



# Global Labor and Employment Law Strategic Topics

Covid-19: Workplace Challenges  
Now and Beyond

**2020 Edition #2**



In this issue, we focus on:

## Covid-19: Workplace Challenges Now and Beyond

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# Editors' letter

The Covid -19 Pandemic is forcing organizations around the world to adapt their company and its culture to new ways of working.

This includes, of course, first and foremost, health & safety concerns for the workforce, customers, and partners, as well as using and enabling technology to allow people to work efficiently together from different physical locations.

The challenges are not to be underestimated as each jurisdiction has its own labor & employment regulations with respect to employer responsibility for the health & safety of its people, and the ability to require its workforce to change its working locations.

Another challenge is the managerial aspect of this shift in our working ways. Managers need to creatively find new ways to stay connected and motivate workers by keeping in touch with them remotely.

# Editors' letter



Employers must also consider the need of many businesses to reduce their HR costs and perhaps significantly transform their businesses to adapt to the economic impact of this pandemic. Here again, local laws will differ on the rules and options for employer to reduce headcount and/or modify an employee's terms and conditions of employment.

In this newsletter, we focus on the labor & employment law challenges for companies in Returning to Work (or Not) in our Covid -19 world. You will find insights from 39 jurisdictions around the world.



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# Argentina



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## Return to the office and the new Talent agenda

In line with other affected countries, the preventive and mandatory social lockdown was established in Argentina (still in force) for everyone who lives in the country or is transitorily staying in it. In this regard, and in relation to workers, the obligation to be present at the workplace was suspended (except for specific activities declared as essential) with the obligation to pay full compensation. Accordingly, it was established that those workers whose regular tasks or other similar ones may be carried out in the place where they are lockdown should agree in good faith with their employer the conditions in which such tasks are to be carried out. This circumstance resulted in most of the workers in the country working from their homes through the “home office” modality (we would like to point out that such modality is not regulated in Argentina).

Therefore, for those activities declared as essential, whose workers are exempted from the lockdown situation, and we hope that in the future for every company, the return to the office will firstly require (and requires) a “transition” which will involve designing and implementing a scheme that ensures the safe and efficient return from a sanitary, regulatory, technological and cultural standpoint, both for the people and the company.

This transition will need a systemic and multidisciplinary approach to be a safe and efficient one based on the following 5 core points:

- ▶ **Workforce:** safety at work should be complied with and the in-company and virtual workforce should be adapted in an organic and flexible way.
- ▶ **Leadership and talent management:** The challenge will be leading both in-company as well as virtual teams and achieving the balance between the worker’s physical and mental wellbeing.
- ▶ **Communication:** Communication should be clear, constant and direct, focused on the training on new safety and prevention protocols and policies.
- ▶ **Technological solutions:** Implementing digital tools to monitor health and ensure a comprehensive approach of the “Employee Journey”, that is, returning to the physical office safely and efficiently.
- ▶ **Preventive Human Resources measures:** Implementing the safety and prevention recommendations for Covid -19, issued by the different parties involved in this matter (the Government, labor unions, company associations, etc.) and by the company itself.

Based on the Employee Journey, it will be necessary to adopt different tools to back up, compile and analyze data and help companies to manage safely the process of returning to the physical office, monitoring the health at an individual level and managing the interactions between people.

Moreover, the transition will in time give place to a “transformation” which will allow us to tap into this time to rethink the Company and Talent focus, using it as a turning point to redefine the essential aspects which will keep the Company and the Talent relevant in the market.

In these circumstances, the challenge for the companies from a labor standpoint would be placed on recognizing the consequences of experiences and changes in the working environment which, to a greater or lesser degree, we went through as individuals, the pandemic having changed us on different levels allowing us to see, think, value and act differently, not only as regards to EY services but also with respect to the family, consumption, our social relationships and the use of technologies.

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# Australia



**Andrew Ball**

## Covid -19 – Next and Beyond

### “Return to work” issues

As restrictions start to lift in Australia, employers face new challenges in ensuring a safe work environment for its employees. The National Cabinet has provided ten National Covid -19 safe workplace principles which set out key issues to be considered by employers as they plan the return of employees to the workplace, and place an onus on both employers and employees to actively control the transmission of Covid -19 while at work.

In the immediate short term, work health and safety (WHS) risk management will be a key guide for how workplaces will change physically, involving hyper diligence around hygiene, workplace cleaning and adherence to distancing to limit the risk of exposure to Covid -19.

In the longer term, the re-design of workplaces is inevitable, prompting employers to reconsider elements such as open plan offices, hot desking and the increase in automated technology including sensor doors and lifts, avoiding the use of employee touch points.

### Rules for working remotely

Each state and territory has determined its own restrictions. In New South Wales (NSW), during the peak of the state’s lock down, the NSW Public Health Order (Order) effectively made it obligatory for employees to work from home unless it was not possible for them to do so. This obligation has now been removed from the Order and employees are free to attend work even if they are able to work from home. There is now a new obligation imposed on employers in NSW which means:

- ▶ they may ask employees to return to their workplace (but cannot oblige them to do so) where working from home is still possible. Employees may refuse this request which is an important difference from the position prior to the Covid -19 position; and
- ▶ where it is not reasonably practicable for employees to work from home, employers may require them to attend the workplace. In the event employees are fit to return to work and not able to work from home, and they elect to remain at home as a precautionary measure, they will no longer be entitled to wages or personal leave.

### Adjusting HR costs and headcount

Employers across Australia have adopted various measures to cut workforce costs and protect employee headcount during Covid -19. The initiatives observed broadly include:

- ▶ access to government assistance such as JobKeeper paying eligible employers \$1,500 per fortnight, per eligible employee – directing reductions of hours / pay to this level;
- ▶ temporary stand-down of employees;
- ▶ re-direction of resources from areas that have slowed, towards busier teams;
- ▶ temporary cuts in bonuses and remuneration.

### Other key issues

- ▶ determining workforce arrangements once the JobKeeper payment scheme comes to an end in September 2020;
- ▶ transitioning full-time employees to part-time working arrangements;
- ▶ weighing up the cost of engaging a more casual workforce and the risks associated with casuals being considered ‘employees’ with additional entitlements.

### Tips for employers

- ▶ Plan: Employers must comply with statutory work health and safety (WHS) obligations, and should undertake a risk assessment and develop a Covid -19 Safe Plan in preparation for workers returning to the workplace;
- ▶ Consultation: consulting with workers about the return to work plan, including about who will be returning to the workplace. Key positions may need to be identified which are absolutely required to return and others who are interested in returning should be a first step consideration.

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# Austria



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## Back to Normality? Balance between Flexibility and Compliance

The Covid -19 crisis has changed working life in Austria fundamentally within a very short time. Although this opened new perspectives, challenges remain, including various labor law and HR related aspects.

### Return to work

Because of the Covid -19 pandemic, many employees were sent to home office by their employers. Since the Austrian government now lifted and/or reduced its measures, employees are gradually returning to the office. As a result, employers have certain obligations arising from their duty of care.

Employers must for example assess which measures have to be introduced into the employee's daily working life to protect their employees and fulfill their legal obligations. This includes hygiene measures at the place of work or the

identification of employees who might belong to a risk group to which special rules apply. Further, employers who employ a high number of employees may introduce tracking or registration systems to enable the retracing of possible infection chains. In case a works council is installed, special rules may have to be considered.

Further, employers might also be confronted with employees refusing to return to the office. If the employer has reserved a right of withdrawal, the return to the office can be ordered. Even if this is not the case, there are good reasons for employers to terminate home-office agreements unilaterally since home-office was implemented because of special circumstances (Covid -19) for a limited period of time only.

### Home-office rules

Although many employers are currently asking their employees to return to the offices, the Covid -19 pandemic has accelerated the trend towards home-office. In general home-office must be agreed between employer and employee. This can either be done directly in the employment contract or by means of a separate agreement. If employees worked from home during the last months and if this is to be (partially) maintained in the future, a corresponding contractual agreement is therefore indispensable. This also applies if the employees shall work from home only on some days while the office shall remain their main workplace. To ensure a smooth workflow, it is recommended to stipulate the key points in an internal company guideline (home-office policy). Such a home-office policy must be contractually agreed between employer and employee. If a works council exists, it is possible to conclude such a framework agreement by means of a plant agreement.

A home-office agreement should especially include rules regarding the specific place of work, the duration of the home-office agreement (temporary or permanent including termination possibilities), the daily and weekly working hours, as well as specifications regarding the provision of work equipment and the bearing of costs for private expenses such as electricity, internet or hardware.

Further topics to be considered are the reachability of the employee, rules regarding the extent of home-office work or a required minimum presence in the office. It is also important to include measures regarding data security and comprehensive confidentiality obligations. Possible applicable provisions in collective bargaining agreements must be considered.

Some employers might also contemplate the introduction of control mechanisms or systems. Depending on the intensity of control, the consent of the works council or, in the absence of a works council, the consent of the employee, may be required.

### Adjusting HR costs

The introduction of home-office as an integral part of the work life as well as flexibility measures in general, can lead to a reduction of costs, e.g. by reducing workspaces in the office and thus decreasing rental costs.

### Conclusion for the future

Employers can take advantage of the current situation to introduce flexible working methods and new perspectives - benefiting both employers and employees. However, this should only be done on the basis of a sound legal framework to ensure a smooth work operation.

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## Brazil



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### Covid -19 – Next and Beyond

#### “Return to work” issues

Brazilian states have been relaxing social distancing rules and promoted the reopening of non-essential activities in the past weeks. However, as there is no vaccine so far and Covid -19 is still a relevant threat, companies are dealing with complex issues while returning to work/workplace: health and safety of the employees, facilities aspects, and the need to comply with several new legislation requirements. In this regard, Federal Government has published several measures that need to be observed by companies, which includes creating protocols to identify and guide employees that might be infected, increasing distancing between employees, promoting remote work, among many others. According to the Government guidelines, companies also need to keep record of all communications about protocols in place as well as of cases of confirmed and/or infected employees, as well as of those who had contact with infected individuals.

On this matter, some companies are discussing the possibility to implement new tools and processes to support the compliance with such guidelines.

Nonetheless, companies are also facing the digital transformation being accelerated, so that employees may perform their activities remotely on a permanent basis.

#### Rules for working remotely

Brazilian legislation regulates remote work since the Labor Reform, occurred in 2017. But since Covid -19 pandemic was declared in Brazil, some rules were made more flexible.

Due to Covid-19 pandemic, a special Temporary Measure published by the government made remote work rules more flexible. Companies were able to communicate employees up to 48 hours before the change, even through electronic communication, with no need to formalize an amendment to the work contract. However, such possibility was in place until July 19th.

After this date, companies are subject to the regular remote work rules established by the Brazilian Labor Code. Therefore, it is necessary to have a formalization in the work contract about the remote work regime and both employer and employee must agree with the regime. Additionally, according to the Labor Law, remote work means that most of the work is executed outside the company's location.

Employer needs to formalize also with the employee the responsibility to provide any type of infrastructure or expense reimbursement related to remote work. Work shift control rules established by the Labor Code are not applicable to remote work regime.

In addition, guidance on precautions to prevent illness and accidents at work, while working at home, must be provided in written by the employer.

#### Adjusting HR costs and headcount

During this pandemic period, Brazilian

Government has published more flexible rules regarding workforce, such as the possibility of work contract suspension and compensation reduction by proportional reduction in the work shift.

Also, the payment of contributions due on payroll have been postponed and reduced in specific cases.

However, some companies have evaluated other alternatives to reduce costs, due to the relevant reduction in the demand. According to the statistics presented by the Ministry of Economy, in April 2020, the dismissals were higher than admissions in more than 860 thousand.

#### Other key issues

Covid -19 may be considered as an occupational disease in Brazil. Therefore, it is important to make sure all necessary measures have been taken to prevent infection in the workplace, including the formalization of procedures and communications to employees.

#### Conclusions

The pandemic has pushed companies to review their strategies, adapt the way they render services and focus on people, considering the new standards of hygiene, safety of their employees and, also, the transition to the new normal and the transformation they will have to face in a world post pandemic.

Therefore, it is time to adapt work regimes and also rethink how to achieve the company's goals by providing the best employee experience and motivation even through the adoption of remote work regime on a permanent basis, as well as making sure that labor costs and risks are well mapped and addressed.

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# Bulgaria



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## Getting “back” to the new normal

### The new normal – yet to be expected in Bulgaria

Between 13 March and 13 May 2020 a state of emergency applied in Bulgaria changes to a number of employment regulations were made. From an employment law perspective the new legislation that was introduced to address the Covid -19 situation provided for a simplified procedure for employers to switch to remote work. Under Bulgarian law remote work can be introduced by a mutual agreement between the employer and the employee. However, the new legislation provided for a unilateral right of the employer to introduce remote work by a simple order. The legislation was intended to apply for the duration of the state of emergency only. However, after the state of emergency ended, this option was extended for an additional period of two months thereafter (i.e. until 14 July

2020). This was a reasonable approach as employers received a period of two months to arrange the signing of remote work arrangements with their employees or to arrange the return of employees back to the offices gradually. In order to be able to address the crisis, the emergency legislation also allowed employers to force their employees to up to 50% of their annual paid leave. This was a relieve for employers to deal with the fact that during the state of emergency in fact a number of employees were prevented from work but kept accumulating annual paid leave at the cost of the employers.

### Remote work regulation – old or outdated

Bulgaria did not make an exception compared to other countries and COVID - 19 turned out to be a huge driver of digitalization of the employment relationships. The current legislation, however, has not been amended recently and is deemed to be impractical in some respects. By way of example - the employer remains responsible for healthy and safe (H&S) working conditions and, respectively, can be held liable in case of breaches of the applicable H&S rules ... which have taken place at the employee’s home. An employee may be subject to inspection by the competent authorities and the employer which is somewhat awkward considering the fact that remote work employees usually work from home or from any place they find suitable – including parks, restaurants, etc. It would also be a practical challenge for each employer to determine whether an accident which has taken place during working hours qualifies as a work accident or not since employees working from home would generally combine home and work tasks – e.g., by doing the laundry or cooking in the work breaks. There is still no relevant legislation or case law which provides for clear rules to determine whether an accident during work from

home qualifies as work accident or not. Naturally, employers are reluctant to be exposed to the risks related to this uncertainty and it would make sense to limit their obligations to the preparation of appropriate H&S rules and instructing the employees in accordance with the law. Another issue which is still a hot topic is the fact which part of the work costs in case of working from home may be left with the employees. Under the current law, in general, all costs shall be borne by the employer unless the parties agree otherwise. However, all costs, such as internet, electricity, water supply and heating at home are borne by the employees anyway and it may be reasonable to consider options for the employer to be protected from claims from employees that all such costs shall be borne by the employer just because this is possible under the law. On the other hand, whenever an employee uses its own equipment to perform its work obligations, the employer may at least consider to cover the costs in case of defects or other issues with the equipment. By doing this, the employer would still benefit from the option to save costs for new equipment. It seems that remote work will become more and more common. This may be an option for employers to reduce office costs. However, it is yet to be seen whether the new H&S requirements will not affect all open space offices by providing for a minimum distance between working places which is much larger than what is currently common. Changes to the existing employment legislation are being discussed intensively. Thus, we will be able to see in next time whether the new challenges will be addressed appropriately.

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# Canada



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## Covid -19 – Next and Beyond

While Canadian employment law is governed by each of Canada's 14 jurisdictions (10 provinces, 3 territories, and federally in the case of federally regulated industries), below are some general matters that employers should consider in all jurisdictions with respect to the impact of Covid -19.

### Rules for working remotely

While not feasible for all industries (e.g. manufacturing), Covid -19 has forced many employers to shift their employees' place of work from the office to home. This is generally permissible under Canadian laws given the circumstances.

### Adjusting HR costs and headcount

Employers may not make material unilateral changes (e.g. pay or hour reductions, etc.) to employees' employment agreements. If they do, an employee may resign and claim constructive dismissal. If a constructive dismissal claim is successful, the employee will be deemed to have been dismissed by the employer without cause, entitling them to termination notice and severance.

While some jurisdictions have enacted legislation to eliminate certain claims that would have otherwise been statutory constructive dismissal, common law claims may still exist. For example, Ontario amended its Employment Standards Act, 2000, to allow employers to reduce employees' hours/wages in response to Covid -19. While this would disallow the employee from bringing a statutory complaint to the Ministry of Labour, employees may still bring a constructive dismissal claims before the courts.

To minimize the risk of constructive dismissal claims, employers should seek employees' written agreement to the change.

Employees that are dismissed by an employer are still entitled to their typical termination and severance entitlements.

To mitigate the economic impact of Covid -19, Canadian governments have implemented a number of measures ([link](#)). For example, the Canadian Federal Government initiated the Canadian Emergency Wage Subsidy to help employers keep employees on payroll. If an employer has a prescribed reduction in revenue for a particular period, they will be entitled to claim a subsidy of 75% of eligible remuneration paid to the employee, up to a weekly maximum of \$847.

### Return to work

Employers have a general duty to maintain the health and safety of its workers. In the Covid -19-era, this could mean having employees work from home where they are able. To the extent the employer reopens their office, they should ensure they implement, among other things:

- ▶ Use of personal protection equipment (PPE) (e.g. masks, gloves, etc.)
- ▶ A Covid -19 policy to maintain a safe work environment (e.g. distancing protocols, direction on the use of PPE, etc.)
- ▶ A protocol for identifying those with high risk of being Covid -19 positive, and ensuring minimal exposure to the rest of the workplace (e.g. having workers who have symptoms work from home)

If employers believe they are maintaining a safe work environment but employees still refuse to come to work, employers should look for guidance in the applicable health and safety legislation and perhaps obtain an independent assessment from a government health and safety officer. To the extent employees refuse to return to work due to a protected human rights ground, employees should be accommodated to the point of undue hardship.

### Conclusion

Employers must balance the need to return to normal business, with their employees' safety and the general community interests. Returning to the office earlier may lessen the immediate revenue impact. However, if done improperly or too hastily, it could create health risks for employees and perhaps extend the negative impact of Covid -19 on not only that business, but the entire community.

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# China Mainland



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## Covid -19 – Next and Beyond

### “Return to work” issues

Even as Covid -19 continues approaching its peak in China in late January, many enterprises were preparing for the return of workers and customers gradually. The official first day of backing at work was February 10 , but with mixed messages from both businesses and the government, running the gamut from mandatory self-quarantine to actively encourage companies to resume work. Up to now, with the epidemic gradually under control, the vast majority of enterprises have resumed normal operation and people return to work.

### Rules for working remotely

China laws keep silent concerning working remotely. Only since the outbreak of Covid -19, the Ministry of Human Resources and Social Security and local administrative governments have issued

relevant guidance on working remotely during the epidemic, which specifies that for the employees who can't arrive on time or the enterprise can't restart production due to the epidemic situation, the enterprise, whose business with the conditions to arrange employees to work at home through flexible working methods such as telephone and network, shall be guided to actively communicate with the employees for such arrangement .

As for the management of employees who are working remotely, in practice, it should be noted that there will be managing problems related to the employees' attendance management and the employer also needs to consider how to manage the employees' effective working time and working result assessment on position basis.

In addition, based on the China Employment Contract Law, the working location is a mandatory item in the employment contract, thus if an employer would like to arrange the employee for home office work/telework, it should secure the employee's agreement. Alternatively, if the home office work/ telework is applicable to most of the employees, then collective consultation/ agreement through democratic consultation with trade union/employee representative will be applicable as well.

### Adjusting HR costs and headcount

For the enterprises with difficulties and are struggling in business, enterprises and employees are encouraged to reduce HR costs in order stabilize positions through various approaches, such as

i) employers may consult with employees to give priority to use statutory annual leave and welfare leave or even no pay leave upon securing the employees' agreement.

ii) employers may consult, through democratic procedures, with employees, trade union or employee representatives to stabilize the job positions by adjusting the salary, rotating the work position, shortening the working hours, etc.

iii) employers could apply for special working hours system with the local government, which including comprehensive working hours system and non-fixed working hours system on positions basis. The working hours of employees under such two special working hours systems are not subject to the limitation of the standard working hours (8 hours per day, 5 days a week), and the overtime payment rules are not applicable as well, which will definitely reduce the labor cost.

According to China Employment Contract Law, an employer may only terminate an employee unilaterally with the legal grounds specified under the law, termination at-will by the employer is not acceptable. For the enterprise that has to conduct layoffs due to the epidemic, it needs an applicable legal ground and a business justification. In general case, the mandatory severance based on the employee' service years should be paid for the termination and layoffs due to the reasons not attributable to the employee.

### Conclusion

As the Covid -19 epidemic is still spreading around the world, enterprises should consider legal and appropriate ways of staff placement and management in order to reduce and overcome the negative impact of the current epidemic on the cost and management of employers.

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# Colombia



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## Covid -19: Labor next steps

### Background

Current pandemic has shown the weakness and strengths of our labor structure. Notwithstanding, our local government has created several regulation in order to adapt labor matters to this new reality. Most of them correspond to transitional measures due to Covid -19, however, economic sectors have considered them as permanent ones that are changing how we perceive labor relationships.

### New working models

Employee's safety is the condition to operate. Colombian workforce will be divided in two main groups:

1. The ones who will perform activities in companies' facilities and;
2. Those who can perform their activities under "Home Office" figure.

### *Physical operations*

Each industry such us construction, retail and tourism, among others, must comply with the implementation of biosafety protocols stated by Resolution 666 of 2020. Each local city through their mayors, must approve and grant an authorization to operate.

### *Home Office*

Colombia, though Law 1221 of 2008 created telework. For the operation of it, is required: 1. Colombian labor risks (in Spanish "ARL") entity must evaluate employee's workplace and identify the eventual risks derived of the execution at home; 2. Payment of a non salary benefit named "connection allowance"; 3. Regulation of telework procedures mainly in how the labor relationship will be developed.

Due to the existence of the current health emergency, Ministry of Labor created the figure "home office" non comparable with telework. Main difference is the non payment of the connection allowance, and the non identification of eventual risks by the ARL, however, employer should notify this entity about the home office novelty.

Notwithstanding, recently the Ministry of Labor determined also the accomplishment of the following issues for home office: 1. How working hours will be established; 2. Employee's unavailable spaces; 3. Specific circumstances that affect employees working hours, such us the need to share with their children due to home schooling.

### HR adjustments

The main purpose of our local government is the maintenance of companies' headcount and workforce. In early March, certain companies enter into a dormant contract figure with no salary payment,

causing a diminish in employee's income. With allowances for company's payroll, Ministry of Labor wants to promote the maintenance of the workforce in a 100%. Also, by mutual consent, employer and employee can agree the non payment or in quarterly basis of extralegal benefits and fringe benefits that will grant a relief to employers.

### Challenges and return to work

Even though is notorious the advances of employee's adaptation to new work schemes, employers are still facing a misunderstanding in the implementation of the several regulations stated by the local government. Creating protocols related to SG-SST for physical return and home office, have been a challenge for economic sectors that needs to operate but do not have the resources to adapt their daily basis to new schemes.

Labor sector is one of the most affected due to Covid -19 . As advisors, we have been challenged to adapt EY clients to new protocols and measures, mainly the need to migrate to digital processes and home office. EY clients discovered employee's resilience and the importance to involve technology and working tools to this new labor reality. As an advise, protocols can be adapted and most of them will grant efficiency in internal schemes. However, we can not miss the human factor that every policy must have. The latest will guarantee our workforce and the adaptability to changes.

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# Costa Rica



Laura Navarrete Hernández

## The Labor Vaccine for Covid -19

The current global pandemic and the national state of emergency enforced in Costa Rica have required that the local authorities take restrictive measures, establish business continuity protocols, and define the total or partial closing of certain sectors. In order to guarantee compliance with new regulations, employers must be kept up-to-date and well advised. Otherwise, they are exposed to sanctioning processes, workers' complaints, and even sanitary closing orders issued by the Ministry of Health.

### Physical return to work

Some businesses have continued to operate on-site, and some have closed altogether due to Government restrictions. Others have had a hybrid approach to comply with the percentage of occupation that the company is allowed on-site. Finally, there are companies that, even though have established remote work for all employees, are now considering a physical return to the companies' premises.

If entities wish to resume the operation on-site, compliance with the guidelines issued by the

Ministry of Health is essential to guarantee the continuity of the business. On addition to such measures, it is key that employers define protocols that are not one-size-fits all, but that fit the company's requirements in specific.

Such protocols may consider:

- ▶ Defining shifts.
- ▶ Take the temperature and prohibit the entrance of anyone that has evident symptoms.
- ▶ Require everyone to wear protective masks.
- ▶ Limit the use of the dining room or other common areas.
- ▶ Reinforce cleaning and disinfection of workspaces.
- ▶ Keep adequate traceability of the physical contacts within the company personnel.
- ▶ Properly train the staff member on the measures implemented will be crucial to prevent the spread of the virus and sanction non-compliant employees

### Remote work

Costa Rica has a law that regulates overtime since September 2019, making it the first country in the Central American region that had this regulation issued.

Currently in Costa Rica, working remotely is still a Government recommendation for the private sector. Thus, even though it is not mandatory, it has become a very common practice.

To apply it, companies must have both a policy that regulates how the of work-from-home modality will be applied, and a written agreement signed with each employee that defines the conditions applicable to their case. This agreement should regulate aspects such as: who will provide the equipment, the obligations that each party has to comply with, amongst others.

Remote work has come to stay, and it will be part of the new reality. In order to maintain it as a permanent practice over time, it is key to digitize processes, define new benefits and tools that help increase staff productivity, define adequate forms of monitoring and controlling the people's performance remotely, safeguard confidentiality, ensure that the connection between team members

is maintained, avoid work hazards due to lack of conditions to work from home, protect the employees' fundamental rights (data privacy, amongst others).

### Adjusting HR costs and headcount

In Costa Rica, companies can dismiss employees without having a just cause, as the country does not have stability in the employment relationship as a general rule. Therefore, if the company is not committing a discriminatory action by dismissing an employee, it is possible to do so based on the employer's free will and as long as the proper indemnity is paid.

In spite of the above, due to the current pandemic, the authorities created alternatives to avoid the termination of employment relationships:

1. The suspension of the contract due to force majeure has always been an option, but new regulations were enacted to digitize the request and expedite the authorities' resolution.
2. Also, the employer may unilaterally reduce the working hours of the employees, and proportionally affect their wage, when its gross income has been affected by the national emergency.

These measures are only temporary, and, when the term for which they were granted expires, employers will have to analyze if they wish to maintain the measures as is, submit a new application, resume work, or dismiss workers with employer responsibility.

No matter the decision, strategic planning and risk management are going to be the best allies for companies in the current stage, as well as for the next and beyond. It is key to have clarity about the company you want to have post-pandemic and implement any measure (or combination of measures) with that vision in mind.

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# Cyprus



Charalambos Prountzos

## Covid -19 – Next and Beyond

### Introduction

The outbreak of the coronavirus pandemic undeniably constitutes a turning point in history. A health crisis that has rapidly evolved and continues to evolve to a financial crisis. The effects of the pandemic have, inter alia, been very apparent in the workplace and as a result, businesses had to adopt new and flexible models in order to provide a healthy and efficient environment to their employees but also to ensure their viability.

### Return to work

The gradual lifting of the restrictive measures has enabled businesses to start planning their employees' return strategy. In order to ensure health in the workplace, businesses that wish their employees to return to work, must strictly follow and comply with the Decrees of the Minister of Health and the respective Protocols issued by the competent Ministry. In particular, it is compulsory to place sanitisers in the entrance of the workplace; ensure a continuous and adequate air flow and that at least 2 meters distance is kept between individuals;

daily cleaning and decontamination of highly touched surfaces and toilets.

Further to the above, businesses may introduce additional measures in order to accommodate "return" to work. For instance, there are companies in Cyprus that require employees, prior to coming into the office, to obtain a permission from their supervisor. Also, companies maintain a record of employees coming into the office and, subject to GDPR rules, request clients to fill in a questionnaire with regards to their recent travelling. Additionally, there have been active efforts to minimise any possible danger hubs and to that end, common spaces such as the kitchen are temporarily restricted.

### Rules for working remotely

In view of both the limitations that still exist in relation to the concentration of a certain number of people in one space and the priority of employers to ensure health, the latter, to the greatest extent possible, provide employees the opportunity to work from home. Notably, there is no legislation in place regulating the minimum requirements to work remotely. Therefore, such arrangement is regulated and monitored by each employer, who should find ways to maintain their personnel engaged and productive, whilst caring for their wellbeing. Company leaders should clearly communicate to the employees the current circumstances and developments with regards to the business. Additionally, they should put in place working from home protocols and incorporate the use of technological means.

It is important that managers set an example towards their employees, in order for the latter to mirror their behaviour and not to feel pressure that they should have been in the office. Furthermore, the peculiarity of the present circumstances is that, offices, schools and day cares are closed and also possibly close family members belong to vulnerable groups and thus remote workers face the challenge of focusing on work while balancing the demands of family members. Therefore, it is critical that managers have a clear understanding on their employees' availability.

### Adjusting HR costs and headcount

Inevitably, companies must assess and review all matters relating to new hires, workforce restructuring, promotions, trainings and redundancies. The extent of the effects of the pandemic are still unknown and thus companies need to be pro-active in order to ensure their viability.

More specifically, companies must assess the needs of the business; where feasible to make use of governmental aid; and to the extent possible to avoid termination of employment. However, should termination of employment be deemed inevitable, companies should seek legal advice since different legislation applies for collective redundancies.

### Other key issues

According to Cyprus law, if an employee is terminated due to redundancy, such termination is considered lawful and he/she is compensated by the Redundancy Fund. A justified reason for termination due to redundancy, inter alia, is the contraction of the volume of work or business. However, the Court has set strict criteria to show that such reason for redundancy is justified. Notably, the contraction of the volume of work or business must not be seasonal or periodic and the Company's usual turnover over the last few years is also taken into consideration. Therefore, it is unlikely that the pandemic will constitute a justified reason for termination of employment.

### Conclusion

Taking into consideration all the above, it is critical that employers take steps to facilitate a healthy work environment for employees to return to work but at the same time accommodate remote work. Furthermore, it is crucial that in order to ensure business viability, employers assess the circumstances before them and seek professional advice on the way forward.

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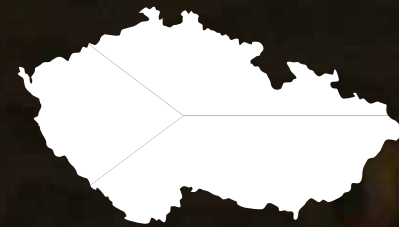
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## Czech Rep



Ondřej Havránek

### Covid -19 – Next and Beyond

The Czech employment landscape has undergone significant changes during the Covid -19 pandemic. Work outside of the employer's workplaces, which most Czech employers hesitated to allow before, has become much more widespread. Hand in hand came a boom in digital tools used for work. What will be the longer-term effect of these changes?

#### “Return to work” issues

There are no Czech hard law rules regulating the return to work as such. The obligation to wear face masks at workplaces has recently been cancelled, with the exception of medical facilities in locations with higher incidence of Covid -19 (including Prague). However, its renewal in the autumn can be expected. According to a standpoint of the Ministry of Health, employers are not obliged

to provide face masks to employees, or any contribution for purchasing them; it is the sole liability of employees to have masks (with the exception of e.g. medical workers).

There are certain additional temporary safety rules imposed on various business activities, subject to frequent change. For example, customers shall be kept in 2-meter distance from each other, stores selling food must provide plastic gloves or other hand protection for free to customers.

The Ministry of Health has published guidelines (recommendations) for a safe return to work, describing recommended workplace measures, guidance for business trips and meetings, preparing the workplace for the case of a Covid -19 positive employee or visitor etc. Under these guidelines, employers shall prepare a ‘return to work plan’ and discuss it with employees prior to starting the returns. Further, e.g. disinfectants shall be made available to all persons at the workplace, contact between persons shall be limited, cashless payments preferred etc.

#### Rules for working remotely

As a general rule, employers have a right to request employees to come back to the workplace anytime. Employees are obliged to perform work at the employer's workplaces, unless they agreed in the employment contract that the place of work is only their home. Agreeing on prolonged home office with employees at increased health risk (or with “at risk” household members) is subject to negotiations between the parties.

#### Adjusting HR costs and headcount

Many employers are considering ways to reduce their HR costs and headcount. Employers who unilaterally determined salaries of their employees in salary assessments or internal regulations can

decrease salaries without the consent of employees, subject to limitations such as minimum/guaranteed wage and equal treatment of employees. Changing salaries agreed in employment or other contracts is only possible with the employee's consent. Furthermore, discretionary bonuses are often discontinued.

First option to reduce headcount is usually limitation of the number of agency workers and workers on the basis of temporary agreements. Subsequently, employees still in the probation period are let go. Last option is termination of employment relationships due to organizational changes (redundancies); employers may serve notice with a 2-month notice period and 3-month severance payment (in case of 2 or more years of seniority). Special notification/consultation rules apply in case of collective dismissals.

#### Other key issues

Many employers are dealing with the inability to assign work to employees for various reasons. The government support program called Antivirus, which compensates (at least partially) salaries that employers have to continue paying in these cases, has been prolonged until the end of August 2020.

#### Trends

Employers should carefully review their documentation relating to remote work, so that they have more flexibility in implementing it whenever needed, while maintaining necessary control over employees. Digital training of employees is a must, as well as continuously adjusted plans for keeping a safe workplace.

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# Finland



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## Covid -19 – Next and Beyond

### Back to workplace

The restrictions and safety instructions stipulated by the Finnish Government and officials are being gradually dismantled as we are shifting to the time after the Covid -19 peak.

The Occupational Safety and Health Act imposes an obligation for the employer to ensure that the workplace is safe and healthy for all employees. While employees are starting to return to workplace after months of remote working, employers are again facing new challenges in ensuring the safety and health of employees.

The new phase of the Covid -19 crisis may require updating the risk assessments and drawing up new instructions and internal policies to be followed when returning to the workplace. Special thought must be given to employees in higher risk due to Covid -19 and appropriate measures adopted in protecting the employees.

The Occupational Health and Safety Act

allows an employee to temporarily refuse to work, if the work is causing severe risk or hazard for the health and safety of the employee or other employees. If the employer is not able to ensure adequate level of safety and protection, the employees may have the right to abstain from work or from performing certain duties until sufficient safety measures have been implemented.

The abstinence from work must, however, be considered as a last resort, and the employee is required to minimize the detriments of his or her actions. The employee is entitled to receive normal salary during the period of abstinence from work under the Employment Contracts Act.

### Rules for working remotely

The employer is equally responsible for the safety and health of employees who are working remotely. The employer's capacity to monitor working conditions and working hours is limited in remote work and thus requires for developing good practices and guidelines for the occupational safety management and paying attention to the special features and hazards of remote work.

The new Working Hours Act which entered into force on January 1, 2020 introduced a remarkable change in relation to remote work. Working hours regulation was extended to cover remote work to the same extent as work done at the regular workplace. This means that working hours must be monitored and, for instance, overtime work compensated regardless of the place of work.

### Adjusting HR costs and headcount

The Finnish Government has implemented several temporary amendments to employment legislation to enable employers adjust their HR costs during the Covid -19 crisis. The measures include, e.g., more flexible procedure for executing furloughs by reducing the minimum negotiation times and notice period

as well as extending the right to furlough to fixed-term employments.

The amendments shall remain in force until 31 December 2020.

### Other key issues

The Finnish Government has also implemented new obligations for employers especially in case of dismissals on financial and production related grounds. An employer is obligated to re-employ a dismissed and still unemployed employee if workforce is needed to perform same or similar duties to those of the dismissed employee within nine (9) months of the dismissal. The extended re-employment obligation is in force until the end of 2020.

### Conclusion

Even though it seems that the Covid -19 peak has been defeated in Finland at least for now, the effects of the crisis will have a long impact for the working life and businesses. Furthermore, should employers need to implement any measures such as furloughs or redundancies, e.g. in case of a second Covid-19 peak, it is important to ensure that these are in compliance with the prevailing rules and regulations as these may change rapidly.

Putting aside the negative effects, this experience has also been an opportunity to re-think the future of working and to learn new skills and embrace new technologies in a very short time. Going beyond the crisis requires adopting these new skills and ways of work - also in order to ensure the resiliency in any unforeseeable future business disruption.

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# France



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## Covid -19 – Next and Beyond

While some companies never stopped their activity during the lock down, some are now resuming their operations, even if on a reduced basis than usual.

Companies that massively used the possibility to work remotely due to Covid-19 are now thinking about a *new modus operandi beyond Covid -19* and others are still at a standstill.

### Working remotely

Working remotely preexisted the pandemic, yet it is now been used as never before and will likely last. It is therefore essential to adapt collective bargaining agreements, guidelines and practices, on matters such as the right to disconnect, follow up of psychological risks, how to compensate employees, and how to equip remote employees in order to be compliant with local rules.

### Work environmental aspects

For companies with employees going back to their workplace, handling health and

safety measures is paramount, including social distancing, schedule changes, alternative teamwork, break time rearrangements.

One major step required by French law is to update the "Risk Assessment Document" (Document Unique d'Evaluation des Risques), in which all risks for each working unit must be identified. Indeed, the employer is accountable for its security obligation towards its employees. The update of the risks such as Covid -19 exposure, rearrangement of working spaces or remote work, must be mentioned.

This Risk Assessment Document must be done with staff representatives and more precisely the Social and Economic committee.

### Return to work

To arrange how to operate the business, to decide who goes back to work on site and who works remotely, employers will need to re-think its employee profile mapping.

Who must report to the workplace? How to ensure cohesion between those who continue to work remotely and those who return to the workplace? How to manage the more vulnerable employees?

### Social dialogue at the heart of HR adjustments

Companies may also have to adapt to situational constraints as the resumption of the activity takes place in an environment full of uncertainties.

French law now provides useful tools to make HR adjustments; the tools include strategic workforce planning (Accord de Gestion Prévisionnelle des

Emplois et des Compétences (GPEC)) and the Collective Performance Collective Bargaining Agreement (Accord de Performance Collective (APC)).

These tools allow employers to achieve great flexibility more easily provided they collectively bargain for these

changes. As an example, an employer can now modify contractual provisions of employment contracts

(ex – reduce pay by 10%) by collective bargaining without the need to obtain individual employee consent.

These HR adjustments need to be the subject of a consultation with the works council (now the "Social and Economic Committee"), labor unions, Covid -19 Referee, the Labor administrator and employees themselves.

Each change must follow its own legal procedure: information and consultation of the Social and Economic Committee, negotiation of a collective bargaining agreement, modification of internal policies, addendum to employment contracts.

Besides, the role of the occupational Doctor must be rethought, perhaps with a medical check-up when employees go back to their workplace or organizing a support program to accompany most vulnerable employees.

### Adjusting HR costs

The French government has been extremely generous in financing payroll costs through the "Partial activity program" whereby subject to a cap, the government is financing significant payroll costs. The most impacted companies will continue to benefit from these government financing measures implemented by the French government to limit the impact of the Covid -19 crisis and encourage employers not to massively reduce headcount. Despite this aid, while slowly returning to work, companies may unfortunately still need to adjust their HR costs and headcount.

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# Georgia



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## Covid – Next and Beyond

### Introduction

Georgia has successfully adopted respective measures and established necessary restrictions for prevention of spread of COVID-19, since mid-March, 2020. Together with social life, the restrictions applied to carrying out the economic activities. Consequently, during the period of the state emergency, most of the employees worked remotely.

The state of emergency was declared throughout the whole territory of Georgia from March 21, 2020 to May 23, 2020.

Any business activity was suspended for this period, except for the following:

- ▶ activities of medical institutions.
- ▶ activities of commercial banks.
- ▶ activities of payment system operators, among others.

The Government initiated the lifting of the established restrictions step by step, since May 23, 2020.

### Return to work

Currently, all business activities are permitted on the whole territory of Georgia, except for the following:

- ▶ organization of sports- events.
- ▶ organization of cultural and entertainment events.

The Ministry of Labor, Health and Social Defense adopted general and sector-specific recommendations to prevent the spread of COVID-19 while conducting permitted business activities. Specifically, maintaining at least 2 meters of social distance and wearing a face mask is a must. In addition, employers should maintain proper practice of hygiene and infection control. Further, they should develop a rotating schedule and/or provide the possibility for employees to work remotely.

### Working remotely

According to the recommendations, at the greatest extent possible, the employers should develop a flexible policy, which will allow employees to stay at home. This should be exercised, if the specifics of their job allow staff members to work remotely.

### Adjusting HR costs and headcount

In general, the Government did not initiate the type of changes from legal perspective that would allow employers to reduce workforce. On the other hand, they did suggest few incentives, including:

- ▶ exemption from payment of personal income tax.
- ▶ compensation for those, who lost their jobs or used unpaid leaves, also compensation for self-employed, among others.

### Other key issues

It is of particular importance that as of now, the international air, land and sea traffics are suspended. However, citizens of Georgia and their accompanying family members are eligible to enter Georgia.

According to the recent changes, the citizens and permanent residents of the following countries may enter Georgia through air transportation: Germany; France; Latvia; Lithuania; Estonia; Luxemburg; Netherlands; Poland; Portugal; Romania; Greece; Sweden; Croatia; Italy; Cyprus; Slovenia and Island.

Additionally, citizens and permanent residents of Germany, France, Latvia, Lithuania and Estonia shall fill in a questionnaire on their travel history for the past 14 days. Moreover, they shall undergo thermo screening and in case having fever of more than 37°C, the PCR test shall be performed.

### Conclusion

Employers are urged to thoroughly follow the recommendations and prevent the spread of COVID-19, while conducting their operations. The next important focus is maintaining the economic development, active business operations and adjusting Georgia to new environment. This attempt of balance is demonstrated by the last regulatory changes that on the one hand aim to ease restrictions and on the other establish strict rules to follow.

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# Germany



Bärbel Kuhlmann

## Covid -19 – Next and Beyond

### “Return to work” issues

Many employers want to return to a new normal - with their employees at their regular workplaces in the company. In this context, it is important to note that employers have a duty of care towards their employees. This includes the observance of hygiene regulations, the new SARS-CoV-2 occupational health and safety standard and measures against the spread of diseases. A company can fulfil this duty by, for example, distributing disinfectants or respiratory masks and giving hygiene recommendations. This also includes redesigning workplaces so that minimum distances are maintained, as well as increased cleaning measures.

### Rules for working remotely

In order to protect the health of their employees and comply with the requirements mentioned above, many employers choose to let their employees work from home, if possible due to the employee’s job. Under German law, there is currently no entitlement to work from home, but it is possible at any time by mutual agreement between employer and employee or by collective (bargaining) agreements. Under certain circumstances, employers can also unilaterally instruct their employees to work from home. However, even if employees work in their home offices, employers have certain obligations, such as the provision of work equipment and, if necessary, reimbursement of expenses incurred. The employers must also ensure that occupational health and safety is observed, and appropriate data protection measures are in place. In addition, employers are obliged to check compliance with the Working Hours Act.

### Reducing HR costs and headcount

Companies can also implement different measures to reduce personnel costs. This may include reductions in working hours of the employees, hiring freezes, reduction of external workforce and adjustments in the compensation structure. Companies can also avoid increasing salaries, suspend variable payments or certain benefits - but only in accordance with the contractual provisions. Team events or other company celebrations could also be cancelled. In the worst case, companies can also consider dismissals due to operational reasons. It is important that prior to a termination, it should always be checked whether the termination could have been avoided by less severe means such as

short-time work. Alternatively, employers can offer employees the possibility to conclude termination agreements.

### Other key issues

When home office or measures to reduce personnel costs and staff cuts are implemented, the co-determination rights of the works council - if existing - must be considered.

On April 27, 2020, the new SARS-CoV-2 occupational health and safety standard was officially announced in Germany which is intended to protect the health of employees from the hazards of the coronavirus. This includes, among others, the involvement of medical officers and occupational health and safety experts regarding occupational health and safety standards, less direct contact within the company as well as the equalization of processes and the special protection of risk groups.

### Conclusion

Employers are well advised to avoid that all employees return to the office in one step. Some employees should continue to work from their home offices in order to maintain the functionality of the business if an employee is infected with the coronavirus.

When returning to the office, it is particularly important to observe the hygiene regulations and minimum safety distances, which are part of the employers’ duty of care.

The employer can also reduce personnel costs through a variety of possible measures and – as a last step - also reduce staff.

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## Greece



**Maria Rigaki**

### Covid -19 – Next and Beyond

The global outbreak of the Covid -19 pandemic has taken global markets by storm and has had a profound impact on the ways we work and live. Greece is widely accepted to have handled the health aspect of the pandemic successfully, but the pandemic has caught the Greek economy and businesses at a stage of recovery following a long-term financial recession where unemployment rates in some cases had literally exploded above the rate of 20%.

It is clear that the main goal of the Greek Government is to introduce measures that could help employers save positions.

#### Adjusting HR costs and headcount

In this context, several measures were introduced, currently, however it is important to mention the state aid mechanism "SYNERGASIA" (Law 4690/2020).

The mechanism for the support of employment in the form of financial support of employment, shall remain in force for the time period from 15.06.2020 until 15.10.2020 and may be further extended.

The mechanism applies exclusively to employees who, on the date of publication of the Law i.e. on 31.05.2020, were employed under a full-time dependent employment agreement.

Companies participating in the mechanism, may proceed with the reduction of the weekly working hours of part or all of their personnel, up to 50%, according to their business needs.

Employees of the companies participating in the mechanism, shall receive state financial support for short-term employment, which shall amount to a percentage of 60% of their net salary, corresponding to the time period during which they do not provide work. In the event that the net salary of the employee (i.e. the total amount of the part of the salary paid by the employer and the part of the salary paid by the State), after the above adjustment, is less than the net statutory minimum salary or daily wage, the difference shall be covered by the state budget.

Companies that make use of the mechanism are obliged not to proceed with the termination of the employees who are included in the mechanism and, in the event of such a termination, it shall be considered null and void.

#### Rules for working remotely

Although provisions related to Covid -19 enabled work from home arrangements (and mainly the right of the employer to unilaterally impose it as a working condition), it is important to note that the related standard legal framework dates

back to 2010. In principle, according to article 5, par. 2 of the Law 3846/2010, teleworking may not be imposed unilaterally by the employer. It may be agreed either at the beginning of the employment agreement or later during the execution of the employment agreement.

Based on said provisions, the employer is obliged to communicate within eight (8) days from the commencement of teleworking agreement, in writing to the employee all the information related to the execution of his/her working tasks and duties and in particular, all the information related to his/her supervisors in the company, his/her working tasks and duties in details, the way of calculation of his/her salary, the way of calculation of his/her working time, the reimbursement of costs incurred during the provision of work remotely (i.e. cost related to telecommunications, equipment, damages of devices).

In addition, the employer bears the cost to compensate the employee for all expenses arising from the use of telecommunications and other technical equipment, including equipment belonging to the employee.

It is clear that said legislative framework needs to be further updated in view of the new reality introduced by Covid -19.

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# Guatemala



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## Covid -19 – Next and Beyond

The Covid -19 has made employers and employees focus efforts in prevention of the spread of the virus in the workplace. The same concern has the Guatemalan authorities whom have issued during this time of quarantine, dispositions to prevent an outbreak in the workplace and procure health and safety working spaces.

Regarding the aforementioned, in Guatemala the employers have developed internal policies and protocols which include teleworking to the extent possible and in case not; applying procedures to prevent outbreaks within working space.

So far, on the teleworking policy, Employers are aware that this modality has not a specific law that regulate its implementation in Guatemala. Due to this, the home office modality continues

being a challenging labor matter, such as the case of the effectiveness of the applicability of the disciplinary system before labor faults made by employees, and also how to guarantee that employees are working from safe and healthy places, even in their own houses in order to assure the performance of the services, but bearing in mind the perfect balance between their personal and professional life to avoid labor accidents or incidents and its consequences.

In fact, for some employers that have experienced working off-site modality and have had an excellent outcome, it has become the new reality; one that brings benefits and savings over the operational costs of their companies such as: leasing, maintenance, parking lot, coffee shop consumables, articles and services for cleaning, telephone, internet and others. An ethical concern has raised that employees are absorbing operational costs as an increment of their personal budget; even the workforce reduction amid of the Covid -19, now is reviewed from other point of view in order to have a tight payroll without some dispensable positions so far, restructuring the headcount policy of their companies.

On the other hand, there are employers that are visualizing telework modality as a temporary way of executing responsibilities of employees until Governmental limitations are released and employees can get back to work. Among this: health measures to diminish risk to get infected in the workplace.

To most of the EY clients we have insisted that it is of the essence to be updated on a daily basis on new laws and regulations that are continuously being issued because of health situation specially new dispositions on occupational health and safety issued by the Ministry of Labor,

Governmental Agreement 79-2020, and Ministerial Resolution 146-2020, issued by Ministry of Health, containing obligations and prohibitions that must be fulfilled in the workplaces to avoid Covid -19 outbreaks. The way companies and organizations are implementing policy is convincingly a win-win strategy for both employers and employees.

As a final note, EY recommendations for Employers are:

- ▶ Keeping updated from all the regulations issued to prevent the virus contagious in the workplace.
- ▶ Develop a step plan of compliance and review the protocols, policies and occupational health and safety plans currently approved within the organization and modified them in case they don't cope with reality.
- ▶ Establish appropriate communication channels to hold and manage the relationships with employees, clients, suppliers and authorities.
- ▶ Train occupational health and safety leaders within the organization, being key allies for management of the Pandemic Covid -19.

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# Honduras



**Andrés Lacayo Rodríguez**

## Covid -19 – Next and Beyond

### Return to work in Honduras

Companies around the world are struggling with the Pandemic situation. Honduras, is no exception. Today Honduras has one of the highest rates of COVID infections and deaths around the Central American region. This not only brings pain and suffering for the country, but also brings lots of unemployment nationwide. As you may know, Honduras is also one of the poorest countries around America, also our history for analphabetism and corruption is not the best. This matters since we are living a new different era and a “new normal” in which our country is not fully prepared. I believe only few countries were prepared for this. The thing is that with technology and the using of applications, Honduran Congress urgently need to discuss and

approve a new law in which Home Office is well explained and described. This in order to maintain order in labor relations between companies and their employees. Honduran has no Home Office Law (“Ley de Teletrabajo”) however, emergency Decree PCM 031-2020 authorizes home office as a possibility to deliver work. This not only applies for Private companies, but also for public employees. Honduran Law defines Home Office or Work From Home as the activity that is developed outside the facilities of the contracting company, appealing to the information and communication technologies for the development of the work. Employees of any public or private entity can carry out their work totally or partially at a distance from their workplace

The obligations of employers and workers remain the same according to Honduran Labor Code.

Returning to work in Honduras has been very slowly. An economic and labor reactivation has been established for a period of time of 45, 60 and up to 75 days divided into three regions distributed according to the amount of contagion by COVID 19. Only 20% of Employees from companies can work in the two most important and economic cities which are Tegucigalpa and San Pedro Sula. Both cities are the most Covid infected in the country.

Companies in Honduras (as in many countries around the globe) before operating need to comply with strong biosafety measures such as: Wearing Mask, alcohol gel, maintain clean areas, maintain two (2) meter distance between each employee, take a temperature reading to each employee and every person that visits the work facilities.

Compliance with the biosafety protocols issued by the Ministry of Labor is mandatory and will from now on be part of the labor and occupational safety legal system.

Which scenarios may Honduras companies consider for the Now, Next and beyond? First, to stabilize and maintain existing credit and build up a liquidity reserve where possible. For this, immediate actions need to be done. Then build resilience managing crisis in a medium term. And finally, in the long run align with the future and ensure sustainability by managing liquidity needs.

There will definitely be the biggest recession in Honduras history and it will have strong effects on private entities. However, there is an opportunity for investors to invest in areas such as:

- ▶ Telephony and Internet
- ▶ Digital Marketplace
- ▶ Cybersecurity
- ▶ Programming and technology
- ▶ Education
- ▶ Medical Services
- ▶ Product distribution companies (sanitary, food, etc.)
- ▶ Convenience Stores/Supermarkets
- ▶ Agriculture
- ▶ Companies that can provide services through Home office.
- ▶ Education With local or foreign companies investing in this areas, Honduras will definitely have more job opportunities since many of this areas are not exploited in our country.

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# Hong Kong



Lynia Lau

## Covid -19 - Next and Beyond

### Introduction

The Covid -19 outbreak has been severely disruptive to businesses in Hong Kong, forcing many to adopt flexible work arrangements and some to reconsider their business and operational strategies. This article highlights the key employment law issues arising from the Covid -19 outbreak.

### Remote working issues

When the virus broke out in late January 2020, the Hong Kong government encouraged employers in the private sector to adopt flexible working arrangements to reduce the risk of spreading the virus. Many companies have since adopted work from home (“WFH”) arrangements, which may be requested by both the employer and the employee, subject to the terms of their employment contract, handbook and WFH policy in place. Pursuant to section 10 of the

Employment Ordinance (the “EO”), an employee may terminate his employment contract without notice if he reasonably fears physical danger by disease. An employee may rely on such right to request to WFH. However, this might be difficult to establish if the employer has implemented preventive and safety measures.

The implementation of a flexible working arrangement does not affect or lessen an employer’s obligation to remunerate its employees. While an employer may ask its employees to take annual or unpaid leave, such arrangement should only be adopted after careful consideration and mutual consensus is obtained to avoid disputes and minimize legal risks.

Notably, an employer remains obliged to compensate its employee for any injury resulting from an accident arising out of and in the course of employment regardless of where the employee was working at the time. Employers should, therefore, take steps to ensure that their employee’s working environment is appropriate and be mindful of whether their WFH arrangements affect any existing insurance policies.

### “Return to work” issues

As the outbreak is gradually contained in Hong Kong, many businesses are beginning to operate as usual. An employer is obliged under section 6 of the Occupational Safety and Health Ordinance and the common law to provide a safe working environment to its employees. An employer may do so by implementing health declaration policies, imposing quarantine measures on high-risk individuals, encouraging social distancing at work, etc.

### Redundancies issues

There are no specific redundancy laws or regulations in Hong Kong; the rules for termination of employment apply. Employers should, however, ensure that

(1) employees made redundant are fairly selected; (2) protected employees (such as pregnant employees) are not dismissed; and (3) in cases of voluntary redundancy, sensitive communications are handled carefully.

### Discrimination Issues

Covid -19 falls within the definition of “disability” under the Disability Discrimination Ordinance. An employer should be careful not to subject employees who have contracted the virus to less favorable treatments, which are not reasonably necessary to protect the public health. Dismissing a previously infected but recovered person, for example, would constitute a violation.

Further, an employer is required to grant sick leave to any employees put under mandatory quarantine by the Department of Health in accordance with section 33 of the EO and any relevant employment contract.

### Conclusion

The Labor Department has issued a guidance note, “Obligations and rights of employers and employees under the EO relating to the Coronavirus Disease 2019” ([https://www.labour.gov.hk/eng/news/pdf/EO\\_related\\_QAs\\_on\\_Covid-19\\_eng.pdf](https://www.labour.gov.hk/eng/news/pdf/EO_related_QAs_on_Covid-19_eng.pdf)). Compliance with such guidance would place an employer in a better position should any claim arise in the future as a result of its measures against Covid -19.

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# Hungary



Gábor Jagicza

## “Covid -19 – Next and Beyond” or what challenges companies will face in the post-pandemic life.

### Return to work places

Due to Government Decrees accepted during the emergency situation proclaimed by the Hungarian Government (“Emergency Situation”), the employers were authorized to unilaterally order the employees to work from home and in telework for a maximum period until the lapse of 30 days after the end of the Emergency Situation. Now the Emergency Situation is abolished with the effective date of June 18, 2020. As a result, it may be expected that the majority of the employers will order their employees to return to their workplace. Nevertheless,

according to EY experience, employers do not order their employees for continuous work at their workplace yet but order them to perform work at the workplace on designated days or in designated periods (e.g., one week in home office and the next one at the work place, to provide for social distancing). Also, several employers consider allowing employees to continue working from home if the Emergency Situation has proven them that home office resulted in an acceptable level of business output.

We also see a tendency that employers still keep health and safety obligations as a top priority whether or not the regulations on social distancing, enhanced hygiene rules or mask wearing still apply to them.

### Rules of remote work

It is an open question whether and how employers will continue ensuring employees to work remotely. Whereas home office work could be unilaterally ordered during the Emergency Situation, employers need to revise their regulations (and employment contracts) in light of the legislation of the regular provisions of the Hungarian Labor Code which differentiates between working remotely (e.g. in home office) permanently and temporarily.

### Impact of M&A activities

Despite government subsidies, loans and payroll tax reliefs, the public has seen several employers engaging in cutting labor costs, collective redundancies or exiting from certain markets, initiating insolvency or winding-up procedures. These go hand in hand with an enhanced activity in M&A as stronger competitors buy suffering enterprises.

### A need for adjustment

While unemployment rate is growing to a rate long not seen, the Hungarian labor market still suffers from a lack of skilled workforce in many sectors. In such circumstances, the experience gained by employers during the Emergency Situation in connection with the real results and efficiency of their departments and personnel when working remotely may prove to be of higher significance.

As a result, many companies now consider reorganizations not just to re-calibrate supply chains, cutting costs with respect to recession fears and operate in the post-Covid -19 era but to keep and better incentivize the personnel providing for real value to business, talented in digitalization or just better adapting to changes. The signs of this shift towards a digital-ready and adaptable workforce are already visible in corporate lands.

As trusted advisors, our ambition is to ensure companies cope with this challenge by re-designing and executing a new HR toolkit to build a Covid -19-resilient, more effective work organization for continuing growth.

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**Stefania Radoccia**

### **Return to work issues**

In Italy, likewise in the rest of the world, the Covid-19 emergency has introduced different dynamics for the work organization and speeded up trends already underway. Now, the emergency situation seems to have subsided and thus companies are facing a slowly returning to normality, with a range of new regulations to apply and new issues to face.

### **New rules related to health and safety and to the working activity (also in smart working)**

The emergency situation has required the employers to identify and implement several additional measures to reduce the risk of its spread in the workplace. Several measures aimed at increasing the preventive and protective measures for the workers in order to contrast and contain the spread of the virus in workplaces as well as at limiting the access to the workplace, have been

introduced by the emergency decrees and the shared protocols signed by the main employers and employees' representative organizations.

Moreover, simplified rules have been introduced in relation to smart-working: until the end of the epidemiological emergency period, it becomes a right for the workers who have at least one child under the age of 14, provided that there is no other parent in the household who is not working or who is beneficiary of income support instruments due to suspension or termination of the working activity and this is compatible with the characteristics of the working activity. The right shall remain unaffected for workers with disabilities and workers caring for a family member with disabilities and for workers suffering from serious and proven pathologies with reduced working capacity.

### **Adjusting HR costs and headcount**

With reference to HR costs, the current health emergency has had a twofold effect: reduction in volumes, given the critical market situation, which will result in greater difficulties in covering fixed costs and, on the other hand, an increase in certain operating costs and lower operating efficiency.

As a result, some Italian companies have reducing, for instance, top management's remuneration (on a voluntary basis) and/or rewarded front-line staff with salary increases, health policies with a wider coverage and babysitter vouchers.

### **Other key issues in Italy and solidarity measures**

In addition, this situation has encouraged the use of the already existing solidarity measures: some companies have implemented the so called "Solidarity Hour Bank" (i.e., "Banca Ore Solidale"),

in order to allow the employees to donate holidays and hours set aside in the years to other colleagues, not only affected by serious health problems, but also to whom need some day-off due to the Covid emergency. In some cases, the value of the holidays has been donated to charity entity and the employer has also participated with its own spontaneous allocation.

Moreover, with specific regards to measures implemented in order to deal with the restart of the activities, Italian law has introduced the possibility of renewing or extending until August 30, 2020 the fixed-term employment contracts in place on February 23, 2020 even in the absence of the usual Italian mandatory conditions (the so called "causali"). A further specific mandatory extension of the final term has been introduced for apprenticeship and fixed term employment contracts (also temporary contracts) for the same duration of the suspension of the working activity due to Covid-19.

Lastly, it has been provided the ban of dismissal for economic reasons (both collective and individual) until August 17, 2020.

### **Conclusion**

The experience of the past months has required to companies and workers to adapt to an atypical situation and this awareness can become a strong point for the work organization of the future.

Therefore, this extraordinary stress test might lead companies to learn how best to balance remote activities and work at the workplace, creating a new and more efficient organization of the work.

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# Japan



Junya Kubota

## New normal with Covid -19

### Events since January in Japan

On January 6, 2020, The Ministry of Health, Labour and Welfare of Japan firstly issued a warning over pneumonia of unknown cause in China. Since then, the situation has kept changing fast until now. On April 7, the government declared the state of emergency over the Covid -19 crisis for seven prefectures including Tokyo. On April 16, the government expanded the subject area to the entire nation. On May 4, the government extended the period of the state of emergency until the end of May. On May 25, the government lifted the state of emergency. My personal thanks to all the essential workers serving on the frontlines in the fight against Covid -19.

### Return to work

We experienced and is experiencing many changes in how and where to work during this period. Even after the state of emergency was lifted, we cannot return to where we were. We need to live in the “new normal” with Covid -19 which includes new employment relationship. One of the responsibilities of employers to be featured in the “new normal” should be the obligation to protect employees from getting infected with Covid -19 through work. The Japan Business Federation (known as Keidanren) issued the Guidelines for Preventing the Spread of Novel Coronavirus Disease (Covid -19) in Offices and in Manufacturing Workplaces. The Guidelines encourage employers to consider a variety of forms of work programs to reduce the frequency of commutes and relieve congestion on public transport. These would include remote work, staggered start and finish times, rotation work, flexible working hour system, and four-day work weeks. The Guidelines also encourage employers to take the other various measures to prevent the spread of Covid -19 to protect the lives and health of employees. To comply with employers’ obligation to keep their employees safe and healthy, employers should carefully study the Guidelines and the other guidelines issued by each industry group.

### Rules for working remotely

As stated above, remote working is viewed as one of the ways to reduce infection risks by reducing commutes to the offices. Basically, there are no regulations specifically applying to employees working remotely. They are subject to the same set

of rules as those who are working at office are subject (such as the Labor Standards Act, Minimum Wage Act, and Industrial Safety and Health Act). The government issued the guidelines concerning telework in February 2018, which are useful for employers to understand the checkpoints. One of the major points would be how the employer ascertains working hours of each employee.

### Dismissal for redundancy (seiri kaiko)

It should be noted that dismissal (unilateral termination of employment by employer) for redundancy is difficult in Japan. A dismissal is void if it does not have objectively reasonable grounds and it is not considered to be appropriate in general societal terms. In a case of dismissal for redundancy, a so-called “four-factor test” is used to determine if it is valid or not. The four factors consist of: i) necessity to reduce the workforce; ii) whether the employer made decent efforts to avoid the dismissal; iii) appropriateness of selection of dismissed employees; and iv) appropriateness of dismissal procedure.

### Employment in “new normal”

While it is important to understand what is required by laws, in “new normal”, minimal compliance with regulations and guidelines could result in losing talented staff. In other words, going forward telework option and the other ways to work flexibly would attract talented staffs more than ever, especially for medium or small-sized enterprises. Government subsidies should be used wisely.

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## Lithuania



Rūta Žukaitė

### Are new ways of working become a new normal?

Although the quarantine and lockdown has recently ended in Lithuania, people are slowly coming back to their workplaces, and companies are reopening, the organization of work will probably never be the same.

#### “Return to work” issues

Safety at work is now more relevant and vital than it has ever been. The employers are now under strict obligations to ensure a healthy work environment by implementing new safety at work measures. The companies have to evaluate the safety at work level by taking into account the size of the workplace, a number of employees and activities of the company, and thus adapt the workplace to new working conditions

and provide the employees with proper safety means. For example, the companies have to ensure that there is more space between employees in their workplace (e.g. spaces between the employees' tables in the open space office), as well as to take care of adequate cleansing and disinfection of workplace facilities, inform the employees and consult them on new working conditions. Moreover, stricter regulations have also made an impact on processing employees' personal data. Now the employers have to monitor the employees' health carefully, regularly check in with the employees, and obtain their approval that to their knowledge, they do not have any health issues or symptoms that could pose a risk to other employees' health. Also, under the new regulation employees with health problems should be granted extra days off, paid a higher severance, etc.

#### Rules for working remotely

The national labor laws only set that if a pregnant, breastfeeding employee, or an employee who has a child under the age of 3, etc., requested to work remotely, the employer would have to satisfy such request to work at least 1/5 of standard working hours remotely unless the employer proved that remote work would lead to high costs due to production necessity or specifics of work organization. As the laws do not provide more exhaustive regulation of remote work, the companies have to set their own rules, policies regarding personal data protection, employees' responsibilities, cooperation, etc., and introduce them to the employees. As for a number of companies (especially the private ones) remote work was more an exception than a rule or standard practice, it took some

time for the employers (as well as the employees) to adjust to the new routine and work conditions, change the habits and look for new opportunities. However, it is noticed that even after the quarantine, many employers encourage remote work as it demonstrated to have many advantages, e.g. it is more comfortable to control the employees' flows in large companies, and thus a safe work environment could be ensured.

#### Adjusting HR costs and headcount

As many companies struggle during this period, business strategies have to be optimized, and some employees could be dismissed. However, as Lithuania's Government puts its best effort to support the business, currently, there is no tendency to terminate the employment relations massively. On the contrary, after the idle time is over, the state will grant subsidies for employees' wages, which would also save many jobs and, at the same time, decrease the HR costs. However, the companies should not relax and keep focusing on properly organizing their activities as 2021 is predicted to be quite tough and lead to a higher number of employment termination cases.

#### New possibilities

Although the past few months were world-shaking, uncertainty is not the answer. Companies, as well as the employees, should take advantage of the current situation, rethink their strategies, needs, reduce significant yet unnecessary expenses and find new opportunities that they could benefit from. Maybe the possibility to work from home and have a real work and life balance motivates the employees more than being offered a free donut during the office breakfast?

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# Luxembourg



Laurence Chatenier

## Covid -19 - Next and Beyond

### “Return to work” issues

The Luxembourg Government has implemented several measures to help alleviate the effects of the recent outbreak and continuing threat of the Covid -19 on the community. Companies had to learn how to reorganize themselves and find new ways to collaborate while keeping their business running. This is why remote working has been rapidly adopted in order to ensure the continuity of business. However, since mid-May, many employees are starting to progressively return to the office (at least a few days per week) or some of them are alternating between home and company premises.

From a workplace and employment perspective, some “barrier” measures, such as the obligation to wear a mask, the obligation for the employer to

provide handwashing soap and hydro-alcoholic gel, to take measures to avoid physical contact and organize social distancing between employees (reduction of desks in the offices, Plexiglas walls) were quickly applied. In the meantime, new methods of virtual communication (videoconferencing, social networks, instant messaging, etc.) are fostered.

The Public Medical Service (“*Service de santé au travail*”) issued detailed recommendations for several activities (hairdressers, beauty Institutes, hotels and restaurants, shops, etc ..) including hygiene and circulation rules, as well as sanitary protocols, to be followed.

### Rules for working remotely

Since the beginning of the Covid -19 crisis, teleworking has been the general rule for most of the financial and services companies to ensure the health and safety of its employees (Article L. 312-1 of the Labor Code) and majority of employees reported positive experiences, especially on the increasing of their productivity.

For some companies, employees are still working remotely most days of the week (even this may create some uncertainty taxwise, see below)

### Adjusting HR costs and headcount

During the crisis, a very efficient public scheme of furlough leave (“*Chômage partiel*”) has been activated by the Government. Many companies could apply to benefit from this scheme, under the condition to commit not dismiss employees for economic reasons during the coverage period.

This massive State aid (together with a leave for family reasons opened to parents of children up to 13 years old) has protected the level of employment in the country even if the unemployment rate

increased because a lot of companies decided to freeze their current recruitments until further notice. This mainly concerns small and medium-sized companies, whose HR teams’ capacity does not currently allow them to carry out normal recruitment processes.

### Other key issued in your country

Luxembourg’s workforce is atypical: 200,000 employees cross the border from France, Belgium and Germany every day. Those three countries have signed separate tax treaties with Luxembourg, in which it is provided that cross-border workers (who are taxpayers in Luxembourg) could telework from their country of residence for a limited number of days per year without becoming taxpayer in this country of residence.

However, since the Covid -19 crisis, these limited thresholds were not sufficient in case of massive remote working and Luxembourg and each neighbouring country decided through bilateral negotiations to suspend these thresholds in order to avoid wages tax difficulties for the cross borders employees working at home due to the crisis.

### Conclusion: your thought leadership/ point of view – must do advice for employers.

Home-working has significantly increased during this crisis even in the banking sector where confidentiality reasons were highlighted by the employers to refuse this way of working. After this crisis, offering this option to commuters will be key to be a competitive employer on the Luxembourg job market.

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# Mexico



Diego González-Aguirre

## How to manage the return to work when the peak has not been reached?

### Over regulation and inspection campaign

As the sanitary crisis develops both the federal and local governments have issued significant regulations that sometimes is inconsistent, especially in regards to the physical return to work and the so-called essential activities.

At this point in time, the federal administration has authorized the reopening of new activities such as the automotive and mining industries, but we have not yet reached the peak of the pandemic. The “good-to-go” for the reopening, at least for the automotive industry, is aimed to align the production calendars with the US and Canada and the imminent entry into force of the USMCA (North America trade agreement).

Some governors, however, are reluctant to a complete reopening and have implemented different reactivation calendars and additional sanitary obligations.

In addition, the government has implemented a major inspection campaign to confirm compliance of those companies that are operating and those that will resume activities.

It is worth mentioning that the reopening calendar determined which activities can be reassumed depending on the number of active coronavirus cases in each state and municipality so, companies need to (i) constantly track the development of the map/calendar; (ii) comply with the appropriate autoregulation processes, and (iii) secure the corresponding certification to be ready to open and continue operating.

### Rules for working remotely

The current framework sets a limited regulation on home office. Together with some judicial precedents it can be said that Mexico has the “minimum -required” standards to adopt this type of work.

As the working world is changing and more companies are considering implementing home office as a regular form of work, in Mexico is important to consider at least the following:

- (i) Alternative place of work. To reduce the possibility of a breach of confidentiality and leak of sensitive information it is of the essence to identify places in which the employees cannot be connected (i.e. public places /wi-fi) and execute appropriate restrictive covenants. Also, to prevent the employee’s exposure to a contagion and secure the fulfilling of the sanitary policies in place.
- (ii) Amendment to employment benefits and conditions. Rules on work shift are very inflexible and it is quite common to

face overtimes claims so, it is advisable to amend the employment contract as to the length of the shift and moreover, as to the ways in which effective time worked will be monitored. Also, consider some modifications of the rules on benefits linked to performance/productivity and progressive disciplinary programs.

### Reorganization of personnel structures

As we still in a middle of an emergency declaration, companies can identify alternatives to either modify, suspend or terminate employment contracts based on force majeure. In some cases, the authorization of the Labor Court is required.

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# Netherlands



Joost van Ladesteijn

## Covid -19 in the Netherlands

The past few months the Dutch working environment has changed dramatically due to the Covid -19 regulations. For office employees, working from home became the new standard. Other industries such as restaurants had to close down due to a lock down. What is the impact so far and what is expected in the future?

### 1. Safe work place and duty of care

According to Dutch law, the employer has an extensive duty of care with respect to health and safety of its employees. The employer is responsible to ensure that the work place is safe and that all legislation regarding health and safety has been taken into account.

In the event an employee would claim that he has suffered damage while carrying out his work, there is only a limited first burden of proof for the employee regarding the connectivity of the damages and the work (causality).

As a response there is a shift in the burden of proof towards the employer, forcing the employer to prove that the workplace was safe. This leads to a general liability assumption of the employer unless the employer can prove that he has complied with his duty of care

and the workplace was safe or can prove that the damage was primarily the result of intent or deliberate carelessness on the side of the employee. In other words: the highest burden of proof lies with the employer. Furthermore the employer should check whether its employees act in compliance with instructions. If the employer is aware of any negligence, it is his duty to confront the employee. Summarized: the employer must ensure that the work environment / work place is safe and hygienic and that all employees comply with the instructions given in this respect.

With respect to the current Covid -19 crisis, the duty of care includes making sure that the work place meets all measures of the Institute of Health Protection (RIVM). It also includes that the employer must give clear instructions to the employees (for example by spreading e-mails, newsletters and protocols) regarding the measures and must check whether the employees comply with all instructions.

### 2. Governmental aid programs

To support companies in times of crisis, the Dutch government has launched several aid programs as part of an emergency package.

The most important aid program provides employers a compensation percentage of the wage bill based on a percentage of the loss in turnover.

The aid program was intentionally for three months (March, April, May) and has recently been extended for another 4 months (June, July, August and September). The new program includes additional conditions, such as limitations with respect to bonus and dividend payments. Companies can file for the aid as of 6 July up until 31 August 2020. Other aid programs that have been launched by Dutch government regard for example compensation for freelancers, flex-workers and small- and medium sized companies.

### 3. Employment conditions

It may be considered to assess possible internal measures, such as asking personnel to take-up overtime/holidays or deciding to postpone bonus payments, promotions and salary increases. Whether this is allowed, however depends on the written arrangements within the organization and the factual circumstances.

With respect to holidays, it should be noted that in principle the employer is not allowed to force employees to take up (statutory) days as this in principle conflicts with European and Dutch (case-)law. Voluntary co-operation can however be requested from the employees. It should finally be noted that the amendments of abovementioned conditions should allow custom work as Dutch law limits such possibilities.

### 4. Re-organizations, (collective) dismissals and re-structuring

Even with the aid programs and possibly amendments in employment conditions, re-organization and/or restructuring of the company may be unavoidable to overcome these challenging times.

As for the dismissal procedure based on economic grounds, the Dutch Public Employment Services are competent to rule.

It should however be noted that insofar the dismissal procedure would include 20 employees or more, the subsidy will in principle be corrected with 5%.

Furthermore, if the company intends such collective dismissal, this intention must be shared and consulted with the Works Council or other form of staff representation.

Finally, re-structuring may be considered for example by changing the company strategy (shifting of focus to for example more digital ways of working, decreasing operational costs and/or redesigning the workforce model).

### Finally

As a result of the challenges companies are currently facing as a result of the Covid -19 crisis, this may be the time to consider measures such as re-organizing or re-structuring the company and re-assessing the current work force, in order to emerge stronger from the crisis and allowing to realize business growth in the future.

Please feel free to contact us in case of any questions.

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# Norway



Helga Aune

## “Return to work” issues

Companies are opening up and encourage their employees to return to the offices and the normal routines, while the Government still emphasizes the importance of maintaining social distancing to reduce the risk of spreading the virus. It’s a shared responsibility, all though we handle it in various ways.

The employers would benefit from strategic planning and open dialog about how the employees are expected to return physically to the workplace, and about rules and routines for their new working life.

Although the society is reopening, the working life will be changed. The employers’ responsibility for the welfare of their employees will have to be expanded to also contain the implementation and compliance of infection control routines, concerning both facilities and individuals. The employers will also face challenges and need for flexibility following the national requirement to stay home if you experience the slightest flu-like symptoms. In addition will there be a need to develop the routines regarding health, safety and environment as more employees work from home.

## Rules for working remotely

The pandemic has revealed the employees’ impressive ability to manage the transition from working at physical offices to suddenly being scattered to various types of offices in their private homes. The situation has without doubt been demanding for both employees and employers. The ability to improvise, adapt and even show leadership has been challenged.

The Norwegian Working Environment Act (WEA) applies even if the employees work from home. This means that there are regulations and requirements concerning working hours as well as working environment and working equipment etc. that need to be met. Employers have to respect the employee’s rights, and facilitate the implementation of these rights even when the employees work from home. At the same time the employers also need to respect the employees right to privacy and time off.

As the WEA was made for working life pre Covid -19, amendments to the WEA is likely to be expected. Clarifications of responsibility and expectations regarding the responsibility for the employers and ensure the rights of the workers will be needed. The current rules on remote work are made ot fit a work reality where the remote work was an exception from the norm, while we now look at remote work being the norm, at least for 2-3 days per week in combination with perhaps 2 days at the office. This will also bring up a new focus on what type of work is to be performed from home office versus at the office.

Not only the legal requirements can be challenging, but employers will also need to find new ways for good leadership to motivate, and control the employees through digital and remote measures.

## Adjusting HR costs and headcount

Due to fewer employees present at the workplace, the need for office space, cleaning and other services and facilities will decline, and this will eventually result in issues

concerning a reduction or adjustments of HR cost and headcount. But at the same time some of the services will probably have to change perspective and aim for more remote or ambulatory activities, which will force the employers to consider new ways of organizing and arranging their services.

It is however crucial that the new working life is based om legally acceptable agreements based on the strong protection of the employees that the Norwegian working environmental Act provides.

## Other key issues in your country

Norway already has a set of rules that applies when working at home is is contractually agreed between the parties “The Regulations on work performed in the workers’ home”. If the employer should consider a permanent home-office solution that requires a separate agreement that must meet the requirements of the regulation. The authorities should however review the regulations to consider weather it is sufficient now that working remote seems to be the “new normal”, at least for some of the office workers of the work force.

## Conclusion

From our point of view; employers and employees alike have to be aware of the potential issues that may rise with our “new normal”. It is crucial to maintain a good and open dialogue and make clear agreements concerning duties, rights and expectations. Many valuable lessons should be on the table for discussion from the “pilot period” of March-June where so many have been working remote. Employers need to ensure that they meet the requirements of the law in these new times.

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# Paraguay



Gustavo Colman

## Covid -19 – Next and Beyond

### “Return to work” issues

In the return to office process, the employer has the obligation to continuously evaluate the work environment and act on potential risks. Covid -19 is an obvious risk in many businesses. Accordingly, appropriate occupational health and safety measures must be taken.

The Ministry of Health in Paraguay has issued many sanitary protocols to be implemented in industries, including civil constructions, corporate workplace, public transport, medical centers, among others.

Specifically, the workplace protocol has mandatory measures about filters at the office entry, obtention of information when there is a new infection or tracing activities of workers, the designation of a team responsible for the Covid -19 measures at the office, social distancing and telework, etc.

### Rules for working remotely

Paraguay enacted a specific sanitary emergency law individualized as N° 6524/2020 that states administrative, finance and fiscal measures in the framework of the pandemic. Furthermore it regulates, among others, the legal regime of “telework” in dependency relationship for both private and public sector.

There is no established procedure for the formalization of telework contracts, more than the agreement between the employees and the employer.

The Paraguayan Ministry of Labor established a mechanism for recording and reporting these contrasts through its digital platform.

It is important to clarify that both rules have been the result of the sanitary emergency situation, nevertheless there is still no single law that exclusively regulates the telework in Paraguay.

### Adjusting HR costs and headcount

The labor law states that employers may not deduct, withhold or compensate any sum that reduces the amount of wages, except for some concepts expressly cited below:

- a. Compensation for loss or damage to equipment, instruments, products, merchandise, machinery and facilities of the employer, caused by fault or fraud of the worker and established in judicial sentence;
- b. Advance payment of wages made by the employer;
- c. Quotas for compulsory social security;
- d. Payment of periodic union, cooperative or mutual membership dues, with prior written authorization from the worker; and,
- e. Order of competent authority to cover legal obligations of the worker.

However, as a consequence of the pandemic and the reduction of working hours, the parties (employer and employee) may agree to the reduction of wages during the term of the strict quarantine and the emergency measures, in an exceptional way, to preserve the employment.

If the employer decides to suspend labor contracts, as a consequence of force majeure like the lack of commercial movement that makes it impossible to face the payment of workers’ wages, must notify the employees and the Ministry of Labor. Law N° 6524/2020 has established a financial compensation for suspended labor contracts, which is awarded by the Social Security Administration (IPS).

Other key issues in Paraguay: The main recommendation is that all work that can be done without being on-site, be done remotely.

Paraguay is currently carrying out the gradual lifting plan of the general preventive isolation which means the reactivation of the economic sector by phases. The plan is about the reactivation of economic, under strict health protocols. The plan to gradually lift the quarantine and advance from one phase to a new one will always depend on the report of the Ministry of Health, therefore, new rules or measures could be implemented around Covid -19 at any time.

### Conclusion

Companies and employers must focus on maintaining their talented employees and anticipate the clients’ necessities related to economic reactivation; complying with all health protocols, taking care of our people and helping each other during this unprecedented time.

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# Peru



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Peru was one of the first countries in Latin America to adopt strict restriction measures regarding the mobility of workers and the operation of companies. The government decision supposed the paralysis of almost 100% of the economic activities at national level as of March 15 and although the economic activities have been reactivated progressively, the quarantine will be extended for the time being, until June 30 and the resumption of some activities could last until the end of this year.

This situation poses a challenge for companies to adapt both in terms of contractual planning, salary planning, and health and safety care for workers.

## Remote work

Regarding the first point, the Peruvian government considered the implementation of remote work for all workers whose work allows it and for the duration of the health emergency in Peru (September 7). This modality is also applicable to workers who have been considered within the risk group (over 65 years of age and workers with a state of health that may present serious complications in case of contracting Covid-19: diabetes, asthma, hypertension, obesity with BMI > 40, among others).

In the event that remote work cannot be implemented, the possibility of agreeing with workers on the recovery of hours left from work has been foreseen. Likewise, both parties are allowed to reach agreements for the early enjoyment of vacation rest and even the possibility of agreeing a salary reduction.

## Suspension of contracts

On the other hand, Peruvian legislation has provided for the possibility of suspending employment contracts until October 7, 2020 (suspension without pay), in cases where companies are unable to implement remote work or cannot compensate for hours left from work, either because the activities of the company do not allow it since they are activities that require the physical presence of the worker in the workplace; or due to the level of economic impact, in cases where the level of sales and payroll in 2019 compared to 2020 shows a drastic drop measured by percentage points. On the matter, the Ministry of Labor stated that at least 8% of companies have invoked perfect suspension at the end of May.

In these cases, the suspension decision must be approved by the administrative labor authority in Peru. In the event that the suspension decision is rejected, the workers must return to work and the employer must assume the payment of salary and social benefits.

## Reopening activities

Regarding the restart of economic activities, the government has determined a process of reopening in phases, currently finding us in phase 2 of 4. The phases are implemented considering the importance of economic activity and measures to prevent the spread of the virus. According to the Ministry of Labor, 80% of jobs that have been lost or suspended - due to the state of emergency put in place to contain the spread of Covid-19 - will be recovered by the end of phase 2 of the economic reactivation

## Sanitary protocol

Finally, in order for a company to restart its operations, it must implement a sanitary protocol approved by the Ministry of Health that includes prevention measures to mitigate the spread of Covid-19 in the workplace. Among other obligations, companies are required to adopt social distancing measures between workers (not less than 1 meter away) and to take tests for workers who have frequent contact with people who may have the virus.

The labor impact of the health crisis is unprecedented in the recent history of Peru, so companies must adapt in the short and medium term for efficient administration of payroll and associated benefits, taking care of the health of workers to avoid affecting its health.

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# Poland



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## Covid -19 – Next and Beyond

### “Return to work” issues

As the companies in Poland are gradually trying to overcome the problems caused by global pandemic and come back to normal operations, the employers are facing the challenges of when and how to safely organize the return of the employees to their workplaces.

With regard to ensuring safe conditions of returning to work, many factors have to be taken into account, including i.a. the sector where the company is operating, proper adjusting working facilities etc.

Helpful here may be recommendations issued by the Polish National Labour Inspectorate (NLI), describing main rules and restrictions to be implemented, in order to allow allowing the staff to safely return to offices.

The main problems indicated by NLI that employers are facing with regard to the work resumption include the obligation to provide personal protective equipment to workers, the possibility of keeping the recommended distance between workers, the frequent disinfection of workplaces and work equipment, need to increase the number of breaks etc.

### Rules for working remotely

Due to the epidemiological situation and in order to be able to continue working in the new sanitary conditions, many employers have decided to direct employees to working remotely.

Remote working before the Covid -19 pandemic was not such a common solution in Poland.

With this regard, preparing or amending the existing policies describing rules of working remotely is recommended, including rules of such work, using of the company's equipment etc.

Preparing the internal rules concerning remote work may be useful also from the perspective of overcoming the new challenges of maintaining employee efficiency and ensuring compliance with the newly proceeded and adopted legislation concerning home office work.

### Adjusting HR costs and headcount

The Covid -19 pandemic has had dramatic impact on the financial situation of many companies.

In order to minimize the HR costs the employers were provided with number of legal possibilities, introduced mainly in the Act of 2 March 2020 on special arrangements for the prevention, counteraction and combating of Covid -19, other infectious diseases and the resulting emergencies and subsequent legislation (described as subsequent versions of the “Anticrisis Shield Act”).

In particular, employers could obtain wage subsidies in the event of a decrease in turnover and the introduction of economic downtime or reduced working hours for employees. Anticrisis Shield Act also provides for the possibility for the employer to conclude agreements with employees on the deterioration of their employment conditions, for a definite period.

### Other key issues in Poland

The Covid -19 pandemic has caused many employers to face new challenges that they have not faced so far in such scope. The employers were forced to learn how to manage the employees often without being able to physically supervise their actions, and simultaneously to protect their business operations.

### Must do advice for employers

The main challenge for the employers is to adapt to the new situation, both from an HR and business perspective.

In order to do that, organizations need to properly assess what kind of reorganizations of their operations are possible, in order to maintain current headcount to the maximum extent. It is also very important to properly implement the possible solutions and make use of the legal forms of support available.

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# Portugal



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## Working Post-Covid -19

Although Portugal has been somewhat spared of a major outbreak, restrictions to activities and circulation still apply, affecting companies and work in general.

To this date, anyone pronounced sick and those under active surveillance by the public health authorities must remain in mandatory confinement, in a healthcare establishment or at home, under sick leave or performing their duties by teleworking.

### “Return to work” issues

Portuguese health authorities have released a set of recommendations for the safe return to workplaces.

In general terms, the Government is attempting to promote self-responsibility, social distancing, information and communication channels at a distance, as well as the use of corporate transport.

Each company, nonetheless, is responsible for defining and implementing a contingency plan, concerning their specific organizational and physical characteristics, space and respective workers.

Therefore, ensuring effective adoption of safety and social distancing measures by each staff member has proved to be the most challenging.

### Remote work rules

Companies are required to provide their employees with adequate health and safety at work conditions, in order to prevent the risk of spreading the virus, namely adopting a teleworking regime, where admitted, in accordance with the Portuguese labor legislation.

Still, remote working is no longer mandatory and an agreement between the parties is again required, except when companies find it impossible to implement the health and safety guidelines issued by Portuguese health authorities, and also when required by an employee in the following circumstances: (i) when the employee is covered by the exceptional protection scheme for immunosuppressed and chronically ill; (ii) when the employee is disabled, with a 60% degree of disability or more; or (iii) when the employee has children under the age of 12, or, regardless of their age, with a disability or chronic illness, given the shutdown of schools and facilities for the disabled, and while this remains.

It is also possible for companies to implement, within the legal limits, teleworking rotation scales (whereby teams work both remotely and on premises, under a schedule), differentiated entry and exit hours (by adjusting these to avoid excessive concentration of employees).

### Adjusting HR costs and headcount

Companies resorting to Government financial support during the outbreak (which may represent 30% of the aggregated country workforce) are required to maintain the employment contracts in force.

Consequently, employers are prohibited from terminating employment agreements by redundancy, until 60 days after the period in which financial support is granted.

Notwithstanding, temporary and fixed-term employment contracts, when determined for a date included in the current pandemic period, may still be terminated.

### Key issues

Several companies have been verifying the advantages of teleworking and remote work, given that production levels in certain departments or even in such companies are not diminished and that the workers may be safe at home. Therefore, many of said entities are being compelled to develop working techniques focused in remote working.

Nevertheless, most companies still require on-site work, and are forced to resort to state benefits for employment, and thus maintain their employment agreements in force, as described above.

Moreover, specific issues arise from the implementation of such measures/state benefits, such as which instalments are to be paid, notably meal allowance.

### Conclusion

All in all, the Portuguese corporate fabric is being impaired and is considered in need of a capitalization and a healthy and moving economy as a consequence of the pandemic crisis, for which workforce restructuring is expected in the coming months.

New sets of state aid schemes for keeping employment are expected, with increasingly demanding eligibility thresholds.

Bearing in mind that companies must seek stability in such difficult times and those ahead, thorough financial planning regarding HR is highly advised. Nevertheless, there is also a high drive for implementing new remote working schemes, notably is specific services or areas of business.

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# Romania



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## Covid -19 - Next and Beyond

### “Return to work” issues

Returning to work after the state of emergency period ended is an issue which should be seen both from a health and from an economic perspective.

While it is essential for companies to implement social distancing measures and comply with the measures imposed by the Romanian Government in order to avoid exposure to Covid -19 infection, there are still many companies which either continue to face regulatory restrictions or have their activities significantly affected and are facing economic difficulties.

In this context, the Romanian Government is granting incentives for employees who return to work and were previously under technical unemployment as well as reimbursement of part of the salary, for companies hiring certain categories of unemployed persons.

### Rules for working remotely

During the state of emergency period, employers were entitled to unilaterally decide that employees should perform work from home, where this type of work was compatible with the type of work performed.

After the state of emergency ceased and the state of alert was introduced, companies were no longer entitled to act in this manner and were required by law to agree with the employees upon the rules applicable in case remote work is performed due to Covid -19 related reasons. Such agreement is made in the form of an addendum to the individual employment contract.

Previous to Covid -19 crisis, remote work, also known as telework, was already regulated in Romania and the same rules continue to apply during the state of alert as well as post Covid -19, if the parties agree upon this form of remote work.

According to telework legislation, employers should design remote work rules in line with the following:

- ▶ Provide adequate technology, tools and IT systems;
- ▶ Ensure confidentiality and security of information and personal data which is accessed outside company premises;
- ▶ Allow employees to choose the place from where remote work is performed, provided that work health and safety legal requirements are complied with;
- ▶ Set timekeeping rules as well as means for monitoring work performance;
- ▶ Who bears the costs generated by remote work.

Although telework legislation was not a popular tool prior to the Covid -19 crisis, this is currently a hot topic in Romania as many companies were forced to implement telework.

### Adjusting HR costs and headcount

Romanian labor legislation is rather rigid in terms of adjusting headcount and salary costs. Changes to salary are allowed only by mutual consent of the parties. Still, employers have a certain degree of flexibility if certain benefits/bonuses are granted at the employer's sole discretion and not regulated in an individual or collective employment agreement.

As regards workforce restructuring, the rules on collective dismissals could apply if the number of restructured positions exceed a certain threshold, this making the process lengthier and more complex.

### Conclusion

The Covid -19 crisis pushed Romanian companies into the digital era much faster and raised awareness on the importance of workforce flexibility and developing an agile and adaptable workplace. It is essential that employers encourage flexible working arrangements and develop innovative solutions in order to adapt in crisis situations and protect their most valuable asset: the human resource.

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# Russia



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## Covid -19 – Next and Beyond

### “Return to work” issues

Although return to work is generally possible now, remote working arrangements are still recommended and preferred by many employees. Employers should decide which employees may return to work based on operational needs and which employees may continue working remotely, where practicable. Further, employers are prohibited from admitting to work certain ‘high risk’ categories of employees (employees age 65 and older, individuals with serious chronic medical diseases, etc).

The main issue employers need to address in the course of getting employees back to work is compliance with a comprehensive set of sanitary and other

Covid -19 protective measures, including, without limitation, separation of work flows and staff (e.g. shift work); ensure compliance of the workplace with social distancing rules or installation of dividers in the workplace; quality cleaning of the premises; arrange for temperatures of employees to be taken no less than once every four hours including at the entrance to the workplace; hand treatment with skin antiseptics; availability at least a 5-day stock of disinfectants and antiseptics; masks and respirators for employees; etc. Certain additional measures may be also established by the state authorities at the regional level. For example, in Moscow employers are required to conduct Covid -19 tests with respect to not less than 10% of employees starting from 1 June 2020 every 15 days.

### Rules for working remotely

Remote work may be agreed upon in the employment contract prior to commencement or during the employment relationship by means of signing an additional agreement to the contract. Unfortunately, the Russian employment law is not flexible enough and currently does not provide for legally safe options of mandatory transfer of employees to remote work. If the employee does not agree to switch to remote work, in order to change the employee’s place of work, the employer has to comply with a relatively complicated process on the change of essential terms and conditions of employment. This option requires a two-month notice and generally remains rather questionable from a legal point of view.

### Adjusting HR costs and headcount

In general, cost-cutting measures with regard to employees are difficult to implement due to the need to obtain the

employees consent in most cases. Those options that do not require consent are subject to strict compliance with the law requirements, including the provision of proper advance notice. The available measures include:

- ▶ decrease of headcount by means of redundancy;
- ▶ introduction of part-time work upon execution of appropriate addenda to employment contracts or in exceptional cases, at the employers’ initiative (up to 6 months);
- ▶ decrease of salary;
- ▶ providing employees with paid and/or unpaid vacation days subject to their consent, or in accordance with a vacation schedule;
- ▶ change/cancellation of bonus/salary increase policies; and
- ▶ decrease salaries.

Redundancy measures are not expressly prohibited by Covid -19 related regulations, but companies implementing such measures may not be entitled to certain Covid -19 related support measures.

### Other key issues

As of today, under the Russian law it is not possible to state that employees can work both in the workplace and remotely based on a particular schedule in their employment agreements. Covid -19 outbreak has drawn attention to this issue, as well as other gaps in law regulation of remote work. The new regulatory framework governing the relationship between employer and employee in the context of telecommuting is already under discussion by the Russian State Duma (the lower chamber of the Parliament).

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# Singapore



Evelyn Ang

## How employers should respond to Covid -19

At the time of writing, Singapore has just emerged from the end of its Covid -19 “circuit breaker” period, during which workplaces and schools were closed, and tight restrictions were placed on social gatherings. As it now embarks on a three-phased approach to gradually reopen its economy and resume business activities, many employers are wondering what this means for them.

### Employers’ obligations

The obligations of employers in respect of Covid -19 are set out in the Covid -19 (Temporary Measures) (Control Order) Regulations 2020 (CTCR). These are subject to change as Singapore reopens its economy, but they currently provide that:

- ▶ Employers who are owners or occupiers of their premises must ensure that they are closed to entry by any individual, unless permitted otherwise by the relevant authorities
- ▶ If an employer is not permitted to operate by the relevant authorities (i.e. a ‘permitted enterprise’), their workers must work from home

Even if an employer is a permitted enterprise, they are still subject to certain requirements, such as:

- ▶ Providing facilities necessary for their workers to work from home, and direct their workers to work from home unless it is impracticable to do so
- ▶ Not deploying workers to work in premises that they do not ordinarily work at
- ▶ Implementing prescribed safe distancing measures at the workplace
- ▶ Communicating all arrangements under the CTCR to affected employees.

### Managing excess manpower

Another area of concern for businesses, especially those that have been severely affected by Covid -19, is how to manage excess manpower. Employers seeking immediate and temporary relief from their manpower costs may consider implementing the following cost-saving measures, among others:

- ▶ Sending employees for training to qualify for absentee payroll subsidies
- ▶ Redeploying employees to an area or industry where manpower is needed
- ▶ Implementing a shorter work week and reduce salaries correspondingly
- ▶ Making direct adjustments to wages
- ▶ Placing employees on no-pay leave

A retrenchment exercise should be the last resort only after other cost-saving measures have been considered and found to be unworkable.

### Looking ahead

The rapid spread of Covid -19 and its effects have highlighted the need for employers to maintain sufficient flexibility in their workforce arrangements. To minimize the risk of future disputes, employers should consider incorporating clauses in their employment agreements that allow them to implement certain cost-saving measures, such as requiring employees to consume vacation days, in order to respond rapidly to similar unforeseen situations. Any modifications to existing employment agreements resulting from Covid -19 should also be put in writing, and may require the employees’ consent.

Furthermore, with Covid -19 expected to remain a problem for a long time yet, employers that anticipate poor business prospects should also consult with their employees and any relevant unions as early as possible on the potential cost-saving measures that may be implemented, so that both employer and employees can prepare accordingly.

The Covid -19 situation remains dynamic and it is unsafe to assume that the worst is over. Employers that have not started on contingency planning for their manpower needs should do so today.

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# Slovakia



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## Covid -19 – Next and Beyond

### “Return to work” issues

Employers must carefully prepare for the return of their employees to the workplace and adopt adequate health and safety (H&S) measures in order to minimize the risk of spreading Covid -19. In line with policies of the WHO and the European Agency for Safety and Health at Work, the Slovak Public Health Authority has laid down H&S rules and recommendations that shall be followed by employers, such as social distancing of employees, regular premises disinfection, placing of protective equipment and appropriate room ventilation. The concrete H&S conditions vary according to the type of the employer’s operation. Employers such as factories are subject to more complex requirements.

### Rules for working remotely

Before the pandemics, the remote work/home office (HO) was subject to an agreement between an employer and an employee. In order to promote HO during the pandemics, an amendment to the LC (LC Amendment) enabled the employer to order HO and the employee to require HO if stipulated conditions are met. After the pandemic restrictions are lifted, HO will again require mutual agreement. However, experience gained with HO during the pandemics will most likely lead to much wider use of HO. Unfortunately, the LC contains almost no specific regulation of HO and leaves many questions open. Therefore, it is strictly recommended that employers govern the unsettled issues, such as proper time recording during HO, wages for overtime work, reimbursement of costs incurred by employees (e.g., the Internet, phone costs, paper and toner), the H&S rules and protection of personal and confidential data while working from home. Employers may tackle these issues in internal regulations or employment or collective bargaining contracts, as applicable.

### Adjusting HR costs and headcount

Dismissal of employees by the LC is regulated in a strict, employee-protective way. Employers must generally meet strict formal and substantive requirements. In the context of Covid -19 pandemics, LC does not recognize a force majeure event nor employer’s economic difficulties as grounds for employee’s dismissal. On the other hand, LC accepts grounds such as employee’s redundancy or closing of employer’s business. In those cases, several rules must be followed, such as mandatory notice periods, severance payments, previous negotiation with employees’ representative and no hiring

of a new candidate on the dismissed employee’s position within the next two months. Many large employers have also notified collective redundancies. In those cases, the employer must follow additional procedural rules and must involve the Slovak labour authorities. Finally, cutting headcount is restricted if employers have received state aid for job maintenance (see below), followed by the duty to recover such state aid.

### Other key issues in your country

As a reaction to the economic decline, Slovak legislator has introduced the Kurzarbeit concept allowing employers to decrease salary compensation to 80% and to seek financial aid from the state. For the time being, state aid will be provided until July 2020. Furthermore, the LC Amendment introduced more flexible rules on HO, announcement of working time schedule and ordering vacation to employees.

### Conclusion

The pandemics had a far-reaching impact on the employment relationships as well as Slovak labour law. For the first time in the Slovak legal history, the legislator finally recognized Kurzarbeit. Remote work has become widely used in practise but due to legislative vacuum requires specific governance by employers. Due to stringent rules on dismissals, we recommend engaging legal advisors to ensure they are conducted lawfully and are legally valid. We also recommend a cautious approach in new employees hiring process, preferring fixed-term employment contracts and probationary period agreements that can be easily terminated.

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# Spain



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## Covid -19 – Next and Beyond

### Remote working regulation

In regular situations, remote working is based in Spain on the principle of voluntariness, and the parties (employee-employer) must reach an agreement on its performance. In Spain, telework is not widely regulated and only article 13 of the Workers’ Statute (hereinafter, the WS) refers to this type of work.

The lack of regulation of remote working makes it very difficult to implement it in practice, however, due to Covid -19, teleworking has acquired a preferred nature, always provided that it is technically and reasonably possible for the employer. From the experience of the Covid -19 crisis, currently the Government is working on a new regulation regarding teleworking that will probably approve in the following months and that it may change the current legal framework.

Key aspects of teleworking in Spain, among others:

- ▶ The agreement establishing the work in distance must be formalized in writing.
- ▶ Teleworking employees must register their working schedule.
- ▶ Employees who telework have the same rights as the rest of employees.
- ▶ The employer must provide all the means/ tools to the employee.

### “Return to work” issues

The preferential nature of teleworking has been implemented during the Covid -19 crisis as a safety measure, but not mandatorily, so it is up to the company, considering its particular circumstances, to opt between (i) teleworking or (ii) presential work.

Therefore, if the employer requests the employee’s attendance to the working centre, disciplinary measures can be adopted on the employee in case of rejection.

However, in the frame of the Covid -19 scenario, the employer also has to guarantee the safety and health of the employees. The employer shall take the appropriate health and safety measures and provide the necessary protective equipment to the employees.

### “Serious and imminent risk”

The Labour Authority has established that employees may leave the working center “in case the rendering of services at the working center entails a serious and imminent risk of Covid -19 infection”. However, if the case is not considered to be a serious and imminent risk, the employees should continue to attend the workplace.

### Obligation to carry out medical examinations

As a general rule, medical examinations are voluntary, except in situations that are legally and expressly established. The current Covid -19 crisis can be considered one of this exception; however, there is currently no case law precedents in this regard and, therefore, it will be necessary to consider future judgments that might be issued in this regard.

### Work and family life conciliation

The right of the employees to adapt the working schedule and reduce the working hours, in order to match work and family, was already established in the Spanish legislation. However, due to Covid -19 crisis, a series of measures have been implemented to promote even more work-family life balance (e.g. adapt working schedule in order to take care of child due to the close of schools).

### Adjusting HR costs and headcount

The Company can adopt measures consisting in: (i) a temporary reduction of working hours, or (ii) the temporary suspension of employment contracts (in Spanish, the so-called “ERTE”).

These measures can be adopted based on force majeure or objective grounds resulting from Covid -19 crisis. Objective grounds can be economic, technical, organizational or productive.

The Company shall follow different procedures depending on the type of ERTE that it needs to implement and the new regulations resulting from the Covid -19 crisis have reduced the timings for these procedures.

Additionally, state aid and support measures have been approved for companies performing ERTEs based on force majeure, but these companies will be subject to the condition that the Company maintains the workforce volume during the following 6 months since the cease of the measure.

Extraordinary measures for the protection of employment have also been adopted. In this sense, companies cannot carry out dismissals or terminations of employment contracts due to force majeure or objective reasons due to Covid -19.

Please note that other temporal adjustment measures exist in order to avoid more dramatic measures such as the temporary non-implementation of the conditions foreseen in the collective bargaining agreement, the reduction of salaries, geographical mobility, among others.

### Conclusion

We are facing a situation of great uncertainty with no case law precedents. Employers’ are looking forward to beginning with the “new normality” but their priority is still their employees’ safety and the compliance with the health and safety regulations when returning to work.

The existing legal framework seems insufficient but new regulations are offering more flexibility which leaves space for employers to adapt to the new situation and implement the measures that best suit the needs of their business.

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# Sweden



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## Covid -19 – Next and Beyond

### Working remotely

With the increased number of employees working remotely in light of Covid -19, we see both challenges and opportunities. Some employees perceive that their daily work - and their everyday life - runs more efficiently with time to focus on the daily work tasks while also saving time from commuting. It is, however, important to set up regular check-ins virtually when there are no longer any natural opportunities to touch base in the office. Employees who feel that they belong to a team generally remain engaged and handle stressful workdays better. From a work environment perspective, an employer shall preferably ensure that this is upheld even in times of working remotely. Not only is this important for the soft values as team spirit and employer branding, but it is also an employer's legal obligation to ensure that employees are surrounded by a safe and sound working environment.

### Work environmental aspects

As an employer, one must regularly follow up and assess the employees' working environment for purposes of mitigating risk factors. While working remotely, this obligation stretches beyond the borders of our offices and into the employees' workplaces at home. Not only does this factor in psychosocial and ergonomic aspects of the working environment, but also the interaction amongst employees/contractors as colleagues. As such, the employer should set a framework for regular follow-ups and check-ins on individual and team levels in order to protect the wellbeing of employees and contractors. Assessing the work environment on an organizational level should also involve appointed safety representatives, if any.

### Return to work

As countries slowly return to normal, employees will also return to the offices and workplaces. While preparing for this return, employers should carefully monitor the transition back to work, including employee workload.

It may not be suitable for all employees to return to work at the same date; factoring in both public transport issues and social distancing aspects. The return should rather be phased in; where each employee is e.g. allocated one or a few days in the office or at the workplace.

Once back in the office, the employer will also need to manage employee wellbeing in compliance with laws, regulations and applicable collective bargaining agreements. This could mean implementing social distancing guidelines at the workplace, for example by way of blocking certain workspaces, limiting the number of people that gather in spall spaces, etc.

Assessing the possibilities to return to work and preparing the organization for such return should also involve appointed safety representatives, if any.

### Privacy issues when returning to work

Factoring in the nature of Covid -19 an employer may have an interest in knowing more about each employee's health status and if anyone is/has been infected with Covid -19 once employees return to work. This may raise concerns around data privacy. It is important to note that information on whether an employee has had Covid -19 will generally be considered sensitive personal data. In many cases, collecting sensitive personal data is prohibited - however, employers may do so in order to fulfill a legal obligation.

### Adjusting HR Costs

Lastly, throughout the Covid -19 pandemic, governments have put in place support measures to enable companies to survive the crisis. Upon returning to the workplace and the "new normal", an employer shall assess HR costs and the organization as a whole; especially if measures similar to short-term work with state support have been used. Is there a need to adjust headcount post-Covid -19 in order to meet new market demands? It remains to be seen how this pandemic affects our companies in the long run.

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# Switzerland



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## Covid -19 – Next and Beyond

### “Return to work” issues

As a result of the decrease in the number of infections with the corona virus, the federal authorities are steadily loosening the health and safety measures taken as well as financial support measures for the economy. However, compliance with distance, hygiene and other measures is still recommended. The Federal Council further recommends continuing to work remotely, respectively, from home whenever possible.

### Rules for working remotely

Working remotely leads to a high degree of personal responsibility of an employee because of professional activities being performed in the private environment.

The employer remains nevertheless obliged to take care for the health protection of its employees and, therefore, to implement respective

measures. It is recommended notifying the employees of health protection and safety regulations and to oblige them to take respective measures in order to comply with these regulations.

Regardless of the place of work and thus also when working remotely, in principle all employment conditions remain applicable. In particular the regulations regarding working and break times, the usual code of conduct, data protection and confidentiality rules must be complied with accordingly. Additionally, required instructions concerning how to access and handle sensitive data or confidential documents when working remotely shall further be given by the employer.

A respective monitoring of the remote employees, their compliance with the above-mentioned regulations and their labor productivity require their prior duly notification and implementation of appropriate technical and administrative measures in accordance with statutory law.

### Adjusting costs

Remote work can lead to cost savings, especially by (partially) giving up office premises.

If an employee voluntarily works from home, the employer is not obliged to cover the employee's expenses if it provides a place of work at its premises.

If, however, an employee works from home because it is an employer's instruction or because not enough office space is available, the employer must reimburse the employee for all expenses necessarily incurred in the performance of the work (e.g. rental costs, energy costs, internet costs etc.). The statutory law does not determine to what extent, respectively, in which amount the expenses must be covered. In the end, the amount paid by the employer must at least meet the actual costs in order not to create any additional claims of the employee.

Further, work tools and materials that are necessary to perform work must, in principle, be provided by the employer as well. It is possible, however, to contractually agree that costs for such work tools and materials are already included in the salary. In case no such regulation exists in current regulations, the respective implementation would in principle require the employee's consent.

### Conclusion

Working remotely was a frequently discussed topic even before Covid -19 and today's technical possibilities definitely allow this new way of working.

Besides all the negative consequences caused, the pandemic and its effects may and should now, if never, be used as an opportunity to implement remote work, to simplify and regulate respective processes in accordance with the law and meet the clearly increased demand for more flexible working and work-life balance to safeguard talent attractiveness and retention not only of the new generation workforce.

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# United Kingdom



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## Covid -19 – Next and Beyond

### “Return to work” issues

Employers have a duty of care to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all employees.

Complying with health and safety obligations will involve, as a minimum, ensuring a safe system of work (with emphasis on risk assessments, hygiene and cleaning arrangements and social distancing measures).

Employers will need to follow the UK government guidelines, which give practical suggestions on how work can be undertaken safely and are intended to help employers when undertaking a Covid -19 risk assessment.

Employers should be mindful of the needs of the vulnerable, those who are shielding and those with protected characteristics who are protected by discrimination law (in particular, in these circumstances, those with disabilities and new or expectant mothers).

Employers should also think about how to manage employees who have concerns about returning to work but are not clinically vulnerable.

### Rules for working remotely

The government guidance states that employers should make every possible effort to enable home working as a first option and employees should be encouraged to work from home unless it is impossible for them to do so.

Whilst there are no specific rules relating to home working, where home working is being newly introduced, or expanded, employers should ensure that home working arrangements are discussed with employees, health and safety and data protection implications are considered, that the necessary infrastructure is in place and employees are included in all necessary communications.

### Adjusting HR costs and headcount

Whilst the government has put measures in place to assist struggling employers, for some, redundancies are inevitable, particularly if the pandemic is protracted.

Employers will need to address the obvious practical difficulties in undertaking redundancy consultation at a time when most of the affected employees are either on furlough leave or working from home.

Where an employer proposes to make 20 or more employees redundant at one establishment within a period of 90 days or less, it must consult on its proposal with appropriate representatives of the affected employees, making the practical difficulties more acute.

Alternatives to redundancy should also be considered such as retraining, reskilling and repurposing of staff.

### Other key issues

Employers should take account of the impact of Covid -19 on employees’ mental health and wellbeing. Keeping in contact and providing support to employees is essential. Those employers who already have provision to support employees’ mental health should direct them to their policies and resources.

Employers may consider collecting health information from employees relating to Covid -19 as part of its approach to maintaining a safe workplace. Employers must take care to keep data protection requirements firmly in mind when considering whether and/or how to collect, process and retain health information.

To adapt to changes in their business, employers may consider changing existing employees’ terms and conditions of employment (e.g. to reduce hours and/or pay, change job roles or location of work or insert lay-off or short-time working clauses). Additionally, employers may need to review their staff handbooks and/or individual policies and procedures to ensure that they are applicable to and support any new ways of working that have been introduced as a result of Covid -19 (e.g. in respect of health and safety, home working and sickness absence and pay).

### Conclusion

Employers will need to take a flexible and agile approach in designing how their businesses operate after lockdown, particularly in the early phases. The working environment will need to be subject to ongoing review and adaptation and clear, consistent and regular communication with employees will be critical.

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# Covid -19: labor and employment guide

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