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CORONA-VIRUS : Practical guide with commercial and legal topics/recommendations

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Introduction

We have drawn up this practical guide to assist the legal teams of companies in the way in which they deal with the challenges they are confronted with, connected to the fast and worldwide spread of the Corona-virus.

The recent rise of Corona receives a lot of attention and an increasing worry worldwide. It has caused governments worldwide to take proceedings, such as isolating certain cities, cancelling events and closing public institutions and schools. Evidently, such measures have a huge impact on the daily life of people and the workings of companies. There are stricter traveling measures set in place for certain areas, this may endanger certain business trips.

In this brochure we tackle certain important aspects that every employer should take into consideration. We guide you through some practical steps which you can take in order to perform damage control and avoid nuisances. There are also certain important aspects about your obligations as an employer that are discussed. The principles and conditions that are talked of in this brochure are only in line with Belgian legislation.

Do not hesitate to contact our experts if you should have any questions concerning any of the topics that are discussed in this brochure.



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Employment law and Pensions

Occupational dissability



What are the symptoms that indicate eventual contamination?

- Fever
- Coughing
- Respiratory problems and shortness of breath
- Respiratory diseases (throat ache, mucus or pneumonia)



What if an employee has one or multiple of these symptoms?

As an employer you would do well to isolate the employee as soon as possible, in order to avoid contact with other colleagues as much as possible. Optionally, you can ask the employee to be medically examined, in view of the safety of the other employees. However, the employer cannot force the employee to consent to such demands.

If employees present themselves with such symptoms, they will be declared unfit for work. The employer has to pay 4 weeks of mandatory guaranteed wages. If the absence would be longer, the employee can fall back on health benefits.

Occupational dissability



As an employer, can you refuse an employee with these symptoms after they have had occupational disability for a while? Can you force the employee that has had these symptoms to pass through the company medical officer before recommencing work?

During the period of occupational disability, it is possible for the employer to have the employee examined by a medical examiner. As long as the medical officer judges that the employee is still unfit to recommence working, they cannot return to work.

As soon as the employee returns to work, the employer can only mandate a medical check-up by the company medical officer in certain (limited) cases, provided by the law.

According to the jurisprudence of the Court of Cassation (c.f. Supreme Court and Supreme Court of Judicature) the end date of the occupational disability as indicated on the medical attestation stands as proof that the employee is fit to resume work. There is no legal prescription that allows the employer to demand the employee to be reconsidered as occupationally disabled (e.g. by providing a medical attestation declaring them unfit for work).

If the employee agrees to be checked up medically by the company medical officer on a voluntary basis then this examination is evidently without any problem.

Force Majeure



An employee cannot travel because they are stuck in another country or because after returning to Belgium after a trip it has become mandatory to remain in quarantine due to a sudden spread of Corona in the region where the employee was present. The employee is thus unable to come to work. Does this constitute as an unauthorised absence of the employee?

There are several options:

- the employee works from home (c.f. Teleworking) or from the other country;
- the employee takes leave days;
- the employee takes open days connected to shortening the working hours (ADV-dagen);
- the employment contract is suspended due to force majeure (and without pay).

If the implementation of the employment contract is temporarily impossible, due to a sudden and unforeseeable happening, the realisation will be temporarily suspended due to force majeure. If the employee notifies the employer as soon as possible concerning this force majeure, thus it cannot be considered as an unauthorised absence.

Seeing as the employee is not delivering any performances during this period of force majeure, the employer does not have to pay any wages. Under certain circumstances there might be made use of a system of provisional unemployment due to force majeure, which allows the employee to depend on benefits up to 60% of their wages, through the National Employment Office (RVA) during the period in which they are unable to come to work.

Force Majeure



The children of an employee cannot go to school and/or day-care due to a (governmentally issued) measure that prevents children from going to school or to their day-care. Can the employer coerce the employee to still come to work?



One of the children of an employee is contaminated with Corona. Can the employee ask to stay at home in order to take care of the ill child?

The fact that the children cannot be taken care of at school or at the day-care, does not give the employee a pass to be absent from work. Evidently in such cases it is possible to come to an agreement with the employer to take leave days or to stay at home for a certain period without pay.

A full-time employee can take 10 days a year of unpaid personal leave. In this situation it is not possible for the employee to work, so the National Employment Office (NEO) benefits for provisional unemployment due to force majeure are not in order.

Yes, the employee would be able to ask leave for the medical assistance to a severely ill family member for instance. In this way the employment contract can be temporarily or partly suspended in order to assist to the ill child.

The employee will be able to receive benefits from the NEO during this period of absence. Every sickness or medical procedure that the treating practitioner of the family member regards as a severe illness, qualifies for the demand of such form of career interruption.

If the child of the employee were to be hospitalised, the aforementioned diverging rules for medical assistance to a severely ill family member apply.

Force Majeure



What can you do as an employer if you are confronted with a situation in which certain goods are no longer delivered and certain goods are out of stock, due to the spreading of Corona?

If you are prevented as an employer to provide work to the employees due to a situation that can be considered as force majeure, the employment contract of the employees involved will be suspended due to force majeure. The employer will no longer owe wages.

The Federal Minister for Employment, Nathalie Muylle, has confirmed 6 February 2020 in a press release that if the necessary conditions have been followed for this purpose (both from the employee's as the employer's side) a call for force majeure can be made in the view of the application of a system of provisional unemployment, so that the employees involved would be able to receive benefits from the NEO. It is up to the employer to submit a file to the unemployment office of the NEO responsible for the place of work. The file will have to show both force majeure and proof of the link between the force majeure and Corona virus. This form of provisional unemployment applies to both blue-collar and white-collar workers.

This measure runs provisionally until 31 March 2020.

Teleworking

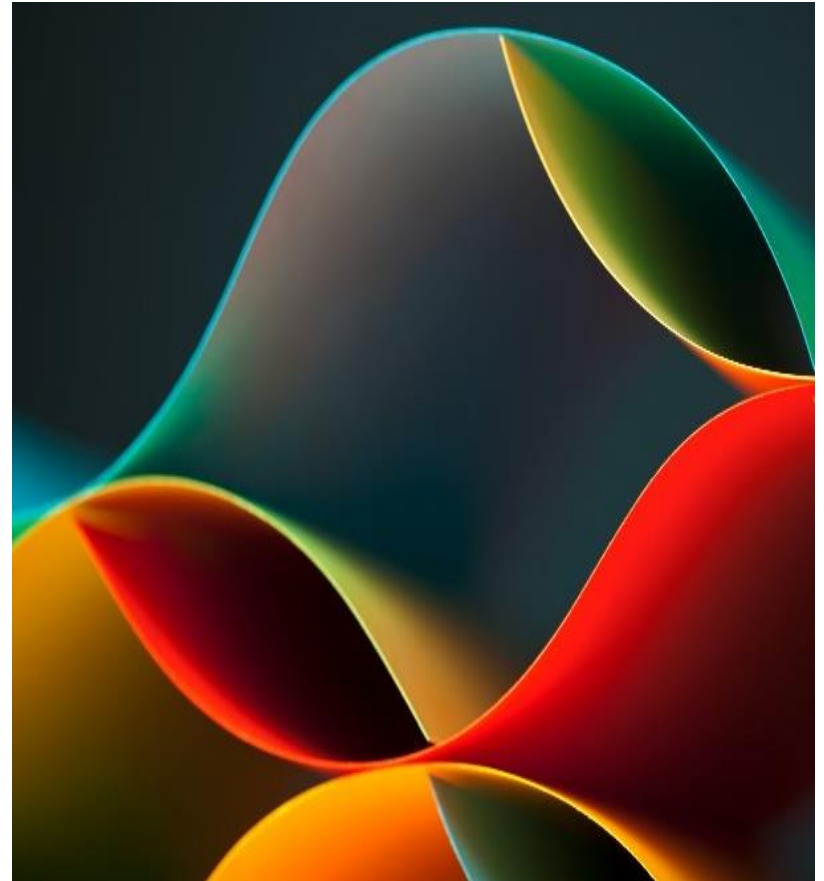


Can an employee decide unilaterally to no longer come to work but to work from home?

No. Even though the recent coverage of the virus understandably worries the population, an employee cannot decide unilaterally to suddenly no longer come to the office but to work from home in case there was no previous agreement surrounding teleworking between the employee and employer.

At the current stage the majority of people up to the age of 49 has a low risk of infection, so it might be a good initiative to discuss certain worries your personnel might have.

If an employee chooses to stay at home unilaterally and they refuse to return to work after several reprimands, the employer can take into consideration to dismiss said employee (with or without urgent reasons).



Teleworking



Can an employer demand as a precaution that their employee works from home or takes leave days (e.g. after returning from an area at risk)?

An employer cannot force an employee that has returned from an area at risk to stay at home for a certain period before returning to work floor when they have none of the aforementioned symptoms

According to the generally binding CAO nr. 85 that sets the regulations for teleworking, teleworking can only be done on a voluntary basis. This voluntary process is equally binding for the employee and employer. None of the parties can force working from home. If both parties agree on teleworking or have settled upon a previous agreement concerning teleworking, it is possible for the employee to work from home a couple of weeks.

Leave days as well must be taken up in mutual consent between the employer and the employee. An employer cannot oblige the employee to use their leave days (unless beforehand a certain period of collective paid leave was announced).

In this situation it is impossible for the employee to work, rendering benefits from the NEO due to force majeure for provisional employment non-applicable.

Teleworking



**What if the employee returns from their holidays in a country where Corona patients have been diagnosed?
Do they have to mention this?
If they do not, should there be a disciplinary sanction? Termination of contract due to urgent reasons?**

It is possible as an employer to oblige employees to notify in writing if less than 14 days prior to recommencing work they have travelled to areas that pose the risk of having Corona, or if one of their family members have been exposed to the virus. Afterwards, the employer will have to prove that the employees were aware of this newly imposed obligation. It is for example possible to enforce such obligations via e-mails with confirmation of reception and read receipt request. Employees that have not confirmed their receiving the mail, must be asked to sign a copy of the communication as proof of reception.

It is necessary to have this obligation in written form. In case the employees do not comply to this duty of confirmation, the employer can hold them accountable and eventually make use of sanctions afore-mentioned in the company handbook. The legislation surrounding company handbooks prescribes that the employer has to use such sanctions maximum one day after acknowledging the infraction. A termination of contract for urgent reasons due to not complying to the duty of confirmation will probably not be accepted by a Belgian employment tribunal. This does not exclude that in certain specific circumstances (e.g. ignoring the duty to confirmation multiple times), the employment tribunal might declare a termination of contract due to urgent reasons valid. Do not hesitate to contact our experts in case you wish to have such specific circumstances analysed.

Business trips



**As an employer, can you still demand employees to go on a business trip?
Is this a case of insubordination if someone refuses to go?**

As an employer it is still possible to organise business trips to areas where there is little to no risk of contamination with Corona. Employees cannot refuse business trips due to the eventual risk of contamination.

The situation is different if an employer wishes to send employees to areas where our governmental authorities have discouraged non-essential travels. We would like to encourage postponing as many business trips to such areas as possible, unless they are actually essential. One could alternatively opt for video conferencing. An employer who would still demand traveling to such areas for non-essential reasons seems an unjustified order which justly allows the employee in given circumstances to refuse following the employer's demand.

Despite these limitations the concerns amongst the population will probably lead towards their unwillingness to travel across borders for work reasons. We advise employers to sit down with their employees who are worried about traveling to certain destinations and whether these travels are essential/necessary and proportional.

Business trips



Can contamination with Corona during a business trip or by coming into contact with someone on the work floor be considered as a work-related accident?

Yes. An employee that is contaminated with the virus during a business trip or consequent to contact with a third party present in the work space could be considered as a work-related accident. The employer will have to take into consideration in such cases whether there is an obligation to notify their insurance company. It is not certain that an epidemic will effectively be categorised as a work-related accident. However, if there are suspicions that the employee has been contaminated while and because of operating the agreed upon working terms and it has caused certain harm, then it might be advisable for the employer to check up on eventual contractual and/or legal obligations and to revisit the coverage of their insurer.

In line with art. 7, first tier, of the law surrounding work-related accidents it is considered as such: any accident that an employee during and or by operating the agreed upon company contract and which has caused harm.

Safety and Health



Can an employee refuse to unpack and handle goods originating from a country where a lot of cases of Corona have been established?

No, an employee cannot refuse to handle goods originating from areas where the virus is wide-spread. According to the World Health Organisation, Corona is not spread by coming into contact with goods. If an employee would refuse to handle goods for said reason, they could receive a notice of default due to insubordination.



Safety and Health



Are employers obligated to take precautions such as disinfectants or masks?

The employer is encouraged to consult the prevention advisor to establish under which circumstances personal protective equipment (PPE) should be provided in the working space. After all, every employer is obligated to provide every necessary equipment that is destined for the employee to protect themselves from one or multiple risks concerning health and safety at work. This also means all the additions or accessories that fall under this category, such as masks. If the circumstances in the working space require these precautions (e.g. employees who take care of someone who is infected, employees who cough or sneeze,...), the employer might possibly, in bilateral agreement with the prevention advisor oblige certain groups of employees to wear face protection. In these cases, the employer is obligated to provide these masks freely to the employees in question.

Even though it is not a legal obligation from a judiciary point of view, it is strongly advised to temporarily provide special disinfecting hand gel in the working space and to ascertain that all equipment and the workshop is cleansed on a regular basis with antibacterial products. Employers have the basic obligation to guarantee the health, the well-being and safety of the personnel in their work space.

Furthermore, during the procedure of risk management and prevention in accordance with the legal obligations at hand, employers might do well to consider keeping an eye on groups at risk (e.g. pregnant or older employees or employees with immunity deficits). Eventually, certain measures can be set into place to protect said groups who have a higher risk of infection (e.g. suggest working from home).

Discriminatory risks or apparent unreasonable discharge?

If a company decides to terminate the agreed upon employment contract or treats an employee in a less favourable manner as a reaction to for example coming into contact with a contaminated family member, this can be seen as an infraction of the anti-discriminatory law. The employee might demand 6 months of pay.

Many companies advise employees to shake hands with customers as little as possible, nor with colleagues. It is important to diffuse communication material so that employees can use this to inform third parties and to make them aware in a friendly way so as to avoid claims on the basis of discrimination.

News coverage shows that the concerns surrounding the virus can lead to racist or xenophobic acts and/or remarks. Such behaviour shall be damaging for the culture and the values of an organisation. It is highly recommended that an employer is strict in such cases, with immediate judgment and eventual sanctions as established in the company handbook towards the employees involved.

Aside from the possible risk of claims concerning discrimination we would also like to point out the risk of executing an eventual unreasonable discharge. The discharge of an employee based on the fact of deciding to spend their holidays in an area at risk, will more than probably be considered as an unreasonable discharge in the framework of CAO nr. 109 surrounding the motivation of the discharge (sanction: maximum 17 weeks of wages).



Practical guidelines

Corona continues to spread. The odds that your company will be confronted with the rise of the virus in one way or another becomes more and more realistic.

Despite the unavoidable fear of a worldwide epidemic it is not clear what the worldwide consequences of the virus shall be.

Seeing the considerable consequences the virus has already had in China and elsewhere, all employers are advised to already set into place executable preparatory and emergency measures.

Companies can use the following plan with the purpose of preparing for and dealing with Corona:

Action plan

1.

**Establishing a
crisis
management plan**

2.

**Revision HR
policies**

3.

**Revision of travel
policies**

4.

**Establishing /
updating video
conference
systems**

5.

**Communication
of clear hygienic
prescriptions**

6.

**Provide sufficient
and adjusted IT-
materials**

7.

**Provide as many
closed bins as
possible**

8.

**Take into account
the legislation
concerning
privacy**

Action plan



Establishing a crisis management plan

Every company should prepare themselves to have their crisis management plan completely on point so that a management plan is at hand to continue the productiveness of the company in case of an increasing spread of the virus. Furthermore, it is advised to communicate this policy again so as to have the directory and leading personnel updated on how to react to the moment the company is confronted with an infected employee, a customer,... A small group of (HR-)employees can be given the responsibility to communicate the most recent advices of the governmental authorities and the World Health Organisation with advice on possible policy changes.



Companies would do well to revise their HR policies concerning absence due to illness, paid leave, flexible hours, teleworking and update them in accordance to the situation.

If there would suddenly be a large number of absentees, the employer is advised to enquire beforehand which possibilities the company has to ask employees or to oblige them to work other or longer hours. Companies need to revise existing policies about these issues in existing employment contracts and the company handbook. The maximum (daily/weekly) work hours, resting hours and current rules surrounding payment should be taken into consideration. Aforementioned aspects should be done in close agreement with the Belgian Employee Council, Committee for Prevention and Protection at Work (CPBW) or the unions and the other authorities which are involved with the safety and health in the work environment.

Furthermore it is important that the means of contact of the employees and in case of emergencies are up to date in case rapid contact has to be established with employees who work from home, or employees who get ill at work.

Action plan



Revision of travel policies

It is important that the content of the current travel policies is revised and adjusted.



Establishing / updating video conference systems

Ensure that the systems that enable video conferencing are on point or can be implemented as soon as possible. It will occur more and more often that employees will have to establish contact with third parties without being present physically in the same place. This way the risk of eventual contamination is lessened.



Communication of clear hygienic prescriptions

Put the posters of the governmental service of Public Health in visible places within the company:

[Click here](#) to download the poster.

Oblige employees to comply with the following prescriptions:

- Wash your hands regularly with soap and water.
- Cover your mouth and nose while coughing and sneezing, preferably with a paper, disposable tissue. If you do not have a tissue at hand, sneeze in the curve of your elbow and not into your hands.
- Avoid contact with people showing symptoms of respiratory diseases (e.g. Coughing, sneezing, runny nose)
- Touch your face, mouth and nose as little as possible with your hands and certainly not with unwashed hands.
- If you are ill, stay at home, at least until 1 day after the fever has passed and stay away as much as possible from people with health issues.

Action plan



Provide sufficient and adjusted IT-materials

Odds are that the company necessarily has to let their employees work from home on a systematic basis. Provide sufficient laptops, computers, phones and printers to comply to a sudden necessity of letting your personnel work from home. Do not forget to cleanse the IT-material sufficiently.



Provide as many closed bins as possible

It is advised to have employees throw out as many used tissues as possible in closed bins so as to prevent an eventual source of contamination to spread any further. Replace open bins in the form of buckets in the offices by those that can be closed with a lid.



Take into account the legislation concerning privacy

As an employer you are obliged to keep track of the medical attestations that are handed over by the employees. It is important to ascertain that only the employees who have authorisation, are provided access to said medical forms.

Furthermore, one should avoid spreading information outside of the company that enables the identification of a specific (ill) employee (seeing as this is sensitive information in the framework of the GDPR legislation). Announcing the name(s) of the employee(s) who have caught the virus publicly is not allowed. The information that is spread should mainly be aimed at assuring the doubts of other employees (e.g. implementing extra measures concerning cleaning and disinfecting the workspace,...).

Evidently, if there are legal obligations surrounding the notification of certain information towards governmental services it is possible to divulge certain elements.

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