



Coronavirus COVID-19: Legal guidance for employers (Ethiopia)

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By: Benyam Tafesse

With 334,000 plus confirmed cases and over 14,600 deaths across 189 countries and territories, the coronavirus COVID-19 is causing havoc throughout the world. As the virus continues to rapidly spread across different jurisdictions including Ethiopia, it is causing many businesses and employers to look at what measures they could legally take to mitigate risks in the workplace, and protect health and safety of their employees. It is also indisputable that there is much anxiety about coronavirus COVID-19 and its impact regarding employment in the event that a countrywide lockdown becomes mandatory.

To help companies navigate through this unprecedented time, we have prepared some general guidance on the impact of coronavirus COVID-19 on the employment relationship under Ethiopian law.

Preventive Measures

Health and safety

The Ethiopian Labor Proclamation obliges employers to take the necessary measures to adequately safeguard the health and safety of employees at all times. This broad responsibility means that employers have the duty to strictly follow precautionary measures at work place upon the occurrence of pandemics and transmitting diseases. Though there is no official separate directive or guideline issued by the Ministry of Labor and Social Affairs on specific measures to be taken by employers in relation to coronavirus COVID-19, employers are recommended to take the following actions:

- Make employees aware of safety and prevention measures in accordance with public briefings, press releases and guidelines by WHO, the F.D.R.E. Ministry of Health and the Ethiopian Public Health Institute (EPHI);
- Availing access to information to the employees. This can be done by regularly updating information on scientific developments and professional advises on notice boards;
- Providing water, soap, paper towels, sanitizers and trash cans to dispose of used materials in work places to allow employees to practice good hygiene at all times (it is commendable if support can also be extended to those who cannot afford soaps and sanitizing materials at home);
- Organizing office spaces in a way the air can easily circulate;
- Regularly assessing the health of employees and remind staff to self-isolate in cases where symptoms are observed;
- Creating a working office which allows employees to distance themselves from each other and avoid suffocation. The employer should recommend that employees practice social distancing and discouraging physical greetings such as shaking hands;
- Avoiding gatherings, meetings as well as work situations exposing employees to contracting the disease;

- Regularly cleaning tables, doors, surfaces, elevators and shared equipment at the work place;
- Amending domestic and international travel policies;
- Providing options to work from home where applicable; and
- Providing information and safety measures to visitors and clients at offices.

It is important to note that the Labor Proclamation excludes endemic or epidemic diseases (except in the case of employees who are exclusively engaged in fighting such illnesses) from the definition of occupational diseases. As a result, employers are generally obviated from liabilities that arise from employees contracting occupational diseases. Nevertheless, employers are obliged to take precautionary measures at all times including during epidemics.

Quarantine

Quarantine is not specifically recognized by the law. However, given the characteristics of coronavirus COVID-19, there may be different types of quarantine scenarios and each comes with slightly different legal implications. We have provided below the recommend measures on how an employer should handle different types of quarantine scenarios in light of Ethiopian labor laws.

Government-mandated quarantine due to a positive coronavirus COVID-19 diagnosis: Where an employee has been diagnosed with the virus and the government or health agency requires quarantine, the employee may be treated as being on sick leave to the extent applicable and provided that the employee has available sick leave. The sick leave to be granted could be fully-paid, partially paid or unpaid depending on circumstances.

Government / health agency-recommended quarantine: Quarantine may be recommended if the employee is showing signs of illness but has not been diagnosed with coronavirus COVID-19. In such circumstances, if the employee is sick and unable to work (for whatever reason), he or she may be entitled to sick leave (paid or unpaid) in accordance with the requirements of the Labor Proclamation. If, however, the employee is feeling well and provided that he/she is able to work from home during the quarantine, the employer may allow him/her to work remotely during such period of recommended or mandated quarantine.

Employer-mandated quarantine: Where the employer asks employees to stay away from work, for reasons related to coronavirus COVID-19, the employee may be entitled to sick leave depending on the individual circumstances of the employee and the requirements of the Ethiopian labor laws.

Employee self-isolation: If the employee is hesitant to come to work because of a fear of contracting the virus, employers are generally encouraged to investigate the reason for the absence and whether there are special circumstances that need to be taken into account, e.g., if the employee is particularly vulnerable or is living with a vulnerable person. Where the reason is legitimate, and the nature of the work allows the employee to work from home, the employer may allow the employee to continue to work from home to the extent possible.

In connection with sick leave, it is important for employers to understand the difficulty that may be encountered by quarantined employees to acquire evidence of ill-health and as such, employers may consider if they have to temporarily adjust their policies in this regard. Additionally, employers are strongly encouraged to seek legal advice to determine to what extent, in what circumstances statutory sick leave may be applicable and to discuss other available avenues in the event sick leave is not applicable.

Working from home

Although it does not provide details, the Labor Proclamation indicates that an employee may work from home when agreement to that effect has been made with an employer. It has been publicly reported that many businesses in various jurisdictions are currently permitting certain groups or even entire staff to work from home on a trial basis to flesh out and address any issues in advance in the event that more widescale home working becomes mandatory. At this stage, employers in Ethiopia are encouraged to review their work from home policies (if any) to make sure these are up-to-date and fit for purpose and that employees who work from home have the requisite technical and material support.

Relevant legal avenues

The Ethiopian Labor Proclamation provides for various measures that could be considered by the employer during challenging circumstances such as the coronavirus COVID-19.

Suspension

Temporary suspension of rights and obligations arising from a contract of employment may be considered in the following cases.

Leave without pay

Suspension of contract of employment can be applied in cases where leave without pay is requested by the employee and granted by the employer. In such cases, the employer's obligation to pay wages and benefits and the employee's obligation to perform work will be interrupted for the period fixed by the parties.

Suspension due to force majeure or financial difficulties

The Labor Proclamation provides that the occurrence of a force majeure circumstance which results in the full or partial interruption of the employer's work for not less than 10 consecutive days justifies temporary suspension of employment contracts. Similarly, financial problems not attributed to the fault of the employer that lead to the interruption of activities of the employer for no less than 10 consecutive days constitutes a valid ground for temporary suspension.

Before suspending employment contracts on the basis of occurrence of one of the above mentioned grounds, the employer is legally required to submit a request for approval to the Ministry of Labor and Social Affairs (MoLSA) or the appropriate labor authority stating the grounds for suspension. The Ministry or the appropriate authority has to determine the existence of a good cause for suspension and announce its decision within three days. If the employer has not received a response from the relevant authority within this period, this will be considered as affirmation of the request and the employer can suspend the employee(s).

When the Ministry or authority approves the request for suspension, it will fix the period of suspension which will not exceed 90 days. On the other hand, the Ministry or the appropriate authority may order the resumption of work and payment for the days on which workers were suspended if it finds that there is no good cause for suspension. In such a case, the employer has a right to appeal to the appropriate labor court within five working days after the final decision has been passed.

Termination

Ethiopian labor law recognizes grounds attributable to organizational or operational requirements of an undertaking as valid causes for terminating an employee after giving notice. One of the grounds that justify termination with notice is fall in demand for the products or services of the employer resulting in the reduction of the volume of work or its profit. In such cases, the employer may terminate employees after giving the applicable advance notice and effecting payment of statutory termination benefits.

However, if the termination affects workers representing at least 10% of the number of workers employed or termination of at least five employees over a continuous period of not less than ten days, in cases where the number of workers in an undertaking is between 20 and 50, the termination may be considered as a "reduction of workers" and will be subject to further regulations and procedures stipulated by the law. In the event of a reduction of workers, the employer should observe the mandatory rules on consultation with trade unions and workers representatives and rules relating to prioritization of employees to be terminated.

By Benyam Tafesse, Head of Employment, DLA Piper Africa, Ethiopia (Mehrteab Leul & Associates Law Office)

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