Directions, related to the epidemiological investigation. Other types of state support apply to the establishment of a flexible working schedule, under certain conditions (*Kurzarbeit*), for hiring certain categories of persons dismissed in the pandemic context, subject to a series of conditions or for occasional workers and seasonal workers, for a limited time period.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Despite employers' general obligation to ensure the health and safety of the employees, the authorities have established the extent of the employer's role in identifying and ensuring proper protection in the event of suspected or confirmed cases of COVID-19 among employees. These are limited to duties such as performing epidemiological triage (temperature and symptom checks) and, for suspected cases, guiding the employee towards the family physician for a diagnosis. Testing duties and further handling cases of quarantine or isolation are the responsibility of specialised authorities.

At first glance, the measure of COVID-19 testing is not expressly prohibited by law and, therefore could be implemented by employers. However, given the rather formalistic view of the authorities on testing, an employer imposing it as a strict requirement or a condition of continuing or returning to work would be seen as exceeding the framework of the employer's duties: it would be considered excessive and restraining the employees legally acknowledged right to work. There are also data protection aspects, see 2.5 below.

### 2.2 Vaccination and vaccination status in the workplace

The vaccine is accessible on a voluntary basis in Romania, following specific phases and is not accessible to the general population until implementation of the Third Phase.

Currently, there is no legal framework to provide expressly for a requirement regarding vaccination in the field of employment relationships. Therefore, imposing a requirement, even if it is part of the employer's health & safety regulation, may be considered excessive. There is no legal framework regarding requiring employees to inform the employer whether they have been vaccinated or not. If this information is deemed necessary for the periodic checks performed by the occupational doctor (or for another justified and

documented purpose, such as eligibility for a mission or project in a foreign state requiring a vaccination 'passport' to enter its territory), it is not excluded that imposing this requirement may be permissible.

See data protection aspects as well.

### 2.3 Incentives for vaccination

Currently, COVID-19 vaccines are provided free of charge on a phased basis. According to recent amendments to the Fiscal Code, employers may bear the costs of epidemiological testing and/or vaccines for employees with the aim of preventing the spread of illnesses than could endanger employees' and public health. These costs are not subject to income tax.

It appears that an incentive could be offered to employees, justified by encouraging vaccination to better handle the current health and safety risks, but discussions could arise about this practice being regarded as discriminatory or differential/unequal treatment, especially by employees who do not want to or cannot be vaccinated (e.g., for religious reasons or reasons related to their medical condition etc.).

### 2.4 Dealing with refusal or inability to get vaccinated

Employers must ensure the proper level of protection of employees according to

the law, regardless of their vaccination status.

Vaccination is only given with the informed and express agreement of the recipient, so if an employee does not want to/cannot be vaccinated, the employer cannot impose vaccination or apply any sanction (including dismissal, prohibition of access or right to work, etc.).

Although the status of being vaccinated is not expressly included among the statutory criteria on which discrimination is prohibited as per the special law, the list of these criteria is not exhaustive. In certain situations, it may be argued that there are even express criteria regulated by law that would implicitly come into play, if they are the reason behind the employee's decision to decline vaccination (e.g., religion, belief, chronic disease). Therefore, it is possible that discrimination be based on vaccination status, either in the opinion of authorities or as basis for a claim by employees. Employers must avoid any differential or discriminatory treatment (e.g., as regards the right or access to work or any related rights and protections, access to or denial of benefits, etc.), based on employees' vaccination status.

On a case-by-case basis, some measures based on vaccination status may be objectively justified, for example when an employee needs to travel to countries that require a vaccination 'passport'. In such a case, if the

employee does not consent to vaccination, s/he may be replaced in that project/mission/category of duties, under certain conditions.

## **2.5 Vaccination and data privacy**

Employers must ensure compliance with all data protection requirements, including with the principles for processing personal data under Article 5 of the GDPR.

In particular, employers must pay a special attention to the data minimisation principle. If the same result (ensuring adequate health and safety conditions in the workplace) can be obtained by other less intrusive means than processing employees' vaccination-related data (e.g. by carrying out epidemiological triage) or by processing less data, then these alternatives must be followed.

In particular, employers should consider the current legal framework that regulates vaccination on a voluntary basis, without the involvement of employers in their employees' vaccination options. In this context, employers risk not ensuring proper compliance with the data minimisation principle, by making it mandatory for employees to be vaccinated, for example, in order to be able to return to work. As an alternative, employers should assess whether it would be necessary or sufficient to collect employees' vaccination-related data on a voluntary basis, as a measure to supplement those already implemented

as part of the health and safety procedure at work.

In order to be lawful, employers should assess the appropriate legal basis for processing employees' vaccination-related data, depending on how they will decide to regulate this processing activity as part of their health and safety internal procedure.

In the absence of a legal provision allowing employers' involvement in employees' vaccination decisions, employers cannot rely on the legal obligation to legitimise processing, including the processing of employees' vaccination status. For the same reasons, employers may not be able to demonstrate that they need to undertake the processing for reasons of public interest in the area of public health, as long as the competent authorities have not imposed obligations in this respect on employers.

Employers are recommended to allow employees to provide vaccination-related data on a voluntary basis, without fear of suffering any negative consequences from their employers in the event of a refusal. In this case, employers may consider employees' consent as a legal basis for processing, but only to the extent they can ensure and demonstrate that it is validly provided, as reliance on consent should be confined to cases where employees have a genuine free choice and could withdraw the consent without negative consequences.

Legitimate interest may also be an appropriate basis for employers to rely on, subject to performing a legitimate interest assessment prior to processing. To the extent employees' vaccination-related data would qualify as data concerning health, which is a special category of data under GDPR, employers must identify additional data processing safeguards from those listed under Article 9, such as carrying out the obligations and exercising specific rights in the field of employment, social security and social protection law or assessment the working capacity of the employee, if certain conditions are met. Employees' consent may be a suitable safeguard under Article 9 of the GDPR, but only to the extent employers ensure that conditions are met, including that the employees give consent freely.

Employers must also ensure compliance with other data protection requirements, for instance, performing a data protection impact assessment (DPIA) if the envisaged processing is likely to result in a high risk to employees' rights and freedoms or to the extent the processing falls under the list of operations for which a DPIA is mandatory according to local legislation.

Compliance with the data protection requirements must be ensured irrespective of the category of data subject (i.e., employees, posted workers, contractors).

## **2.6 Vaccination and posted workers**

There are no specific provisions in force at the moment as regards testing or vaccination of posted workers. In any case, employers should make employees aware of any possible requirements in place preventing travelling or entering a country without proof of vaccination. Otherwise, employer's liability for consequences arising from such failure to observe this cannot be excluded (e.g. for damages suffered or caused by the employee).

Liability between the two entities involved in posting could be established if they agree, contractually, to vaccination obligations. However, no contractual obligation could imposed vaccination, testing or any sanction on employees. The data protection considerations described in 2.5 also apply.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

During the state of alert, employers must observe a full set of measures, including:

- provide new health and safety training (adapted to COVID-19 related risks) and inform employees of them;
- provide disinfectant dispensers and, in some cases, also provide

protective equipment (depending on the specifics of the activity);

- perform epidemiological triage of employees according to the law;
- comply with the limitations imposed on the number of participants in certain events/ activities;
- ensure mandatory wearing of masks in the workplace, as per the law.

### **3.2 Vulnerable employees**

Based on the risk evaluation performed, the occupational doctor can introduce special derogations or particular protective measures for risk groups (e.g. individuals suffering from respiratory illnesses).

### **3.3 Back in the office**

Employees cannot be forced to return to work. However, economic operators have an obligation to implement, where the nature of activity allows for it, a teleworking/work from home regime, subject to administrative sanctions. When the activity cannot be carried out remotely, the working schedule must be organised by dividing employees into groups, starting and ending activity at staggered times with a difference of at least one hour.

Employees can refuse to come to work when their health is under a significant risk (i.e. there is a risk of infection and no remedial measures have been taken by the employer).



### **3.4 Suspected cases**

Employers have the obligation to prohibit employees with COVID-19 symptoms from entering or remaining in the workplace, based on epidemiological triage and direct employees with specific symptoms to their family physician for diagnosis.

There is no official notification obligation expressly required by law, but considering their general health & safety obligations, employers must notify the local public health authority or call a dedicated number/the emergency number, if there are COVID-19 cases at the workplace.

Employers must perform epidemiological triage and temperature check without any personal data processing (taking appropriate measures to protect and not communicate the personal data of the employees).

Employers also have an obligation to inform employees regarding anything that involves a risk to their health and safety, as well as protection and prevention measures taken at unit level to eliminate these risks. If there are confirmed/suspected COVID-19 cases among employees, the employer must inform the direct contacts and require these individuals to isolate at home for 14 days (this may also be ordered by health authorities when conducting epidemiological investigations).

The employer could issue a plan/instruction/policy to better organise the protection and prevention.

### **3.5 Return to work after recovery**

Quarantine for individuals returning from areas of high risk or for direct contacts, expires after 14 days or when the person is confirmed as infected, in which case, s/he enters isolation (see below). Quarantine leave (and suspension of activity) operates only if activity cannot continue from home.

Isolation, established for all confirmed cases of COVID-19, lasts until the person is confirmed as cured on the basis of clinical and para-clinical examinations or on a doctor's recommendation. For individuals with no or mild symptoms, who are isolated at home under the supervision of the family doctor, isolation may not exceed 14 days from the first (positive) test and they may be declared cured and restart activity without a second test. Individuals confirmed infected are entitled to medical leave (that suspends their individual employment agreements), until they are considered cured.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Regardless of the actual number of teleworking days performed (assuming at least one day of work per month is

performed at a different location than the headquarters, using information and communication technologies, as per legal requirements), the rights of teleworkers include:

- having the materials used in performing activity transported by the employer to and from the place where remote work is carried out;
- the right not to be isolated from colleagues;
- receiving special remote working equipment necessary to carry out their duties, installation, verification and maintenance thereof, ensured by the employer, unless the parties establish otherwise;
- receiving appropriate health and safety training and instructions.

Teleworker's main obligations include:

- informing the employer about the work equipment used, conditions and the need to carry out remote work;
- allowing the employer to access the remote work location;
- not changing the conditions of safety and health at work;
- using only work equipment that does not represent a danger to health and safety;
- compliance with employees' health and safety obligations, contractual provisions, rules and restrictions established by the employer.

Under Romanian legislation, it is not possible to acquire a right to work from

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home based on doing so for a certain period, the agreement of both parties being required to establish teleworking regime and its length.

### **4.4 Working from another country**

The law contains neither a prohibition on performing remote activity from abroad, or an express possibility of doing so. Some teleworking minimum requirements, though, will reasonably apply, regardless of the exact location of the workplace, for example the individual employment agreement or addendum to it must contain the express mention of the place or places from where remote activity is performed.

In addition, the following are particularly relevant to teleworking from abroad:

- synchronisation of the work schedule with the rest of the employees.
- employer's obligations/responsibilities regarding transporting work equipment and necessary materials to and from the place where work is performed; take the necessary measures so that the employee is not isolated from colleagues; health and safety; and coverage of certain costs.
- employer's right to perform an inspection of the place where activity is performed.

The employer must also inform the employee who will work abroad, in good time, about aspects of working aboard

(e.g. the duration of the work period abroad; benefits in cash and/or in kind related to the activity performed abroad; legislative, climate and even cultural specifics, etc.).

A teleworker working from another EU member state falls under the social insurance legislation applicable in that state, retaining the possibility to remain insured under Romanian social insurance legislation, subject to certain conditions.

From a data protection perspective, according to a reasonable interpretation, the same rules apply in both cases where the employee works in the country specified in its employment contract or in another country. This means that if an employee has an employment contract concluded in accordance with Romanian law, the employer must ensure the same level of protection of his or her personal data as if the employee were working in Romania. The rules on cross-border transfers may be relevant depending on the scenario.

From a personal income tax perspective, under domestic regulations, salary remains subject to taxation in Romania. However, if the telework is performed from a state with which Romania has a double tax treaty, this treaty would have to be considered when determining the country where the dependent activity would be taxed.

According to the Romanian Fiscal Code, expenses incurred by the employer in relation to employees who telework are deductible for corporate income tax purposes. Amounts granted to these employees for the purpose of covering certain expenses according to the employment contract or internal regulations are not treated as salary revenue up to a limit of RON 400 per month (corresponding to the number of days spent in teleworking).

From a corporate income tax perspective, the employer should analyse whether the activity performed by the teleworker in another country would generate a permanent establishment for the company there.

If a Romanian employee wants to telework from abroad, immigration legislation and requirements in the receiving state must be analysed and complied with (the Romanian immigration framework does not apply in this situation).

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# Russia

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## 1. Government support for employers

Small business employers are not subject to scheduled inspections in 2021.

Support measures vary by region. With regard to Moscow, as of December 16, 2020, the fifth business support package was adopted by the Moscow Mayor. According to these changes, the subsidized interest rate for small and medium-sized businesses is up to 6% (if the loan was issued before 15 April 2020), up to 8% (if the loan is issued after 15 April 2020). These measures will remain in place until 1 July 2021.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

An employer cannot require employees to take a COVID-19 test if it is not prescribed by federal or regional rules. At the federal level, there are no compulsory requirements related to COVID-19 tests. This issue may also be regulated at the regional level. For example, in Moscow, employers must provide clinical COVID-19 tests every 15 calendar days for not less than 10% of the employees working onsite. Employees must participate in medical testing organised by the employer according to the requirements of the Moscow Mayor.

The Russian Labour Code imposes mandatory medical examinations for certain categories of employees. At present, there is no official guidance from

the authorities or court rulings confirming whether prescribed testing for COVID-19 is included in these mandatory medical examinations or not.

### 2.2 Vaccination and vaccination status in the workplace

Generally, employer cannot impose a mandatory requirement for employees to be vaccinated.

However, as of 9 December 2020, vaccination against COVID-19 was included in the calendar of preventive vaccinations that are epidemiologically indicated. There are three priority levels of citizens who must be compulsorily vaccinated against coronavirus:

- Level one is employees of medical, educational organisations, social services and multifunctional centres; people living in social service organisations; and people with chronic diseases (e.g., diabetes, obesity, etc.).
- The second priority level includes: employees of transport and energy organisations, employees of law enforcement agencies and state control bodies at checkpoints across the state border; individuals working on a rotational basis (that is a camp-based job, working and living onsite as is common in construction and mining); volunteers; military personnel; and employees of service providers.

- The third priority level includes: state civil and municipal employees; students in professional educational organisations and educational institutions of higher education aged over 18; and individuals subject to conscription.

In addition, the priority levels can be changed by the regional authorities of the Russian Federation, taking into account the epidemic situation. Employees falling under the above categories may be subject to other rules and requirements with respect to their employment depending on the employing organisation and their vaccination status. In particular, the Russian Government has set out types of work requiring mandatory preventive vaccinations: agricultural, irrigation and drainage and construction work; work related to caring for animals; and work in organisations carrying out educational activities, etc. These employees have a high risk of contracting infectious diseases and require mandatory preventive vaccinations.

Unless otherwise provided by Russian legislation the information on the fact or absence of the employee's vaccination can only be collected and processed with the employee's consent.

### 2.3 Incentives for vaccination

Formally there are no legal restrictions on encouraging employers to be vaccinated. However, employers must be careful about establishing rules relating to

incentivising vaccination to avoid discrimination issues with the employees. Incentivising employees to get vaccinated may trigger discrimination issues as the fact of vaccination is not connected with an employee's job skills or fulfilment of their working duties.

#### **2.4 Dealing with refusal or inability to get vaccinated**

All citizens have the right to refuse vaccination (for any reason), including mandatory vaccination. An employer may not suspend employees based on the fact that they are not vaccinated. The only exception is if these employees are subject to mandatory vaccination due to the specifics of their job. The list of jobs requiring mandatory vaccination is established by the law, see above. Some citizens cannot get a vaccine. The main contraindication for all vaccinations is a strong reaction or a complication following receipt of the same vaccine. Particular contraindications to the vaccination against coronavirus are a history of severe allergic reactions; acute infectious and non-infectious diseases, exacerbation of chronic diseases (vaccination is possible two to four weeks after recovery or remission); pregnancy and breastfeeding; being under 18 years old; individuals who participated in a clinical trial of the vaccine. If employee's job falls under the category of jobs requiring mandatory vaccination, and an employee refuses to undergo it, then such an employee can be

suspended from work. The employer may not terminate employment based on this.

#### **2.5 Vaccination and data privacy**

The fact or absence of vaccination is sensitive personal data about an employee. Employers can process sensitive personal data of employees if this is required in accordance with Russian legislation or with the employee's written consent.

#### **2.6 Vaccination and posted workers**

Currently there are no specific requirements in relation to posted workers' vaccination.

### **3. How to keep workers safe in the office**

#### **3.1 Setting up the workplace**

All organisations that are resuming operations are obliged to observe sanitary and epidemiological rules prescribed by federal regulations, including Rospotrebnadzor (the federal authority for supervision of human rights protection and welfare) recommendations.

The employer should provide employees with safe working conditions and protection and keep them informed. Employers are recommended to:

- appoint an official (e.g. an HR person or Health and Safety official), to

monitor and review guidance from governmental bodies and be a point of contact for concerned employees.;

- consider legal requirements prior to implementing changes to terms and conditions of employment;
- keep employees informed via emails, training and visual materials (including on sneeze etiquette and handshake hygiene) without causing panic;
- provide body temperature monitoring for employees in the workplace;
- provide hand sanitiser and face masks, educate staff on their use and encourage regular use;
- regularly clean and ventilate the workplace, including using sanitisers where necessary;
- ensure compliance by employees with social distance (no less than five metres), including by applying special markings and establishing a special access and occupation regime for buildings.

In addition, currently, additional employer's duties may be imposed by a particular region of the Russian Federation based on the local sanitary and epidemiological situation. For example according to a Decree of the Mayor of Moscow dated 6 August 2020 No. 68-UM ('On the stages of lifting the restrictions established in connection with the introduction of a high availability regime') employers must:

- provide personal protective equipment (masks, respirators,

- gloves) at the workplaces and at the company's territory;
- check employees' body temperature in the workplace not less than every four hours;
- provide COVID-19 tests each 15 calendar days for not less than 10% of the employees;
- provide for blood collection from employees for laboratory tests for COVID-19 infection and immunity;
- comply with social distance requirements or provide dividing walls between workplaces;
- comply with other recommendations issued by the Rospotrebnadzor.

From 5 October 2020, employers must adopt a decision setting a number of employees to be transferred to remote work; and a number who cannot be transferred to remote work because their presence is needed to ensure continuous technological and other processes, which are required to ensure the organisation's functioning.

From 5 October 2020, employers must implement measures to minimise employees' in-person presence at their places of work in companies' premises. 30% of the workforce, workers over 65 and those with specified illnesses (e.g. pregnant women, employees with diabetes mellitus, second-degree bronchial asthma, etc.) must be transferred to remote work.

From 12 October 2020 until lifting restrictions owing to the improvement of

the epidemiological situation in Moscow, employers must provide the Moscow Government with a weekly report stating the number of employees who are transferred to remote work; the number of employees who cannot be transferred to remote work because their presence is essential (see above); the company's activities and the place where the company carries out its activities.

It is not necessary to submit information on a weekly basis if the previous week's submission remains accurate. If information changes, the report should be updated and provided to the Moscow Government on the day the relevant decision is adopted by the company. The notification shall be submitted in the form stipulated in the Decree of the Moscow Mayor, in electronic format by using a personal account of a legal entity on the Moscow Mayor and Moscow Government [website](#).

Organisations must also report specified information on employees who will be transferred to remote work: mobile phone number; vehicle state registration number if any; 'Troika' electronic card number (Moscow urban-transport pass) if any; Strelka electronic card number (Moscow region urban-transport pass) if any; social card number if any; monthly unlimited or 70 trips travel ticket number, temporary single social ticket or temporary special ticket if any.

### **3.2 Vulnerable employees**

See above on the obligation to move employees over 65 and with specified illnesses to remote work.

### **3.3 Back in the office**

Employees' return to the office depends on whether an employee was transferred to remote work during the lockdown, and if so, how this was formalised. If an employee was not transferred to remote work and stayed at home during the self-isolation period, s/he must come back to work in the office once the relevant restrictions are lifted. If an employee was transferred to remote work by signing an addendum to his or her employment contract, return to on-site work depends on the contents of this addendum. For instance, employees transferred to remote work for a specified period should return to work after this period.

### **3.4 Suspected cases**

If an employee falls sick, the employer should ensure that the employee does not continue working. Employers must also disinfect all areas of the site where exposed employees were located or which they visited, and conduct temperature checks on all employees. Any employees who have high temperature should be suspended. Failure to comply with these requirements may lead to liability of the employer and its officials.



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An employer cannot require an employee who is suspected to be infected not to come to work. One of the available options is to convince an employee to take sick leave as those who are suspected to be infected should observe the self-isolation regime. The employer can also transfer an employee suspected to be infected to remote work or, with the agreement of both parties, s/he can also take paid or unpaid leave.

The state authorities could request information about employees who may have been exposed to coronavirus. The employer must contact the regional office of a relevant government agency by mail or by the telephone hotline to provide information about infected employee and all the employee's contacts in relation to performance of his/her work duties.

Employers can communicate infection information through corporate email or in other available ways. Please note that personal data of the infected employee should not be disclosed.

### **3.5 Return to work after recovery**

The employee can return to work after discharge from medical care and on provision of a certificate of terminated sick leave to the employer.

If the employee did not obtain a sick leave certificate (e.g. employee was transferred to remote work or took paid/unpaid leave) after the self-isolation

period the employee can return to work with a negative COVID-19 test result.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Generally, employees who are working remotely have the same rights and obligations as ordinary employees with some exceptions, not connected with the term of remote work.

All special provisions, such as providing equipment for the employee to use at home, or compensation for the use of equipment owned or rented by remote employees, should be specified in employment agreements.

Employees cannot request long-term homeworking based on concerns about coronavirus, and the employer is not obliged to provide it. Any decision on long-term homeworking should be formalised with an additional agreement, meaning the parties should reach an agreement on it. Transfer to remote work is recommended by the state authorities, if it is conducted in accordance with applicable laws, employees' rights are respected and remote work is feasible.

There are no rules allowing employees to continue working from home simply on the basis that they have already worked from home for some time. They do not acquire a right to work from home. However, if an end date was not agreed when formalising a transfer to remote

work and the employee refuses to go back to the office, the employer cannot force him or her. In this case, the parties should agree on the terms of return to in-person work and conclude a new additional agreement.

### **4.2 Working from another country**

According to the explanations provided by the Ministry of Labour and Social Protection, an employer cannot conclude an employment contract for remote work if the employee fulfils his or her work duties on a permanent basis outside Russia. In this case, the relationship between the employee and the employer can be regulated within the framework of a civil contract.

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# Saudi Arabia

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## 1. Government support for employers

As of July 2020, the Ministry of Finance launched the corporate sustainability programme worth SAR 670 million to support the deferment of loan instalments for the private sector, including the health and education sectors. It covered more than 192 establishments across sectors such as education, health and industry. The initiative aims to support projects in the education, health and real estate development sectors by accelerating approvals and disbursement of loans and easing requirements.

Some of the initiatives introduced to support the private sector relating to employment in the KSA include:

- Allocating SAR 4 billion to provide employment support and training programmes that will allow more than 300,000 beneficiaries to work in the private sector.
- SAR 1 billion going to help private sector employees who have not previously benefited from the support programs available.
- Exempting expatriates whose residency ends between the end of March 2020 to the end of June 2020 from the necessary financial requirements needed for visa renewal, by extending their residency period for a period of three months without reapplication.
- Enabling employers to recover any work visa fees incurred after the issuance of permits which were not

used during the period of the entry and exit ban even if they were stamped at the airport. Alternatively, work visas will be extended for an additional three months without charge.

- Enabling employers to extend unused exit and return visas during the period of the entry and exit ban for a period of three months without charge.

The government also offered a salary subsidy through the SANED program but this has now been discontinued.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Employers can require staff to take a COVID-19 test where they reasonably suspect that the individual may be showing symptoms of the virus or if the individual or the workplace has been exposed to a confirmed case of COVID-19 infection before allowing the employee to return to the workplace as part of the employer's obligation to safeguard the health and safety of other employees and anyone else accessing the employer's work premises.

### 2.2 Vaccination and vaccination status in the workplace

The KSA government is carrying out a national vaccination plan for all citizens and residents who are being encouraged to register for it. However, as yet, registration is voluntary and therefore

employers will not be able to make it a mandatory health and safety requirement for employees to be vaccinated, unless staff work in environments which are high risk sectors such as healthcare and social care where the employer's obligation to ensure staff do not pose a risk to other staff, patients or clients and vice versa may include an obligation to ensure staff are vaccinated against common infections, transmissible illnesses and biological hazards. If the government makes vaccination mandatory then employers will be able to make it a general condition of employment for employees to be vaccinated, subject to any exemptions that are medically certified.

### 2.3 Incentives for vaccination

The vaccination is being offered free of charge by the KSA government, so payment or incentives are not required.

### 2.4 Dealing with refusal or inability to get vaccinated

Vaccination is not a mandatory requirement in the KSA and unless this changes it will not be possible to terminate employment lawfully if the employee refuses to be vaccinated whether for religious or medical reasons or for no reason. However, where employees work in a high-risk sector such as healthcare and social care then employers may be able to prevent an employee from coming to work, change their duties or alter their working

conditions to reduce the risk they may pose to other employees, patients or clients.

Excluding employees from the physical workplace or otherwise treating them differently because they have refused to take the vaccine may not, of itself, be an act of unlawful discrimination unless it is also for reasons related to the protected characteristic of the individual, such as their disability, gender or religious belief.

### **2.5 Vaccination and data privacy**

There are exceptions to the data privacy laws which allow for the collection, use and disclosure of information where there is consent or where the collection, use or disclosure of information is necessary for the implementation of a legal obligation or in the legitimate interests of the employer (unless it conflicts with the fundamental rights and freedoms of the individual).

There is also a general exemption in regard to the management of the employment relationship. Employers should think carefully about collection, use and disclosure of information about an employee's COVID-19 status. Where possible, it is recommended to obtain the consent of the employee. If it is not practicable to obtain consent, then it is important to consider carefully the extent of necessary uses and disclosures.

Where they are reasonably considered to be necessary for individual or public health purposes, it is appropriate to proceed while also making sure that procedures are in place to limit the use and disclosure of personal information to

uses and disclosures which are permitted by the Personal Data Protection Law.

### **2.6 Vaccination and posted workers**

There are no specific provisions related to testing or vaccination for posted workers. The same considerations will apply as for non-posted workers.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

If your business is permitted to be open wholly or in part, take precautions to protect the health and safety of all your staff. This can include providing tissues and hand sanitisers, educating staff on the risks of contracting and spreading the virus and ensuring that staff who may have been exposed to the virus or who have similar symptoms do not attend work. It can also include finding alternative ways of working, including working remotely and keep up to date with government guidance.

The specific precautionary measures issued by the MHRSD require that:

- Prior to returning to work, employers must evaluate the health risks using the MHRSD 'Mawid' application.
- Employees in high-risk categories should remain working from home.
- Visitors are to wear masks, and visitors should be limited to 1 per 10m<sup>2</sup> and visitor seating should be spaced out.
- Staff members need to wear masks when entering the workplace and use them in communal areas of the workplace.
- Social and transport protocols must be followed when travelling to work.
- Handshaking is prohibited.
- Social distancing and barriers must be used between staff members.
- Separate entry and exit points should be used where possible as well as floor markings indicating safe distance in queues at entry and exit points.
- Temperature screening guidelines should be followed.
- Flexible working hours are to be applied.
- A cleaning schedule must be set up at least once a day.
- Employees must maintain social distancing.
- Paper cups or personal cups must be used.
- Different stairs are to be used to go up and down where possible.
- Food halls, rest areas and nurseries remain closed.
- Personal mats, face masks and safe distancing to be used for prayer.

- An isolation room is to be allocated in the building.
- Awareness training is to be provided.

### **3.2 Vulnerable employees**

The MHRSD has instructed the private sector that employees with a higher risk of contracting the virus (i.e. pregnant or nursing mothers, those with respiratory or cardiac diseases, HIV or hereditary diseases, users of immunosuppressive drugs, those who are undergoing treatment for tumours, and employees aged 55 and above) are granted 14 days' paid leave and the right to work from home by law until further notice. Employees are not required to work during the granted 14 days' paid leave, but they are expected to resume working from home after this period, in accordance with the MHRSD's guidance, until further notice.

### **3.3 Back in the office**

Although the government has recommended working from home, this is not mandatory. Therefore, employers can oblige employees to work from their offices.

### **3.4 Suspected cases**

Any suspected case must be reported immediately to the Ministry of Health's call centre via the 937 hotline number.

Employees who are sick should be asked to go home or remain at home and seek medical treatment. Anyone who has come into contact with a sick person but is not showing any symptoms should be asked to see a doctor, particularly if they have travelled to a high-risk area. If employees are showing symptoms similar to the virus, then they can be asked to get a medical diagnosis and to stay away from work until they recover. Employees can also be asked whether they have travelled to a high-risk area or have plans to do so in the near future.

Employees can refuse to disclose details of their medical health but if there is any suspicion that the employee may be a risk to the health and safety of others then he or she can be sent home. The employee may either be asked to work from home or to stay at home on sick leave. However, suspected cases must be immediately reported to the 937-hotline number.

Employees cannot be forced to take a test, see above, but employers have the right to request that they are seen by a doctor to prove their fitness for work.

Employers have an obligation to report suspected and confirmed cases to the Ministry of Health immediately, and a failure to do so will constitute a crime. Employers should also take immediate steps to contain the spread and to ascertain those individuals who have been in contact with the infected individual.

There are no specific requirements on how employers should communicate infection information and employers are free to decide how they wish to do so. However, any communication should maintain the confidentiality of employees that are confirmed to be infected with COVID-19.

### **3.5 Return to work after recovery**

Following reporting an infection case via the 937-hotline number, the employer will be provided with all necessary details about the relevant employee, enabling the employer to make a decision as to when the individual may be able to return to work.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Where employees are required by the employer to work from home then the employer must ensure that the employee is working from a safe environment that complies with the health and safety requirements for the workplace. Employees can also request that employers provide them with the necessary tools and equipment to perform work from home and this can extend to covering fixed costs such as internet and telephone charges.

There is no provision in the Labour Law for homeworking and there is no statutory right to do so or to request homeworking.

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Employees can request to work from home if they consider that the workplace is not a safe environment. However, employers are under no obligation to grant these requests and can refuse them where they have complied with the health and safety at work requirements and put in place the measures suggested by the Ministry of Health to safeguard against COVID-19.

It is unlikely that employees would acquire a right to work from home if they have done it for a certain time, unless this is contractually promised to the employee.

#### ***4.2 Working from another country***

Employers can refuse a request to work in a different country and are not obligated to provide any work to the employee where he/she is unable to attend the workplace. Where an accommodation is made to the employee to work overseas then the employer will need to continue making social insurance contributions on behalf of the employee. The employer should also satisfy itself that the employee's work environment is safe and meets the minimum requirements of KSA laws; however, this may not be practically possible if, as is likely to be the case, the employer cannot access the premises. Employers will also need to make sure that employees can safeguard the privacy of data.

If the employee is an expatriate then s/he will need to return to KSA before the expiry of their work permit and entry visas to have them renewed. Renewals may be

possible online through the Muqem portal but this is not guaranteed. Employers will need to consider carefully whether any tax obligations may be triggered by the employee working in a different country

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## 1. Government support for employers

The Korean government expanded and loosened the eligibility criteria for various subsidies in order to mitigate the economic consequences of imposing restrictions on commercial activities. One of the most significant was the expansion of the employment-retention subsidy, a pre-existing subsidy intended to support struggling businesses that choose to use a statutory partially paid furlough or working-hours reduction instead of downsizing.

The eligibility criteria for the employment-retention subsidy remain loosened and the increase in the maximum benefit period from 180 days to 240 days remains in effect. However, a temporary increase in the subsidy amounts has largely ended, except for certain industries that are most directly impacted by social-distancing requirements (e.g. restaurants, indoor sports facilities, etc.).

Eligibility requirements for a less common alternative version of this employment-retention subsidy, which can be used for a non-statutory, negotiated furlough or hours reduction, have also been loosened.

For so-called 'workers in special types of employment' (a designation referring to certain types of contractors who are eligible for certain limited social-insurance enrollment like employees, including golf caddies, door-to-door salespeople, platform workers, etc.) who are not

'employees' and lack job protection, the government has offered several rounds of direct, individual one-time subsidies.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

The extent to which an employer can require employees to take COVID-19 tests and enforce such a requirement through exclusion from work and discipline, is unclear. An employer could require employees to take a COVID-19 test if there is a sufficient legitimate basis, which would likely include circumstances such as an employee having been in contact with someone who has tested positive, although such an employee may be required by the government to be tested regardless, through Korea's rigorous contact-tracing and testing system.

Conversely, generally requiring all employees to be tested, in an absence of sufficient basis for serious concern, could be seen as an unjustified infringement on employees' rights. An employer that wants to enforce a generalised COVID-19 testing requirement should do so cautiously, and with acceptance of some legal risk, and/or should consider alternatives such as allowing employees to work from home. Care is advisable in imposing any significant disciplinary action for failure to be tested, or for absence from work if employees are barred from the workplace for refusal to be tested.

Under Korean data privacy law, collecting COVID-19 testing information would require that the employer obtain, or have obtained, consent in an appropriate form and manner under Korean law. There is a general exception to these privacy-law restrictions when the matter concerns public health and safety, but it is interpreted very narrowly and should not be relied on to collect vaccination information.

### 2.2 Vaccination and vaccination status in the workplace

Korea does not yet have a COVID-19 vaccine available to the public. As a vaccine becomes available, the government may issue guidelines or take other regulatory or enforcement action with respect to its distribution and administration. However, there is currently no express statutory, regulatory, or other legal ground enabling a company to require its employees to be vaccinated. Requiring employees to be vaccinated *could* be seen as a reasonable/justifiable HR measure. If so, employees who refuse to be vaccinated could be subject to disciplinary action. However, requiring employees to be vaccinated could also be seen as an unjustified infringement on employees' rights. An employer that wants to enforce a vaccine requirement should do so cautiously and with acceptance of some legal risk. Care is advisable in imposing any significant disciplinary action for failure to be vaccinated, or for absence from work if

employees are barred from the workplace without proof of vaccination.

There are risks involved with requiring only certain categories of employees to be vaccinated. In particular, there is a risk of workplace harassment claims, and/or discrimination claims if the requirements appear to relate to any protected status such as gender, religion, or nationality. These risks would be lower if a convincing objective justification can be provided.

As with testing, Korean data privacy law would require consent for the collection, use, or transfer of vaccination information.

### **2.3 Incentives for vaccination**

President Moon's government has announced that it intends to offer the COVID-19 vaccine for free to all Korean residents, once it is available. However, no specific plans or programs have been announced.

There is no express statutory or other legal prohibition against a company 'encouraging' its employees to be vaccinated. However, if an employer incentivises vaccinations, some care should be paid to potential discrimination issues, i.e., if disparate treatment of employees appears to be based on protected categories such as gender, religion, nationality, or fixed term/part-time status. It would generally be less of a risk to cover the expenses for vaccination rather than pay an extra

bonus/allowance to those who get vaccinated.

### **2.4 Dealing with refusal or inability to get vaccinated**

Taking disciplinary action against such an employee could be deemed illegal discrimination. It would be prudent to provide alternatives such as to have the employees work from home, where possible. However, HR measures including preventing an employee from coming to work, and/or changing an employee's duties, should generally be justifiable. If the government issues a mandate or guidelines requiring everyone to be vaccinated, it will be easier to defend a workplace vaccine requirement, and other actions to enforce it, as reasonable HR measures.

Additional care should be exercised with respect to pregnant employees who decline to be vaccinated. Pregnant employees may be seen as having greater justification to refuse a vaccine, and are specially protected from discrimination under Korean gender equality laws. Thus, taking any adverse action against a pregnant employee may be more likely to be found to be unjustified discrimination.

### **2.5 Vaccination and data privacy**

As mentioned above, under Korean data privacy law, collecting employees' personal information and providing personal information to third parties for

their use each requires specific informed consent. So for both collecting and transferring to third parties employee vaccination information, the employer must obtain, or have obtained, consent in an appropriate form and manner under Korean law.

### **2.6 Vaccination and posted workers**

In the absence of any law, or mandate/guidelines, it is difficult to say whether different categories of workers (including posted workers) may be regarded differently and in what ways. If an employee is posted to Korea, from abroad, they will be required to have a COVID-19 test in order to enter Korea, and to quarantine/isolate for two weeks after entry.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

According to most recent guidelines issued by the Ministry of Employment and Labor ('MOEL'), businesses should establish a prevention and response plan (including subcontractors, temporary agency workers, etc.), designate a team or a person in charge of monitoring for possible COVID-19 outbreaks, and keep appropriate records.

Employers should also maintain a clean work environment and provide protective equipment and hygiene products. More

specifically, the guidelines recommend that employers:

- encourage good hygiene practices by providing sufficient hygiene-related products such as masks, hand sanitizers, thermometers, and others, and keep the workplace clean through proper disinfection and other measures;
- inform employees to cover their mouth and nose when coughing or sneezing;
- inform employees to avoid physical contact, and maintain a safe distance while having meals;
- provide personal hygiene tips to employees and visitors (e.g., customers), by putting up notices or posters promoting personal hygiene;
- disinfect desks, chairs, office equipment, door knobs, switches/buttons, railings, and other items on a regular basis; and
- ventilate and disinfect places many people use including offices, lounges, restrooms, entrances, elevators, and hallways on a regular basis.

### **3.2 Vulnerable employees**

According to the MOEL guidelines, workers who are especially vulnerable to

infection, such as pregnant women, should be encouraged to work from home.

### **3.3 Back in the office**

Employers are generally entitled to require employees to come to work. However, an employer bears a duty of diligence to ensure the health and safety of its employees in the workplace. If employees' safety is unreasonably threatened by being required to come back to work, especially given the unprecedented circumstances surrounding COVID-19 they could have claims for damages against the employer if they can prove they contracted COVID-19 from coming back to work. If there is any violation of health and safety laws, they could also report it to the authorities; and any disciplinary action for insubordination or unexcused absence might be overturned at the court or labour tribunal on the basis that their refusal to come back to work was justified due to reasonable safety concerns.

If employees are required to come to the workplace and some become sick, there is a risk of claims that the employer failed to practice adequate social-distancing or other safety precautions. So it will often be prudent to allow employees to work from home where practicable, and depending on the current social distancing alert level maintained by the government.

### **3.4 Suspected cases**

Workers outside the workplace who have a fever of 37.5°C or higher or respiratory symptoms (cough, sore throat, etc), which is the Government definition of suspected cases, should not come to work.

Workers who have a fever or respiratory symptoms inside the workplace should be separated from others in a designated isolation area, wearing protective equipment such as a mask. They should follow the directions of the public health authorities after consulting with the KCDC call center at 1339, or regional code+120, or the local public health center; and absent other specific directions from the authorities, should immediately return home.

In the event of a confirmed case, government disease-control staff will disinfect the workplace and may shut down affected areas until the following day.

Employees confirmed as carriers outside the workplace should report this to their employer and follow instructions from government officials.

If you suspect an employee is infected you can generally require him/her not to come to work: this is reflected in the MOEL guidelines. However, the suspicion should be based on reasonable grounds such as symptoms or potential or actual contact with a confirmed case.

In the event of a confirmed case, immediately report it to a public health clinic or the KCDC. The employer should inform all other employees in the workplace (including on-site contractors and dispatched workers), see below.

There is no specific rule, but it is recommended employers notify employees that a confirmed case has occurred in particular area of the workplace, along with any information regarding where the infected worker has been. You can encourage employees who have been in contact with the confirmed case to be tested, to prevent further infection.

It is prudent to provide further details about the confirmed case only as necessary, for example to notify employees suspected to have been in contact. Employers should take care not to disclose sensitive personal information of confirmed cases.

### **3.5 Returning to work after recovery**

An employee can return to work following infection once the required quarantine period has passed and the worker tests negative for COVID-19 and does not have symptoms.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

In Korea, homeworking has rarely been implemented by employers for anything more than a temporary period under special circumstances (or, in some individual cases, as the contractually agreed workplace from the start). So legal regulations regarding homeworking have not been clearly established and there have not been many actual legal disputes.

Homeworking does not impose any additional health and safety related duties on employers. Employers must follow general legal obligations such as complying with standards to prevent industrial accidents; ensuring a comfortable working environment and proper working conditions so as to diminish physical fatigue, mental stress, etc. of employees; and providing employees with certain information on safety and health in the workplace concerned (according to Article 5(1) of the Industrial Safety and Health Act).

Under a homeworking system, however, in practice those obligations would be mitigated because employers would have less ability to exert supervision and control within the privacy of the employee's own home.

There are no legal regulations regarding costs, expenses, or allowances for

expenditures on utilities or supplies under a homeworking system. However, employers typically bear expenses regarding telecommunication equipment and office supplies.

Unless employers set homeworking-specific rules in a 'homeworking policy' or similar, general policies on privacy and confidentiality apply equally to the homeworking environment as they do to working in the office.

There is no established legal right for employees to demand long-term homeworking because of COVID-19 concerns. In practice, some employers have been implementing or considering homeworking systems based on concerns about COVID-19 and government recommendations favouring it. There is a per-capita subsidy available for small and mid-sized companies that implement flexible or home-working arrangements, subject to certain eligibility criteria. The subsidy predates COVID-19 but some eligibility requirements have been loosened.

Theoretically, if a homeworking system has been implemented continuously for a long period of time, employees may argue that the homeworking practice has become a kind of unwritten workforce rule and that they have the *right* to continue to work at home. However, in most cases this is unlikely to be a very strong argument because labour practices are only recognised as binding unwritten rules under a fairly strict legal standard.

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### **4.2 Working from another country**

As of now, it is somewhat unlikely that an employee would want to work outside of Korea due to COVID concerns because Korea has a relatively low infection risk, except compared to a handful of places where COVID-19 has been virtually eliminated, such as New Zealand or Taiwan.

If an employee were to make such a request, the employer has no obligation to send the employee abroad unless agreed. However, if an overseas assignment to a safer jurisdiction is practicable, it may be worth considering particularly if there are special risks or other circumstances.

If an employee is sent abroad on assignment, in general the Korean employer will still be responsible for social insurances, OSHA-related obligations (various workplace safety measures) as well as other employee rights under Korean law. If the employee were actually hired directly by an overseas employer entity, this would not be the case.

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# Sweden

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## 1. Government support for employers

There are government support measures in place for businesses affected by the coronavirus crisis, for example short time work (see here for 2020 support <https://theword.iuslaboris.com/hrlaw/insights/swedish-government-proposes-support-employers-with-short-time-work-allowance-for-details>). The government has announced that new temporary support measures will be available to apply from 15 February 2021, for the period 1 December 2020 – 31 June 2021. The requirements described in the article will remain the same for 2021, according to the proposal.

Employees who either are infected with COVID-19 or who share the same household as a person who has been confirmed to be infected, and because of this are restricted from entering the workplace, have the right to apply for sickness benefit by the Swedish Social Insurance Agency.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

An employer may not require an employee to undergo any physical intervention such as vaccination. An employer is responsible for making sure that the work environment is safe and may, because of this, argue that one way to achieve a safe work environment is to vaccinate all employees. This requirement may however be in conflict

with the employees' personal integrity, which is why it would be unreasonable to require employees to undergo any physical intervention.

### 2.2 Vaccination and vaccination status in the workplace

Employers cannot make it a mandatory requirement to be vaccinated, for the reasons described in relation to testing, above. Regarding information on employees' vaccination status, this would be considered as sensitive data and therefore as a general rule be prohibited for an employer to process.

### 2.3 Incentives for vaccination

Employers can pay for employees' vaccination or offer incentives to get vaccinated, but the Swedish government has pledged that the state will bear all the costs for vaccination.

### 2.4 Dealing with refusal or inability to get vaccinated

Dismissing an employee who refuses to be or cannot be vaccinated is not permitted, nor is preventing him or her from coming to work or changing working conditions or duties. This could be regarded as discrimination based on the employees' religion, which would constitute unfavourable treatment in working life, and therefore be discriminatory. There are also no legal grounds for termination if employees have other objections to vaccination

meaning this measure would also be seen as unlawful in other cases.

However, if the employer is operating in a very vulnerable area (e.g. healthcare) which may involve real danger when employees decide not to get vaccinated, it may be possible to, for a limited time, relocate an employee for safety reasons to another role.

### 2.5 Vaccination and data privacy

Information concerning vaccination of employees is considered as sensitive personal data and as a main rule it is prohibited to process it.

### 2.6 Vaccination and posted workers

There are currently no specific provisions relating to vaccination and posted workers. Please note that the Swedish legislator has not yet presented any new legislation relating to vaccination in working life and this is likely to be presented during the spring. Employers with employees working or posted in Sweden should stay updated on how the situation develops.

## 3. How to keep workers safe in the office

### 3.1 Setting up the workplace

Employers are responsible for the organisation of work and for ensuring the work environment is safe and no one becomes sick because of their work. If

this cannot be guaranteed due to an outbreak, the organisation may have to close down a site or office temporarily. To minimise the risk of infection when workplaces are re-opening, employers should make a risk assessment according to the Swedish Work Environment Authority provisions relating to systematic work environment management and infection spreading. Employers should plan how a potential workplace outbreak would be handled, identify specific work tasks that need to be done continuously and ensure that all employees carrying out these tasks work under as safe conditions as possible. To avoid spread, employers should ensure that employees, as far as possible:

- keep distance from one another.
- avoid unnecessary travel at and to work; and
- can adjust working hours to avoid travelling during rush hour (public transport).

There are no obligations, but recommendations regarding social distancing, and no recommendations regarding masks, number of employees etc. at the workplace. The Swedish Public Health Agency recommends that 'as many people as possible shall continue to work from home'. The Agency recommendation also states that face masks must always be seen as complementary to other recommendations; stay home when you

have symptoms, wash your hands regularly and keep distance from others.

We recommend employers ensure that there are adequate and accessible facilities to achieve good hygiene practices in the workplace and ensure physical distancing so far as it is reasonably practicable. This may require providing additional washing facilities to ensure there is an adequate number of hand washing stations in convenient locations. If there are limited hand washing facilities, employers could provide hand sanitisers in appropriate locations. Employers should also make sure that regular contact surfaces (such as handles, keyboards, sinks etc.) are cleaned frequently to minimise the risk of infection.

We recommend employers provide employees with guidelines on reducing the risk of spreading in the workplace, when to work from home and other matters. The organisational and social work environment also needs to be addressed, meaning employees' anxiety about the coronavirus should be assessed and measures taken.

### **3.2 Vulnerable employees**

The Government has maintained guidelines for people who are at higher risk of severe illness, includes people who have a disease that increases their risk (ongoing cancer treatment, obesity etc.).

If the employee belongs to a risk group, or live with a person in a risk group, the Public Health Agency of Sweden recommends:

- maintaining physical distance from other people;
- socialising outdoors;
- avoiding places such as shops and cafés where many people gather;
- avoiding travelling on public transport.

At present, there are no indications that pregnancy is a risk factor for severe illness from COVID-19. However, falling ill towards the end of the pregnancy might imply difficulties. It is therefore important to follow the Public Health Agency's advice on avoiding infection. It is recommended that pregnant women take extra precautions from week 36 and follow the recommendations thoroughly. In Sweden, a pregnant woman can start parental leave 60 days before the expected date of birth.

Alternative arrangements may apply to these people, such as continuing to work from home, temporary deployment to roles with physical distance and limited contact with other people, and/or taking leave. If eligible, the Government's aid to vulnerable employees, which aims to provide financial assistance for employees who are at higher risk of severe illness or lives with a vulnerable person, may be relevant.

### **3.3 Back in the office**

Yes, employers are entitled to direct work, so if you direct an employee to come back to on-site work, provided that she/he is not sick, the employee must do so.

### **3.4 Suspected cases**

There is no recommended/official procedure for dealing with suspected cases in the workplace, but if several employees are infected, the employer must assess if the workplace should be shut down to protect the health and safety of employees.

Once an employee has been confirmed sick, he/she must stay at home for at least seven days after becoming sick (see conditions for return to work, below). If the employee has no symptoms, but received a positive test result, he/she should stay home for seven days.

Given the incubation period of COVID-19 is two to 14 days before symptoms occur, keep in mind that more employees can be affected due to the high risk of spreading and encourage the employees to be vigilant about potential symptoms. More people will now be tested, but even if the tests are negative and they feel sick, they should stay at home until two days after they are symptom-free.

The general principle is that homeworking is only possible if employer and employee agree. The employer is, however,

responsible for the health of all employees and we are of the opinion that it would be possible to unilaterally require certain employees to work from home for a short appropriate period based on a suspicion the employee may be infected. If such a decision is taken, the employee is still entitled to his/her salary and other benefits during the suspected infection. Even if the employee cannot work from home, the employer can demand he/she goes home. However, salary must be paid during the period.

COVID-19 is classified as a notifiable communicable disease and is therefore subject to mandatory contact tracing to limit the spread of infection. Thus, contact tracing should always be performed, but the extent can vary depending on individual circumstances and the current phase of the pandemic in the country or region. There is currently no obligation on employers to perform general contact tracing.

It is important to bear in mind that information regarding employee's health and safety is regarded as sensitive information and the employer needs to take measures to guarantee employees' privacy. When someone is off work due to infection, this should not be communicated to her/his colleagues, unless necessary. The employee must be informed about any such communication beforehand.

### **3.5 Return to work after recovery**

After the seven-day period of required absence, an employee must be symptom-free for two days before returning to work. If the employee was severely sick, and in hospital but not ICU, s/he must not return to work for at least 14 days, plus two symptom-free days. If treated in ICU, an individual assessment of fitness to return must be done by a doctor.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Employers have the same responsibility for the work environment during homeworking as they do in general. This means employers must comply with the requirements of the Swedish Work Environment Act and the Swedish Work Environment Authority's various regulations. Initially, the employer must carry out a risk assessment to ensure that the employee is not exposed to sickness or accidents during homeworking.

The home office must be functional and ergonomic. The interior design and technical equipment at the workplace should take into account the work to be carried out and what is economically possible. Solutions may vary depending on existing conditions. For regular homeworking, the home office should be equipped with, as far as possible, the

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relevant office supplies (screens, desk, chair, lightning, etc.). The employer is only responsible for costs directly attributable to the workplace. Employers are also responsible for the social work environment, meaning employees should receive clear instructions on how the work should be carried out. Employers should ensure the workload is appropriate and take action in the event of any signs of ill health (such as stress). It is important employees pay attention to their own wellbeing during homeworking and notify their line manager in the event of signs of ill health. Employees cannot request long-term homeworking based on COVID-19 concerns. The employer holds the right to direct the work and may require that the employees work on site as long as the workplace is a safe environment. Concern about COVID-19 is not a legitimate reason for working from home without the employer's consent. Employees anxiety should however be taken serious as this ultimately is a question regarding for the work environment.

In the light of the recommendation from the Public Health Agency of Sweden that 'as many people as possible shall continue to work from home' that if an employee requests to work from home and if this can be arranged in a suitable manner, we recommend accepting the request.

Employees will not acquire a general right to work from home based on the fact they

have worked from home for a time in the context of the COVID-19 crisis. The place where the employee works is the place stated in his or her employment agreement. The employer also has the right to direct the work and can therefore direct employee either to work on-site or at home, see above.

### 4.2 Working from another country

First of all, the greatest legal implication of working in a different country will be to determine which country's law the employee will be governed by. This must therefore be included in the employment agreement with a jurisdiction clause, stating that Swedish law applies to the agreement. However, regardless of this, employees in some countries may still acquire local employment rights, so this must be investigated on a case-by-case basis.

Secondly, it must be investigated whether the employee holds the right to work in the new country or not. Employers should be aware that if the employee is not entitled to perform work in the host country this could have implications for both the employee and the employer.

Employees may also be facing paying income tax in both the home country where the employer is established, and s/he previously performed work, and in the new country. Moreover, if you as an employer from have any pre-existing presence in the country, the employee's presence there alone may create a

permanent establishment, requiring you as a business to pay business tax.

Regarding social security and health and safety requirements, in general those are subject to local legislations so the requirements will be different depending on where the employee performs the work and where you have previously, for example, performed a risk assessment. Working abroad could also result in the employee acquiring new benefits which would have to be provided, such as more generous pension rights.

Lastly regarding data privacy, this would not result in too many implications as long as the new country is within the EU. If not, the employer would have to ensure that personal data could lawfully be transferred to the country. In conclusion, there are various different implications to take into consideration, so before an employee transfers to another country, this must be agreed on individually through a separate agreement.

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# Turkey

Last updated:  
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## 1. Government support for employers

The government applied the Economic Stability Package at the beginning of the COVID-19 epidemic and supported businesses with a range of measures. These are set out [here](#).

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Employers must ensure the occupational health and safety of their employees at the workplace and during performance of their work. Therefore, when an employee is infected with COVID-19, the employer must take all measures to prevent spread of COVID-19. In view of this, we believe the employer may request everybody in contact with the infected employee to be tested. However, we consider that employers must cover the cost of this testing.

### 2.2 Vaccination and vaccination status in the workplace

Currently, vaccination for COVID-19 is not mandatory in Turkey; however the government encourages everyone to get vaccinated. Since COVID-19 vaccine is not mandatory and there are no regulations enabling employers to require their employees to be vaccinated, it is unclear under Turkish law if employers can make vaccination mandatory. We are of the opinion that they can; however, the

employers' risk will be high, as detailed below.

Employers must ensure health and safety at the workplace to protect their employees. If an employee threatens health and safety at the workplace or breaches health and safety rules, the employer is entitled to terminate the relevant employee immediately for just cause without paying compensation to the employee. Therefore, it may be argued that the employer can require vaccination given its health and safety obligations. However, since the vaccination is not mandated by the government and the effects/results of the vaccination are unclear at the moment, doing so may not be considered valid in the event of a potential dispute. If so, the employee may have the option to terminate his/her employment agreement with just reason and request severance payment. We believe the employer's risk is very high in the event of legal action for the reasons described above.

In addition, forcing vaccination on employees may be considered as non-accidental injury (if the employee is injured) or cause of death (if an employee dies) pursuant to Turkish Penal Code and may result in imprisonment of company authorities.

If the employer proves in the event of a potential dispute that there is a justified reason for differential treatment (e.g. if the employees forced to get vaccinated are making site visits, meeting with

third parties outside of the employer's organization, they have chronic illnesses etc.), the dispute may be concluded in favor of the employer.

### 2.3 Incentives for vaccination

Currently COVID-19 vaccination in Turkey is free of charge. However, if it becomes available for a fee, we consider employers may pay for their employees. Employers can also encourage employees to get vaccinated. We consider employers may incentivise employees to get vaccinated, such as by making a one-time payment, providing time off etc. However, the employer must provide the same incentives to people that cannot get vaccinated for justified reasons (e.g. pregnancy, illness, breastfeeding etc.), otherwise, it may be considered workplace discrimination.

### 2.4 Dealing with refusal or inability to get vaccinated

If the employees want to refuse vaccination that is considered mandatory by the government, we are of the opinion that they must have justified reasons (e.g. pregnancy, illness, allergies etc.). If an employee refuses vaccination because s/he is in one of the categories for whom the government does not currently recommend vaccination (early pregnancy, allergy to vaccine ingredients, etc.), it is highly likely that s/he will be considered to have a justified reason for refusing the vaccination.



In addition, if an employee who refuses vaccination based on his or her religious beliefs is terminated by the employer for the refusal, it will most likely be considered discrimination and the employer may be obliged by the court to pay compensation to the relevant employee.

If an employer mandates vaccination although it is not considered mandatory by the government, an employee may refuse to get vaccinated for any reason. Employers may take certain actions, set out below, where employees refuse vaccination employers have made mandatory in the workplace, but these actions may involve risks for employers. *Termination:* If vaccination is mandatory in the workplace and the employee fails to get vaccinated without a justified reason, the employer may choose to:

- terminate employment immediately with just reason without paying any compensation to the employee due to threatening the health and safety at the workplace;
- terminate employment for a valid reason due to the conduct of the employee by providing notice period/payment in lieu of notice and paying all the employee's entitlements arising from termination.

As stated above, termination in this case is likely to be resolved in favour of the employee and the employer may be required to reemploy the employee and pay additional compensation for the period s/he is not employed (up to four

months' salary), or not to reemploy the employee and pay higher compensation (up to 12 months' salary). We do not advise termination for more sensitive groups (e.g. pregnant or breastfeeding employees etc.).

*Written warning:* The employer may issue the employee with an official written warning letter stating the employee must follow the rules. If the employee continues to refuse vaccination, their employment may be terminated by the employer for a valid reason by providing a notice period/payment in lieu of notice and paying all the employee's entitlements arising from termination. This termination may also incur the risks described above.

*Preventing the employee from entering the workplace:* The employer may consider stopping the employee from enter the workplace, since s/he may be vulnerable at risk and the employer is obliged to protect health and safety of its employees. However, in a potential dispute, this may be ruled unilateral termination by the employer (incurring the risks above), since vaccination is not officially mandatory.

*Put employee on unpaid leave unilaterally and without obtaining their consent:* In Turkey, currently the employers are entitled to do this until 17 March (this can be extended by the President) due to COVID-19. If an employee refuses vaccination, the employer may choose to use this.

## **2.5 Vaccination and data privacy**

Health data processed in organisations in the context of COVID-19 measures should only be processed by workplace doctors. If not, employees' explicit consent should be obtained. Since vaccination status is considered health data, employers must obtain employees' explicit consent to learn about their vaccination status.

If this data will be transferred/stored outside of Turkey even if the purpose of processing falls under a legal exceptions, the employer still needs to obtain explicit consent of employees. Whether consent is required or not, the employer should inform the employees before it commences to process personal data of the employees (and before obtaining the consent) of

- identity of data responsible and its representative (if any),
- purpose of data processing,
- to whom or for which purpose the processed data may be transferred,
- method and legal ground for collecting personal data,
- other rights of the data subject, set out in article 11 of the Turkish Data Protection Law (these include the right to request information on the matter if the personal data is processed, the right to know the third parties to which the personal data will be transmitted domestically or in abroad, the right to request for correction of personal data processed

wrongfully or deficiently, the right to request deletion or disposal of personal data within the scope of conditions set forth for the deletion of data, and the right to request for compensation for the damages incurred due to unlawful processing of personal data, among others).

There is no specific form required for this, however it is advisable to provide this information in writing or on the Internet (e.g. by email, website etc.).

### **2.6 Vaccination and posted workers**

There are no specific provisions relating to posted workers.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

Employers must also continue to implement the following measures until the threat of COVID-19 is eliminated.

You must inform employees about the health and safety rules they must follow to avoid COVID-19, such as washing hands frequently with soap for at least 30 seconds, avoiding crowds, social distancing, wearing masks if they become sick, avoiding touching their face without washing hands, using hand sanitisers at the office and not sharing towels or glasses with those who have fallen sick.

It is important to keep employees informed and handle any cases of

COVID-19 calmly and in a way that does not lead to panic and disorder at the office. You should set up systems to enable employees to work remotely if the virus spreads. It is justifiable for employers to ask employees whether they are infected and/or whether they have recently travelled to a high-risk area, and this should be done as a way of protecting the employees. However, the employers cannot guarantee that people will always tell the truth and they may also refuse to tell the employers.

At the moment there is no way for employers to require an employee to be tested for the virus. The government advises people to check their health regularly and immediately go to hospital if they have symptoms. It has also issued advice about handwashing and sanitation and to avoid hugging, kissing and hand shaking.

### **3.2 Vulnerable employees**

Currently there are no measures being implemented by the government for vulnerable employees or vulnerable groups.

### **3.3 Back in the office**

If the employer can prove that it has taken all the necessary precautions at the workplace in order to prevent employees from getting infected with COVID-19, the employer may require employees to come back to work. If an employee fails to comply with the employer's request,

the employee's employment may be terminated by the employer for absenteeism without any just reason or excuse.

However, if the necessary precautions are not taken by the employer, the employee may reject a demand to come back to work and we are of the opinion that the employer is not entitled to terminate an employee in these circumstances.

### **3.4 Suspected cases**

If a person becomes sick with a high fever, sore throat and cough, s/he must be advised to stay at home and call the number provided by the government for directions.

You may inform the employee and request such employee not to come to work. In addition, with the current implementations based on COVID-19, you may send the employee on unpaid leave and this way, the employee will be prevented from entering the workplace and spread the COVID-19. However, there are no explicit rights granted to the employer to suspend the employee solely due to a suspicion on COVID-19.

Health data cannot be processed without the explicit consent of the data subject but there are exceptions if processing is necessary for the protection of public health. Therefore, we believe employers should immediately tell the authorities if

there are COVID-19 patients in the workplace.

Other employees in the workplace should be followed up closely and warned to be careful. If an employee is diagnosed with COVID-19, others who have been in contact with them, including colleagues, must be quarantined to avoid spreading the disease.

In addition, if employees encounter a serious and imminent danger in the workplace, they can notify the employer and request that necessary measures to counter it are implemented. The employer determines whether there is a danger and notifies employees. Employees can refrain from working on site until the appropriate measures are taken. If the serious and close danger is unavoidable, employees are entitled to leave immediately and go to a safe location. Employees' rights are not prejudiced under these circumstances.

### **3.5 Return to work after recovery**

There are no official provisions on how and when an employee can return to the workplace after a COVID-19 infection. It is reasonable for an infected employee to return to work when his or her COVID-19 test result is negative, provided that appropriate health and safety measures continued to be applied in the workplace.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Under the Turkish Code of Obligations, employers must cover all kinds of expenses incurred by employees for the performance of their work and, if the employer employs employees outside of the workplace (e.g. remote working), the employer must cover the relevant expenses related to this.

If an employee is employed under remote working, the employee's employment contract must include:

- the definition of the work to be performed by the employee;
- information on how employee will perform his/her duties;
- salary and salary payment information;
- the equipment provided by the employer and information on protection of this equipment;
- information on how the employer will communicate with the employee; and
- other employment terms.

Remote working employees cannot be treated differently from non-remote working employees by the employer unless there is an objective reason (e.g. seniority difference etc.).

The employer must inform the remote working employee of all relevant precautions regarding health and safety taking the duties to be performed by the employee into consideration and train the

employee accordingly. The employer must provide health and safety supervision and take health and safety precautions in relation to the equipment provided. Other than the above, the main principles of Turkish employment law will apply.

If an accident occurs while employee is working remotely, this can be considered an occupational accident and the employer may be liable as if it occurred in the employer's workplace. If the accident is not related to the employee's work duty (e.g. if the employee fell in his/her house and broke his/her leg while cleaning the house), then the accident will not be deemed as a workplace accident.

Although there are no clear legal provisions regarding this, as a general principle, the employer should ensure the safety of the work environment and equipment, even in cases of remote working). In particular:

- The equipment provided to employees and the work location must comply with occupational health and safety rules and requirements.
- The employer should provide training to employees in relation to equipment to be used during their remote working period, dangers that may be encountered during remote working and measures to be taken in order to avoid these dangers (it also advisable a written document may be signed by the employees stating this training has been undertaken).

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The employer can instruct employees to allocate a certain location in their homes for work and to continue to work as if they are working at the workplace; they must take the appropriate safety measures for their work environment.

Despite all these measures, in the event of a potential workplace accident, the court may hold that the employer is at fault. However, if all measures are taken, we consider that the fault ratio attributed to the employer for a workplace accident (and thus the employer's liability) will decrease.

Employees can request long-time remote working based on their concerns on COVID-19; however, we are of the opinion that the employers are not obliged to fulfil such request.

It is not likely that employees will acquire a right to work at home based on the fact that they have done so for a certain time in the context of the COVID-19 crisis: employers retain the right to recall employees to work at the workplace.

#### **4.2 Working from another country**

*Tax:* If the employee remains with a Turkish resident employee, employment income should continue be taxed through withholding by the employer. The employee may submit annual income tax return if his/her annual income exceeds the legal threshold mentioned (TRL 600,000 for the year 2020).

If the employee is employed by a non-resident employer, employment income taxation will depend on residency. If the employee is a Turkish resident for tax purposes, then the employment income will be taxed through annual income in Turkey. If the employee is non-resident, the employment income will only be taxed in Turkey if it is deemed sourced in Turkey. A residency test should be conducted followed by determining source of income and an analysis of any applicable Double Taxation Agreement should be carried out.

Please note the above explanations are of general nature and provisions of Double Taxation Agreements are reserved.

*Health and safety:* The health and safety provisions described in 4.1 also apply to employees working abroad.

*Data privacy:* Data privacy rules do not change regarding an employee's work location if s/he is subject to Turkish laws.

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# Ukraine

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## 1. Government support for employers

Support for business and employees includes the following:

- temporary release from the obligation to pay the social security contributions for SMEs, professionals, and farmers;
- one-time compensation of employee salary (UAH 8,000 or approximately USD 285 per employee) for businesses in sectors worst affected by lockdown (retail, HoReCa, events, etc.);
- one-time compensation of the average monthly social security contributions for businesses in sectors worst affected by lockdown.
- one-time financial compensation (UAH 8,000 or approximately USD 285) for employees and sole proprietors working in sectors worst affected by lockdown.
- temporary cancellation of fines for violations of tax legislation and late or incomplete payment of the social security contributions.
- temporary exemption from taxation for unemployment income for the period of quarantine.
- a temporary moratorium on tax audits and other planned state control measures;
- compensation of part of employees' salaries due to layoffs.

The Government is still carrying out a credit support programme for businesses to save employment and improve their

economic situation: 'affordable loans' 5-7-9%. Some local authorities have also launched their own programmes to support local businesses.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Taking some tests is obligatory in certain cases, but the employer cannot force an employee to take a COVID-19 test.

After full recovery from COVID-19, an employee should merely provide a 'sick list' (certificate from the employee's doctor confirming sickness) to the employer but not a COVID-19 test result.

### 2.2 Vaccination and vaccination status in the workplace

Employers cannot make it a mandatory health and safety requirement for employees to be vaccinated. Vaccination is only obligatory if provided by law and the relevant state decree is issued. No decree on COVID-19 vaccination has been adopted yet. Equally, employers cannot require employees to disclose their vaccination status.

### 2.3 Incentives for vaccination

Employers can pay for employees' vaccinations or offer an incentive for voluntary vaccination. Employers are free to introduce a bonus or benefit and provide it upon voluntary vaccination.

### 2.4 Dealing with refusal or inability to get vaccinated

Employers cannot dismiss an employee based on his or her refusal to get vaccinated, nor can they prevent an employee who has not been vaccinated from coming to work.

Employers can only suspend an employee if s/he avoids obligatory vaccination. COVID-19 vaccination is not yet obligatory. Finally, changing the employee's duties or otherwise altering their working conditions based on refusal to get vaccinated is likely to constitute discrimination. Vaccination status may serve as a ground for discrimination at the workplace (segregating un-vaccinated employees, forcing them to work remotely, etc.). There is no justification in law to do this with COVID-19 vaccination.

### 2.5 Vaccination and data privacy

Vaccination status is a health information, which is considered to be sensitive personal data. Employers can only process sensitive personal data when it is necessary for its duties in employment relations sphere (an employer has no duty to ensure its employees' COVID-19 vaccination), or if an employee has explicitly consented to this processing. Processing sensitive data without any of these grounds would be unlawful and may lead to fines up to the equivalent of USD 1,215 for the employer's managers.



## **2.6 Vaccination and posted workers**

There are no specific provisions regarding vaccination and posted workers.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

Organisations must conduct their business in line with the sanitary rules adopted by the Ukrainian Government. Companies allowed to do business must comply with the following rules:

- social distancing: one customer/employee per 10 M<sup>2</sup>;
- sanitary treatment (cleaning) of premises (twice a day);
- more frequent ventilation of work premises: not less than once in two hours;
- provision of informational material about health and safety at work;
- access to office space exclusively in masks or respirators;
- availability of disinfectants, liquid soap and other hygiene tools;
- installation of 1.5 metre distance markings in front of the entrance to the office.

Businesses are recommended to screen employees' and customers' temperature.

## **3.2 Vulnerable employees**

Employers have no specific responsibilities in relation to vulnerable employees. The Government recommends people above the age of 60 work at home if that is possible. In the yellow risk zone, visits to nursing homes and hospitals for the elderly are prohibited. Local authorities are recommended to take additional measures to identify and care for single people, the elderly, individuals with disabilities, and individuals who are self-isolating.

### **3.3 Back in the office**

Employees are entitled to refuse to perform their working duties if this is due to the risk to their health and life. Apart from this, employees can take an unlimited number of unpaid leave days within the quarantine period.

### **3.4 Suspected cases**

Ukrainian law does not require employers to test employees' health. Furthermore, employers are not entitled to require employees to disclose their health-related information. Municipal authorities and State Labour Service recommend employers screen employees' temperature and send them home if they have a fever or seem to be sick.

You are entitled to require an employee not to come to work if you think they may be infected, and to see a doctor. If an

employee is infected and keeps on coming to the office, you must suspend them from work.

There is no notification obligation, while local authorities only recommend notifying hospitals, the State Labour Service, and the State Service for Food Safety and Consumer Protection, or their local divisions.

Infection information contains sensitive personal data, which the employer can't communicate without the employee's consent or other grounds for its lawful processing. During quarantine, it is only permissible for doctors and state authorities to process this information without consent. Nevertheless, employers may communicate infection information to the workforce in an anonymised form: that is, without mentioning the infected employee's name or any other data that would allow him/ her to be identified.

### **3.5 Return to work after recovery**

An infected worker can return to work after one negative test following ten days of medical treatment or after 14 days following testing positive if the worker has no symptoms of illness.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

An employee may choose homeworking for the long term by concluding an

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agreement in writing with his or her employer. In the period of pandemic or epidemic, homeworking can be unilaterally introduced by the employer.

Employers must provide free equipment to homeworkers or compensate employees for depreciation of their own equipment. The amount of compensation must be agreed by the parties. Reimbursement of other expenses (electricity, water, etc.) is not obligatory but may be agreed by the parties. When the employer does not provide equipment, it must cover depreciation of the employee's own.

Employees can request long-term homeworking based on concerns about COVID-19, but ultimately the decision will depend on reaching an agreement with the employer. In contrast, the employer may request employees to work from home without their consent, but only during quarantine and the pandemic). In all other cases, homeworking conditions (e.g. working hours, monitoring, work safety) must be specified in an agreement between employer and employee.

Homeworking employees can distribute their working time at their own discretion and are not required to obey internal work regulations, unless otherwise provided in their employment contracts. The total number of working hours may not exceed the normal statutory maximum.

During homeworking, the employer remains responsible for occupational health and safety rules. You must

undertake all precautionary measures (training, instructions, etc.) to prevent employees from suffering any work accidents at home.

Once established by agreement, the right to work at home becomes an 'essential employment term', or acquired right, of the employee. The employer may withdraw this right on two months' notice, provided it can demonstrate business reasons for requiring the employee's return to office.

### 4.2 Working from another country

*Immigration:* consider whether or not the country requires an employee to have a work visa. Employers are recommended to keep informed about the grounds for closure of borders, so an employee can freely exit the country.

*Local employment law:* consider which law would apply to the employment contract if the employee works from a different country. If that country's law applies, the employer must be aware of at least work safety rules and working time (including working hours and public holidays).

*Social security:* establish whether a bilateral agreement applies, that allows double payment of social security contributions to be avoided. Bilateral agreements may also exempt the employer from the social security contributions in its country, if an employee stays in a different country

more or less than a certain amount of time.

*Tax:* consider how an employee will be paying taxes, to which treasury, and when s/he will become a tax resident of a different country pursuant to bilateral tax avoidance treaties.

*Data privacy:* if employee works in a country other than an EEA country or a signatory to the Council of Europe Convention No. 108, any transfer of personal data will be considered a cross-border transfer and require additional safeguards (explicit consent, data export contract, etc.).

*Health and safety:* as a condition for entrance, some countries demand a COVID-19 insurance policy and/or test. Employer should find out how to buy a COVID-19 insurance policy if needed and when an employee needs to undergo a test.

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# United Kingdom

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## 1. Government support for employers

Employers can use the Coronavirus Job Retention Scheme (CJRS) to place eligible employees on furlough with their agreement. The CJRS is due to run until 30 April 2021.

Employers can claim for up to 80% of staff wages for hours unworked (up to a cap of GBP 2,500) with employers required to contribute employer national insurance and pension contributions. Employers have the option to offer employees what hours they can and claim on the CJRS for unworked hours.

As of 1 December 2020, employers cannot claim for any days a furloughed employee is serving a contractual or statutory notice period.

The government will publish the names of any organisation using the scheme on or after 1 December 2020 along with an indication of the claim's value.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Employers cannot require employees to take a COVID-19 test, employees would need to agree. Employers can encourage employees to take a test, but there are data protection risks in insisting that employees reveal their results. As with medical tests, an employer which

asks for information about tests will be processing health information and should only do so if necessary and proportionate.

Guidance from the Information Commissioner's Office advises that employers should complete a data protection impact assessment before carrying out testing, collect the minimum data necessary, keep it secure and provide employees with information on what data is collected and how it is used, how long it is kept and who it is shared with.

Requiring the employee to take an invasive test simply so that they can potentially return to work a few days earlier should they test negative could be disproportionate, but the employer may be able to justify its policy on the basis of the need to safeguard the health and safety of others in the workplace. If employers are going to require employees to take tests, then it is important to do everything possible to minimise the data protection risks.

### 2.2 Vaccination and vaccination status in the workplace

The vaccine is not commercially available yet so it would not be possible for employers to mandate vaccination now. However, if an employer could show that vaccination is the most reasonably practicable way of mitigating the risk of

COVID-19, having carried out a risk assessment, it could in theory mandate the vaccination as a health and safety requirement. It may be risky to say that a refusal to accept vaccination would amount to a breach, given that the government (the largest employer in healthcare settings) is not making the vaccination mandatory. Ultimately, it may depend on the workplace setting and the pandemic at the time given it may be reasonable to mandate vaccination in some contexts but not others. Employers could argue that in order to comply with their health & safety duties (including conducting risk assessments), it is necessary to obtain an employee's vaccination status. It would be up to the employer to decide whether a failure to provide this information would be treated as a disciplinary matter or whether those who refused to provide their status would be regarded as unvaccinated.

### 2.3 Incentives for vaccination

It is not yet possible to pay as vaccines are not available commercially. If vaccination is made mandatory for employees, then the employer would be expected to fund it once available. Offering incentives to employees in return for receiving the coronavirus vaccination is potentially discriminatory to those who cannot receive the vaccination due to a protected characteristic e.g. disability or belief. However, it is possible that any discriminatory impact may be justified as

a proportionate means of achieving a legitimate aim.

#### **2.4 Dealing with refusal or inability to get vaccinated**

Certain categories of employees may refuse vaccination. Employers need to be aware of discrimination risks where employees may be treated less favourably based on their vaccination status. Employers should be careful not to judge or stereotype employees such as assuming vaccination refusal is due to an employee's perceived religion or that certain employees would refuse vaccination.

The UK is currently rolling out vaccination to priority groups. Employers may therefore find that their older employees are offered vaccination before their younger employees. Vaccination policies may therefore discriminate against younger workers who are not yet eligible to receive a vaccination.

Employees are protected against discrimination on grounds of their religion or belief. While a small number of religious groups disapprove of vaccinations, most religions do not disagree with vaccination in principle. Vegans may also disagree with vaccinations that contain animal-based ingredients or have been tested on animals. Ethical veganism has previously been found to amount to a protected belief in the UK. Although a general belief against vaccinations is unlikely to amount to a belief capable of protection.

Vaccination policies that do not account for such objections may therefore be indirectly discriminatory unless they can be justified.

As above, vaccination policies that do not account for employees unable to (or choosing not to) receive vaccination on medical grounds may be indirectly discriminatory unless they can be justified. Some disabled employees may also be able to show that they have been treated unfavorably because of something arising from their disability, if their disability is the reason they have refused vaccination.

Employers operating in high-risk sectors such as healthcare may consider a requirement to receive the vaccine a reasonable management instruction whereby failure to do so could result in disciplinary action. However, there would be alternatives to consider first such as redeployment, what exceptions are made for those with medical conditions and health & safety risk assessments. Such a question is currently untested in UK law.

Employers may be able to prevent an employee who has not been vaccinated from coming to work, change their duties or otherwise alter their working conditions. Such policies would be regarded as discriminatory but employers could potentially rely on a defence of the policy being objectively justified as a proportionate means of achieving a legitimate aim. Employers are likely to have legitimate aims for health and safety

and maximising the number of employees who can attend work safely. However, whether this is a credible defence depends on an employer's unique set of circumstances.

The legitimacy of an employer's aims may diminish over time. For example, once 'herd immunity' has been established, it will be harder to justify not making exceptions for those refusing vaccination.

#### **2.5 Vaccination and data privacy**

An employee's vaccination status would be treated as special category data. Employers would need to carry out a data protection impact assessment ('DPIA') before processing any data regarding it. Any DPIA would consider whether there are legitimate reasons to collect an employee's vaccination status. Employers should only collect the limited information required, hold it for no longer than necessary and inform employees why the information is needed, as well as providing details regarding storage details, retention length and who can access it. Any policy would need to be reviewed regularly given the information about vaccine effectiveness and immunity are changing regularly e.g.. if herd immunity is established, a vaccination register would be irrelevant.

## **2.6 Vaccination and posted workers**

There are currently no specific considerations relating to posted workers as vaccination is limited to priority groups. There are no specific provisions on testing, but any overseas travel generally requires a negative test for coronavirus.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

The government has issued detailed guidance on working safely including 14 separate guides for different industries. The guidance covers issues such as managing customers, cleaning and necessary PPE. An employer's legal health and safety duties will continue alongside, and in addition, to the guidance meaning workplace risk assessments should be carried out with additional measures to mitigate particular risks.

Consultations should take place with employees or their representatives (including a union if recognised) on workplace health and safety plans.

Employers have a duty to take steps that are reasonably necessary to ensure the health, safety and welfare of employees. Take simple precautions like following and enforcing social distancing requirements, strictly limiting work trips unless absolutely essential, educating

staff on hygiene, conducting risk assessments and following government self-isolation guidance.

When not in lockdown, certain industries are legally required to put in place key COVID-19-secure measures.

### **3.2 Vulnerable employees**

The government recognises two groups of vulnerable people: the clinically extremely vulnerable ('CEV') and the clinically vulnerable ('CV'). During national lockdowns, CEV individuals have been advised to self-isolate and not attend their workplace.

When local tiered restrictions are in place, the guidance does allow those who are CEV to attend work if unable to work from home across all alert levels. However, the highest alert levels still 'strongly advise' CEV individuals to work from home.

CV people (including pregnant women and those with certain underlying health conditions) who cannot work from home can return to work but must take extra care with social distancing. It is considered good practice as part of the employer's general health and safety obligations to prioritise the CV for the safest roles over anyone who is not vulnerable.

Remaining at home on pay/furlough, working from home or taking unpaid leave is currently a better approach for

vulnerable employees if they are unhappy about returning to work, given the legal risks.

Employers must assess the specific risks to pregnant employees in line with newly released specific guidance for pregnant employees and, where these are identified, do all they can to prevent or remove them. If safe working conditions cannot be ensured, employers should temporarily alter the pregnant employee's working conditions or hours, provide suitable alternative work on the same terms and conditions or (as a last resort) suspend the employee on full pay.

Government guidance refers to research suggesting that some employees with protected characteristics may be at more risk of being infected and/or an adverse outcome including BAME workers and older males. Medical evidence and government guidance should be kept under review but avoid making decisions purely on the basis of protected characteristics, except in relation to pregnancy and age (where they are included in the list of vulnerable groups).

### **3.3 Back in the office**

Whether employers can require employees to return to on-site work depends on the workplace. Current advice is that people may only leave their home for work if they cannot reasonably work from home.



### **3.4 Suspected cases**

Employers should draw up a plan for dealing with a suspected case of COVID-19. This should include the steps that need to be taken if someone has symptoms, including identifying somewhere they can be safely isolated and planning how they can be safely transferred from there to their home or a health facility. The workplace does not necessarily have to close but the employer should follow the government's advice on cleaning and disinfection.

Employers should also consider whether they have appropriate insurance cover in case anyone does become infected through attending the workplace.

Employees with symptoms can request an NHS test. In the meantime, they must self-isolate for ten days and should not attend the workplace. It is an offence, punishable by fine, for an employer to knowingly allow an employee who is required to self-isolate to attend the workplace. Employees should be reminded of this and encouraged to contact the employer if they exhibit symptoms so that it can consider whether it is appropriate to contact anyone they were working with. Employers should support staff who need to self-isolate by arranging for them to work from home, if possible, or paying them any sick pay to which they're entitled, and by supporting their mental health and wellbeing.

If there is an identified risk that an employee may have exposure to COVID-19 but the employee is not within the government's self-isolation advice then, given its health and safety duties towards other employees, the employer may wish to keep that employee away from the workplace until the risk has passed. The employee is likely to have a right to continue to receive full pay. It is unlikely to be a breach of contract to require an employee to stay at home in these circumstances, assuming there are reasonable and non-discriminatory grounds for concern, and the matter is dealt with proportionately and sensitively.

COVID-19 is a reportable disease under RIDDOR (Reporting of Injuries, Disease and Dangerous Occurrences Regulations 2013). An employer must make a RIDDOR report when:

- An unintended incident at work has led to someone's possible or actual exposure to coronavirus (e.g. accidental exposure in a laboratory), reported as a dangerous occurrence.
- A worker has been diagnosed with COVID-19 and there is reasonable evidence that it was caused by exposure at work, reported as a case of disease.
- A worker dies as a result of occupational exposure to coronavirus.

Where there is more than one case of COVID-19 in a workplace the employer

should contact their local health protection team to report the suspected outbreak.

Employees do not have a right to be notified if a colleague has suspected or diagnosed COVID-19. Employers owe the colleague a duty of confidentiality and data privacy obligations which would ordinarily mean that details about their health should not be disclosed. But employers also have a duty of care and health and safety responsibilities towards their other employees. Try to balance these obligations by warning individuals who have been in contact with any suspected or confirmed case of COVID-19 without revealing names or if unrealistic, not revealing any information more widely than necessary.

### **3.5 Return to work after recovery**

Employees with symptoms of COVID-19 should self-isolate for ten days and cannot attend the workplace.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Employers have the same health and safety obligations to those who work from home, including responsibility to safeguard mental health and wellbeing. It is recommended employers undertake a homeworking risk assessment (and basic workstation assessments) to consider

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measures for keeping in touch and monitoring wellbeing; type of work being undertaken and working hours; whether the work can be done at home safely and whether any control measures should be put in place to protect the homeworker, for example ensuring employees take screen breaks or providing eye tests. For prolonged homeworking, more comprehensive risk assessments and regular discussions with workers may be needed to assess whether additional steps are needed, for example reported discomfort or disabilities.

Employers may also agree to cover costs associated with working from home, such as the costs of purchasing equipment.

If employers monitor the use of electronic communications, they should inform employees and ensure compliance with data protection obligations.

Employees with 26 weeks' service can make a flexible working request, which must be dealt with in a reasonable manner within three months. This could be to work from home on a permanent basis. The employer can reject a request for one of eight business reasons. Given employees who are home working may feel the arrangement has worked well, employers will need evidence as to why continuing would not work for the business in the long term if it rejects a request. Refusing a request from an employee with protected characteristics often risks discrimination claims.

Disabled people, who may be clinically vulnerable to COVID-19, could ask to work from home as a reasonable adjustment, a refusal might amount to unlawful disability discrimination. It would be difficult for an employee to argue they had permanent home-working rights by virtue of doing so for a period of time if an employer has expressly said any home-working arrangements were temporary pandemic measures.

### 4.2 Working from another country

It is strongly advised to seek specific legal advice in relation to a specific request from an employee to work from another country. However, as a general consideration:

- Continue to deduct income tax and national insurance contributions notwithstanding that the employee is temporarily working overseas (unless the employee will be working overseas for a complete UK tax year).
- Consider any risks of income tax or social security liability in that country, or risks that the employer is regarded as having created a permanent establishment.
- Check if there are any immigration restrictions, such as for a business visitor, or right to live and work for EEA nationals.
- Check whether there are any local mandatory employment protections which will apply to the employee.

- Consider if the employee's role will involve processing personal data, particularly if the country is outside of the EEA and therefore not subject to the GDPR and other EU data privacy laws.
- If an employee works from home abroad, employers should also ensure that it is compliant with any local health and safety requirements in line with their existing duties.

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# United States

Last updated:  
25/01/2021

## 1. Government support for employers

The US federal government provided various aid packages through the CARES Act, signed into law on 27 March 2020.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

The Americans with Disabilities Act requires that any mandatory medical test of employees be 'job related and consistent with business necessity'. Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take screening steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others.

### 2.2 Vaccination and vaccination status in the workplace

Employers can require that employees be vaccinated if the failure to be vaccinated constitutes a direct threat to other employees in the workplace. However, if an employee states that they cannot receive the vaccine due to a disability or sincerely held religious belief, the employer will need to engage in an interactive accommodation process.

### 2.3 Incentives for vaccination

Employers may pay for the vaccines and/or offer incentives for employees to get vaccinated.

### 2.4 Dealing with refusal or inability to get vaccinated

Regarding an employee who claims to be unable to receive the vaccination due to a disability, the ADA allows an employer to have a qualification standard that includes 'a requirement that an individual shall not pose a direct threat to the health or safety of individuals in the workplace.' However, if a safety-based qualification standard, such as a vaccination requirement, screens out or tends to screen out an individual with a disability, the employer must show that an unvaccinated employee would pose a direct threat due to a 'significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.' Employers should conduct an individualised assessment of four factors in determining whether a direct threat exists: the duration of the risk; the nature and severity of the potential harm; the likelihood that the potential harm will occur; and the imminence of the potential harm. A conclusion that there is a direct threat would include a determination that an unvaccinated individual will expose others to the virus at the worksite. If an employer determines that an individual

who cannot be vaccinated due to disability poses a direct threat at the worksite, the employer cannot exclude the employee from the workplace or take any other action unless there is no way to provide a reasonable accommodation (absent undue hardship) that would eliminate or reduce this risk so the unvaccinated employee does not pose a direct threat.

If there is a direct threat that cannot be reduced to an acceptable level, the employer can exclude the employee from physically entering the workplace, but this does not mean the employer may automatically terminate the worker. Employers will need to determine if any other rights apply under the EEO laws or other federal, state, and local authorities. For example, if an employer excludes an employee based on an inability to accommodate a request to be exempt from a vaccination requirement, the employee may be entitled to accommodations such as performing the current position remotely. This is the same step that employers take when physically excluding employees from a worksite due to a current COVID-19 diagnosis or symptoms; some workers may be entitled to telework or, if not, may be eligible to take leave under the Families First Coronavirus Response Act, under the FMLA, or under the employer's policies.

Regarding a sincerely held religious belief, once an employer is on notice that

an employee's sincerely held religious belief, practice, or observance prevents the employee from receiving the vaccination, the employer must provide a reasonable accommodation for the religious belief, practice, or observance unless it would pose an undue hardship under Title VII of the Civil Rights Act. Courts have defined 'undue hardship' under Title VII as having more than a *de minimis* cost or burden on the employer. EEOC guidance explains that because the definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar, the employer should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief. If, however, an employee requests a religious accommodation, and an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance, the employer would be justified in requesting additional supporting information.

### **2.5 Vaccination and data privacy**

There are no specific considerations for employers relating to vaccination and data privacy.

### **2.6 Vaccination and posted workers**

There are no specific considerations for employers relating to vaccination and posted workers.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

The category of businesses permitted to reopen and their obligations depend on each state's orders and local laws. Generally, employers are encouraged to take the following steps:

**Provide** education on the proper method for washing hands.

**Post** reminders in key areas on the proper way to prevent the spread of germs, such as using hand sanitiser containing at least 60-95% alcohol and covering your mouth with tissue (or an elbow or shoulder if no tissue is available) when coughing or sneezing.

**Ensure** tissues, hand sanitiser and disposable wipes are readily available for employee use. Consider providing no-touch waste receptacles.

**Encourage** employees to work remotely if feasible.

**Ensure** employees are aware of the importance of not reporting to work if they are ill and/or experiencing fever, cough, shortness of breath, sore throat, runny or stuffy nose, headache, and fatigue.

**Notify** employees they will be sent home immediately if they report to work ill or become sick during the workday and will be separated from other employees in accordance with Center for Disease Control health guidelines.

If an employee is confirmed to have coronavirus, employers should **inform** fellow employees of their

possible exposure to it in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA).

**Communicate** to employees that the organisation is monitoring the virus outbreak and will take proactive steps as necessary to protect their health. Decisions will be based on the best available information.

You may choose, if not legally required to do so (by state or local orders), to require employees to wear masks. Generally, if you require masks be worn, you should provide them. If the masks can be cleaned by hand or in regular laundry, then employers would not be required to compensate employees for cleaning (state or local laws may require this).

According to the US Equal Employment Opportunity Commission (EEOC), employers can test on-site employees for coronavirus as a condition of entering the workplace and may conduct temperature checks on employees returning to work. Employers should ensure tests are accurate and reliable.

### **3.2 Vulnerable employees**

Workers who have been advised by a healthcare provider to remain out of the workplace because they are in a vulnerable group may be eligible for FMLA leave or a reasonable accommodation under the ADA.

### 3.3 Back in the office

An employee cannot generally refuse to return to work. For an employee who was receiving unemployment benefits as a result of coronavirus, a refusal could result in termination of unemployment benefits. However, an employer may not discriminate against an employee who exercises his or her right under the Occupational Health and Safety Act ('OSHA'). Under OSHA, an employee may refuse to come to work if s/he asked the employer to eliminate a hazard in the workplace but the employer failed or refused to do so; s/he has a good-faith belief that an imminent danger exists; a reasonable person would agree there is real danger of death or serious injury; and there is no time to get the hazard corrected through appropriate channels.

Employees may refuse to return to work because they believe they are at a higher risk due to a pre-existing medical condition. If the pre-existing medical condition is a 'covered disability' under the ADA, the employer should engage in the interactive process with the employee and provide reasonable accommodation, if any, that does not constitute undue hardship to the employer

### 3.4 Suspected cases

Per the Centers for Disease Control (CDC), in most cases, employers do not need to shut down a facility, but it is recommended to close off any areas used for prolonged periods of time by the

sick person and wait 24 hours before cleaning and disinfecting to minimise potential for other employees being exposed to respiratory droplets. If waiting 24 hours is not feasible, wait as long as possible.

Follow the CDC cleaning and disinfection [recommendations](#)

- Clean dirty surfaces with soap and water before disinfecting them.
- To disinfect surfaces, use products that meet the Environmental Protection Agency criteria for use against [SARS-Cov-2](#), the virus that causes COVID-19, and are appropriate for the surface.
- Be sure to follow the instructions on the product labels to ensure safe and effective use of the product.
- You may need to wear additional personal protective equipment (PPE) depending on the setting and disinfectant product you are using.

In addition to cleaning and disinfecting, employers should determine which employees may have been exposed to the virus and need to take additional precautions:

- Employees who test positive for COVID-19 (using a viral test, not an antibody test) should be excluded from work and remain in home isolation if they do not need to be hospitalised. Employers should provide education to employees on what to do if they are sick.

- Employers may need to work with local health department officials to determine which employees may have had close contact with the employee with COVID-19 and who may need to take additional precautions, including exclusion from work and remaining at home.
- Most workplaces should follow the Public Health Recommendations for [Community-Related Exposure](#) and instruct potentially exposed employees to stay home for 14 days, telework if possible, and self-monitor for symptoms.
- Critical infrastructure workplaces should follow the guidance [Implementing Safety Practices for Critical Infrastructure Employees Who May Have Had Exposure to a Person with Suspected or \[Confirmed COVID-19\]\(#\)](#).

Sick employees should follow CDC-recommended steps. Employees should not return to work until they have met the criteria to discontinue home isolation and have consulted with a healthcare provider. Antibody test results should not be used to make decisions about returning persons to the workplace. You may require that employees who have symptoms of coronavirus remain out of the workplace.

Organisations should report illnesses as required by applicable law. For the



duration of the coronavirus crisis, all employers must report any confirmed coronavirus diagnosis that is both work-related, and involves OSHA general recording data to OSHA. OSHA recognises that certain employers may have difficulty assessing whether workers who contracted coronavirus did so due to exposure at work, given the possibility of community transmission. Employers of workers in the healthcare industry, emergency response, and correctional institutions must continue to make work-relatedness determinations pursuant to OSHA. OSHA will only require other employers to report coronavirus illnesses where:

- There is objective evidence that a case may be work-related. This could include a number of cases developing among workers who work closely together without an alternative explanation; and
- The evidence was reasonably available to the employer. Examples include information given to the employer by employees, or information an employer learns regarding employees' health and safety in the ordinary course of managing its business.

Employers may share information with public health authorities and other government organisations to enable them to carry out their responsibilities. If an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible

exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA). Employers may not provide names of infected employees, but general notice is appropriate so employees can monitor themselves for symptoms and seek medical treatment if needed.

### **3.5 Return to work after recovery**

The CDC is no longer recommending a test-based strategy to determine when to discontinue home isolation, except in certain circumstances.

Individuals with COVID-19 who have symptoms and were directed to care for themselves at home may discontinue isolation under the following conditions:

- At least ten days have passed since symptom onset; and
- At least 24 hours have passed since resolution of fever without the use of fever-reducing medications; and
- Other symptoms have improved.

A limited number of individuals with severe illness may produce replication-competent virus beyond ten days, that may warrant extending duration of isolation for up to 20 days after symptom onset.

Individuals infected with COVID-19 who never develop symptoms may discontinue isolation and other

precautions ten days after the date of their first positive test.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Employers should ensure that they clearly communicate the requirement for employees who are not exempt from overtime under the Fair Labor Standards Act to accurately record all hours worked. The US Department of Labor stated in the Family First Coronavirus Relief Act rulemaking that an employer that allows employees to telework with flexible hours during the COVID-19 emergency does not need to count as hours worked all the time between an employee's first and last principal activities in a workday.

An employee's request to continue working from home may trigger an employer's obligation to engage in the interactive process to determine whether a reasonable accommodation needs to be provided.

It is possible that employees who request the option of working from home as a reasonable accommodation may use the fact that they worked at home during a period of quarantine as evidence that such an accommodation does not pose an undue hardship for the employer to provide.

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### 4.2 Working from another country

US income tax continues to apply to US citizens and lawful permanent residents (green-card holders, 'LPRs') who work outside the US, and their employers in the US continue to be responsible for withholding US income tax from their paychecks. The employee working abroad may also be subject to tax in the country in which he or she is working; that is a matter of that country's local laws. However, income tax treaties are often in place to prevent, or at least minimise, double taxation (the US is party to 66 such treaties). In general, US Social Security and Medicare taxes also continue to apply to wages of US citizens and LPRs who work outside the US, if they are working for American Employers, certain foreign affiliates of American Employers, or, in certain circumstances, aboard an American aircraft or ship. The US also has bilateral Social Security treaties ('Totalization Agreements') with 30 countries, which can either expand upon or modify the general rules, so an Employer needs to know the country(ies) in which its employees are working.

Employers should consult with local immigration counsel to ensure that the employee obtains the appropriate visa and work / resident permit before they start working in a foreign country. Depending on the immigration laws of the host country, as well as the citizenship / nationality of the employee, the nature of the position, and the duration of stay, the

application process can take several months or longer to obtain the necessary visa and/or work permit. Additionally, employees who are LPRs (green card holders) and plan to travel outside the US for a year or more, will need to apply for and obtain a re-entry permit in order to be readmitted to the United States. Two US states' data privacy laws became effective in 2020. On January 1, 2020, the California Consumer Privacy Act introduced duties on some employers. Employers subject to the law must issue a 'notice' to employees, communicating the categories of personal information collected and the use to which it is put. And they must maintain reasonable safeguards against a data breach. The New York SHIELD act became effective in March 2020. It requires businesses to safeguard the private information of New York residents (including employees) and expands New York's data breach notification requirements.

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# Venezuela

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## 1. Government support for employers

The National Executive announced measures in the early stages of the lockdown including the payment of the wages of all employees working for small and medium companies, until December 2020. Payments were made through the 'Patria' platform (an online system originally used for individuals to register and receive benefits from social assistance programmes). Although no guidelines or regulations have been published to this effect, the Executive has been paying monthly bonuses for the amount of the current minimum wage (approximately USD 1.00 at the current official exchange rate) to individuals registered in the Patria platform. However, several users of the platform have reported that they have not received these payments. Whether such measures will continue to apply for the duration of 2021, has yet to be determined. Other measures include the implementation of a debt relief program and the suspension of rent payments for commercial use real property until March 2021.

## 2. Testing and Vaccination

### 2.1 COVID-19 testing

Employers could require employees to take a COVID-19 test. Testing plans would be consistent with both the existing 'state of alarm' which addresses the need to adopt measures to protect the health of the population and with the Health and

Safety provisions that impose the obligation on employers to ensure a safe work environment for their employees. It is advisable however, for COVID-19 test requirements to be previously approved by the work entity's Health and Safety Committee as part of the entity's Health and Safety programme, which should be updated to include measures that prevent the contagion and spread of COVID-19 (safe distancing at work, PPE, washing hands, remote work when possible, etc).

### 2.2 Vaccination and vaccination status in the workplace

Undergoing vaccination must be voluntary. Information on employees' vaccination status could be required from employees as work-related information, however, an employee cannot be discriminated against if s/he has not been vaccinated.

### 2.3 Incentives for vaccination

It is possible for employers to offer employee incentives for getting vaccinated, including offering to pay for them. It is also possible to offer a one-time bonus to those employees that show vaccination certificates. The amount of this bonus does not necessarily need to be related to the cost of the vaccine (in case the vaccine is not available in the public health network).

### 2.4 Dealing with refusal or inability to get vaccinated

Refusal to be vaccinated would not constitute grounds for dismissal under local law. Further, because employers should refrain from any discriminatory behaviour against employees who have not been vaccinated, employees cannot be prevented from attending work for this reason nor can their duties/working conditions be unilaterally modified by the employer. This does not preclude the possibility of implementing changes to the working conditions in agreement with the employee. Neither does it prevent the organisation from adopting special measures of social distancing and work-from-home with respect to those employees that refuse to get vaccinated.

### 2.5 Vaccination and data privacy

Employee medical records (vaccination status included) must be kept confidential and all related information is protected by the data protection principles, as it would be considered personal data:

- Employee consent would be required to process personal data.
- Employees must be informed of the purpose(s) of the collection of their personal data.
- Employees must be informed on who will be the final users of the data (i.e. whether any third parties will have access to the data).

- The employer must ensure adequate security levels to access and keep the data.

## **2.6 Vaccination and posted workers**

There are no specific provisions that regulate testing or vaccination for posted workers, but employers should consider that the Venezuelan labour and health and safety regulations are mandatory and public policy provisions, and they apply to work convened in Venezuela to be performed abroad. This means that from a strictly legal standpoint, these provisions have an extraterritorial reach. It is advisable for the transfer/assignment to be thoroughly documented between the host state, the employer and the employee, and an assessment of the health and safety standards of the countries involved should be performed to verify inconsistencies or incompatibilities and attribute responsibilities among the parties.

## **3. How to keep workers safe in the office**

### **3.1 Setting up the workplace**

Effective 1 June 2020 and following the gradual relaxation of the quarantine, the Health Ministry issued a resolution establishing health and safety regulations to combat COVID-19. See here for details.

If an employer is unable to implement the required epidemiological control and

surveillance mechanisms, then it may not resume activities until the appropriate measures to ensure public health and safety are in place. The regulation further provides a set of health and safety measures applicable to private and public health care centres.

Some companies have set up specialised COVID-19 committees for surveillance and detection purposes. Other measures include the implementation of surveys that the employees must fill out daily before entering work to verify any COVID-19 symptoms.

Additionally, certain Municipalities have adopted local resolutions with further health and safety measures, applicable to commercial establishments.

### **3.2 Vulnerable employees**

There are no specific rules for vulnerable employees or groups, but employers should have special consideration when planning their return to work and promote remote work in such cases, to the extent possible.

### **3.3 Back in the office**

Labour activities continue to be suspended since 16 March 2020. Certain sectors deemed essential are excluded from this nationwide suspension, including health services, police, telecommunications and media, fuel sales and gas stations, medical supplies,

pharmaceutical services, food supply and water distribution. Restaurant delivery and take-out services are permitted.

Effective 1 June 2020, the National Executive announced the implementation of a '7 plus 7 Plan' which involves seven consecutive days of easing measures, for seven consecutive days of quarantine.

The Plan has been applied unevenly throughout the country, and varies on a weekly basis, depending on the reported number of COVID-19 cases. During 'flexible' weeks, the National Executive has announced easing measures for 24 sectors, including banking, register offices, the judiciary, public notaries, courier services construction, hairdressers, plumbing and medical practices, which may operate within specific work schedules. For December 2020, the National Executive exceptionally applied a general easing of lockdown measures that lasted the whole month but has reassumed the '7 plus 7 Plan' for the first month of 2021.

Employees falling outside the scope of the suspension of labour activities who work for businesses that are authorised to operate by the Plan may be required to return to work. However, employees are entitled to refuse to work under conditions that may pose a risk to their health and wellbeing, so employers must put adequate health and safety measures in place, to ensure a safe return to work.

### **3.4 Suspected cases**

In the event of suspected or confirmed cases, employers are required to ask employees to voluntarily undertake quarantine/self-isolation and employers must report employees to the sanitary authorities if they refuse to observe it. Reasons for considering an individual has or could have contracted coronavirus are:

- S/he shows the symptoms widely acknowledged by the WHO.
- S/he or she has been in contact with an individual who is suspected to have contracted COVID-19 or tested positive for it (including having travelled with such an individual).
- S/he has been identified as such and notified of their condition by the sanitary authorities.

We recommend that employers set up specialised COVID-19 committees for surveillance and detection purposes (these committees can be set up as a subcommittee of the health and safety committee or as a separate committee working in cooperation with the health and safety committee), and also establish internal reporting protocols for dealing with suspected coronavirus cases. Obtaining the approval of these protocols from the Health and Safety Institute (INPSASEL) is also advisable.

There is no specific official procedure for reporting cases of COVID-19. Any communications of infection should be performed in coordination with the

company's health and safety committee or the specialised COVID-19 committee. We suggest an initial verbal approach if possible, and then in writing.

Any training or information sessions related to COVID-19 measures should also be documented and an attendance list with all participating employees should be kept and confirmed by the attendees. Written COVID-19-specific risk notices should also be delivered to employees with a requirement for confirmation of receipt.

### **3.5 Return to work after recovery**

Initially, infected employees must have completed their isolation period and no longer show COVID-19 symptoms, in order to return to work.

Employers could also impose coronavirus testing as a condition for employees to return to work, as long as there is reason to suspect the employee has contracted coronavirus.

## **4. Where to work**

### **4.1 How to organise homeworking for the long term**

Venezuela has no specific regulation applicable to remote or homeworking. There are special provisions that regulate domestic work which may be used as a reference, where relevant (although they were not intended to regulate the use of technology in the performance of work).

The government has announced that it is likely to discuss a telework regulation by the first semester of 2021.

In any case, it is advisable for employers to document homeworking conditions with employees. Employers would be required to pay utilities (including internet services) and ensure that employees have the equipment required to perform remote work.

Further, employers must ensure appropriate health and safety measures are followed under the homeworking scheme, so an alternate risk assessment of the employee's workplace (covering conditions such as ergonomics of the workstation, use of the computer, etc.) should be performed with the employee's cooperation. A protocol for reporting accidents should also be implemented.

Employees are entitled to observe outlined working hours with rest periods. We recommend clearly establishing reporting duties and the expected work results with employees before homeworking starts.

An employee can request long-term homeworking based on concerns about coronavirus, if his/her job duties or tasks can be carried out from home. In fact, the current sanitary regulations encourage employers to maintain remote work arrangements, as far as possible.

In the current context where homeworking has been implemented as a



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temporary arrangement, it is unlikely that employees will acquire the right to work at home after a certain time. However, it is important for employers to document the arrangements in place and clearly state that their implementation is a result of the circumstances generated by the COVID-19 pandemic and the 'state of alarm', and that this intended to be an exceptional form of work. This may afford employers some flexibility in determining whether this could be a long-term arrangement for the future.

### **4.2 Working from another country**

Venezuelan labour and health and safety regulations apply to work convened in Venezuela but performed abroad in cases where Venezuela remains the home country for the purposes of the employment contract, as they are deemed mandatory and public policy provisions with extraterritorial scope.

Determining the applicable law could cause certain practical difficulties, including conflict of laws between overriding or mandatory provisions of the other country and local laws.

In principle, the Venezuelan employer would continue to be responsible for informing and providing training to employees in relation to the occupational risks abroad, ensuring the employees' health and safety at his or her work station, and keeping the employee enrolled in the Venezuelan Social Security authorities. It is advisable for

employers to consider offering the employee health insurance coverage while working abroad.

Employers must ensure that personal data is only passed to countries that meet the levels of protection of Venezuela, following the local data protection principles.

Depending on the jurisdiction involved, there may be certain tax and immigration issues to consider.

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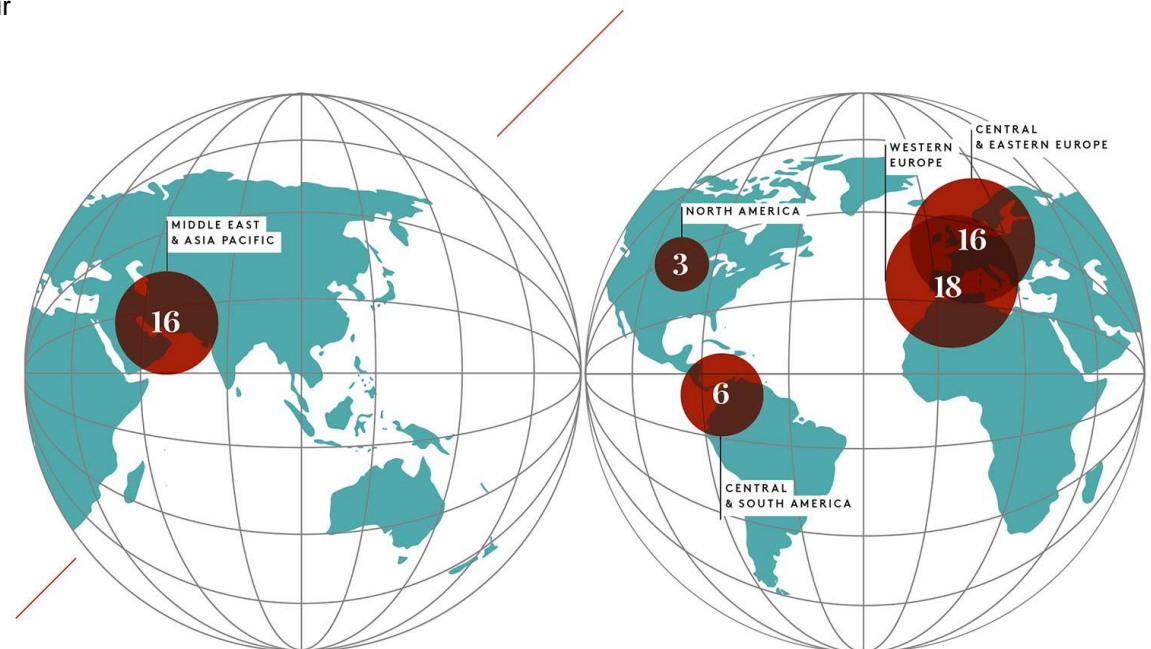
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