

Ius Laboris Webinar

Coronavirus: Getting back to the new normal?

Thursday 2 July 2020

14:00 – 14:45 BST

15:00 – 15:45 CEST



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COVID-19 – THE CURRENT POSITION

EMERGING FROM HIBERNATION, AND MOVING TO NEW NORMAL...

- Pandemic started later (lockdown began on 23 March 2020), but the country was hit hard – c. 43,000 deaths at the time of writing (25 June)
- Coronavirus Job Retention Scheme, or “furloughing”, covered up to 80% of employees’ wages, capped at GBP 2,500 per month. From 1 July, can move to “flexi-furlough” and allow partial work. Increasing monthly employer contributions from 1 August to wind up of scheme on 31 October. No bar on making furloughed employees redundant and many employers already doing so
- Government published COVID-19 recovery plan on 11 May (since updated). Published alongside guidance on safe reopening aimed at various different types of working environment, e.g. offices, shops and factories. Gradual reopening of the economy since then – e.g. non-essential retail on 15 June, bars, restaurants and hairdressers from 4 July. Only limited sectors compulsorily closed after this
- Guidance still “work from home if you can do so”, and likely to remain so for some time. Particular issue for busy city centres reliant on public transport

SPAIN

DEFROSTING THE ECONOMIC FREEZE AND LOCKDOWN

- Pandemic started sooner (lockdown began on 14 March 2020), but country hit hard – c. 29,000 deaths at time of writing (25 June). 13 March all schools, colleges, childcare facilities, sporting and cultural gatherings were cancelled due to the State of Alarm.
- Temporary Wage Subsidy schemes, based on *force majeure*, for example, were requested by companies, covering up to 70% of employees' wages capped at EUR 1,200 per month. A new extension with lower economic contributions has been extended until 30 September
- Government published a COVID-19 transitional recovery plan on 28 April with 4 phases, to gradually reopen the economy. Although there is a preference for remote work, any employee whose services may not be rendered remotely is exempt from working remotely. Until 20 September companies should encourage remote work if possible.
- A new benefit, the 'Minimum Living Allowance', was approved with effect from 15 June, but it only covers individuals in very straitened circumstances.

IRELAND

EASING LOCKDOWN RESTRICTIONS

- The virus hit Ireland around 29 February. Over the next 3 weeks gradually everything closed. 12 March all schools, colleges, childcare facilities, cultural institutions closed, St Patrick's Day festivities were cancelled, people began working from home and the elderly and vulnerable had to cocoon
- The Temporary Wage Subsidy Scheme was brought in on 24 March and extended to the end of August – employees were still allowed work while on the scheme and employers had to have an anticipated loss of 25% of trade
- 18 May, easing of restrictions began, with 5 phases initially and now 4, each phase being expedited
- We are currently in Phase 3 (since 29 June) - most businesses can reopen, limited gatherings indoors of 50 people and outdoors of 200 people
- Phase 4 (20 July) bars, hotel bars and casinos and larger indoor and outdoor gatherings
- Where possible employees are still encouraged to work from home
- Detailed Return to Work Protocol published on 9 May: consultation, lead work reps, COVID-19 response plan and policy, risk assessments, contact logs, isolation areas, handwashing, cleaning, physical distancing, RTW induction training, pre-return questionnaire

PORTUGAL

FROM BEST PUPIL TO (ALMOST) LAST IN CLASS

- Lockdown was quite early – Emergency State was declared on 18 March, but by then most private schools had already closed and many parents were forced to work from home.
- All non-essential activities were shut down, including retail, as well as those entailing the possibility of large gatherings – e.g. concerts, cinemas and gyms
- Government enacted some support for parents who were unable to work remotely and had to care for children
- Companies also received financial support by means of a simplified lay-off (furlough) scheme - suspension or reduction of working time – and that is due to continue until the end of July. Employees are paid 2/3 of their salaries (caps applying), 70% being borne by social security and 30% by the employer
- As from 4 May, lockdown has been gradually lifted at 15-day intervals. The country has been spared, both in the number of COVID-19 cases (approx. 41,650) and of deaths (1,570), but since easing the lockdown, the curve has been consistently growing, especially in the Lisbon metropolitan area



SHORT TERM ISSUES

DISCRIMINATION

- Legal issues for employers resulting from:
 - Continued home schooling. For example, in the UK only a minority of children have returned to school, and home schooling will remain the norm at least until September - indirect sex discrimination issues. In Spain, school has finished and some summer camps have opened but work-life balance issues remain a big problem for parents who change their working regime as a result of COVID-19. In Portugal vulnerable employees may seek to force employers to let them work remotely
 - BAME individuals are especially vulnerable to COVID-19. 'Rock and hard place' for employers told to take account of this in risk assessments, but barred from positive discrimination. Black Lives Matter movement adds fuel to the fire
 - Staff who are vulnerable themselves, or live with/have caring responsibilities for those who are - disability and age discrimination/associative discrimination issues.
- How to select who returns and deal with those who don't want to or can't? Issues of paid, unpaid leave and working time.

DATA PRIVACY AND IT

- Protection of data and security of information is of the essence. Exponential increase of phishing, ransomware and cyberattacks.
- Cultural challenge: remote working requires an internal policy with clear technical instructions and security. Strict compliance by all employees to avoid breaches. Information protection with VPN, corporate email and programs. Encrypted storage devices.
- Bring your own device (BYOD) policies if personal devices are used to work remotely. Protection of devices with antiviral software, firewalls, operating systems and duly updated software.
- Training sessions to ensure awareness and fulfilment.
- Data protection obligations to be reviewed by the employers. Proportional, appropriate and necessary measures that respect employee privacy.
- Employer's concern to ensure employee's productivity and efficiency.
- New challenges negotiating with employee reps by means of virtual platforms

RETURNING SAFELY

- 'Working from home' remains the guidance, if you can do so, expected to last until September
- lockdown fatigue
- new divide between those wanting to come back to the workplace ASAP, and those who never want to return. Most staff are somewhere in middle. How to manage this?
- HR-centric planning
- health inspectorates carrying out workplace inspections
- acceleration of the reopening has put employers under pressure in terms of compliance
- some offices are not returning until 2021
- some offices are working on an A team and B team basis
- health and safety obligations very onerous – social distancing, contact logs, worker reps, training
- work life balance issues on returning to work, particularly where childcare is limited
- vulnerable employees need to be accommodated
- employee wellbeing and anxiety about returning to the office needs to be managed by employers
- health and safety measures need to be constantly reviewed, updated and communicated

INCENTIVES TO RETAIN YOUR WORKFORCE

- Generally countries have enacted Temporary Job Retention and Temporary Wage Subsidy schemes, all measures to help companies keep their workforces during lockdown
- (Paid) lay-offs or 'furloughing' has been a common approach from governments around the world – and very much so in Europe
- Possibility of a reduction in working hours, partially state-borne has also been offered in some countries, especially since lockdown restrictions have been lifted, and businesses are gradually reopening, although sales/trade levels are still much lower than usual
- Many countries (such as Portugal and Spain) have imposed a time-bar on making furloughed employees redundant, as an additional measure to try to secure workforces and prevent massive unemployment. Others, like the UK, did not and employers are seizing the opportunity.
- Many of these measures are now coming to an end, or being readjusted to lower payment percentages as we move into Q3 – to ease the financial burden on governments



LONG TERM ISSUES

AN UPTICK IN CLAIMS

- Labour courts and employment tribunals are set to see massive increases in claims resulting from measures taken during lockdown
- These may arise, for example, where pay cuts and the withholding of bonuses and pay increases have not been reversed
- Or there may be complaints of unfair or wrongful dismissal, or others, such as discrimination, from employees who have been let go
- Some countries, such as the UK and Ireland, expect whistleblowing claims for raising COVID-19 and H&S concerns
- There may also be audits by public authorities of the usage of job retention schemes
- How will administrative systems cope with such challenges?
- The system will no doubt adapt - e-trials are becoming feasible and seen as normal and will need to be rolled out to cope with the expected dramatic increase in the number of court proceedings

WORKING ALL DAY LONG?

- Turn of screw in working time register: limitation on employers controlling 'real working time'. Overtime lack of control?
- Employees at full disposal during endless working hours. Clash with right to digital disconnection
- Trend towards a possible flexible and extended working day at the employee's convenience? Time on – time off
- Adaption of traditional rights: training and promotion, H&S, collective rights and possible new rights
- Challenge: equal treatment with the rest of workforce. Avoiding discrimination dealing with employees working remotely
- How to combine sporadic and permanent remote workers. Sense of lack of control. End of the traditional workforce

WORKING FROM HOME LONGTERM & HEALTH AND SAFETY

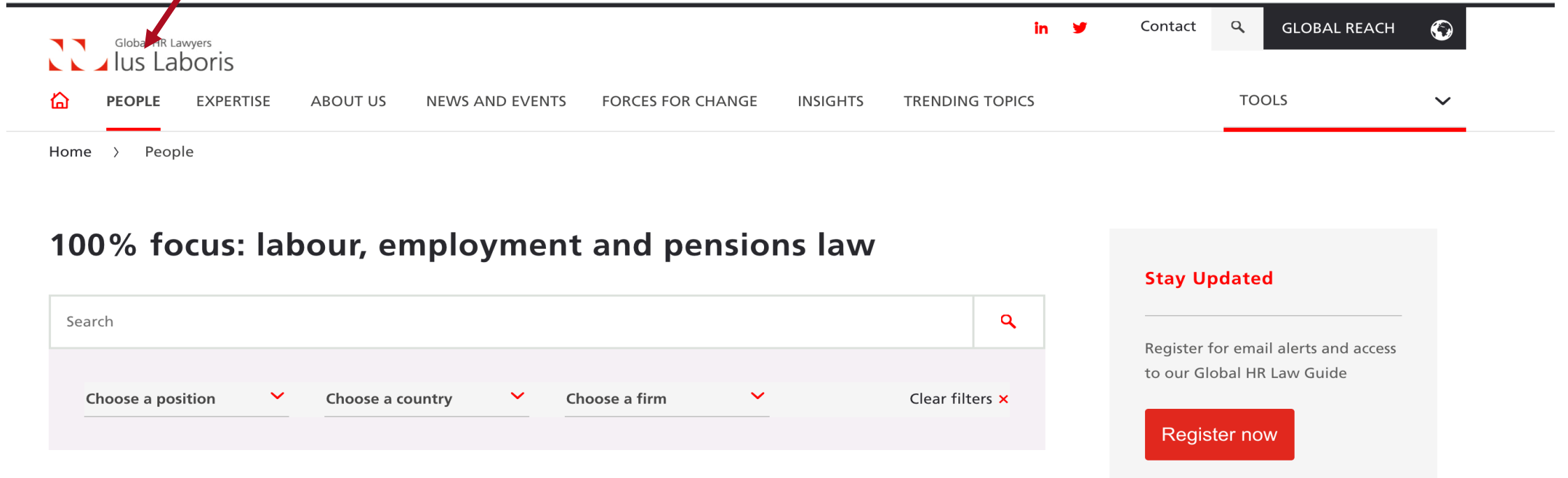
- Historically most employers are reluctant to agree permanent remote working for business reasons
 - no longer able to rely on this
 - expect a massive increase in requests
- Remote working planning as part of HR management – many employees want a mix
- Employers may possibly move to permanent virtual teams
- Employers will need to adapt working practices, management style, culture and HR support for managing remote workers and lone working
- Wellbeing issues will arise – mental health issues may be harder to pick up on
- Working Time Directive may not fit with flexible, remote working – purpose of directive is health and safety
- Risk of ‘always on’ culture becoming even more difficult to tackle leading to anxiety and stress
- Current temporary H&S and ergonomic measures for sudden home working are unlikely to work long term
- General pandemic planning now an everyday part of business continuity planning and risk assessments

WILL THE EFFORTS BE ENOUGH?

- Business restructuring in its various forms will be a reality
 - Office space re-thinking, both because of remote work and social distancing rules
 - Related cost-cutting or maybe not
 - New working practices and internal policies will have to be implemented
 - Rethink how to work and retain talent in this new era especially if daily work is not performed in the company's physical premises
- In the not-so-long term if the economic activity is not relaunched in an expressive way, downsizing will be a reality – it will apply both to countries that have barred redundancies after furloughing and those that have not – it is just a matter of time

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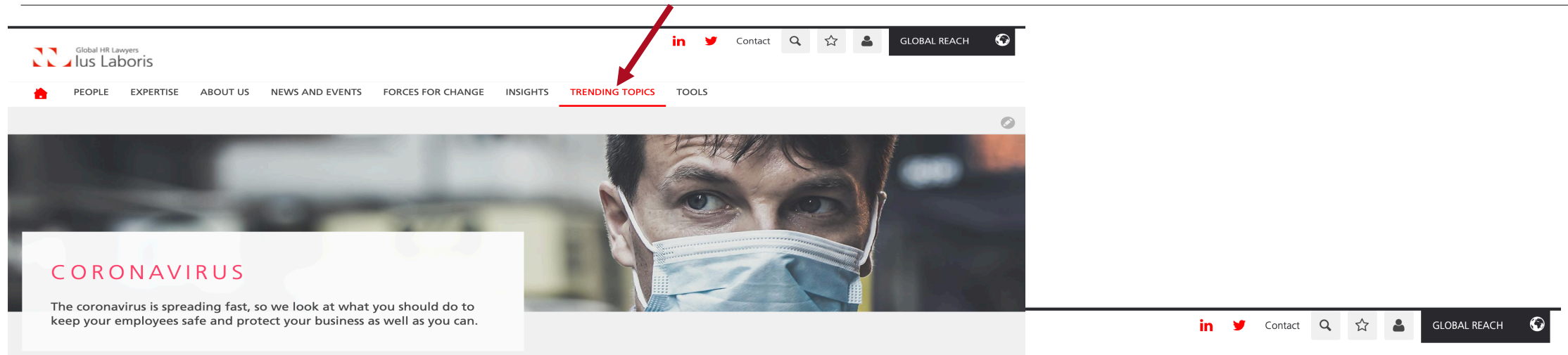
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The screenshot displays the Ius Laboris website interface. At the top, the navigation bar includes the Ius Laboris logo (a red square icon with white geometric shapes) and the text "Global HR Lawyers Ius Laboris". To the right of the logo are social media icons for LinkedIn and Twitter, a "Contact" link, a search icon, and a "GLOBAL REACH" button with a globe icon. Below the navigation bar is a horizontal menu with the following items: "PEOPLE" (highlighted with a red underline), "EXPERTISE", "ABOUT US", "NEWS AND EVENTS", "FORCES FOR CHANGE", "INSIGHTS", "TRENDING TOPICS", "TOOLS", and a dropdown arrow. Below the menu, a breadcrumb trail shows "Home > People". The main content area features the heading "100% focus: labour, employment and pensions law". Below this heading is a search bar with the placeholder text "Search" and a red search icon. Under the search bar is a filter section with three dropdown menus: "Choose a position" (with a red dropdown arrow), "Choose a country" (with a red dropdown arrow), and "Choose a firm" (with a red dropdown arrow). To the right of these filters is a "Clear filters" link with a red 'x' icon. On the right side of the page, there is a "Stay Updated" section with a red heading. Below the heading is a text box that says "Register for email alerts and access to our Global HR Law Guide". At the bottom of this section is a red button with the text "Register now".

Questions and comments also welcome: anni.laakso@iuslaboris.com

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