



# Coronavirus (COVID-19): ten practical steps for global employers, right now (Global)

Employment Alert

COVID-19 Alert

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As the coronavirus disease (COVID-19) continues to spread across the world and WHO has declared the virus a pandemic, below are some practical steps that global employers may consider now.

These steps are not based on the laws of any one jurisdiction but rather are designed to provide a global employer with themes to consider, understanding that what may be suitable for each employer will vary greatly depending on the employer's unique circumstances. Employers are encouraged to continually monitor local government travel and health agency guidance and contact their local DLA Piper counsel to discuss obligations and best practices specific to their location, industry, size, works council / labor union involvement, and existing policies. Employers are also encouraged to remain nimble, recognizing that the public health threat and employers' legal considerations may change as the situation evolves.

For support globally, or in any of the countries in which you operate, contact your DLA Piper relationship attorney or email us at [CoronavirusEmployment@dlapiper.com](mailto:CoronavirusEmployment@dlapiper.com).

## 1. Update your business travel policy

Most employers have not banned all business travel at this time; however, business travel has been seriously curtailed due to the spread of the virus. Employers are encouraged to follow local government and/or health agency advice at all times and keep this under daily review.

Indeed, within the last 24 hours pronouncements such as the US government's decision to restrict certain travel to and from Europe are causing many businesses to look at alternatives to business travel even to presently non-restricted areas, a sensible precaution given the risk of border lockdowns at short notice.

As of the date of this publication, government authorities are generally advising that all travel, business or otherwise, to restricted / high-risk areas be suspended, unless it is absolutely critical. Even then, it may be inadvisable as it may become difficult, if not impossible, for an employee to travel out of the destination or the employee may have to go into quarantine on return home should the situation or guidance change during the period of travel.

Employers generally may continue to request that employees travel to lower-risk areas if this is part of their normal duties, but should keep up to date with travel advisories and continually reassess the risks involved with such travel.

If an employee refuses to travel to a lower-risk area, the employer may consider investigating the reasons why and determining whether the employee has offered a reasonable concern, *eg*, if the employee has a legitimate heightened concern about exposure to the virus due to an underlying health condition. If so, the employer may consider whether the travel is essential or whether another employee may travel in his or her stead.

Many employers with business travel insurance are also checking to identify whether employees are covered for travel undertaken on the company's behalf.

Should an employee contract the coronavirus during a business trip, depending on the circumstances and the jurisdiction, it could arguably be treated as a work-related illness. Jurisdictions and industry standards vary; but, generally, employers are expected to take adequate steps to protect the health and safety of their employees.

Because of the fast-changing situation, while business travel to much of the world is still possible, many employers are exploring alternatives.

## **2. Consider the implications of personal travel**

Employers may not, generally, dictate where employees travel in their personal time in jurisdictions that offer legal and/or contractual protection of the lawful off-duty activities of employees. However, it makes sense for employers to advise employees to keep up to date with the relevant guidance from their local governments and agencies and to practice sensible precautions while traveling.

Employees who nevertheless inform an employer that they anticipate traveling to a high-risk area may be cautioned that a mandatory quarantine period may be imposed upon their return from the travel, during which time the employee may be asked to work remotely or to take accrued/unpaid leave, depending on the employer's practices and local obligations (and subject to the local rules about treatment of a quarantine period, some of which will mandate that this period is treated as sick leave).

Whether the employer may ask employees precisely where they plan to travel (or have traveled recently) will depend on the laws of each jurisdiction. In some European countries, including Spain, France, and Italy, this question may be prohibited on the basis that it interferes with the right to a private life. Elsewhere, such as the UK, China, Canada, and the US, this may be a permissible question if asked to protect the health and safety of the workforce or for another legitimate, non-discriminatory reason.

## **3. Decide how to handle different types of quarantine**

There are different types of quarantine scenarios, and each comes with slightly different implications:

- Government-mandated quarantine due to a positive COVID-19 diagnosis
- Government or medical authority-recommended quarantine, *eg*, where an individual is showing symptoms but has not been diagnosed

- Employer-mandated quarantine
- Employee-led self-isolation due to symptoms, recent travel to affected areas, or special circumstances, eg, pregnancy or an underlying health condition.

**Government-mandated quarantine due to a positive COVID-19 diagnosis:** Where the employee has been diagnosed with the virus and the government or health agency requires quarantine, some jurisdictions may require that the employee be treated as being on sick leave and, if an employee has available sick leave, paid accordingly. Employers are encouraged to engage with counsel to determine if applicable law mandates special pay procedures. For example, in the UK, statutory sick pay has been extended slightly to provide for three extra days' pay in these circumstances.

Government / health agency-recommended quarantine: Quarantine may be recommended if the employee is showing signs of illness but has not been diagnosed with COVID-19. For instance, the employee may have returned from a restricted area or been in contact with someone showing signs of the illness, such as a close family member or individual residing in the employee's household.

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 employer's policies and as local law may otherwise require.

If, however, the employee is not sick and able to work at home during the quarantine, employers are encouraged to check local rules as to the permissibility of requiring remote work during any period of recommended or mandated quarantine. If so, many jurisdictions would require that the employee be paid in the normal course.

If the employee is unable to work remotely because of the nature of his or her role, the position is less clear, and it may be the case that the employee is entitled only to applicable statutory pay, or to no pay. Employers are encouraged to engage with counsel to determine applicable requirements. However, if employers do not pay in these circumstances, some fear an employee presenting for work despite the government / health agency advice, so some employers have considered offering some pay in these circumstances to avoid potential risk to the workforce.

Employer-mandated quarantine: Where the employer asks employees to stay away from work, for whatever reason, employees may receive pay, depending on local rules and the employer's own policies.

Employee self-isolation: If the employee is hesitant to come to work because of a fear of contracting the virus, the employer may investigate the reason for this and whether there are special circumstances that need to be taken into account, eg, if the employee is particularly vulnerable or is living with a vulnerable person. Where the reason is legitimate, and the employee can work from home, the customary practice in many jurisdictions is that the employee be paid in the normal course.

Where the reason is legitimate, but the employee is unable to work from home, the employer may consider alternative options with the employee. For instance, the employer might consider whether the employee can be given alternative duties that they can carry out at home or if the employer can adjust certain conditions to address the employee's concerns, such as changing start / end times to minimise travel during peak periods or changing the set up in the office to minimise contact with other staff. If there are no feasible options, agreeing to a period of annual leave or unpaid absence to cover the time off may be the way forward.

For any periods of sick leave, consider if you need to adjust – temporarily – your policy on employees supplying evidence of ill-health in case employees are unable to acquire this due to quarantine.

Taking the time off as annual leave: In some jurisdictions, employers may insist that employees schedule vacation at a particular time, but there are normally strict notice periods and other rules around this. If employers wish to insist on employees taking a period of vacation, employers are encouraged to familiarize themselves with the local rules and provide employees as much notice as practicable. This may not be possible in all jurisdictions.

#### 4. Review your approach to other absences

Other reasons for employee absence related to COVID-19 could include:

- Employees stuck in another country due to a travel lockdown or quarantine

- Employees having to stay at home due to school closures
- Employees having to stay at home to look after sick relatives

Employees stuck overseas: Employees who are stuck in another country due to a lockdown or local quarantine after a period of business travel may be entitled to continue to receive pay until they return home, and where possible, continue to work remotely (subject to any visa or policy restrictions). If the employee was on vacation at the time, the position may depend on the employer's policy or custom and practice of handling such situations when they arise. Either way, it would be sensible to explore if remote working is possible or if the employee could take additional leave (paid or unpaid) to cover the further absence.

School closures and caring for sick / vulnerable relatives: In many jurisdictions, an employee may be permitted to take time off (paid or unpaid) to care for family and dependents, which could be used as a short-term measure here, while longer-term care arrangements are made. If school closures / quarantine periods continue for a longer period of time, then employers may look at practical ways of managing that absence. If the employee can work from home during this period, then it is customary to provide normal pay. If this is not possible, then it may be necessary to consider other types of leave that may be available, again depending on the jurisdiction and the employer's own policies.

#### **5. Make sure you have the right measures in place to support working from home**

In some countries, there are restrictions on requiring employees to work remotely, although these may be relaxed given the circumstances. Assuming remote working is possible locally, employers are encouraged to review their work from home policies to make sure these are up-to-date and fit for purpose and that employees who do not ordinarily work from home have the technical and other support necessary. It has been publicly reported that some businesses are permitting certain groups or even entire offices to work from home on a trial basis to flush out and address any issues in advance in the event that more wide-scale home-working becomes mandatory. Other businesses are trialing split site working or splitting teams into different locations, with some working in the office and some working remotely, to attempt to contain the spread of the virus via social distancing.

Other practical steps, depending on specific circumstances, could include:

- Advising employees that working from home at short notice may become necessary; and, as a result, they should bring their laptops, chargers, and other required equipment home each day as a precaution
- Issuing laptops / devices where necessary
- Reviewing and reissuing any "Use Your Own Device" policy
- Reviewing and reissuing policies on the use of confidential information and security of information outside the office (eg, how to handle and/or dispose of confidential or otherwise sensitive information in a home office)
- Considering how to keep staff engaged during periods at home, exploring different remote working tools and other ways team members can connect with each other
- Considering how to monitor productivity of staff who do not typically work remotely, although note that there will be data privacy restrictions on monitoring across the European Union and elsewhere.

#### **6. Assess the implications of a short-term closure / temporary layoffs**

In some countries, this extraordinary situation may trigger the right (under law or collective bargaining agreement) to put employees on reduced hours, for an employer to suspend operations temporarily while the employee remains bound under the employment contract. The right to do this, and the pay that is due as a result, will depend on local rules and may require a statutory process to be followed, as well as consultation with employees, which can take time. In some countries, including France and Italy, employees may be entitled to a statutory payment during this period. However, in other countries, including the UK, there may be no right to do this unless the contract provides for it. If positions are made redundant during or after a temporary layoff, the normal rules that apply to redundancies / reductions in force may apply. Employers are encouraged to engage with counsel to ensure that local rules are observed before proceeding.

#### **7. Comply with your health and safety obligations**

Employers have a general duty to take reasonable measures to protect the health and safety of the workforce and to provide a safe place of work. Some of the practical steps that employers may consider include:

- Providing regular up-to-date government and health authority information to staff
- Displaying notices based on the latest health advice on how to prevent the spread of the virus and what to do / who to contact if they have symptoms
- Reminding everyone with symptoms of the virus not to come to the office and of the recommendations on self-isolation
- Discouraging physical greetings such as handshakes and kissing and otherwise encouraging social distancing
- Reviewing cleaning regimes so that high-traffic areas or surfaces such as door handles / faucets / shared equipment, etc., are cleaned regularly
- Providing tissues and ensuring there are sufficient means for disposing of tissues
- Providing hand sanitizers in entrances to the office and ensuring there are appropriate hand washing facilities (with soap) for employees and invited guests using the office
- Assessing if there is any particular risk in relation to certain members of staff who have underlying health conditions or are vulnerable for any other reason
- Providing similar advice to visitors / contractors who are working on the premises and mandate that they also comply with any policies or guidance in place.

Employers are not generally obliged to provide face masks, although many employers across Asia are supplying them. For instance, many employers in Hong Kong are providing masks, and there is a general expectation that people will wear them. In Italy, there is generally no obligation to provide masks – unless a doctor says that it is necessary for a particular employee, however some employees in Italy are now requesting masks, and many employers are trying to procure them despite the recent supply shortage. Unless and until the government or local health agency require masks to be provided, employers are not obliged to provide them.

Across Europe, where employers are subject to the General Data Privacy Regulation, employers generally may not require employees to undergo medical screening or temperature checks or to collect medical data that goes beyond the minimum necessary to manage the virus. Employers in some jurisdictions may be able to ask employees to test themselves in certain situations but typically may not carry out the tests, nor collect or process the results of such tests. Health data is generally considered sensitive data, and many jurisdictions set a high threshold for handling this data.

The data privacy authorities across Europe are starting to issue guidance on the use of data and data privacy compliance in light of COVID-19 and employers are encouraged to check for the latest position, which varies across the EU. The stance elsewhere may differ (eg, in China, it may be possible for employers to require staff, to undergo temperature checks on arrival at the office). On this, it is imperative that employers engage counsel to help ensure that local rules are known and applied on a fact-specific basis before acting.

#### **8. Remember that discrimination risk could still arise**

Employers may be alert to the risk of discrimination claims arising when handling issues relating to COVID-19. Employers may seek to remind Human Resources and managers that policies be applied consistently and without regard to an individual's ethnicity or national origin; that practices not disproportionately affect one group of protected employees more than another – absent a legitimate, non-discriminatory reason; and that, in a world where individuals are ever-conscious of the health concerns of those around them, that employees are not treated differently on the basis of an actual or perceived disability – again, absent a legitimate, non-discriminatory reason (eg, protecting the workforce).

#### **9. Think about what else you can do to support the workforce**

Understandably, there is much anxiety about COVID-19. Employers are encouraged to be alert to this and to issue appropriate communications to staff to, where possible, ease anxiety and provide clear and comprehensible guidance on the current and future situation. In addition to the subjects described above, below are a few other steps that may be worth considering, each of which to be viewed in light of local law and existing policies:

- Provide regular updates from company leadership to reassure staff
- Consider what steps – if any – may be appropriate to protect the mental well-being of staff during periods when they may be self-isolating or required to stay away from the business
- Publicize information concerning who employees can speak with if they have particular concerns or anxieties about the virus and the measures being taken

- Evaluate workplace emergency response protocols and consider what, if any, modifications may be necessary to address a potential pandemic
- Check whether personal contact information is up to date and business emergency procedures are in place
- Consider reissuing your social media policy and what employees should / should not be posting about the virus and your business prevention measures to avoid the spread of rumours / false information or the misimpression that employees are authorized to speak on behalf of the company
- Talk to employee representatives (in jurisdictions where you have these) about your plans and the potential impact on the workforce as may be appropriate pursuant to local law, custom and practice
- Review your schedule of upcoming meetings and conferences and decide which, if any, to cancel, modify (eg, turn into a conference call or "virtual" meeting) or maintain as-is
- Think through hiring processes: may interviews be conducted remotely if need be, and is it permissible in the given jurisdiction for interviewees to be screened in any way (eg, for recent travel to high-risk areas or current symptoms)?
- Consider visitor / contractor policies for the workplace and if these need to be updated
- Think about the impact on any temporary staff in the case of office closures, eg, will the outsourced cafeteria workers be paid if the office is closed?
- Consider the health and safety implications of provided transportation.

#### 10. Keep up to date with the latest information

Last, but not least, the following is a list of various websites containing local government health agency guidance concerning COVID-19. Should your jurisdiction not be listed, or should you wish to obtain support either globally or in any particular country, please do not hesitate to contact your local DLA Piper counsel, your DLA Piper relationship attorney, or email us at [CoronavirusEmployment@dlapiper.com](mailto:CoronavirusEmployment@dlapiper.com):

<b>Regional / global</b>	World Health Organisation European Commission Coronavirus Response European Centre for Disease Prevention and Control
<b>Australia</b>	Australian Government Department of Health
<b>Austria</b>	Austria: Bundesministerium Travel Advice Austria: Bundesministerium Health Advice
<b>Belgium</b>	Belgium: Guidelines from Federal Public Services of Work, Labour and Social Dialogue Belgium: Central Web Portal of the Federal Public Services of Health Belgium: Guidelines from the Flemish Employers Federation Belgium: Guidelines from National Employment Office regarding Temporary Unemployment Belgium: Travel Advice by Country of the Belgian Ministry of Foreign Affairs
<b>Canada</b>	Public Health Agency of Canada Canada government advice on when to cancel events
<b>China</b>	China: National Health Center China: Center for Disease control and prevention
<b>Denmark</b>	Danish Health Authority Danish Ministry of Foreign Affairs

<b>Finland</b>	Finnish institute for health and welfare
<b>France</b>	French Government Guidance
<b>Germany</b>	Germany: Robert Koch Institut (German) Germany: Robert Koch Institut (English) Germany: Bundesministerium fur Gesundheit(German) Germany: Bundesministerium fur Gesundheit (English)
<b>Hong Kong</b>	Hong Kong: Centre for Health Protection – Coronavirus News Hong Kong: Centre for Health Protection – Latest Local Situation of COVID-19 Hong Kong: HKSAR Government Press Releases
<b>Hungary</b>	Hungary Nemzeti Népegészségügyi Központ Hungarian Government Coronavirus information page
<b>Italy</b>	Italy Viaggiare Sicuri Italy Ministero della Salute Italy Istituto Superiore di Sanità Italy Gazzetta Ufficiale
<b>Ireland</b>	Ireland: HSE Covid-19 Overview Ireland: Department of Employment Affairs and Social Protection COVID-19 Information for Employers and Employees Ireland: COVID-19 Government Advice Ireland: Dept Foreign Affairs and Trade Advice on Covid-19
<b>Japan</b>	Japan: Ministry of Health, Labor and Welfare
<b>Netherlands</b>	Government of the Netherlands Netherlands: National Institute for Public Health Netherlands: National Institute for Public Health and the Environment
<b>New Zealand</b>	New Zealand: WorkSafe New Zealand: Ministry of Business, Innovation and Employment New Zealand: Ministry of Health
<b>Norway</b>	Norwegian Institute of Public Health
<b>Poland</b>	Polish Chief Sanitary Inspectorate Polish National Health Fund Polish National Labour Inspectorate
<b>Portugal</b>	Portugal Direcao-Geral da Saude

<b>Romania</b>	Institut National de Sanatate Publica Romania
<b>Russia</b>	Russia: Official Website of Moscow Mayor (Russian) Russia: Official Website of the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing (Rospotrebnadzor) (Russian) Russia: Official Website US Embassy & Consulates in Russia (English)
<b>South Africa</b>	South Africa National Institute for Communicable Diseases
<b>Spain</b>	Spanish Health Department: Spanish Employment Department Spanish Foreign Affairs Department
<b>Sweden</b>	Sweden: Public Health Agency Emergency Information from Swedish authorities
<b>UK</b>	UK Foreign and Commonwealth office UK Government Guidance for the Public COVID-19 Specified countries and areas with implications for returning travellers or visitors arriving in UK UK ACAS Guidance on COVID-19
<b>Ukraine</b>	Ministry of Health of Ukraine Public Health Center of the Ministry of Health of Ukraine Ministry of Foreign Affairs of Ukraine Cabinet of Ministers of Ukraine
<b>US</b>	US Center for Disease Control US State Department US: Department of Labor on pay in the event of office closures US Government US: EEOC US: OSHA US: SEC

Please visit our COVID-19 Resource Center and subscribe to our COVID-19 list here to receive alerts and webinar invitations on navigating this challenging time.

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