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# Coronavirus – key considerations for employers

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The situation with Covid-19 (**Coronavirus**) is still developing and is being followed worldwide with great interest and obvious concern. In this briefing, we consider some of the key issues that employers should be considering. We address the practical steps you can take to reduce any disruption to your business and the key issues around your duties as an employer. At this early stage, the value of having clear policies in place, from the perspective of both business protection and employee relations, should not be underestimated.

## What key issues should we consider now?

At the time of writing the number of confirmed cases of Coronavirus in most countries is relatively low, with no confirmed cases yet in the Slovak Republic and only a few cases in the Czech Republic. Despite the inevitable fears of a global pandemic it is not clear what the impact of the virus will be worldwide. However, given the significant impact it has already had in China and elsewhere, all employers are advised to put in place robust preparatory and contingency measures now. This is particularly true given the possible long-term nature of the disruption which Coronavirus presents and that it is difficult to predict the spread of the virus. These measures might include:

- giving a small group of employees (for example, in HR) responsibility for monitoring the latest World Health Organisation and national government advice on Coronavirus and reporting back regularly to management, advising on potential policy changes;
- ensuring effective communication with staff regarding national government advice and the approach of the business to Coronavirus issues;
- introducing a (flexible) policy to cover employment issues specific to Coronavirus, including any proposed departures from normal employment policies;
- minimising the impact of absences from the office and creating a consistent policy on how absences will be managed; and
- adopting a management plan to protect business continuity in the event of a severe outbreak.

## What are our duties as an employer? How do we protect our staff?

**General health and safety duties.** In a number of countries employers have a duty to ensure the health, welfare and safety of all staff in the workplace. This could include maintaining a working environment that is, so far as is reasonably practicable, safe, without risk to health and adequate as regards facilities and arrangements for staff members' welfare at work. Even where this is not a feature of local health and safety law, it will clearly be best practice for international employers. Communication with staff will also be key, including communicating that staff are expected to follow the latest national government guidance.

We also recommend the adoption of additional hygiene measures. Many employers are already, for example, providing anti-bacterial wipes and gels in offices and toilets and arranging for all surfaces and equipment to be cleaned regularly with anti-bacterial products.

**Special groups of staff.** Employers should, in accordance with any applicable legal obligations or company policy, conduct risk assessments and monitor the risks posed by Coronavirus to anyone at particular risk. This might include those with pre-existing health conditions, pregnant employees and those who otherwise have compromised immune systems. Although there is currently a low risk of infection in most countries, you should monitor the situation. If the risk profile increases, businesses may want to consider steps to reduce the risk to these individuals such as asking them if they want to work from home.

**Should we be providing staff with face masks?** The medical evidence on the benefit of face masks outside of a clinical setting is not well-established and incorrectly worn masks will not effectively prevent infection. The WHO advises use of a mask only for those who have respiratory symptoms (coughing or sneezing), have suspected Coronavirus infection with mild symptoms, or are caring for someone with suspected or known Coronavirus infection. It advises that the most effective forms of protection against Coronavirus are to frequently clean your hands, cover your cough with the bend of elbow or tissue and maintain a distance of at least 1 metre (3 feet) from people who are coughing or sneezing. However, it is important that employers continue to monitor WHO and national government advice.

## **How do we manage staff members who have been abroad?**

Some employers may find themselves in a situation where staff members are unable to attend the workplace. For instance, some countries have introduced travel restrictions which may prevent staff from getting to work, or they may be in quarantine or self-quarantine in accordance with national government rules or guidance (some governments, including the UK Government, have published guidance on when individuals should 'self-isolate'). No such comprehensive guidelines have yet been published in Slovakia or the Czech Republic; however, in the Czech Republic the Ministry of Health in cooperation with the National Institute of Public Health has issued several recommendations on how to behave responsibly and how to react when returning from high risk countries. However, should the guidelines be issued it will be important, within the parameters of local privacy laws, for employers to be able to 'keep track' of staff members' travel plans (whether business or personal) in order to be able to assess which employees should self-quarantine in line with national government guidance or any specific company policy. Equally important will be ensuring that the workforce is kept apprised of how fast guidance is developing on which countries to avoid unnecessary travel to.

Our advice is that employers should:

- encourage all staff members to avoid any travel to high risk countries;
- where staff have returned from any countries subject to self-quarantine guidance, should this be introduced, try to agree with the individual what, if any, work they can carry out remotely;
- if it is not possible for the individual to perform any duties whilst absent from the workplace, decide on an approach for your business in relation to pay entitlement, with the aim of applying it consistently within the jurisdiction as a minimum (and potentially consistently across jurisdictions, subject to local law entitlements and laws).

Whilst agreeing to pay staff who are unable to work (potentially for a prolonged period) may appear cost prohibitive, this needs to be weighed against the adverse reputational risk of being seen to punish those who self-isolate. It is also possible that staff members could fail to disclose that they have travelled to high risk countries or regions in order to avoid financial hardship, which would increase the risk to the rest of the workforce. As we explain below, an employer's approach to this issue must be carefully considered and the outcome may depend on the particular circumstances. Maintaining flexibility to accommodate changing circumstances is recommended. Some possible scenarios include:

***Those trapped in mandated quarantine abroad.*** The legal position here will depend upon the terms of the staff member's contract and any applicable local law.

***Those who have returned from abroad and meet government guidance for self-quarantine, should this be given.*** If a staff member falls within national government guidance for self-quarantine, they should follow that guidance.

***Those who have returned from abroad and do not meet government guidance for self-quarantine, should these be introduced.*** Some businesses are considering taking a more cautious approach to self-quarantine. For example, in countries where national governments are asking individuals to self-isolate after returning from particular areas only if they have symptoms, employers might ask them to self-isolate regardless of whether they have symptoms. This has the advantage of reducing infection risk – and thereby protecting other staff members – in comparison to strictly following national government guidance. Generally, our view is that employers who ask staff not to come to work on these preventative grounds should pay their staff in full, even if they are not able to work from home. In some jurisdictions that may be a minimum entitlement in any event.

Employers should consider carefully whether, and what, limits should be placed around any encouragement to self-isolate in excess of national government guidance, and any related pay. For example, businesses may wish to make clear that self-isolation is only encouraged (and paid) for those returning from areas that government guidance has identified as higher risk, but not elsewhere. It would be prudent to reserve an element of discretion to make ad hoc decisions as the situation changes. For instance, if a staff member returns from an area in which an outbreak developed while they were there but is not yet identified in government guidance as being a higher risk area, you may still wish to encourage self-isolation.

Businesses that are offering some form of enhanced pay during sickness or quarantine absence may wish to make it clear that staff members who book travel to an area which has been identified in government guidance as being of higher risk *after* that area has been identified in this way, or who travel after the relevant national agency advise against all but essential travel to that area, will be required to self-quarantine but will not (necessarily) receive any pay above their minimum legal entitlement. However, this may be resource-intensive or difficult to police in practice.

For businesses whose staff do not or cannot work from home, the above considerations may need to be taken into account alongside issues of potential cost and business continuity. Businesses should particularly bear in mind upcoming holiday periods (e.g. Eid al-Fitr and Easter are celebrated with multiple national holidays in

certain parts of the world) which will most probably result in a lot of staff members travelling abroad, and the potential costs of such a policy in the event of mass absences.

It is important in all cases to clearly communicate expectations to your staff.

## **Should we restrict business (and other) travel?**

Some national government agencies are currently advising against travel to a small number of specific regions unless it is essential. Employers should therefore suspend all business travel to these areas unless it is essential.

Despite these limited restrictions, public concern is likely to result in staff members being less willing to travel abroad for work, especially for conferences with international attendees. Some conferences are already being suspended as a precaution. We recommend that businesses consult with staff members who are concerned about travel to other destinations about whether this travel is necessary and proportionate.

## **What if someone refuses to come to work?**

The recent news coverage of the virus is understandably causing concern among the general population. However, at this stage, the vast majority of individuals are at a low risk of infection so speaking to your staff about any concerns they have is a good first step. Where working from home is usual or technologically possible businesses may want to consent to this on an ad hoc basis, provided the individual understands that the situation may change in future. If the individual is pregnant or otherwise at a higher risk, we recommend being more accommodating about requests to work from home or take holiday.

## **What if one of our staff members develops coronavirus?**

It would be prudent to consider the approach your business would take in the case of a staff member contracting Coronavirus or being placed in quarantine preventatively. This should include:

- Whether this should be announced and if so in what form (e.g. email, team meeting). Bear in mind that data privacy laws may govern whether and to what extent you can communicate information about employees' health. Any such announcement should be aimed at reassuring staff members about the current situation;
- If national government advice at the time requires that people who have been in contact with a confirmed case are informed and/ or self-isolate, how will you identify and approach those people in an appropriate way without causing unnecessary alarm;
- How the individual will be dealt with under your sickness procedures; and
- How to reduce infection risk. For example, you may want to arrange a thorough clean of the area that the staff member has worked in. Some businesses already have processes of this type in place for when staff members contract contagious illnesses such as shingles.

## **How would we react to higher levels of absence?**

This is a key issue to address in business continuity plans, and if you have not reviewed yours this is a good opportunity to do so. It is good practice to have plans in place which address the possibility of high levels of absence and inability to use the normal workplace (for example, if travel restrictions are put in place). At this

stage we recommend businesses carry out an initial review to identify any potential areas of difficulty. We suggest this should include reviewing the following:

- How your business can operate with reduced staffing levels. Are there staff members with transferable skills such that people can be redeployed to cover core business functions? Although a significant change in job role might be unpopular (or even give rise to legal risk in some countries), provided their proposed temporary responsibilities are within their capabilities, it may be arguable that it is reasonable for the employer to ask them to cover business critical tasks as part of reduced workforce in times of emergency;
- What scope your business has to ask people to work from home and communicate with their colleagues if they are unable to reach the workplace, for instance due to travel difficulties or caring for dependants (see below), or if the workplace needs to close temporarily. If a workplace closure seems likely, this should be discussed as early as possible with staff and (where relevant) employee representatives;
- What your procedures are for speaking to staff at short notice, particularly if people are already working from home. You should also ensure that employees' contact details and emergency contact details are up to date in case individuals need to be contacted at short notice;
- What scope the business has to ask or require staff members to work different or longer hours. Good practice would be to raise this possibility at an early stage and be up-front about expectations and any additional pay. Businesses should check any statements on these issues in existing employment contracts. Employers should also bear in mind that legal rights which are not normally an issue might need to be considered, such as those around maximum weekly working time, rest periods and the national minimum wage, as applicable;
- If remote working or redeployment are impractical or undesirable, your business may be able to recruit temporary or agency staff, particularly in administrative roles. This is, of course, likely to result in additional costs and such individuals will be entitled to the same health and safety protection as the permanent employees for whom they are covering;
- What the procedures are where staff members need to take time off to care for dependants who are unwell or whose schools/ nurseries have closed. In some countries employees can take time off to care for dependants or make arrangements for their care in unforeseen circumstances. However, you should consider what expectations will be communicated around working from home during this period, and / or arranging alternative care. Any communications around this should emphasise that they apply only to this as a response to this particular outbreak; and
- Whether you need to or should consult with works councils, workplace health and safety representative bodies, unions or any other workplace representatives regarding any of the proposals set out above.

Employers should make sure that all staff members, particularly managers, are aware of the applicable procedures.

## **Discrimination risks**

News reports already show that concern about the virus is leading to incidents of racist or xenophobic behaviour. Such behaviours will be detrimental to an organisation's culture and values, and in some jurisdictions will expose the employer to claims for discrimination. As in all cases of discrimination or harassment, having a well-publicised anti-harassment and/or equal opportunities policy and mandatory training is important. This should reduce the incidences of harassment.

## A final thought

People spend a large amount of time at work and inevitably the messages they receive from their employer about Coronavirus will influence their feelings on the matter. There is significant value in clear communications that show your business is considering staff welfare and responding in a measured way. The virus is still at an early stage with limited reported cases outside those higher risk regions and, while being prepared is always valuable, a measured approach is advisable.

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