



Coronavirus: Key employment legal issues for multinational employers (Europe, AsiaPac)

25 February 2020

By: Johnny Choi | Helen Colquhoun | Tim Marshall

As the number of coronavirus COVID-19 cases exceeds 40,000, and with the World Health Organisation having declared the virus as a “public health emergency of international concern,” employers the world over are putting in place plans to prepare for the risk of an employee becoming exposed to or ill with the virus.

DLA Piper's global team can help advise employers, wherever they are based, on the employment legal issues involved. We are currently advising clients on a range of issues related to the coronavirus COVID-19 outbreak and have extensive experience of advising on similar outbreaks such as SARS. Some of the key issues to consider are set out below.

How can you best protect the health and safety of your employees?

Although coronavirus COVID-19 originated in China, there are now cases in 18 other countries, including the UK, US, France and Germany. WHO has advised that there is likely to be further international exportation of the virus meaning that cases may appear in any country. Given that employers have an obligation to ensure a safe workplace, which includes taking steps to guard against the risk of infectious diseases, the outbreak of this new virus should prompt employers to implement a strategy to protect employees. A detailed plan can help employers and managers to comply with legal obligations and will evidence the steps the company has taken to try to protect against an outbreak at work and what steps will be followed if there is an outbreak in order to minimise and mitigate against its impact.

A sensible strategy is likely to include:

- Keeping abreast of WHO and government advice and communicating this to employees.
- Updating contact details of employees and circulating emergency contact details for key employees.
- Carrying out a risk assessment, ensuring good hygiene practices in the workplace and training employees on the key facts and risks.
- Updating any policies or procedures (eg sickness absence, dependent care leave, flexible/home working) which may be affected by an outbreak of coronavirus COVID-19.
- Displaying signs of symptoms and steps employees should take if they suspect they may have come into contact with someone with coronavirus COVID-19 including details of the nearest medical center equipped to deal with the virus.
- Asking employees to report to HR if they themselves have been to a high risk destination or if they have been in contact with someone else who has been to a high risk destination regardless of whether or not they are exhibiting symptoms.

How should you deal with international business travel in light of coronavirus?

Employers may want to restrict employees from traveling to China or other high risk destinations unless absolutely

necessary, as is currently being advised by a number of governments. While the Chinese government has placed the city of Wuhan, and other high-risk cities, under lockdown, and international travel to China has been reduced by commercial air carriers, the virus still continues to spread. If employees must travel, they should be advised to follow infection control precautions with careful hygiene; avoiding contact with sick people; avoiding contact with animals and uncooked animal products; and wearing personal protective equipment.

In terms of employees returning from China or other high risk destinations to their home country, the restrictions which are in place in various countries mean that individuals may be subject to screening at airports, mandatory quarantine or monitored self-quarantine. As a result, employers should put in place protocols which are likely to vary for employees who are subject to mandatory quarantine and cannot to return to the workplace; employees who under monitored self-quarantine; and employees who have travelled to a high risk destinations (or have had contact with someone who recently has) and demonstrate symptoms consistent with a cold.

For those who require quarantine, employers should encourage employees to adhere to the quarantine restrictions and either work remotely or take time off work. During any quarantine period, employers should generally expect to continue to pay the employee their ordinary wages and contractual benefits – provided they are otherwise ready and willing to work. Legal advice for the particular work location is likely to be prudent if any alternatives are being considered.

Can you require employees to stay at home if there is any risk that they may have come into contact with coronavirus?

Employers are likely to want to require employees who have travelled to or been in close contact with someone from a high risk area to be placed on enforced leave or require them to work from home until it is clear they are not infected.

Employers should carefully review internal policies and contracts of employment to check whether there are any provisions enabling them to do this lawfully, and, if there are no such provisions (and depending on the applicable laws in the relevant jurisdiction), weigh up the risks of the 'quarantined' employee bringing a claim versus their general duty of care towards all employees.

Any period of time for which an employee is required to remain away from the workplace should be reasonable, which in general will be no longer than the time taken to establish that the virus has not been communicated. Unless the local regime or contract provides otherwise, employees should be paid as normal, at least until such time as they are either declared unfit for work - so that any sick leave entitlements kick in - or are able to return. Employers should also take all necessary steps to ensure that employees are able to continue to work (if they are well enough to do so) to avoid employees suffering any prejudice as a result of being required to work from home.

Can an employer carry out medical screening if an employee has been to a high risk destination?

The right to screen employees or require them to attend medical appointments will depend on the local legal position and contractual rights, and here employers need to balance the obligation to provide a safe workplace against obligations of data privacy and confidentiality. Whether it is proportionate and reasonable to ask an employee to undergo a screening test and the potential options if the employee refuses will also depend in part on the medical advice received in the relevant jurisdiction regarding the necessary precautions, taking into account the level of potential exposure and risk. Discrimination risks could also arise if employers single out certain employees based solely on their nationality or racial or ethnic origin.

Information gathered about the health of an employee will be classed as sensitive data in some jurisdictions, requiring special handling, so employers should always take care to keep information relating to the health of employees confidential. Data privacy issues also arise in relation to measures such as mandatory temperature testing and requiring employees/visitors to fill in travel or health declaration forms.

What can an employer do about employees who refuse to come into work or travel?

Employers need to balance the need to keep genuinely sick employees away from the workplace and the need to prevent unauthorized absence. While employment laws vary from country to country, employers generally have a duty of care

towards employees at work and on business travel - as well as to third parties visiting the employers premises - in addition to obligations under local health and safety laws. Employers worldwide are expected to take proportionate and sensible action to protect employees which will include cancelling business trips where government and insurance guidelines advise against travel to specific destinations. Failure to follow such advice could put the business at risk of negligence or health- and safety related claims should an employee become infected on such a trip and this could even invalidate insurance policies.

While employers should be sympathetic towards employees who have genuine and reasonable fear that attendance at work or international travel could put them at risk, they should also be wary of employees taking advantage of the situation. Employers should ensure that their disciplinary and absence policies deal with any employees who are unreasonably refusing to attend work or travel for work through fear of contracting the virus.

How can a multinational employer deal with contingency planning on a global basis?

Coronavirus COVID-19 is an international concern and multinational employers should consider implementing advice and plans across their worldwide operations. The key issues to consider in respect of each jurisdiction will include:

- Ensuring that the employer has complied with its duty of care and obligations in respect of health and safety towards employees, contractors, clients and visitors.
- Reasonably balancing the rights and obligations of employers and employees.
- Providing employees with access to up to date information and support.
- Putting in place appropriate medical arrangements.
- Personal injury liability.

AUTHORS



Johnny Choi

Foreign Legal Consultant
Hong Kong | T: +852 2103 0808
johnny.choi@dlapiper.com



Helen Colquhoun

Partner
Hong Kong | T: +852 2103 0808
helen.colquhoun@dlapiper.com



Tim Marshall

Partner
London | T: +44 (0)20 7349 0296 [UK Switchboard]
tim.marshall@dlapiper.com
