

CORONAVIRUS (COVID-19): CHALLENGES FOR EMPLOYERS

As the Coronavirus (Covid-19) outbreak continues to spread, businesses face a range of issues. What are the key risks and legal considerations for employers?

1. WORKPLACE SAFETY

Employers have duties to provide a safe place of work and take reasonable care of the health and safety of their employees. ***In Turkey, such duties comprise of statutory duties arising from the occupational health and safety legislation as well as contractual duties arising from individual employment contracts.*** Law on Occupational Health and Safety provides that the employer is obliged to take any and all measures necessary to provide a safe workplace for its employees - even when such specific measures are not specifically prescribed under the law.

- Coronavirus (Covid-19) has not been officially classified as an “occupational disease” entitling compensation under the Labour Law and occupational health and safety legislation. However, it may be possible for employees to have contracted the virus during the course of employment or during their business travels and this may lead to the risk of claims being brought under the employee compensation or occupational safety and health legislation.
- Given the broad definition and interpretation of "occupational accident" under the Law on Social Security and General Health Insurance, it is likely for the Social Security Institution to classify Coronavirus cases as "occupational disease" when employees are found to contract the virus at their work environment. While this may entitle the employee to benefit from social security funds and receive a certain amount of compensation from the Social Security Institution, the employers' responsibility may not arise for each case - especially when employer has objectively acted diligently in adopting measures to mitigate the risks of spreading illness in the workplace.

To mitigate the risks of spreading illness, available precautionary measures and relevant information should be considered, continually monitored, and actioned upon to protect the health and well-being of employees.

- Depending on the severity of the risks, precautionary measures to be taken may vary from workplace to workplace. These may include: stepping up cleaning and hygiene practices (and in some cases, provision of protective apparatus); limiting access to some company areas; requiring provision of medical and travel records (subject to data privacy rules); setting up an approval regime for travel; protocols on external client or supplier meetings and handling client requests in high risk zones; suspending group activities; collecting self-declaration information from staff (subject to data privacy rules); applying access restrictions for employees and clients who have either had close contact with infected individuals or have recently travelled to high risk areas; and so on.
- Another precautionary measure may be considering alternative work arrangements such as rotation, shifts, rosters and working from home. While assessing these work arrangements employers must keep in mind that under Turkish law, employers may not unilaterally substantially alter the employees' working conditions.

- Employers should conduct risk assessments of the work of their employees, and, based on the results of the assessments, provide them with the necessary information and equipment to safeguard their health and safety. Coronavirus developments and guidance should be monitored, such as the latest guidance from the Ministry of Health and other competent local authorities.
- A temporary lock-down is also a possible alternative. However, employers cannot temporarily lock-down work-places without the approval of the Turkish Labour Institution. Should the employer consider the risk of spreading illness is so high that the work place shall be temporarily locked-down or working hours shall be significantly limited, the employer may file a request of temporary lock-down (for a period no longer than three months) to the local labour administrations. If such request is approved by the Turkish Labour Institution, employees may benefit from the relevant public funds reserved for unemployment.

2. KNOCK-ON EFFECT: PAY, PAID LEAVE

Changes to work arrangements may potentially have a knock-on effect on employees' pay, holiday and sick leave entitlements, particularly if employees are restrained from undertaking certain work activities due to medical surveillance, compulsory quarantine, or self-quarantine, or are within restricted zones overseas.

- Employees are entitled to receive wages in exchange of the work they carry out. Accordingly, if an employee is ready, willing and able to perform the work, and work can be performed remotely from home, the employee should be paid in the usual way. If an employee's inability to work is the result of a governmental decision or external constraints, the position is less clear and the practical implications would be case specific.
- Moreover, if, following a holiday or business trip, employees are stranded overseas as a consequence of locally imposed travel or quarantine restrictions (e.g. in China or Italy), employers and employees should discuss what safe travel options exist and the possibility of remote working.

For workplace measures and travel advisories in response to Coronavirus, please refer to the checklist below.

3. REGULATED SECTORS: KEY PERSONS AND QUALIFIED STAFF

In case the outbreak becomes particularly serious in cities where banks and regulated financial institutions operate, having appropriate team rotation and other risk management arrangements would be particularly important for such banks and financial institutions, as there must be sufficient human and technical resources devoted to operational risk management to ensure that business activities are conducted by qualified staff with the necessary experience and technical capabilities.

- If key persons are stranded or if the entire team has contracted the virus, business operations would be severely hampered. Regulated entities that are required to have a business continuity plan should ensure that the business continuity plan sufficiently covers such situations.

4. DATA PRIVACY

Companies are multiplying measures to prevent Coronavirus from contaminating their premises. These measures sometimes require them to collect, analyse and share information about their employees and other individuals (e.g. customers, contractors). For instance, a company may wish to request employees and office visitors to provide information about their recent travels, exposure to potentially contaminated individuals for the purpose of Coronavirus containment.

- Processing this personal data is usually necessary for the company to comply with health and safety regulations. Nonetheless, it raises data protection challenges, in particular with respect to the information of concerned individuals regarding what the company envisages to do with one's personal data, types of personal data that it is permitted to collect, conditions to process sensitive data such as health data, and circumstances under which such personal data can be shared within and outside the company's group.

- Especially for health data (e.g. for cases where employees are asked to disclose if they are experiencing any flu-like symptoms), employers shall act particularly cautious as unlike the GDPR, Turkish data protection rules only allow health data to be processed by specific health personnel acting under the duty of confidentiality.

Accordingly, the employers should not force their employees to disclose any symptoms they may be facing and/or be medically tested. However, the employees shall act in accordance with their duty of loyalty towards their employer and cooperate to maintain the safety of the work environment. It may be advisable to remind such duty of loyalty to the employees.

5. TERMINATION ISSUES

Coronavirus itself or the exceptional circumstances it procures may result in suspension or termination of employment contracts.

Employers' termination rights

Employers may have the right to terminate employment contracts of the employees (i) who are sick and absent from work for a duration that is six weeks longer than his/her notice period and (ii) who are absent from work for more than a week due to exceptional circumstances (e.g., being quarantined in a different country/region). During the term that the infected employee is absent from work due to health reasons, his/her employment contract may be deemed suspended and the employee may not be eligible to receive his/her wages. In that case, the employee may receive temporary unemployment allowance from the state. Moreover, if an employee is not ready, willing and able to perform his/her work due to such exceptional quarantine circumstances for a duration less than a week, the employer has the right to pay only half-fees for the duration of such exceptional circumstances.

Employees' termination rights

Employees may have the right to terminate employment contracts if i) he/she believes that a healthy work environment is not provided, ii) one of his/her co-workers with which he/she has frequent close contact has diagnosed with a contagious disease or iii) the workplace is under lock-down for a period longer than a week due to exceptional circumstances.

Please note that for the latter case the employees are only entitled to receive half-fees. If the employee does not terminate his/her contract and such lock-down period do not cease, the employment contract shall be deemed suspended and employee will not be entitled to receive any wages after the first week. While these termination rights are currently available under applicable law, in case of epidemic crisis, governments may impose exceptional measures to suspend such rights under the law. For example, in China, the PRC Ministry of Human Resources and Social Security issued a circular on 24 January 2020 prohibiting employers from terminating the employment of any employees who are infected by Coronavirus during their quarantined treatment (otherwise than for misconduct). Similarly, under Turkish emergency laws, the President is authorised to regulate the working conditions of the employees if an emergency state is declared.

CHECKLIST – WORKPLACE SAFETY

- Whether information has been provided, or reasonable protective or precautionary measures have been taken, to minimise the risks of spreading illness? For example, good hygiene practices, self-quarantine, referral for medical advice, approval regime for business travel, protocols on external client or supplier meetings and handling client requests in high- risk zones, monitoring Coronavirus developments and guidance such as the latest guidance from WHO or other competent local authorities on precautionary measures to be adopted.
- Whether there is a need to consider alternative work arrangements? For example, remote working and IT and other tech options to facilitate staff in their roles, such as client conferences by video.
- In respect of employees infected, was it in the course of, or arising out of employment, and would it be considered a workplace accident entitling compensation?
- Is termination or temporary lock-down is a viable option?

WORKPLACE MEASURES IN RESPONSE TO CORONAVIRUS (COVID-19)

Public Resources: Quarantine & travel advisories

WHO recommendations for international traffic	<p>WHO continues to advise against the application of travel or trade restrictions to countries experiencing Coronavirus outbreaks.</p> <ul style="list-style-type: none"> It is prudent for travellers who are sick to delay or avoid travel to affected areas, in particular for elderly travellers and people with chronic diseases or underlying health conditions. Affected areas are considered to be those countries, provinces, territories or cities experiencing ongoing transmission of Coronavirus in contrast to areas reporting only imported cases. WHO is publishing daily situation reports on the evolution of the outbreak. (The Situation Reports deal with global stats.) <p>https://www.who.int/news-room/articles-detail/updated-who-recommendations-for-international-traffic-in-relation-to-covid-19-outbreak</p>
Turkey	<p>Advise from the Ministry of Health: https://hsgm.saglik.gov.tr/depo/birimler/Bulasici-hastaliklar-db/hastaliklar/2019_n_CoV/rehberler/COVID-19_RehberiV5-25Subat2020.pdf (only available in Turkish)</p>
China	<p>Government news:</p> <p>http://english.www.gov.cn/2020special/5e2f934ec6d019625c6040a0/wuhantour</p> <p>http://english.www.gov.cn/policies/latestreleases/202002/25/content_WS5e55075ac6d0c201c2cbce5e.html</p> <p>http://english.www.gov.cn/policies/latestreleases/202002/26/content_WS5e565703c6d0c201c2cbd056.html</p> <p>http://english.www.gov.cn/policies/latestreleases/202002/23/content_WS5e526a8ac6d0595e03c214ad.html</p>
China – Hong Kong	<p>Advice from the HK CHP: when there is a suspected or confirmed case of Coronavirus (Covid19) – Health Advice on Prevention of Coronavirus disease (COVID-19) in Workplace (Interim)</p> <ul style="list-style-type: none"> Advice on travels: https://www.chp.gov.hk/en/features/102624.html#FAQ14 Entry to Hong Kong: https://www.brandhk.gov.hk/html/en/WhatSON/Novel-Coronavirus.html General update from the HK Government: https://www.coronavirus.gov.hk/eng/
France	<p>Travel advice to various Corona virus affected countries: https://solidarites-sante.gouv.fr/soins-etmaladies/maladies/maladies-infectieuses/coronavirus/coronavirus-infos-voyageurs</p> <p>Advice to companies: www.entreprises.gouv.fr/coronavirus-des-mesures-pour-entreprises-françaises-impactees</p>
Germany	<p>List of worldwide travel advisories for Germany: https://www.auswaertiges-amt.de/de/ReiseUndSicherheit/10.2.8Reisewarnungen</p>
Italy	<p>http://www.viaggiasesicuri.it/documenti/FOCUS%20CORONAVIRUS.pdf</p> <p>Travel advisories worldwide: http://www.viaggiasesicuri.it/</p>
Japan	<p>Japanese Ministry of Health, Labour & Welfare: https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/newpage_00032.html</p> <p>Important Notice on New Restrictions Related to Novel Coronavirus (Feb 26,2020): https://www.hk.emb-japan.go.jp/itpr_en/important_notice3.html</p> <p>Government Initiatives Related to Coronavirus Disease (COVID-19) https://www.hk.emb-japan.go.jp/itpr_en/2020_coronavirus_0221.html</p> <p>From Japan Ministry of Foreign Affairs: https://www.mofa.go.jp/press/kaiken/index.html</p>
Singapore	<p>Singapore Ministry of Manpower:</p> <ul style="list-style-type: none"> General advisory for employers if a confirmed or suspect case of COVID-19 is detected at the workplace General Advisory for Workplaces and Frontline Workers in Response to Confirmed Cases of Local Transmission of Coronavirus Disease 2019 in Singapore Advisory for Employers and Employees Travelling to and from Affected Areas in Response to Increase in Cases of COVID-19
UK	<p>UK Government travel advice: https://www.gov.uk/guidance/travel-advice-novel-coronavirus</p>

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