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COVID-19 Crisis

Current Status – Employment &
Social Security Aspects in Spain

CMS Spain

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COVID-19 Crisis

Current Status – Employment & Social Security Aspects in Spain

Official acts adopted by Spanish & regional authorities/governments; and other recommendations, criteria and technical guidelines issued by the competent authorities

General health and safety regulations must continue to be applied regarding the COVID-19 crisis.

Likewise, the Spanish/regional governments and competent authorities are regularly publishing recommendations and guidelines for employers in this regard. However, all protocols and recommendations are under constant review and are therefore subject to further updates:

National level

- i. “*Criterion 2/2020*” criteria on temporary disability due to common illness during periods of preventive isolation suffered by employees as a result of the coronavirus (published 26 February);
- ii. Guidelines action plan published by the Ministry of Employment regarding employment as a result of the coronavirus (4 March 2020);
- iii. Action procedure published by the Ministry of Health for occupational risk prevention services as a result of exposure to the coronavirus (published on 5 March);
- iv. “*Criterion 3/2020*” criteria on the determination of the contingency of the situation of temporary disability regarding employees who have tested positive for coronavirus (published 9 March);
- v. Technical document on recommendations at the workplace issued by the Ministry of Health (still not officially published);
- vi. “*Real Decreto-ley 6/2020*”, 10 March, adopting certain urgent measures on the economic and health aspect.

Regional level

- i. “*Orden 338/2020*” of 9 March issued by the Health Authorities adopting preventive measures and public health recommendations for the region of Madrid (published 9 March); and,
- ii. Recommendations issued by the Government of Catalunya (published 9 March 2020).

General health and safety regulations that may be taken into consideration with regard to the COVID-19 crisis

In general terms, employers shall apply the ordinary duties of protection set forth in labour and health & safety regulations (articles 4.2.d) and 19.1 of the Spanish Workers' Statute - "**SWS**" - and article 14 of Occupational Risk Prevention Act "**ORPL**").

Companies' general duty of protection implies that the employer must guarantee its employees' health & safety in all work-related aspects. In particular, this general duty of protection involves several obligations, especially those related to the avoidance of any potential risks to employees; to the implementation and application of a prevention plan; risk assessment and preventive plan; to provide adequate work equipment and adequate protective individual equipment; to provide enough information to the employees and their legal representatives; to ensure employee training; to draft emergency plans; to adopt appropriate measures in cases of serious and imminent risks; to monitor employees' health; and to enforce the protection of protected employees (related to employees under the legal age and motherhood).

In any case, the company shall adopt the necessary collective or individual preventive measures indicated, where appropriate, by its risk prevention service in accordance with the risk assessment, i.e. depending on the type of activity and specific characteristics of the activity that the company performs.

In light of the above, with regard to exceptional and unexpected situations such as COVID-19, it is recommended that the company adopts extraordinary measures in order to comply with its general duty of protection of employees' health & safety, such as the assessment of new risks derived from COVID-19 and to inform employees about the risks and the measures to be adopted.

Employers: general measures on information and protocols as a result of COVID-19

Among the measures that can be adopted and always subject to the indications of the prevention service at any given time, the following are some of the last measures that have been issued by the competent authorities - at national level - and that should be considered by employers:

- i. Organise work in such a way as to reduce the number of employees exposed, establishing rules to avoid and reduce the frequency and type of contact between people.
- ii. Take, where appropriate, specific measures for those employees who are more sensitive or whose health situation is more delicate.
- iii. Employees with respiratory symptoms should, as a general rule, reduce their contact with other employees, recommending the use of remote working, if possible.
- iv. Hand hygiene measures should be encouraged, both by providing information and posters at key points, and by ensuring the availability of water, soap and disposable paper towels in all workplaces. In points or spaces with more difficult access to water and soap, hydro-alcoholic solutions can be provided, for example, by installing dispensers.
- v. Respiratory hygiene should also be promoted among employees, informing them that it is essential to cover their mouths with the inside of their elbow, forearm or a tissue when coughing and sneezing.
- vi. Tissues should be disposed of immediately after use and hands should be washed after handling.
- vii. Tissues should be deposited in hand hygiene stations and other key wastebaskets, preferably with a lid that opens with a foot pedal.

- viii. It is important to ensure the cleaning of surfaces and all other workplace spaces, trying to ensure that all surfaces are cleaned daily, with emphasis on those with frequent contact such as door handles, railings, buttons, etc. The usual detergents would be enough for such purpose.

Likewise, the government of Madrid has published (9 March 2020) the following recommendations regarding the working environment and other general recommendations:

Recommendations on the working environment

- i. Encourage companies to perform services through remote working systems;
- ii. The development and update, where appropriate, of business continuity plans for the company, establishing actions to be carried out as result of COVID-19;
- iii. Encourage companies to promote flexible working time and shifts; and
- iv. Encourage meetings to be held via videoconference.

Other types of recommendations

- i. People who suffer from respiratory symptoms and/or fever should remain at home, avoiding going to their workplaces and/or hospitals as long as their clinical condition allows;
- ii. Elderly people or those who suffer from chronic or multi-pathological diseases or with congenital or acquired immunosuppressive states should avoid leaving their home unless strictly necessary. In any case, they should avoid crowded places where it is not possible to keep a safe distance of at least one meter; and
- iii. Encourage home care for the elderly.
- iv. Avoid trips that are not strictly necessary.

With regard to Catalonia, the document "*Recommendations for companies and employees on actions related to situations that may occur due to the effect of the Coronavirus SARS-Cov-2*" of 9 March 2020 establishes the following measures:

- i. The use of information and communication technologies and home-based working is recommended in general terms.
- ii. Likewise, internal flexibility measures are proposed (which, if applicable, must be negotiated) such as flexi-time to enhance the flexibility and adapt to the company's productive needs, adapt the working schedule, redistribute the working day, etc.

Alternatives: remote working

Spanish authorities have encouraged employers to promote remote working where this option is feasible.

Temporary employment measures: suspension and working time reductions

Suspensions and working time reductions: objective grounds and force majeure

In the event the company is obliged to suspend its business activity (fully or partially), or even to reduce the working time, as result of (i) a decision adopted by the health authorities, or (ii) indirectly as a consequence of the COVID-19 effects on such activity; these measures shall be implemented according to the statutory procedures established in the employment legislation and based on the grounds recognised by law.

Objective reasons (organisational, technical or production-related) may occur as result of the COVID-19 situation. For example:

- i. Due to a lack of enough stock or resources to continue with the normal activity as result of the impact of the COVID-19 on suppliers.
- ii. Based on a decrease in demand, the inability to render services or an excess of products manufactured, all as result of a decrease in demand from client companies.

The government has informally announced that force majeure grounds may be defined in the context of the COVID-19 during the following days.

To that effect, the company would have to follow a specific statutory procedure on suspension of employment or reduction on working time, depending on the level of impact of the COVID-19 crisis on the working time of the employees.

The abovementioned procedure may also be based on force majeure, rather than objective grounds in case there are involuntary, unexpected and external facts affecting the company and limiting the labour activity. For instance, the following circumstances may be considered as force majeure:

- i. Absenteeism rates that imply a stop to the company's activity (isolation, illness, etc.); and,
- ii. A decision adopted by the health authorities declaring closure on precautionary grounds.

To suspend employment contracts or to reduce working time based on objective grounds, the employer shall implement the relevant statutory procedures, which include among other obligations a prior consultation period with the employees' representatives to be implemented regardless of the number of employees affected by the measure.

However, in case of force majeure as grounds for the suspension of employment contracts or working time reductions, the procedure would be faster (for example, no consultation period is requested) but authorised by the competent authorities. The most relevant feature is that the decision must be verified and approved by the Labour Authority, irrespective of the number of employees affected, through a statutory procedure prior the adoption of the measure, i.e. the suspension of the contracts (the Labour Authority has a term of 5 days to accept or reject the proposed measure).

Costs for the companies as result of suspensions or working time reductions

During the suspension of contracts, the employer would not be obliged to remunerate the employees (or, in case of reduction of working time, apply the proportional remuneration). However, the company will be obliged to keep paying social security contributions during the suspension or reduction of working time even in case of force majeure.

In any event, where an emergency situation is declared, the Council of Ministers could approve, regarding suspension and working time reductions directly derived from the emergency situation, a motion stating that the employers are exempt from paying Social Security contributions and other joint contributions during the term of the measure.

Other employment measures: employment terminations

Companies may also decide to implement employment terminations based on the same grounds described in the previous paragraph (objective or force majeure reasons).

In this case, the company will also have to follow the relevant statutory procedure that, depending on the number of affected employees, may require a consultation period and other legal formalities.

In the event of force majeure grounds, the procedure would be the same as the one described for suspensions and working time reductions, subject to the approval of the Labour Authorities.

Likewise, with regard to costs, in the event an emergency is declared, the Council of Ministers could rule that the applicable severance or legal severance (20 days' salary per year of service, capped at 12 months) must be paid by the competent public institutions ("FOGASA"). However, these could be claimed back by employers at a later date.

What is the protocol established if there is a suspicion of a potential infection of COVID-19 in the workplace?

According to the latest recommendations, COVID-19 infection may be suspected in employees if they have respiratory symptoms (fever, cough or shortness of breath) and, furthermore: (i) if they have been in close contact - they have been in the same place and closer than 2 meters with a confirmed case while he/she had symptoms - with a patient diagnosed with COVID-19; or (ii) if they have travelled to a high-risk area in the last 14 days (i.e. Northern Italy, China, Japan, Singapore, South Korea and Iran).

If an employee has symptoms compatible with the disease and meets any of the two previous conditions while he/she is in the workplace, the procedure to be followed would be:

- i. The individual with symptoms should minimise his/her contact with other employees and go to a specifically-designated room where he/she remains alone, if possible. If this is not possible, a minimum distance of 2 meters with other individuals should be observed, ideally using physical barriers such as partitions. If masks are available, the individual shall put on a mask.
- ii. In addition, it will be necessary to call 112 (Spanish emergency services) or the telephone number that the autonomous community has arranged for the management of COVID-19. The number enabled for the region of Madrid is +34 900 102 112.

Likewise, the employee will probably be placed in preventive isolation by the competent health authorities. In such a case, said authorities could grant sick leave to the employee which, according to Royal Decree-Law 6/2020 of 10 March 10 will be considered a work accident on an exceptional basis.

According to the recommendations issued by the relevant authorities, companies' activity shall continue under the same terms, although protective measures must be adopted to protect employees' health and safety at the workplace as described above (i.e. recommendations and protocols).

The health authorities will report the results of the tests carried out and the confirmation of a positive COVID-19 case. Where confirmed, the contacts of the employee must be identified and proceed according to the following section, according to the indications issued by the public health authorities.

In any case, the company must give instructions to the cleaning services of the work centre to carry out a thorough clean of the area or areas where the individual suspected of having COVID-19 has been, with special emphasis on the surfaces and areas of frequent contact with hands.

What is the protocol established if there have been contacts with COVID-19 in the workplace?

Likewise, the latest recommendations establish that contacts should be divided between close contacts and casual contacts in order to deal with an infection. In any event, there is no specific restriction on work activities for close or casual contacts, without prejudice to the risk prevention measures deemed necessary.

Close contacts

Close contacts are understood to be when people have been in the same place and closer than 2 meters to a confirmed case while the individual had symptoms.

Close contacts should be informed, and active monitoring shall begin, following the protocols designed for this purpose by the health authorities. It is recommended that they limit social activities and non-essential travel, informing about respiratory hygiene and hand washing precautions.

In accordance with recommendations, the decision to minimise possible contact with other individuals by remote working, or even to cease working activities, must be made on a case-by-case basis following an individual risk assessment by the company's health and safety provider.

Casual contacts

Casual contacts are understood as individuals that have been in the same closed space with a positive case while he/she was symptomatic, but that does not meet the criteria to be considered close contact.

According to the recommendations issued, in such a case an active search will not be carried out, but rather passive monitoring is recommended, on an ordinary basis, including the workplace. However, if symptoms develop within 14 days after exposure, the individual must immediately self-isolate at home and urgently contact 112 or the telephone number enabled by the relevant Autonomous Community.

In any case, if the employee has Covid-19's symptoms, as per the recommendations, he/she shall reduce his/her contact with other employees, rendering services on a remote basis, if possible.

If there is a serious and imminent risk of infection of COVID-19 in the workplace?

In addition to the abovementioned recommendations and protocols, according to general prevention measures on health and safety, if there is an infection of COVID-19 at the workplace that involves an imminent and serious risk of infection regarding the rest of the employees, the employer must immediately:

- i. Call the competent authorities for further instructions, as well as the risk prevention service company in charge of health and safety at the workplace;
- ii. Inform the employees accordingly about the existing risk and the measures implemented as result of this infection; and,
- iii. Adopt the necessary measures to interrupt the activity and, if necessary, exit the workplace with immediate effect (to work remotely, if possible).

Withdrawal right, i.e. the right for the employee not to come to work to protect his/her health

There is no legal withdrawal right established.

However, employees may be entitled to request the interruption of their labour activity (or, if any, the employees' representatives) in case the provision of services in the workplace involves a serious risk and imminent coronavirus infection (in accordance with certain legal provisions of the Spanish Health and Safety Act).

Nevertheless, the simple fact of the spread of COVID-19 at national level or the social unrest generated as result of the COVID-19 are not enough to justify that the requirements to interrupt the activity have been met. For that purpose, an impartial assessment must be prepared based exclusively on reliable facts.

In this sense, where the company has adopted the necessary preventive measures and, if possible, other alternative measures such as homeworking or shift working, this kind of interruption would be unlikely.

Likewise, in general terms, employees may be entitled to request other employment measures according to Spanish regulations in order to be able to ensure a work-life balance (for example, adaptation of the working time, working from home, reduction of working hours, paid leave to fulfil an inexcusable public and personal duty, etc).

Interruption of the business activity by the Labour Authorities/Inspection

The Labour Inspection Service would be also entitled to interrupt the activity in case of serious and imminent risks to the employees' health & safety (reserved to very extreme cases).

Other rights of the employees in the context of the COVID-19

In addition to the work permits that may be applicable in accordance with the applicable collective bargaining agreement in each company or other types of collective agreements, these are some of the rights that could be exercised by the employees in the context of COVID-19:

Working time

The employee could request, in accordance with article 34.8 of the SWS, an adaptation of the duration and distribution of the working day; a re-organisation of working time including the provision of remote working, in order to trigger his/her right to a work-life balance. Such adjustments shall be reasonable and proportionate to the needs of the employee and the organisational or productive needs of the company.

However, unless the company immediately accepts the request by agreement with the employee in the light of the recommendations, a negotiation process would be opened for a maximum period of 30 days, which may seem not appealing considering the imminent closure of schools in different Spanish regions.

At the end of the negotiation period, the company will communicate in writing: (i) the acceptance of the request; (ii) an alternative proposal, or (iii) that the request has not been accepted. In the latter case, the objective reasons on which the decision is based shall be indicated.

Reduction of working time

Alternatively, the employees could request a reduction of their working time for child care (under 12 years), although this would involve a proportional reduction of salary.

In these cases, the request should be submitted with 15 days' notice. However, cases of force majeure would not require notice. In this sense, the closure of schools due to the COVID-19 could be understood as force majeure.

Paid leave

There have been some employees who have recently asked for a specific paid leave to fulfil an inexcusable public and personal duty.

Unless the company accepts it in order to promote the recommended work-life balance measures, we understand that this case will not fit in the context of COVID-19.

In any event, as mentioned before, there may be other types of paid leave or permits established in the applicable collective bargaining agreements or other collective agreements. Likewise, the government may announce in the following days the implementation of new paid leaves as result of COVID-19.

Right to sick pay in quarantine

The latest criteria published by the government has considered, as an exceptional measure, that periods of isolation caused by the COVID-19 virus will be considered as a situation “assimilated” to an accident at work, exclusively for the economic benefit of temporary disability granted by the Social Security system.

If the employee has been infected by COVID-19, the situation will be considered as a situation “assimilated” to a work accident.

To that effect, it is recommended to contact the prevention service entity as this contingency should be classified as a work-related accident.

Obligation to take holidays for self-isolation

Non-applicable in Spain.

Personal belongings or equipment used by employees infected by COVID-19. How the employer should act?

According to the latest recommendations, these are the protocols regarding the personal belongings of employees infected with COVID-19:

- i. No special treatment is required for the personal belongings of employees with COVID-19.
- ii. If the workplace has a kitchen or canteen area, no special disinfection precautions need to be taken, in any event, all things must be washed with hot water and regular detergents. In this sense, when washing in the dishwasher, the program must be a whole cycle of hot water.
- iii. In the case of work uniforms or similar, they will be bagged and sealed, and moved to the point where they are usually washed, being recommended that they are not shaken or disturbed and are washed with a complete cycle at a temperature between 60 and 90 degrees.

Any specific queries or doubts related to the prevention and control measures for the transmission of the infection shall be addressed to the corresponding risk prevention services.

Sanctions against the employer

In the worst-case scenario, the Labour Inspection Service may declare the closure of the business activity.

Likewise, in the event there is a breach of health and safety regulations, administrative fines could be imposed from EUR 40,986 to EUR 819,780 (in very extreme cases), in addition to criminal or civil action as a result of this breach.

Sanctions against the employee

Notwithstanding the aforementioned interruption right of the employees, these are obliged to go to work under normal circumstances (unless a serious and imminent danger to their health is detected).

From an employment perspective, in case there are unjustified absences from work, or a breach of health and safety obligations related to the employees, the misconduct of employees may be considered a serious infringement depending on the circumstances (subject to disciplinary measures such as disciplinary dismissal).

However, we understand that in these cases the relevant courts may consider the uncertainty regarding the coronavirus as a mitigating circumstance.

The comments included do not constitute professional opinions or any form of legal advice. For more information, please contact:

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