



# Criminal and administrative liability risks for businesses arising from COVID-19 restrictions

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	Can companies face criminal / administrative liability risk for exposing employees or the public to coronavirus?	Can senior management be held personally liable where the company is in breach of the law?	What potential penalties are there for companies / senior management?	Have there been any cases of note so far regarding these issues?	Are there any rules or guidance that companies should be following to reduce risk?	What civil claims risk is there for businesses?
Colombia	<b>Yes</b> – administrative liability only, for breach of (i) existing health and safety laws for exposing individuals to risk of harm and (ii) Specific Coronavirus regulations emitted by local or central government.	<b>Yes</b> – senior management may be held criminally liable for conscious breaches that entail effective risk of contagion or actual injury or death, and administratively liable for conscious breaches of existing H & S laws, and under the emergency regulations.	Senior management can face between 4 to 30 years' imprisonment, depending on the crime. For administrative liability penalties includes the permanent or temporary closure of businesses and fines up to \$2.5 million for individuals and companies.	More than 150 people have been indicted to date. Actions such as organizing illegal parties, knowingly continuing to work whilst having the virus, or continuing with suspended activities such as prayer meetings, have been the main targets of prosecution.	Government guidance: <a href="https://id.presidencia.gov.co/Documentos/200424-Resolucion-666-MinSalud.pdf">https://id.presidencia.gov.co/Documentos/200424-Resolucion-666-MinSalud.pdf</a>	(i) Employees can initiate legal actions against the company to compensate any damage caused at work. (ii) Customers and third parties can initiate non-contractual civil liability actions against companies in tort. (ii) "Class actions are possible If the same behaviour affects a group of people..
France	<b>Yes</b> – (i) on the basis of general French criminal law rules and principles and (ii) the employer's duty of care under the French Labor Law Code.	<b>Yes</b> – senior management, other company representatives or delegates may be liable for criminal offences and for breach of the employer's duty of care.	<u>Company</u> : fines of up to €375,000.  <u>Senior management</u> : fines of up to EUR 75,000 and up to 5 years imprisonment.	<b>Yes</b> – a decision of a Civil Court of Appeal on 24 April 2020, stated that Amazon did not take sufficient measures to protect the health of employees.	Guides from the French Labour Ministry: <a href="https://travail-emploi.gouv.fr/le-ministere-en-action/coronavirus-covid-19/protger-les-travailleurs-les-emplois-les-savoir-faire-et-les-competences/">https://travail-emploi.gouv.fr/le-ministere-en-action/coronavirus-covid-19/protger-les-travailleurs-les-emplois-les-savoir-faire-et-les-competences/</a> <a href="https://travail-emploi.gouv.fr/le-ministere-en-action/coronavirus-covid-19/deconfinement-et-conditions-de-reprise-de-l-activite/">https://travail-emploi.gouv.fr/le-ministere-en-action/coronavirus-covid-19/deconfinement-et-conditions-de-reprise-de-l-activite/</a>	(i) From workers who allege the employer has not take the necessary measures to ensure their safety and physical and mental health and (ii) by any person "justifying an interest in acting" In relation with the 'vigilance plan' that major companies must establish and implement notably in order to identify risks and preserve the health and safety of persons.
Germany	<b>Yes</b> – administrative liability only. A new law providing for criminal liability of companies is due to come into force soon.	<b>Yes</b> - administrative and criminal liability possible for non-compliance with health & safety laws. Senior managers and directors will be liable for breaching law as well as for mis-organisation or negligent breach of their obligatory supervision.	Company – fines up to €10m (and disgorgement of benefits). Individuals – breaching the German Infection Protection Law: negligently up to €25,000; deliberately up to 2 years imprisonment. German Criminal Code: Bodily harm or negligent homicide – imprisonment up to 5 years or higher sentences if deliberate. Infringement of obligatory supervision: senior managers/directors fined up to €1m.	Yes – at investigation stage. Notable cases include deaths in retirement homes, infections in restaurants and hotels and high infections in some slaughter-houses close to NL border.	No official guidance but general information (keep distance, mouth protection, hygiene, disinfection available, avoiding groups). It is recommended to follow RKI (German Robert Koch Institute) advice, guidance of Federal Institute for Occupational Safety and Health (BAuA) and/or from advisors of German Cabinet.	No specific rights to claim under German Infection Protection law but general German Civil Law will be applicable: staff or customers/public, who could claim damages e.g. if companies do not take sufficient protection measures and that leads to infection. Causation is likely to be more difficult for members of the public.  Class actions are also possible.

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Italy	<b>Yes</b> – companies can face administrative liability via health & safety legislation (the virus is treated as an “injury”) where employees contract coronavirus through negligence of the employer (i.e. the board) or for manslaughter if they die. However, no similar administrative liability applies to contraction by business partners/ the public.	<b>Yes</b> – if senior management negligently failed to take security measures and this caused infection (to employees or public), it could lead to criminal liability for personal injury through negligence or manslaughter (or culpable offences against public health).	<u>Company</u> : fine up to €1,549,000 and disqualification from conducting business for up to 1 year.  <u>Senior management</u> : imprisonment up to 7 years (manslaughter) and a fine up to €7,862.44 (for failing to carry out a risk assessment).	Not yet.	There are rules set out in Prime Ministerial Decree of 17 May 2020 and the Protocols annexed:  <a href="http://www.governo.it/sites/NEW.governo.it/files/DPCM_20200517_txt.pdf">http://www.governo.it/sites/NEW.governo.it/files/DPCM_20200517_txt.pdf</a> ;  <a href="http://www.governo.it/sites/NEW.governo.it/files/Dpcm_20200517_allegati.pdf">http://www.governo.it/sites/NEW.governo.it/files/Dpcm_20200517_allegati.pdf</a>	Claims by workers or the public who contracted the virus due to a business operation during lockdown, or its aftermath, where the business did not follow health and safety measures provided by law (including the Coronavirus Protocol) or by contracts. High-risk workers who become infected need only prove their job put them at high risk of infection. Collective action is not possible.
Monaco	<b>Yes</b> – (i) under the existing criminal code and (ii) under the new legislation adopted in response to the COVID-19 pandemic.	<b>Yes</b> – senior management and other employees may be held criminally liable on the same grounds and under the same conditions as the company itself if at the relevant time the individual had the power to represent the company for the relevant matter.	<u>Legal entities</u> - fines up to €180,000 and temporary shut down of activities.  <u>Individuals</u> - depending on the severity of the negligence, fines up to €36,000 and imprisonment from 3 months to 3 years.	No.	Government guidance: <a href="https://covid19.mc/en/">https://covid19.mc/en/</a>	Ordinary tort claims and employee claims based on breach of employment contract. In practice the plaintiff will have serious challenges in bringing forth the necessary evidence to prove that: <ul style="list-style-type: none"> <li>the damage resulted from COVID-19</li> <li>the company committed a fault</li> <li>there is a causal link between the damage and the fault.</li> </ul> Class actions/group claims are not possible.
Peru	<b>Yes</b> – for breach of the mandatory measures issued to contain the spread of COVID-19 (criminal penalties). Corporate liability is going to be consequent to the liability of the employee or the representative.	<b>Yes</b> – if it was a part of senior management's roles and responsibilities to take precautionary sanitary measures or if the omission is an act of negligence.	Penalties may include imprisonment (up to 20 years) and civil compensation (up to €27,000) for both employees and senior management. The company will be tried as a civil third party and may have to pay civil compensation; it also administrative sanctions (up to €552,000).	Not yet. However, a number of companies have failed to comply with these regulations and have had employees doing in-work activities or carrying out these activities without any personal protection. A number of investigations have been initiated.	The Ministry of Health issued the Ministerial Resolution 239-2020-MINSA, which are the "Guidelines for the Vigilance, Prevention and Control of the Health of Workers at Risk of Exposure to COVID-19" and which are applicable to companies resuming their activities.	Claims could come from employees or members of the public in relation to working conditions or failing to comply with sanitary guidelines. If an infection occurs and damages arise to the health of the employee, claims could be placed against the company as well.

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Poland	<p><b>Yes</b> - companies may be held administratively liable for violations of established prohibitions, orders and restrictions related to the spread of coronavirus.</p>	<p><b>Yes</b> – senior management can be held administratively and criminally liable. They will be administratively liable for violations of prohibitions, orders and restrictions related to the spread of coronavirus.</p> <p>In turn, criminal liability may be incurred for failure to comply with health and safety regulations (misfeasance) and for causing the spread of infectious diseases in connection with such non-compliance.</p>	<p>The company and the senior management may be fined between €2,250 and €6,765 for breaking administrative rules.</p> <p>For breaching health and safety regulations, the senior management may be fined between €250 and €6,765. For causing the spread of a contagious disease in connection with such non-compliance, the senior management may be sentenced to imprisonment up to 3 years.</p>	<p>There have been several cases of coronavirus-related punishment of enterprises. The administrative penalties concerned the violation of existing restrictions (receiving more customers than possible) and prohibitions (running a business that has been prohibited).</p>	<p>The Main Sanitary Inspectorate, together with individual ministries, issues guidelines on an ongoing basis to minimize the spread of coronavirus. <a href="https://gis.gov.pl/aktualnosci/wytyczne-zamieszczone-na-stronach-poszczegolnych-ministerstw-we-wspolpracy-z-gis/">https://gis.gov.pl/aktualnosci/wytyczne-zamieszczone-na-stronach-poszczegolnych-ministerstw-we-wspolpracy-z-gis/</a></p>	<p>Employers may be liable to pay damages to employees for violations of health and safety regulations. Companies may also be liable towards customers and third parties, whose health has been endangered by failure to comply with sanitary requirements.</p> <p>Class actions are possible.</p>
Russia	<p><b>Yes</b> – administrative liability under provisions of the Code of Administrative offences for violation of sanitary and epidemiological rules and regulations.</p> <p><b>No</b> – criminal liability, only individuals are subject to criminal liability.</p>	<p><b>Yes</b> – under provisions of the Criminal Code and the Code of Administrative offences for violation of sanitary and epidemiological rules and regulations.</p>	<p>Administrative (companies) – fines up to €12,500, suspension of operations for up to 90 days. Administrative (management) - fines up to €6,250, disqualification for up to 3 years. Criminal (management) – fines up to €8,750 and / or imprisonment up to 7 years.</p>	<p>So far only for bootlegging activities (illegal operations of bars, night clubs, etc.) in course of the quarantine.</p>	<p>Federal Guidance (sanitary, labor authorities, etc.) Local rules and regulations adopted in each region of the Russian Federation.</p>	<p>Potentially various if (i) wrongful act occurred (i.e. violation of sanitary rules); (ii) damages suffered; and (iii) direct causal link exists between the wrongdoing and damages.</p> <p>Class actions are possible.</p>

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South Africa	<b>Yes</b> – under existing health and safety laws if it does not take the necessary measures to safeguard the health of employees, as well as business partners and the public, in relation to the conduct of its business.	<b>Yes</b> – senior management or other company representatives could face criminal liability for any exposure or risk of exposure if it is found that they intentionally exposed another person to coronavirus (i.e. a breach of regulations issued under the Disaster Management Act). They may also be held liable for a breach of existing health and safety laws.	For breach of H&S laws: a fine of up to R50,000.00 (approx. €2500) and/or imprisonment of up to 1 year; or a fine of up to R100,000.00 (approx. €5000) and/or imprisonment of up to 2 years (depending on the breach).  For breach of regulations issued under the Disaster Management Act: fine and/or imprisonment of up to 6 months for certain offences; or prosecution for assault, attempted murder or murder for intentionally exposing another person to coronavirus.	Not yet.	<ul style="list-style-type: none"> <li>Occupational Health and Safety Measures in Workplaces COVID-19 (C19 OHS) 2020 Directive (GN 479 in GG 43257 of 29 April 2020) issued on 29 April 2020.</li> <li>Risk-Adjusted Strategy Regulations issued on 29 April 2020 under the Disaster Management Act.</li> </ul>	<p>An employee is entitled to claim compensation from the Compensation Fund if the employee has contracted occupationally-acquired COVID-19.</p> <p>Business partners and members of the public could have a claim which may be based on breach of contract, statute or otherwise. This will ultimately depend on the circumstances of each case.</p> <p>Class actions/group claims are possible.</p>
United Kingdom	<b>Yes</b> – under (i) existing health and safety laws for exposing individuals to risk of harm and (ii) restrictions on business operations in Coronavirus legislation and regulations. Requires proof of “directing mind and will” involvement.	<b>Yes</b> – liable with the company when they consented, connived or were negligent in the commission of the offence (both under existing H & S laws, and under the emergency restrictions regulations).	For H&S, corporate/management fines are unlimited, based on culpability, harm risked and turnover. Senior management also face up to 2 years imprisonment. Coronavirus legislation penalties are restricted to fines.	None for corporations or senior management. Enforcement against individuals, using fixed penalty notices under the emergency restrictions regulations. But likely to reduce as restrictions eased.	<p>HSE guidance: <a href="https://www.hse.gov.uk/news/working-safely-during-coronavirus-outbreak.htm">https://www.hse.gov.uk/news/working-safely-during-coronavirus-outbreak.htm</a></p> <p>Government guidance: <a href="https://www.gov.uk/government/news/new-guidance-launched-to-help-get-brits-safely-back-to-work">https://www.gov.uk/government/news/new-guidance-launched-to-help-get-brits-safely-back-to-work</a></p>	<p>(i) From workers who allege they contracted the virus from unsafe work practices or for stress.</p> <p>(ii) From members of the public, who have been placed at risk as a result of business operations. In either case, there are likely to be difficult issues of causation.</p> <p>Class actions possible.</p>
Ukraine	<b>No</b> - companies (legal entities) cannot be subject to administrative or criminal liability.	<b>Yes</b> - Not in their <i>ex officio</i> status but only as natural persons for their personal offences. Their holding of managerial positions may add to the gravity of the offence.	<u>Company</u> : No penalties <u>Natural persons</u> : fines up to UAH 170,000 (circa €5,750) for an administrative offence, or up to 3 years imprisonment for a criminal offence, (8 years in case of victim's death or other severe consequences).	Not yet. Approximately 100 criminal proceedings are being investigated, but there is no public information regarding them. Also approximately 12,000 protocols on administrative offences were issued by police.	Generally – very similar to the ones adopted in other countries. In addition, company management is obliged to make transportation arrangements for its employees. There are also specific regulations on client interaction for regulated professions plus those that have significant F2F exposure.	Only natural persons are likely to be exposed to civil liability. One will need to prove actual damage to one's health in order to succeed. Moral damages can be claimed along with actual damages. No statute of limitations periods. Group actions are possible.