



COVID-19 outbreak: employment law rights and obligations

The new Corona virus COVID-19 is disrupting the world. As employer a tailormade strategic micro plan is a pivot for employee health and safety and to ensure business continuation. Also to avoid liability for damages and/or fines employers need to act now.

1 Employer obligations

Employers are obliged to ensure a safe and healthy work environment for their employees, temporary workers, trainees, volunteers and specific self-employed persons. If an employer violates this obligation, he is liable for non-compliance damages.

To ensure a safe and healthy working environment, employers should do “everything reasonably possible” to prevent ill employees. Employers may consider the following actions:

- ▶ Follow the RIVM (the Dutch National Institute for Public Health and Environment) guidelines and reasonably instruct employees to wash their hands regularly, sneeze and cough inside elbow and use paper tissues.
- ▶ Regularly check official sources to be fully and accurately informed about the outbreak and the advised official measures.
- ▶ Team up closely with the company doctor on inter alia specifically advised measures.
- ▶ Provide specific protective equipment, such as disinfecting hand gels.
- ▶ Inform employees unambiguously about steps, including measures (to be) taken.
- ▶ Limit close physical contact as much as possible and organize calls instead of meetings.
- ▶ Postpone assignments or re-assign expats.
- ▶ Postpone or cancel events, trainings, receptions, trips and/or similar.
- ▶ Intensify cleaning services.
- ▶ Don't work at different offices/locations, if not necessary.
- ▶ Promote working from home.
- ▶ Under GDPR (General Data Protection Regulation) employers are allowed to ask employees, if they visited so-called risk area's determined by the RIVM. Employers should assess whether this entails a risk for any employee.
- ▶ Install a Corona 'prevention' team, also to centralize communications. If an employer shares an office building with other companies, it is advised to install a cross-company prevention team.
- ▶ Check existing health and safety policies, and update these if required.
- ▶ Diligently document actions performed.

2 Employer rights

Besides the obligation to ensure a safe and healthy working environment, the employer may also take certain actions to ensure smooth continuation of daily business:

- ▶ The employer may instruct employees to follow certain hygiene guidelines and sanction employees for non-compliance.
- ▶ The employer may, in principle, oblige an employee to perform work remotely or to go on a business trip. In view of the obligation to ensure a safe working environment, it is essential to make a careful assessment in this respect.
- ▶ The employer is in principle not permitted to medically test an employee on suspicion of a coronavirus infection. An employer should refer the employee concerned to a general practitioner or the company doctor.
- ▶ Employers may request the relevant authorities for a temporary work time reduction permit, if:
 - ▶ the work capacity is minimally 20% decreased;
 - ▶ for a duration of 2 up to 24 weeks;
 - ▶ as a direct result of “extraordinary circumstances” that are not part of the normal employer business risk (the Dutch government has classified the coronavirus as an exceptional circumstance).

Employees receive salary during the work time reduction. Employers may be eligible for a compensation of the salary over non-worked hours by the UWV (Dutch Public Employment Service), which is capped to the maximum daily pay. In principle, a permit is valid for six weeks. This can be extended with a maximum of 24 weeks.

3 Employee rights and obligations

Surely, employees may have a variety of questions and uncertainties. In this respect employees have the following rights and obligations:

- ▶ The employee is in principle not entitled to stay home out of fear for infection.
- ▶ The employee may be entitled to a specific leave for e.g. an ill child or due to a suddenly closed school.

- ▶ Emergency leave: e.g. if the school is suddenly closed and the employee has to find a babysitter. If the employee cannot find a babysitter, the employee should consult with the employer and holiday leave should be taken.
- ▶ short-term care leave: e.g. the employee has to take care of an ill child.
- ▶ It can be argued that employees, as good employees, should inform the employer of such information to enable him to ensure a safe and healthy working environment.
- ▶ In principle, quarantined employees, who are unable to work due to the coronavirus, are entitled to wage continuation and cannot be requested to take up holidays.
- ▶ Private trips cannot be prohibited, at best discouraged. However, if an employee travels to a designated risk area, employees should consult with the employer not to jeopardize the right to wage continuation in the event of illness due to the coronavirus.

What we can do for you:

- ▶ Ensure compliance with national and international health and safety regulations
- ▶ Provide guidance in creating a safe and healthy work environment
- ▶ Provide support with regard to claims and/or (intended) actions from the Dutch labor inspectorate and/or employees

For more information:



Joost van Ladesteijn
Partner | Lawyer Labor & Employment
 E: joost.van.ladesteijn@hvglaw.nl
 T: +31 6 21 25 11 58



Yaser Aziz
Lawyer Labor & Employment
 E: yaser.aziz@hvglaw.nl
 T: +31 6 2125 2045

HVG Law LLP (HVG Law) ranks amongst the top Dutch law firms and is characterized by an entrepreneurial, innovative and solution-driven approach. With more than 150 dedicated and pragmatic lawyers, including (candidate) Civil Law Notaries, HVG Law offers high-quality, legal services in a broad and multidisciplinary context. Our lawyers are active in all legal areas and sectors relevant to business, directors, shareholders and government authorities and have knowledge of your business and your market. At our offices in Amsterdam, Rotterdam, Utrecht, Den Haag, Eindhoven, New York, Chicago and San Jose (i.e., Donahue & Partners LLP in the USA), we are able to offer our legal services to national and international clients. HVG Law is part of the global EY Law network and we have a strategic alliance in the Netherlands with Ernst & Young Belastingadviseurs LLP.