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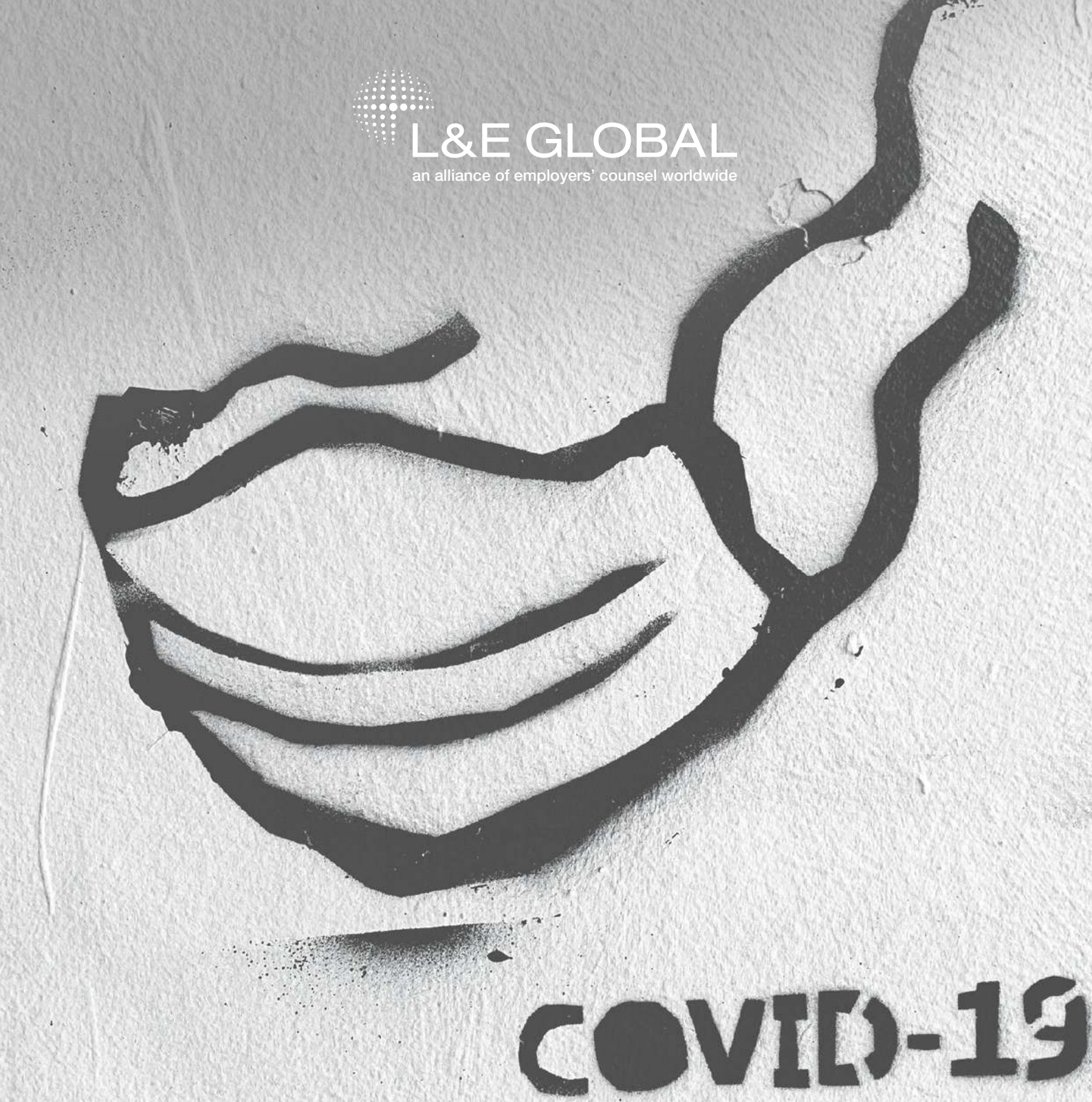

SPECIAL REPORT: COVID-19 BACK TO WORK

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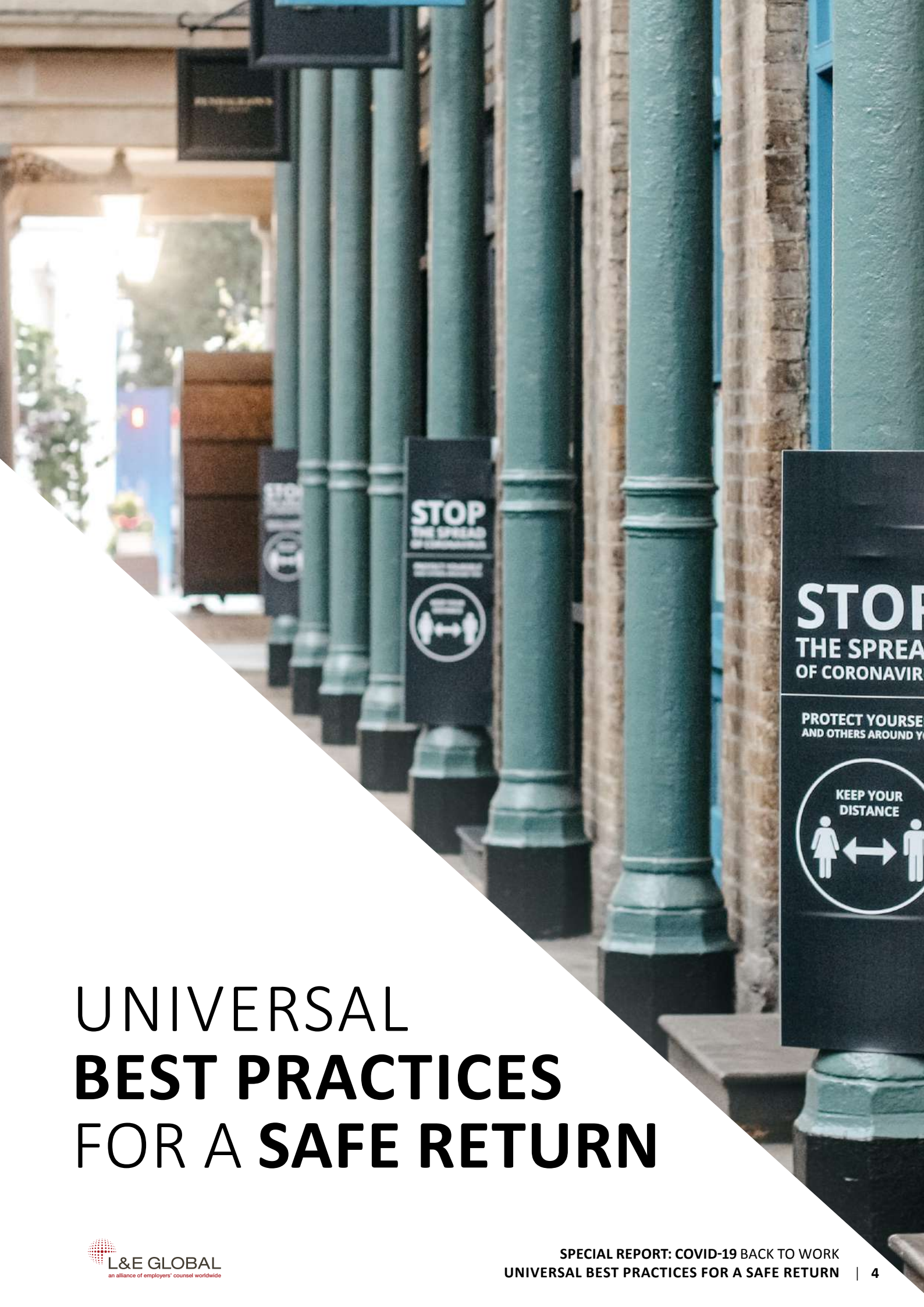
INTRODUCTION

COVID-19 has confronted the world with challenges to public health and the economy few of us have ever experienced or even contemplated. As we publish this guide in July 2020, we have come to realize that the dislocations of COVID-19 were not a moment in time, but remain an ongoing phenomenon which will affect all of our lives well into 2021 and beyond. The workplace is in many ways the epicenter of our battle to contain and defeat COVID-19, as we continually identify the most effective and current measures to protect employees, while also striving to maintain the enterprises which provide our livelihoods and generate the revenue to support the needs of our societies.

In this Special Report, we compile our best information and guidance from 28 major markets concerning the most important workplace law issues you will encounter as we reopen our businesses and maintain their safe operation: national emergency mandates and special programs aiding affected businesses, health and safety measures, teleworking, managing COVID 19-related employee issues, and cost reduction strategies. Perhaps most importantly, we identify local sources you may consult to remain up-to-date, and set out best practices learned from the already robust experience many have had dealing with this crisis.

It is our privilege to provide this resource to you, and we hope you will refer to it often as you advise your employers or clients. Please reach out to L&E Global or any of our member firms with any questions you may have.

John Sander,
Chairman of L&E Global



UNIVERSAL **BEST PRACTICES** FOR A **SAFE RETURN**

MANAGING LEAVE FOR EMPLOYEES AFFECTED BY COVID-19

During the COVID-19 pandemic employers have been faced with difficult decisions regarding their workforce. Across the globe organisations have been grappling with furlough, layoffs, redundancies, workshare programs and other cost-saving strategies, to ensure their organisation's long-term health. But now as businesses gear up to reopen, an organisation may find itself in a different dilemma - how to respond to employees affected by COVID-19 who cannot return to the worksite.

Below are various scenarios that would require an employer to provide or consider providing leave for an employee:

- The government has advised that the employee stay home because they fall in a vulnerable population category.
- The employee is caring for an elderly parent or lives with someone who falls in a vulnerable population category.
- The employee's child's day care (or school) is closed and he/she needs to take care of the child or help with schoolwork.
- The employee has been exposed to COVID-19.
- The employee's spouse has COVID-19.
- The employee is experiencing COVID-19 symptoms and seeking medical confirmation.
- The employee has COVID-19.

While each jurisdiction will have its own appropriate course of action, the potential dilemmas are universal, and it is important for an organisation to anticipate and prepare for how to respond to these scenarios if and when they arise. For example, in the U.S. under the Family First Corona Response Act (FFCRA) covered employers must provide up to 80 hours of emergency paid sick leave for many of the examples mentioned above, and prohibits employees from being discharged, disciplined or discriminated against for taking (or seeking to take) emergency paid sick leave, filing a complaint or instituting a proceeding to enforce the FFCRA or testifying in such a proceeding. In France, if confinement is required (and teleworking is impossible due to the nature of the job), or it is necessary take care of a child under 16 affected by a school closure, an employee may be placed on sick leave and compensated. In Canada, as a result of Bill C-13, the Canada Labour Code now contains a new leave of absence for absences related to COVID-19 that corresponds with the (Canada Emergency Response Benefit) CERB. Every federally-regulated employee in Canada is now entitled to and shall be granted "Leave Related to COVID-19" of up to 16 weeks if the employee is unable or unavailable to work for reasons related to COVID-19.

Organisations confronted with these unprecedented leave scenarios should consider the following takeaways:

- Update company policies to address requests for COVID-related leave.
- Stay up-to-date on this still evolving area of the law, and make updates to policies when necessary.
- Consider whether an employee is entitled to any form of protected leave or other accommodation under national or local law.
- Ensure HR, legal and any other relevant personnel are trained to handle leave requests, including documentation and providing any required notice.
- Maintain open communication with employees to help ensure the appropriate course of action.

- Consider any privacy and confidentiality implications associated with an employee's reason for leave.
- Implement safety and health measures in the workplace, to prevent the spread of COVID-19, and in turn the need for any additional leave once an employee is able to return.

COVID-19 **TEMPERATURE MONITORING AND WORKPLACE SCREENING**

RETURNING TO THE WORKPLACE: HAS YOUR COMPANY CONSIDERED A TEMPERATURE MONITORING PROGRAM?

Is your business proactively planning for the "restart" of operations, and the return of employees to the workplace? As organisations return to business as usual, obviously health and safety of the workplace is critical. Among COVID-19 screening programs in the workplace, many employers have implemented or are considering temperature monitoring as a way to identify persons at risk of being infected and stopping them from infecting others. Whether mandatory or recommended, screening employees and visitors could play an important role in curbing the spread of the virus. Nonetheless, developing and implementing a screening program raises a range of issues organisations need to think through carefully.

SETTING UP A COVID-19 SCREENING PROGRAM FOR YOUR ORGANISATION REQUIRES CAREFUL PLANNING. HERE ARE A FEW KEY STEPS TO CONSIDER:

- **Identify a "Screening Program" Leader.** With guidance across the globe changing rapidly, a leader needs to be informed and practical, as well as sensitive to confidentiality.
- **Understand applicable mandates and recommendations.** Guidance may come from a myriad of sources on the national, regional, and local level.
- **Develop a plan.** The program leader, together with appropriate personnel, e.g. legal and HR, should outline a program in writing. Examples of key components of an effective program include:
  - ***Designating responsibility.*** Who will conduct screening, maintain records, address disputes, handle requests for screening related information? All such employees and/or third parties should undergo training on program requirements.
  - ***Identify who is subject to screening.*** This may include employees, contractors, job applicants and/or visitors.
  - ***Establish procedures for administering screening.*** Determining the best time of day for screening, obtaining notice/consent (if required), deciding who receives and handles results, identifying equipment needed for screening, informing individuals about best practices for self-quarantining (if necessary), and communicating any updates to the programs.
  - ***Ensure confidential and secure collection, storage, and, if necessary, transmission of the data screened.***

Here are some examples of screening program mandates and recommendations from across the globe:

- **The Americas:** The U.S. Equal Employment Opportunity Commission (EEOC) issued an update expressly recognising that employers may implement temperature-screening programs in response to the COVID-19 pandemic. Likewise in Mexico, the Federal Labour Law allows employers to implement mandatory screening programs.

- **Europe:** The European Data Protection Board has confirmed that the GDPR provides legal grounds for employers to implement screening programs. This however, is subject to limitations of national law – e.g. in France the CNIL informed organisations that they should not collect the body temperatures of their employees or visitors to the premises, while in Germany, the DPA's guidance made it clear that such screening is permissible.
- **Asia:** Most countries throughout the Asia-Pacific region have implemented GDPR-like data privacy legislation that would treat temperature data as sensitive. Nevertheless, and despite the concerns over privacy, several countries and regions (e.g. China,Hong Kong Special Administrative Region, Japan and Singapore) have, to some extent, either mandated or recommended temperature monitoring in the wake of the coVID-19 outbreak.

As nations confront the possibility of reopening, governments may increasingly compel, or otherwise sanction, the implementation of COVID-19 screening programs to help prevent a second wave of the virus. Your organisation may also decide to proactively establish such a program. In either case, the program should be carefully considered and implemented.

CONTACT TRACING TECH IN THE WORKPLACE

SHOULD YOUR COMPANY IMPLEMENT A CONTACT TRACING TOOL IN THE WORKPLACE?

Stopping the spread of the coronavirus is critical to overcoming the COVID-19 pandemic. As companies prepare for a return to the workplace, many are considering contact tracing measures. Contact tracing entails the identification of individuals who have been in close contact with someone who has tested positive for COVID-19, during the time in which that individual was likely infectious. In the news of late, there is much discussion on the use of contact tracing technology by governmental organisations (e.g. Singapore, Australia and Israel) to help prevent the spread of COVID-19, but this technology is also developed for use by employers in the private sector.

A contact tracing tool generally comes in the form of an "app", relying either on GPS/location data and/or Bluetooth to alert the user if he or she has been in contact with an individual who reported a positive test result for COVID-19. These apps are usually connected to an employee's smartphone, or a "wearable" such as a bracelet or badge.
While the appeal of this technology is clear, employers must carefully think through a range of issues before the implementation of a contact tracing tool in the workplace. **Here are a few key issues to consider:**

- Whether use of the tool will be mandatory or voluntary;
- Whether there will be any limitations on the hours the tool will track employees;
- What data will the tool collect;
- Who within the organisation and/or third party will have access to data;
- How and where data is stored (e.g. on an external server/cloud or on an employee's device);
- What policies are in place to ensure data privacy and security;
- How long data will be retained for;
- Review of data privacy and security, health and employment laws in countries where your business operates.

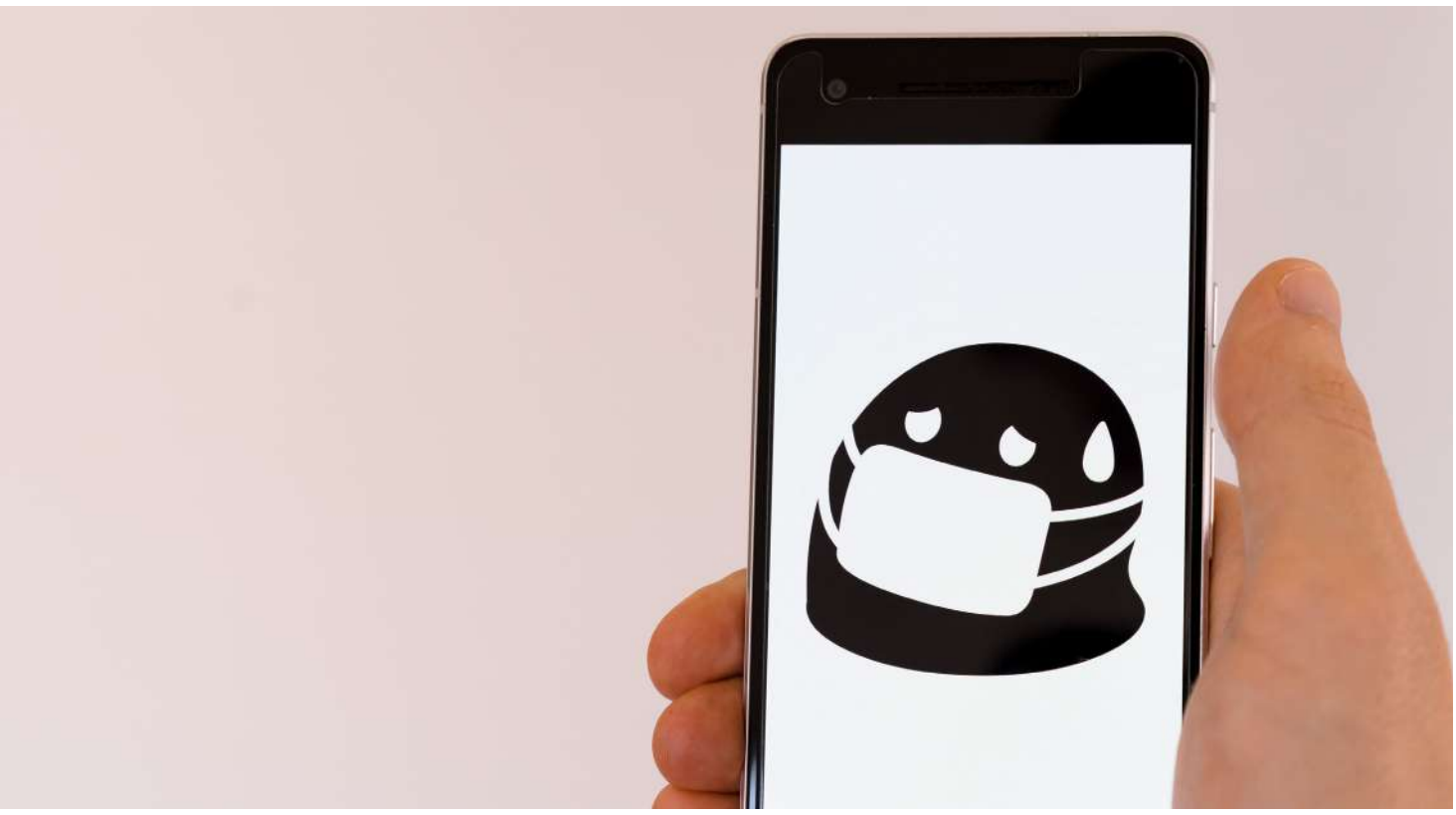
Here is a roundup of mandates, guidance and other resources from across the globe to help navigate contact tracing technology:

- **The European Commission** issued its Guidance on Apps supporting the fight Against COVID-19 pandemic in relation to Data Protection, "to ensure a coherent approach across the EU (European Union) and provide guidance to Member States and app developers" relating to "features and requirements which contact tracing apps should meet to ensure compliance with EU privacy and personal data protection legislation, in particular the General Data Protection Regulation (GDPR) and the ePrivacy Directive."
- In **the United States**, a key feature of the White House's Opening Up America Again Guidelines are several "core state preparedness responsibilities" that each state should be able to adhere to before removing COVID-19 restrictions. The White House plan suggests that employers should "develop and implement policies and procedures for workforce contact tracing following employee COVID+ test results." In addition, the U.S. Centers for Disease Control and Prevention (CDC) published a COVID-19 Contact Tracing Training Guidance and Resources Plan (strategies for implementing contact tracing standards and practices in the workplace, suggestions for policy improvements, and resources to consider when designing a company-specific training plan for COVID-19 contact tracers), a booklet on the basic principles of contact tracing tools, as well as a fact

sheet discussing different types of digital contact-tracing tools.

- In **Australia**, the Attorney General is considering a draft bill to include significant penalties (breaching these requirements will be a criminal offence, among others) for misuse of data collected through the country's COVID-19 contact tracing app, which has been downloaded more than 5 million times since its release on 26 April. Serious infractions related to misuse of the COVIDSafe app include collection, disclosure or use of data outside public health authorities' contact tracing purposes, and uploading the information without an app user's consent.

The advantages of these technologies can be substantial, quickening an organisation's path to compliance and opening its doors for business. However, organisations should proceed with care and examine not only whether the particular solution will have the desired effect, but whether it can be implemented in a compliant manner with minimal legal risk.



SOCIAL DISTANCING WEARABLES

SOCIAL DISTANCING WEARABLES: ARE THEY RIGHT FOR YOUR WORKFORCE?

As companies work to prepare for their return to a safe workplace, establishing a social distancing policy is key. Innovators are rising to meet the changing needs of the workplace with a range of technologies, including social distancing "wearables" to be worn by employees and visitors. A wearable is a smart electronic device worn close to the skin, that is able to detect, analyse and transmit information – usually in the form of a bracelet or badge. Wearables used for social distancing, generally alert the wearer that he or she is getting too close to a colleague, which may boost an organisation's efforts to adhere to distancing requirements.

The advantages of these technologies can be substantial, quickening the path to compliance and opening the organisation's doors to business.
However, implementing a social distancing policy that is effective, and in compliance with privacy, security, employment and health laws is an ongoing effort.

Below are some questions organisations should consider:

- **What is the organisation's goal for the technology?** If the goal of the workplace is to keep workers separate from one another, a social distancing wearable could be a helpful tool. On the other hand, if the goal is to identify workers exposed to COVID-19, then other technologies such as a contact tracing tool or temperature monitoring kiosk may be more appropriate.
- **Does the technology work?** As developers of wearables race to provide organisations with cutting edge tools to help them navigate the COVID-19 pandemic, there may be glitches along the way. It is important for employers to validate the accuracy and effectiveness of the device.
- **Is notice/consent required?** This may be a difficult question to answer without having an understanding of the data that the technology is collecting. For example, if the wearable is linked to an employee's personally owned device, notice and consent are likely required, and most certainly a best practice. In addition, use of such technology may require an employer to consult, and possibly engage in bargaining with, the applicable works council or union. Finally, collecting the geolocation of employees, and interactions with others is likely considered elements of personal information under the General Data Protection Regulation(GDPR), California Consumer Privacy Act (CCPA) and other similar consumer privacy laws.
- **Will workers participate?** If implementation and/or usage is voluntary, the effectiveness of the technology in meeting the organisation's goals may be substantially impacted. Regardless of whether implementation is voluntary or required, it is important for organisations to communicate with their workers to explain the goals of the technology, answer questions regarding same, and address concerns over privacy and related issues in order to ensure buy-in and effectiveness.
- **How is data collected, shared, secured and deleted?** Understanding the answers to these questions are imperative in order to help ensure compliance. This is especially true as there are numerous laws across the globe which may be implicated when data is collected from workers. In addition to statutory or regulatory mandates, organisations will also need to consider existing contracts or service agreements, which may provide for, or limit, the collection, sharing,

storage, or return of data. Finally, whether mandated by law or contract, an organisation should still consider best practices to help ensure the privacy and security of the data that it is responsible for.

- **When should the use of the technology end?** As organisations look to the future, and the hopeful end to the COVID-19 pandemic, they will need to consider when the state of the pandemic no longer supports the use of this technology.

In short, we now have extensive technology at our disposal and/or in development, which may play a crucial role in helping organisations address COVID-19, ensuring a safe and healthy workplace and workforce, and preventing future pandemics. Nevertheless, organisations must consider the legal risks, challenges, and requirements associated with any technology prior to implementation.

REMOTE WORK CONTINUES AMID REOPENING

REOPENING THE WORKPLACE AS REMOTE WORK CONTINUES

Organisations across the globe are beginning to reopen, but part of reopening requires adjusting to the "new normal", which may still include a need for some employees to work remotely. Employers should anticipate that for a myriad of reasons employees may request to continue working remotely, and alternatively a need to downsize office space for economic reasons may demand that some employees (or even entire departments) work remotely.

Across the globe, national governments and administrative bodies are providing guidelines and best practices for teleworking during this unprecedented time:

- In the U.S. the EEOC released updated guidance regarding reasonable accommodations employers can consider for continued telework arrangements.
- The UK Government continues to release updated guidance on working safely during COVID-19, including when it is appropriate to work from home and issues to be mindful of.
- The French Data Protection Authority (CNIL) released guidance for employers on how to implement teleworking and best practices for employees in this context.
- ILO and UNICEF jointly issued guidance for employers on flexible work arrangements.

Here are a few practical tips to consider when implementing a longer-term work-from-home policy:

Make a plan.

- Review existing resources, applicable policies, customer/client agreements to ensure work-from-home is feasible, prudent and contractually permissible.
- Review insurance policies (e.g. employee benefits, workers' compensation, cyber, etc.) to ensure coverage.
- Outline and circulate employee best practices for maintaining a safe "workspace".
- Consider an employee agreement to cover remote work (e.g. adherence to privacy/confidentiality/security policies, ensuring work time is recorded, assignment expectations, etc.).
- Ensure policies are applied fairly and consistently to prevent potential discrimination issues.
- Update plan as needed.

Confirm IT team & infrastructure can support remote work.

- Ensure data privacy and security (see below).
- Expand IT team as needed, including help desk capacity.
- Prepare to address systems/equipment to ensure remote work compatibility.

Ensure data privacy and security.

- The work-from-home policy must be consistent with the company's written information security program (WISP) to ensure that business and personal information is safeguarded:
  - o Require two-factor authentication.
  - o Permit access only through VPN or similar connection.
  - o Ensure all employees have secure laptops/equipment.
  - o Ensure employees are aware of common issues that may arise (e.g. spotting phishing attacks, knowing when to report a data incident, not sending sensitive corporate data to personal email or cloud accounts, avoiding printing sensitive corporate materials, etc.).

Organisations should assess the impact on management, staffing and communications as certain business functions return to the worksite, while some employees (or even entire departments) continue remote work, perhaps indefinitely. Further, organisations should ensure their HR department is equipped to handle requests for flexible work arrangements as well as reasonable accommodations, which likely would have been denied prior to the COVID-19 pandemic.

MODIFICATIONS TO FACILITATE A **SAFE RETURN TO WORK**

WAYS TO ENSURE A HEALTHY AND SAFE RETURN TO THE WORKPLACE

Many countries are in the process of lifting their shelter-in-place orders, if they have not already done so, allowing businesses to begin to reopen and bring their employees back to the workplace. In-house counsel, Human Resource professionals and executives need to be ready to navigate workplace modifications, including social distancing protocols, sanitation and safety considerations.

Below is a non-exhaustive checklist of some best practices and mandates from across the globe, on workplace modifications to facilitate a smooth return to work and help to minimise risk:

- Consider physical changes to reduce risk of exposure to COVID-19 and comply with applicable social distancing mandates, such as moving workstations, altering layouts and access points and installation of barriers. In Belgium for example, the Federal Ministry of Labour and Employment's "Generic Guide for Combatting the Spread of COVID-19 at Work" advises employers to use ribbons, markings or physical barriers to demarcate zones or places to indicate distance, and aid in compliance with the government mandated social distancing requirement of 1.5 meters.
- Implement cleaning and disinfection protocols, and obtain necessary supplies. In the United States for instance, this will require consistency with CDC and OSHAprotocols. In France, under Article L. 4121-1 of the Labour Code, employers have an obligation to take the necessary measures to ensure safety and protect the physical and mental health of workers. France has also prescribed a protocol for cleaning and decontamination of the workplace if a case of coronavirus is detected in the company.
- Evaluate the voluntary or mandatory use of personal protective equipment (PPE) (e.g. masks, gloves, face shields, etc.) and obtain the necessary equipment. Employees should be trained on use and decontamination. For example in Singapore, pursuant to the Government's "Safe Management Measures"employers must ensure that everyone entering the workplace, including employees and visitors, wears a mask and utilises the appropriate PPE, at all times.
- Consider staggered and group divided work shifts to help minimise the impact of COVID-19 exposure. This may require a corresponding salary adjustment, due to reduced schedules. For example, the UK government's COVID-19 guidance and support advises employers to provide different start, finish and break times for their staff, where possible.
- Prohibit or limit shared use of devices such as telephones, headsets, copiers, timeclocks, etc. Implement decontamination practices where prohibiting shared use is not possible.
- Establish protocols for interactions with customers (e.g. eliminating handshakes, requiring masks/barriers, digital customer signage). In Spain for instance, the Health Ministry issued a rule mandating face masks in the street and in public places or places where it is impossible to keep a distance of 2 meters.
- Post notices regarding new workplace rules. In the United States for example, under the Families First Coronavirus Response Act (FFCRA), an employer with less than 500 employees is required to post hygiene/handwashing and social

distancing reminders, in addition to any state and local requirements.
- Continue to check national, local and industry laws and guidance for updates in this area.

COVID-19 has required us to change our behavior, and the workplace is no different. It is important for businesses to prepare effective new workplace policies and procedures to ensure a healthy and safe transition for their workforces to return to work.

COVID 19, BACK TO WORK FAQ'S – **COUNTRY/REGION OVERVIEWS**

ARGENTINA

I. EMERGENCY MEASURES

Mandatory isolation has been longer than predicted by most companies. Luckily, most of our clients were able to migrate rapidly to teleworking. Teleworking will be a very valuable resource when reopening facilities and we highly recommend executing an agreement with employees, providing that such benefit is only granted while sanitary emergency is in place or for a fixed period of time. Although the restart of businesses involving reopening of facilities has not been established on a national level, we are prepared for whenever this might occur. We have organised an interdisciplinary team of specialists (including lawyers, doctors and health, safety and hygiene specialists) ready to analyse each case and assist clients with restarting their businesses. Protocols and tailor-made safety measures will be critical to ensure a safe workplace. Prohibition of dismissals for no cause or due to force majeure, as well as duplication of severance compensation provided for dismissals for no cause, have also been enacted and extended for a significant period of time. These measures have forced employers to explore other alternatives, such as agreed furloughs or agreed terminations.

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

As of June 2020, Argentina is still under Mandatory Social Isolation (ASPO), with only essential activities allowed to open. Decree 297/2020, which originally established ASPO regarding essential activities, provided that employers must guarantee health and safety conditions as established by the Ministry of Health in order to preserve the health of the employees. Furthermore, the Ministry of Labour, through Resolution 202/2020, provided that employees affected by mandatory isolation, wherever possible, must render services remotely from their homes. Nonetheless, section 6 of Resolution 202/2020 compels employers to take all measures necessary, in order to ensure that the working conditions and environment meet the legal standards in accordance with the protocols established by the health authority for the Coronavirus (COVID-19) emergency. In this regard, the Superintendent of Occupational Risks has been publishing on their website, recommendations, guidelines and protocols for a safe workplace. Although no mandatory measures have been issued regarding the reopening of facilities on a national level, Decree 459/2020 provides that every province can mandate different measures required for reopening. Accordingly, pursuant to Decree 297/2020, Resolution 202/2020 and section 75 of Labour Contract Law (LCL), employers must ensure that sufficient safety measures are implemented in order to provide a healthy and safe workplace.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

Clients are encouraged to communicate openly and continuously with their dedicated Labour Risk Insurance Company (ART).

The latest recommendations and guidelines published by the Superintendent of Occupational Risks are available at:
https://www.argentina.gob.ar/srt

Also, a special section of the government's website offers advice on COVID-19:
https://www.argentina.gob.ar/coronavirus/cuidarnos

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

On 1 April 2020, an Emergency Assistance Program for employers and workers affected by the COVID-19 health emergency was created through Decree No. 332/2020 (Emergency Assistance Program for Work and Production, "DNU 332/2020"), which was later amended by Decree No. 347/2020 ("DNU 347/2020") dated 6 April 2020, and Decree No. 376/2020 ("DNU 376/2020") dated 19 April 2020. In short, the Emergency Assistance Program sets out the following benefits:

- the postponement or reduction of up to ninety-five percent (95%) of the payment of employer contributions to the Argentine Social Security System;
- the payment of a Supplementary Salary, e.g. an allowance paid by the government for workers in the private sector equivalent to 50% of the net February 2020 salary, which cannot represent less than the minimum vital salary published by the government or more than twice such minimum and vital salary, or the total February 2020 salary.
- the provision of a Zero Rate Credit for Small Taxpayers and for self-employed workers with a subsidy of one hundred percent (100%) of the total financial cost up to ARS 150,000 credited to their credit card; and
- unemployment benefits, by which workers who meet the requirements set forth in Laws No. 24,013 and No. 25,371 will have access to a financial benefit of between ARS 6,000 and ARS 10,000.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

Decree 459/2020 approved protocols by the Ministry of Health for the automotive and auto parts industry, electronics and household appliances, clothing, tobacco products, metallurgy, machinery and equipment, footwear, graphics, publishing and printing, wood and furniture, toys, cement, textile products, leather goods, tires, bicycles and motorcycles, chemicals and petrochemicals, cellulose and paper, plastics and by-products and ceramics. Decree 459/2020 also provided that each governor may establish specific protocols for each province and activity.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

Main recommendations in all protocols;

- gradually reinstate employees;
- maintain the safety distance (between 1.5 and 2 meters);
- control entry of employees and suppliers;
- provide elements and equipment for personal protection;
- adequately ventilate the establishment;
- continuously inform about safety measures and provide the appropriate training;
- do not share tools or utensils;
- do not hold in-person meetings;
- clean and sanitise frequently and on a regular basis (before, during and at the end of the work day);
- provide designated isolation areas for employees with symptoms of COVID-19; and
- establish and inform an action plan in case of a suspicious case of COVID-19.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

The Superintendent of Occupational Risks (SRT), through resolution No. 21/2020 has stipulated: (i) that employers who enable their workers to perform teleworking in the context of the current health emergency must inform the Labour Risk Insurance Company (ART) affecting the payroll of workers, as to who will be rendering services from their homes, the frequency (days and hours in which they will be rendering services) and the domicile where they will perform tasks; and (ii) that Resolution 1552 SRT, which provided for the mandatory provision of certain elements relating to safety and hygiene in the workplace (fire extinguisher, mouse pad, ergonomic chair, first aid kit, etc.), will not be applicable in cases of teleworking, due to COVID-19.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

Decree 367/2020 provided that the COVID-19 disease shall be presumed to be an occupational disease, in respect of dependent workers excluded by legal dispensation from compliance with the mandatory and preventive social isolation ordered by Decree No. 297/20, and its supplementary regulations, for the purpose of performing essential activities ("essential workers"), while the isolation measure provided for by such regulations is in force, or during any extended periods thereto. Based on the foregoing, Labour Risk Insurance Companies must provide medical assistance (for which purpose a special fund was created) to infected essential workers and will cover their salaries and medical expenses during medical leave. Finally, the Central Medical Commission will evaluate whether the disease was work related.

Regarding childcare, the Ministry of Labour provided, by means of Resolution 207/2020, that during the suspension of classes in schools, as stipulated in Resolution No. 108/2020, issued by the Ministry of Education, the leave of the parent or responsible adult in charge, whose presence in the home is indispensable for the care of the child or teenager, shall be considered justified. Employees covered by this dispensation shall: i) notify their employer that these circumstances are applicable to his/her situation; ii) justify the need for such leave; and iii) provide any relevant information which should be taken into consideration by the employer. Only one parent or responsible person per household may use this exemption.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

As long as the employer provides a safe workplace, employees must return to work once the mandatory isolation period is terminated. In this regard, Section 75 of the Labour Contract Law not only compels employer to provide a safe workplace, but also allows employees to refuse to work onsite, without loss or reduction of remuneration, if an imminent danger exists and/or the employer does not adhere to, or fails to adequately provide for, the necessary safety measures.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

Section 5 of Resolution 202/2020 of the Ministry of Labour provides that the employer must inform the Ministry of Health about confirmed and suspected cases of COVID-19, in accordance with the employer's obligation to provide a safe workplace in order to protect the health of its employees. It is important to note, that, while employers have a responsibility to inform its workers about an employee who has been in contact with suspected or confirmed cases, including isolating the suspected employee, and in order to take the appropriate precautions and preventative measures, the employer must, at all times, handle such sensitive information with the utmost care, and keep such information strictly confidential, as such information falls under the purview of, and rights afforded by, the laws governing Data Protection and privacy.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
Decree 329/2020 (dated 31 March 2020) has been extended by Decree 487/2020 (currently in force until 30 July 2020) prohibits unilateral furloughs on the grounds of force majeure, lack of work or work reduced for a period of 60 days. The Decree provides one exception only, regarding furloughs covered under the terms of Section 223 bis of the LCL, which provides that, for furloughs agreed to

between the employer and with each employee, respectively, or the relevant union, and approved by the labour authority for those employees who do not perform any tasks as a result of a lack of work or a reduction of work (not attributable to the employer) or force majeure (dully evidenced). Based on the foregoing, the Ministry of Labour issued Resolution No. 397/2020 for the purpose of facilitating the Ministry's process to approve furlough agreements as such, pursuant to section 223 bis of LCL.

b. Salary reductions.
Salary reductions are not permitted under local labour laws. The only alternative is to proceed with a furlough agreement (see part a. Furloughs, above).

c. Redundancy.
Decree 329/2020 also prohibits dismissals: (i) without justified cause; or (ii) due to lack of work or a reduction of work, and by force majeure, for a period of 60 days (e.g. currently in force until 30 July 2020, as extended by Decree 487/2020). The Decree provides that any dismissals in breach of the provisions established in 329/2020, shall have no effect, and the labour relationship will continue in force under the same terms and conditions. Moreover, prior to the implementation of COVID-19-related measures, duplication of severance payments was enforced for 180 days, and has, just recently, been extended for an additional 180 days (Decrees 34/19 and 582/20).

d. Facility closure.
While a company may proceed with the closure of its facilities, due to the prohibition of dismissals in force, the permanent closure of the company's premises/offices would not be possible. However, the company does retain the option to execute a mutual termination of the employment agreement with each employee. In case the company faces an impossibility to continue paying salaries, the company has to go through a mandatory conciliation procedure before the Ministry of Labour, which the union and the company will be summoned to a hearing to discuss salary reductions and where the parties are encouraged to reach an agreement.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

It is highly recommendable that employers implement teleworking policies in writing. In case employees should be required to return to the office after the isolation period has ended, it is also advisable that such policies state clearly, that teleworking is intended to be an arrangement that is temporary in nature and has been adopted as a result of the public health emergency caused by COVID-19, in order to avoid the risk of an employee filing a claim in this respect, when he/she is eventually required by the employer to return to the office. We also encourage employers to explore possibilities to reach agreements on furloughs and terminations with employees and the respective representatives. Per local authorities nationwide, companies should have safety and hygiene protocols in place prior to their employees' returning to work at the company's facilities. We also encourage employers to develop such protocols with the assistance of an expert on matters of safety and hygiene in the workplace.

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AUSTRALIA

Despite some initial delay, Australia reacted relatively quickly to the COVID-19 crisis with both the industrial tribunals and the government introducing changes to allow business to change and cope with increasing restrictions and the need to make changes to allow businesses to cope with a significant downturn in the economy. The public health restrictions included limits on non-essential travel (for most businesses, this included the inability to travel to work) and this meant a major shift for many employers to a majority of employees working from home, bringing issues of supervision, technological control, privacy issues and safety obligations in ways not previously experienced. The economic impact has been significant and is likely to be felt for a number of years. For many businesses, there has been reduced income (sometimes no income) and continuing expenses such as rent and outgoings, meaning that wages have been impacted, job losses increased, and an increased reliance on government support. The material below outlines the position but as public health measures have so far proved successful, the legal position is rapidly changing as governments ease restrictions in an effort to return the economy to previous levels.

For further background of Australia's response to the COVID-19 crisis, we refer to our previous L&E article: ***Australia: Variations to Modern Awards and Introduction of the JobKeeper Scheme in Response to Serious Industry Concerns During the COVID-19 Crisis***

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

The position on reopening facilities depends on the State or Territory in which the business is located. Further, the position is changing rapidly, for example, NSW has recently announced a planned easing of the position so that by July the only restrictions on some businesses will be that the "social distancing" rules must be observed (1.5 metres apart for non-household members, with 4 square metres of space per person determining the maximum capacity of a venue). Some restrictions (for example, limits on numbers attending funerals) have been lifted with immediate effect (again, social distancing still applying). As of the morning of 12 June 2020 the following restrictions applied:

a. **NSW:** In cafes and restaurants up to 50 people can dine-in, as long as businesses observe the four square metre rule (maintaining an area of four square metres per person). Hairdressers, nail, waxing, tanning and beauty salons can open to 10 customers at a time. Gyms and fitness centres are prohibited from opening.
b. **Victoria:** In cafes and restaurants up to 20 people can dine-in, as long as businesses observe the four square metre rule, with tables being spaced 1.5m apart. Hairdressers, nail, waxing, tanning and beauty salons can open to 20 customers at a time. Gyms and fitness centres are prohibited from opening.
c. **Queensland:** In cafes and restaurants up to 20 people can dine-in, as long as businesses observe the four square metre rule. Beauty therapy, tattoo parlours, spas, and nail salons can open to up to 50 people at a time. Gyms and fitness centres allowed to reopen to 20 people in each facility.
d. **Tasmania:** In cafes and restaurants up to 10 people can dine-in, as long as businesses maintain four square metre rule. Only hairdressers and barbers can open. Gyms and fitness centres are prohibited from opening.
e. **Western Australia:** In cafes and restaurants up to 20 people can dine-in, as long as businesses observe the four square metre rule. Only hairdressers and barbers can open. Gyms and fitness centres allowed to reopen to 20 people in each facility.
f. **South Australia:** In cafes and restaurants up to 80 people can dine-in, as long as businesses observe the four square metre rule. Hairdressers, along with beauty salons, nail and tattoo parlours can all reopen. Gyms and fitness centres allowed to reopen to 20 people in each facility.

g. **Northern Territory:** All businesses allowed to reopen with a COVID-19 plan. Hairdressers, along with beauty salons, nail and tattoo parlours can all reopen. Gyms and fitness facilities allowed to operate.
h. **ACT:** In cafes and restaurants up to 20 people can dine-in, as long as businesses observe the four square metre rule. Hairdressers, along with beauty salons, nail and tattoo parlours can all reopen. Gyms and fitness centres allowed to reopen to 20 people in each facility.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

a. The Fair Work Ombudsman is a key resource for information about workplace entitlements and obligations during the COVID-19 crisis.
b. Safe Work Australia, the Australian Government's statutory agency tasked with improving work health and safety and workers' compensation arrangements across Australia, has collated industry-specific information and resources for employers during the COVID-19 crisis.
c. The National COVID-19 Coordination Commission has introduced an Online planning tool to help business develop a plan to keep their workers, customers and the community safe as they reopen or increase their activities in the weeks and months ahead.
d. The Department of Health is providing up to date news and alerts on COVID-19, specifically targeted towards the Australian Government's responses and initiatives.

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

a. The Fair Work Commission has, on application by the parties, introduced variations to some industry-specific Modern Awards, for example, the Hospitality Industry (General) Award 2010, the Clerks – Private Sector Award 2010, and the Restaurant Industry Award 2010. The variations provide increased flexibility for employers and employees during the COVID-19 crisis, including allowing for flexible "working from home" arrangements, leave entitlements and work hours.
b. On 8 April 2020, the Australian Federal Parliament passed the Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020 (Cth) and the Coronavirus Economic Response Package Omnibus (Payments and Benefits) Act 2020 (Cth), introducing temporary amendments to the FW Act to allow employers to change workplace arrangements and claim "JobKeeper payments", this being a fortnightly $1,500 JobKeeper payment for each eligible employee, until business conditions improve.
c. On 8 April 2020, the Fair Work Commission varied 99 awards by inserting a new Schedule dealing with "Additional measures during the COVID-19 pandemic" under section 157 of the FW Act. These variations entitle employees to take two weeks unpaid pandemic leave if required, by government or medical authorities or acting on medical advice, to self-isolate or is otherwise prevented from working by measures taken by the government or medical authorities in response to the COVID-19 pandemic. Further, the variations entitle employees to take twice the amount of their annual leave at half pay by agreement with their employer.
d. The Australian Federal Government has established a $1 billion COVID-19 Relief and Recovery Fund to provide tailored support to communities and industries disproportionately affected. Support provided by the Fund is targeted towards initiatives supporting industries including aviation, agriculture, fisheries, tourism and the arts. Available support may include fee or levy relief, increasing payments through existing grant programs and establishing targeted new programs to support the particular needs of an industry sector.
e. On 2 April 2020, the Australian Government announced the new Early Childhood Education and Care Relief Package. From 6 April 2020, weekly payments have been made directly to early childhood education and care services in lieu of the Child Care Subsidy and the Additional Child Care Subsidy, to help them keep their doors open and employees in their jobs.

A number of these provisions are time-limited and are due to be reviewed in September 2020 at the latest. Some changes have already been announced.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

a. Physical distancing measures are still in place across Australia. Currently, this means keeping a distance of at least 1.5 metres between people and 4 square metres per person.
b. The Australian Government has introduced the COVIDSafe app, an entirely voluntary contact tracing tool to assist health officials to quickly contact people who may have been exposed to COVID-19.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

a. The model Work Health and Safety Laws (see attached Guide) require employers to take care of the health, safety and welfare of their workers and other staff, contractors and volunteers, and others (including clients, customers and visitors) at the workplace.
b. Measures typically implemented by employers to comply with their work health and safety obligations include:
   i. implementing working from home arrangements;
   ii. discouraging workers from unnecessary usage of public transport;
   iii. requiring workers and other people to practice physical distancing;
   iv. requiring workers and other people to practice good hygiene (e.g., through workplace policies and ensuring access to adequate and well stocked hygiene facilities);
   v. requiring workers to stay home when sick;
   vi. requiring others to stay away from the workplace, unless essential, e.g., such as family, friends and visitors;
   vii. cleaning the workplace regularly and thoroughly;
   viii. restructuring the layout of the workplace to allow for physical distancing;
   ix. limiting the number of people in the workplace at any given time;
   x. providing adequate facilities in the workplace to protect workers from contracting COVID-19 (e.g. washroom facilities including adequate supply of soap, water and paper towel, and hand sanitiser where it is not possible for workers to wash their hands);
   xi. providing any necessary information or training to protect workers from the risk of exposure to COVID-19; and
   xii. consultation with workers on health and safety matters relating to COVID-19, which involves taking the views of the workers into account and advising workers of the outcome of consultation.
c. Both pre-made and customisable materials, including posters, stickers, and decals containing checklists, infographics, fact sheets for industry and posters on handwashing, hygiene and physical distancing, have been made available by the Australian Government for use by cafes, restaurants, stores and retailers, residential buildings and sports and entertainment venues to download and display in their workplaces. Resources can be found at COVIDSafe resources and Safe Work Australia.
d. One factor where the employer is at risk from so many of the workforce working from home is that under the uniform Health and Safety legislation in place in a majority of Australian jurisdictions, the home is a workplace and the employer thus has duties towards the employee in relation to safety in that workplace. This includes everything from electrical safety, tripping hazards and ergonomic issues to safety of the person such as increased risk of domestic violence. This will be an increasing issue if home working continues to be widespread.
e. Safe Work Australia has provided Guidance for employers on how to clean their workplace to keep it safe and limit the spread of COVID-19 .

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

a. Whether telework remains an option is heavily dependent on the employer and the industry in which they operate. Although some reports suggest that working from home will become more and more common in a future after COVID-19, employers still retain the discretion to direct their employees to return to the workplace (see point 8) provided it is safe to do so.

b. In Australia, there has been a reported surge in sales of software to monitor employees' productivity at home. Only some jurisdictions have legislation covering monitoring of workplace computers and so the use of this software will not always be covered. Thus, most of the privacy issues would arise pursuant to employer's privacy policies.

c. Employees may submit a formal request to continue to work remotely once business reopens. Requests for flexible working arrangements are protected as a National Employment Standard.

   i. An employee may request a change in their working arrangements from their employer if they require flexibility because they:

      1. are the parent, or have responsibility for the care, of a child who is of school age or younger
      2. are a carer (within the meaning of the Carer Recognition Act 2010)
      3. have a disability
      4. are 55 or older
      5. are experiencing violence from a member of their family, or
      6. provide care or support to a member of their immediate family or household, who requires care or support because they are experiencing violence from their family.

   ii. An employer can only refuse the request if there are reasonable business grounds to do so. On this issue, the fact that so many people working from home have proved that there is no issue with doing so and no loss of productivity may make it more difficult for an employer to argue that there are business grounds for refusing a request.

d. Where a workplace has a small office space, Fair Work Australia has recommended rotating working from home for employers in order to allow for adherence to the four-metre sq rule.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

a. On JobKeeper: As part of the Australian Government's JobKeeper scheme, a qualifying employer can:

   i. request an eligible employee to take paid annual leave (as long as they keep a balance of at least 2 weeks)

   ii. agree in writing with an eligible employee for them to take annual leave at half pay for twice the length of time.

b. Sick leave: as paid sick leave covers only situations where an employee has illness, including COVID-19, employees cannot take sick leave for compulsory or voluntary self-isolation if they are not sick with any illness or injury. They can take sick leave in these occasions if they are sick with illness or injury.

c. Compulsory or voluntary self-isolation: employees must use their annual leave entitlements or take unpaid leave if they do not have annual leave available. This covers employees who are not sick and required to self-isolate because they have come into contact with a case of COVID-19 or have returned from overseas.

d. Childcare: employees can use paid carers leave to take care of children if schools or childcare centres close, or if their child is sick.

   i. If an employee is on Parental Leave Pay, and their employer cannot continue to afford to pay them because of the impact of COVID-19, the employee can apply to the Government to receive their Parental Leave Pay.

   ii. Notably, from 6 April 2020, the Australian Government implemented the Early Childhood Education and Care Relief Package. This means that between the period 6 April 2020 to 12 July 2020, families have not been charged fees for early childhood education and care. This has lessened the need to take childcare leave for employees.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

a. Employers should first and foremost develop a COVID-19 plan (see 4 and 5). This means adhering to the four-square-metre rule and compliance with other WHS laws.
b. Any employee who refuses a lawful and reasonable direction to return to work is in breach of an implied term of employment: Grant v BHP Coal Pty Ltd (No 2) [2015] FCA 1374.
   i. A direction will be considered 'lawful' if it does not involve illegality, and falls within the scope of the employee's employment (King v Catholic Education Office Diocese of Parramatta [2014] FWCFB 2194 , [27]). Notably, a direction could be construed as unlawful if it would create risks to WHS. Thus, it is crucial for employers to develop and follow a COVID-19 Safe plan.
   ii. Whether a direction will be considered reasonable is based on the express and implied terms of the contract, nature of employment, established custom and relevant instruments (CFMEU v Glencore Mt Owen Pty Ltd [2015] FWC 7752). It may be considered reasonable in some instances to give a direction to go back to work, such as those roles that need physical presence (such as hospitality staff), but not reasonable in others (in white collar professional roles where work can be easily performed from home).
   iii. If an employer refuses a lawful and reasonable direction, it may provide a valid reason for dismissal of the employee under the Fair Work Act 2009 (Cth). An employer can also discipline an employee or decide to take no action.
c. Alternatively, employers can direct employees to use their paid and unpaid leave entitlements.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

a. Safe Work Australia has outlined the Steps an employer must take when responding to an incident of COVID-19 in the workplace, which are as follows:
   i. isolate the person;
   ii. seek advice and assess the risks;
   iii. ensure the person has transport home, to a location they can isolate, or to a medical facility if necessary;
   iv. identify and tell close contacts while maintaining the privacy of all individuals involved; and
   v. review risk management controls.
b. If an employee is infected with COVID-19, employers are directed to call their state or territory helpline and follow the advice of public health officials.
c. For assessing the risk to the workplace, workers and others, employers should ensure they have the current contact details for the infected person and make a note about the areas they have been in the workplace, who they have been in close contact with and for how long.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
b. Salary reductions.
c. Redundancy.
d. Facility closure.

Many rights in Australia are governed by legislation, either State (for example, long service leave legislation) or Federal (the Fair Work Act for example sets many minimum standards) and by instruments made under that legislation (registered agreements or industrial awards, for example, can both set minimum standards). So the ability to direct, for example, an employee to take leave will be restricted by that legislation.

Salary reductions will be partly governed by the contract of employment (an employer cannot unilaterally change a contract of employment) and so normally consent will be required. Even then, an agreement to reduce wages or conditions below the statutory minimum will be ineffective.

Redundancy is covered by legislation or instruments made by legislation. Condition attach: for example, there are consultation provisions.

Closing facilities will be governed by redundancy requirements and notice must be given to social security agencies.

Given that this advice is dependent on the individual circumstances of the employer, we recommend that employers seek personalised legal advice on matters related to cost reduction facilities.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

Employers should:

- Obtain legal advice as soon as possible and if necessary, financial advice.
- Review contracts of employment, industrial instruments, and statutory obligations, as well as any policies or documents such as handbooks to ensure compliance.
- Ensure they consult with employees about change (including consultation with unions where applicable).
- Ensure compliance with Work Health and Safety obligations.
- Ensure compliance with any public health orders or regulations.
- Implement any changes necessary to ensure compliance and safety as identified.
- Ensure proper support for employees, including assistance programs generally, counselling, financial advice, health advice etc as appropriate to the workforce.

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BELGIUM

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

The legal basis of the reopening of companies is laid down in the Ministerial Decree of 23 March 2020, later replaced by the Ministerial Decree of 30 June 2020. The Decree of 23 March 2020 has been amended multiple times to adapt the rules for each stage of the reopening. According to art. 2 of the Ministerial Decree of 30 June 2020, companies have to take preventive measures, which are based on the "Generic Guide for Combatting COVID-19 at Work" of the Federal Government. This guide provides a framework with measures that can be adapted by the different sectors, and by each employer, to their specificities in order to ensure that the activities can be resumed under the safest and healthiest possible conditions. This Generic Guide is further specified by sectoral guides set up by the Joint Committees.

- The latest version of the Ministerial Decree of 23 March 2020 is available only in Dutch or French.
- The English version of the Generic Guide is published on the website of the Federal Public Service Employment.
- The sectoral guides are usually only available in Dutch or French.
- For more information on the reopening of the economy, consult Van Olmen & Wynant's dedicated newsletter or FAQ on Corona.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

Van Olmen & Wynant has an up-to-date FAQ on Corona in English and will publish newsletters on new initiatives. Other useful websites to find the latest developments are the website of the FPS Employment (only in Dutch or French) and the website of the Federal Association of Enterprises (in English) and Unizo (for SME's, only in Dutch) and the general governmental website with information on the Coronavirus (in English), the website of the Federal crisis center (only in Dutch, French and German), as well as the websites of Brussels (in English), Flanders (only in Dutch) and Wallonia (only in French).

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

As of 13 March 2020, all temporary unemployment resulting from the coronavirus can be considered as temporary unemployment due to force majeure. This flexible temporary measure of the federal government is valid until 30 August 2020. For certain sectors who are severely hit by the crisis (e.g. entertainment and restaurants and bars), the measure will be prolonged until 31 December 2020, for the other sectors there will be a transition period which make it easier for employers to apply the traditional system of temporary unemployment due to economic reasons. Under the Corona system of temporary unemployment, the employment contract is suspended and the employees will receive an allowance of 70% of their capped salary. On top of this, the government will add a supplement of €5.63 per day. Only a withholding tax on professional income of 26.75% will be deducted from the benefit. This withholding tax is reduced to 15% as of May 2020 until the end of the year. More information can be found in our ***Corona FAQ***.

Companies that had to close down due to the lockdown can request to postpone their social security contributions to 15 December

2020 (for some sectors this postponement was automatic). If the company experienced economic consequences as a result of the COVID-19 virus, and the company has difficulties paying the social security contributions, the employer may apply to the National Social Security Office for an amicable repayment plan for the first and second quarter of 2020. Companies can also request an amicable repayment plan for their taxes. More information ca be found in our ***Corona FAQ.***

The regional governments provide subsidies:

Flanders

- A subsidy of €4,000 for companies which had to close down in March. If they still had to close down after 5 April, they received an additional €160 per day. If the company has multiple exploitation seats, it can be awarded a maximum of 5 times per company.
- A compensation of €3,000 for companies that did not need to close down, but lost more than 60% of their revenue between 15 March and 30 March, compared to last year (also a maximum of 5 times for companies with multiple seats).
- Another important Flemish measure is the corona-loan for SME's: see our dedicated newsletter.
- More information and other Flemish measures are also available.

Brussels

- A subsidy of €4,000 for companies which had to close down (only for certain sectors).
- A compensation of €2,000 for small enterprises with not more than 5 employees, which suffer under the lockdown (e.g. majority of employees on temporary unemployment).
- Postponement of city taxes.
- More information and other measures are also available.

Wallonia

- A subsidy of €5,000 for small and micro enterprises (less than 50 employees) if they needed to close down during the lockdown (only for certain sectors).
- A subsidy of €2,500 for small and micro enterprises which had to reduce their business.
- More information is also available.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

The Ministerial Decree of 30 June 2020 does not impose specific measures, but refers to the Generic Guide and the sector guides will include the possible preventive measures. At the end, it is the responsibility of the employer to take sufficient preventive measures. Telework and social distancing are still recommended standard practices. Next to the Ministerial Decree of 30 June 2020, the duty for the employer to take preventive measures concerning the health and safety of employees also follows from the Employment Agreements Act of 3 July 1978, and the Act on the wellbeing at work of 4 August 1996 and the related Codex on Wellbeing.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

Social distancing and telework are still highly recommended where possible. Next, the Generic guide includes recommendations concerning:

- Communication of the measures and rules to employees;
- Maximal application of social distancing;
- Hygiene measures (hand + respiratory);
- Cleaning of the workplace, tools and social facilities (e.g. break room, cafeteria, etc.);
- Collective protection measures (partition walls, placing of marks, rope and ribbons to separate persons, etc.);
- Individual protection measures (mouth masks, gloves, protective clothing, glasses, etc.);
- Mouth masks are especially recommended when social distancing is not possible;
- Measures for the commute from home to work;
- Measures for the arrival at work;
- Measures for inside the locker rooms;
- Measures for at the work post/during work, including meetings;

- What to do when an employee becomes ill at work;
- Measures for sanitary amenities (toilets);
- Measures for during breaks;
- Measures for the circulation at work;
- Measures for returning to home;
- Rules for external persons (visitors, clients, deliveries, etc.);
- Measures for external employees or independent workers or multiple employers at the same location;
- Measures for working on location;
- Measures for off-site work;
- Measures for working from home (telework).

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

Until the reopening of the companies (11 May 2020) telework was mandatory whenever it was possible. Now, it is no longer compulsory, but it remains strongly recommended by the government. This system of telework does not really fit the standard systems of structural or occasional telework, but the National Social Security Office allows employers to give their teleworking employees a monthly cost compensation of which no social security contributions (nor taxes) are due. It is recommended that employers should sign a telework agreement with the employees, or that they would provide a telework policy (the rules can be included in the work rules). More information can be found in our ***Corona FAQ.***

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

If employees become sick due to COVID-19, it will be treated according to the normal rules of sick leave (COVID-19 might become recognised as an occupational disease, which will give right to a higher allowance). The government has created a new medical certificate, the quarantine certificate, which is meant for employees who should confine themselves, because they came into contact with persons who are infected or because they tested positive, but do not show any signs. In that case, the employer can put these employees on temporary unemployment. More information can be found in our ***Corona FAQ.***

Further, the government has introduced a system of corona-parental leave (applicable until 30 September) for parents of children up to 12 years (or disabled children). They can use this specific form of parental leave to decrease their working time with 1/5th or ½ in order to take care of their children. They will receive a higher allowance than is provided for the normal parental leave. Read more about this leave in our dedicated newsletter.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

In order to prevent these situations, it is important to involve the structures for social dialogue at the company. The preventive measures should be discussed in the works council and the health and safety committee. In this way, the employees' representatives can help to create support for the measures and facilitate their enforcement. Communication of the measures is key and it is equally important to effectively enforce the hygienic and safety rules. Concerned employees can address their worries to their superiors, the prevention advisor or the health and safety committee. If they still feel like the employer is not taking sufficient measures, they could contact the competent social inspection, which might control the company (after contacting the prevention advisor). Some academics have argued that workers have a right to remove themselves from the workplace in case of a grave and imminent danger (like the coronavirus). However, the relevant legal provision has never been called upon before the courts. Most Belgian employers will try to address these issues with a clear policy, which is communicated to the workers. If this does not help, it could be possible to take disciplinary measures against the illegally absent employees. Find more information in our ***Corona FAQ.***

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

By virtue of the principle of confidentiality (GDPR Article 5.1, f) and the principle of minimum data processing (GDPR Article 5.1, c), an employer may not simply disclose the names of the infected persons involved within the company. Proportionality is also an important principle to be observed when processing personal data (medical or otherwise). With a view to, for example, preventing further dissemination, the employer may of course, inform other employees of an infection, without mentioning the identity of the person(s) involved. The name of the infected person may, however, be communicated to the occupational physician or the competent government services.

OTHER ISSUES.

The Federal government also introduced some flexibility in labour law.

This relates to i.a.:

- A more flexible use of tempory employment in vital sectors (mostly the agricultural sector).
- The introduction of the possibility for employers to give a consumption check of 300 euro for employees which is beneficially taxed.
- Tempory collective reduction of working time of employees (by 1/4th or 1/5th) of companies which are recognized as being in difficulties or in restructuring.
- An employer could propose a corona time credit to an employee which would reduce the individual working time with 1/5th or ½ during 6 months. The employee would receive an allowance during the time credit.
- A full-time employee of 55 years or older can request an "end-of-career" working time reduction of 1/5th or ½ (which would be compensated by an allowance) if he has a career of more than 25 years.

For more information on other issues, consult our ***Corona FAQ.***

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
The legal principle is (and remains at least for the time being) that holidays are fixed in mutual agreement between the employee and the employer. Most of the companies we have been in touch with take on the following approach: they request employees to plan a certain percentage of their holidays before a certain date (e.g. 70% needs to be planned before the end of September). Although we have not seen this before, we believe the employer could also request to plan all holidays before a certain date. In this case, the individual employee still has the possibility to freely choose the date of his holidays. Next, under certain conditions, it is possible to introduce a collective leave for the company or a department, during which all the employees have to take leave for a specified period. If the sector did not foresee this, such a collective leave can only be imposed by an amendment of the work rules. In any case, employers must make sure that employees can take their leave before the end of the year.

b. Salary reductions.
It is not permissible to unilaterally reduce the salary of an employee. This is an essential element of the employment contract. Therefore, an imposed salary decrease will be seen as an implicit dismissal, which constitutes an irregular termination of the employment contract. A salary reduction is allowed with the consent of the employee(s) concerned.

c. Redundancy.
It is still possible to dismiss employees. The normal rules will apply.

d. Facility closure.
The normal rules for collective dismissals and closing of the company will apply. This includes a mandatory information and consultation procedure, the negotiation of a social plan and, under certain conditions, the payment of an additional compensation.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

- Be sure to have a clear policy with measures to prevent the spread of COVID-19, based on the recommendations of the Generic Guide or the sectoral instructions. This will allow your company to reopen safely, assure your employees and clients, and prevent a fine or even a company closure by the social inspection.
- Involve the Health and Safety Committee and the expertise of the prevention advisors. If necessary, consult an external prevention service to provide the necessary expertise.
- When implementing measures, take into consideration the privacy rights of your employees and other limitations set by Belgian employment law.
- Enforce the prevention measures and communicate with employees about their fears in order to prevent or overcome issues with work refusals.
- If possible, allow your employees to telework and provide a clear telework policy.
- Show your employees that the company is doing everything in its power to create a safe workplace in order to create goodwill among the employees, to show flexibility as well as a positive attitude during the current crisis.

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BRAZIL

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

States and cities have different rules related to reopening facilities and, further, it also varies in accordance with the activity performed by the company. It is necessary to check the Decrees, orders and guidelines in effect for your type of activity and location before reopening.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

States and cities usually have their own website with updated information about applicable COVID-19 rules. Here are some websites that include current information about the Decrees, orders or guidelines in effect in São Paulo and Rio de Janeiro:

General Controllership of the Municipality of São Paulo:
https://www.prefeitura.sp.gov.br/cidade/secretarias/controladoria_geral/a_cgm/index.php?p=297823

Decrees of the Government of São Paulo with measures to prevent and combat the new coronavirus:
https://www.saopaulo.sp.gov.br/spnoticias/decretos-do-governo-de-sp-com-medidas-de-prevencao-e-combate-ao-novo-coronavirus/

Attorney General of Rio de Janeiro publications related to COVID-19 State and Federal Legislation:
https://pge.rj.gov.br/covid19/

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

On 1 April 2020, the Brazilian Federal Government issued Provisional Measure (MP) No. 936/2020, which establishes an emergency employment and employees' income maintenance program (Program) and determines additional measures that may be adopted by companies during the COVID-19 pandemic. The Program has three defined goals:

1. Preserve employment and employees' income during the state of public calamity;
2. Ensure continuity of work and business activities;
3. Reduce social impact caused by the coronavirus pandemic.

To achieve the goals of the Program, MP No.936/2020 establishes the possibility to (i) reduce salary and working hours and (ii) to suspend employment agreements. The MP also establishes an Emergency Benefit to be paid by the Federal Government to the employees, when the reduction of working hours/salary or suspension is implemented (see section VI. Cost-Reduction Strategies, part a. Furloughs and salary reductions below for more information).

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

States and cities have different rules, both compulsory and recommended, regarding healthy and safety measures, which vary in accordance with the activity performed by the company. Nevertheless, the employer has the duty to preserve the employees' rights to perform and

develop their activities in a healthy and safe work environment. Thus, preventive measures should be implemented by employers.

Recommendations:

- promote a specific coronavirus prevention program, with support from SESMT (Specialised Service in Safety Engineering and Occupational Medicine) and CIPA (Internal Commission for Accidents Prevention), with distribution of posters and booklets on care and hygiene.
- as much as possible, establish policies for aerating workplaces, opening access and availability of sanitiser in entries/exits and other strategic locations in the high-traffic/common areas.
- establish permanent visits to the different workplace stations/areas to verify the effectiveness of the prevention measures and their compliance by employees.
- inform and frequently provide guidance to employees concerning the consequences of the COVID-19 disease and about routine changes in the workplace.
- identify marginally suspicious cases (either employees with flu-like symptoms or those who have, or have had, contact with potentially infected people) and arrange for their immediate removal from the workplace.
- inform employees, in the event of a suspicion or confirmed case of infection, without disclosing the worker's name, in order to balance the right to privacy with the right of co-workers to be informed of potential risks.
- provide the necessary referral for medical care for employees with flu-like symptoms.
- take the necessary measures to refer the sick employee to the Social Security Agency, after the 15th day of consecutive sick leave, in accordance with the social security legislation.
- allow paid leave for employees that need to take medical tests to identify the disease.
- establish minimum distances between employees during the execution of activities and while using common areas, such as cafeterias, changing rooms, resting areas, etc.
- allow remote work according to the need, possibility and nature of the activity of the company.
- establish a rotation scheme to have a portion of the employees working both from home and at the company's workplace.
- in those cases where employees who use public transportation prove to be subjected to agglomerations, if possible, temporarily offer free alternatives or more individualised means to commute.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

Measures recommended and typically implemented:

- cleaning measures, obligations to wear masks, physical workplace modifications, social distance at the workplace, guidelines regarding the use elevators and the company's common areas. No associated risks.

Measures adopted by some companies and those that may be mandatory depending on employer's activity and location:

- temperature monitoring (does not require the employee's consent);
- COVID-19 testing (the employee's consent is required).

In both cases, the employer should be careful to avoid any type of discriminatory treatment, must provide the employees with information on the data that is collected and they should be conducted by a health professional (e.g. doctor, nurse, technical professional in health, who works at the company or is hired by the company for such purposes). Also, the employer should have a protocol in place on how to proceed in view of the results verified. We recommend deleting the information as soon as it becomes irrelevant.

Additional measures:

- social distancing technology and contact tracing tools (though neither are, at this time, very common in Brazil, the employee's consent is required)

Employers should be careful to avoid any type of discriminatory treatment and must provide the

employees with information on the data that is collected. Here too, it is recommended to delete the information as soon as it becomes irrelevant.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

Telework remains an option and is an alternative already established by the Brazilian Labour Code (CLT). It requires amendments to the employment contract, health and safety guidelines, and agreement by the parties with respect to infrastructure and costs.

Guidelines issued by some states and cities, advise employers to continue to offer accommodations for employees who need to continue to work remotely (e.g. employees who fall within one or more at-risk-groups).

Recommendations for teleworking:

- provide at least the minimum work conditions for the employee (computer, accessories, internet, etc.);
- if the employee is not released from control of working hours, advise him/her to fill out a spreadsheet with the working hours actually performed, with subsequent delivery to the manager or the HR department;
- issue, in writing, instructions to the employee regarding the observance of ergonomics, conservation of the equipment provided by the company, organisation, concentration and fulfillment of tasks;
- if necessary, issue a warning or suspension via teleconference (e.g. video or audio teleconferencing platforms like Skype and Zoom) and confirm the application of the disciplinary measure in writing, by email;
- in case of termination during this period, the company should observe the mandatory termination procedures, such as payment of the mandatory severance and delivery of the termination documents within 10 days, counted as of the last day worked. The termination medical examination will be necessary, unless a work-related medical examination, performed in the last 180 days, already exists.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

Brazil does not recognise family leave, administrative leave or unpaid parental leave. However, employers may choose to adopt unpaid leave if requested by employees. Employees affected by COVID-19 will be on medical leave. Employers are responsible for the payment of the regular remuneration during the first 15 days of leave, and the social security agency is responsible for the payment of a sick leave allowance for the remaining period of the medical leave. Depending on the terms of the applicable collective bargaining agreement, employers may have to pay a supplementary sick leave allowance.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

We recommend verifying if there is any valid reason other than a “fear of infection”. Depending on the situation, employers may agree on remote working or may demand the immediate return to in-office work. Disciplinary measures may also be adopted.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

Individuals who may have been exposed to suspected or confirmed cases of infection, should be advised to monitor their health for 14 days from the last day of possible contact. However, in general, the name of the infected employee should not be disclosed; employers should communicate just the department where he/she works.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs and Salary reductions.

MP 936 Emergency Program for the Maintenance of Employment and Employees' Income — TozziniFreire

Alternatives	How to implement	Monthly remuneration	Option	Emergency Benefit paid by the Government
Reduction of salary and working hours: Up to 90 days	Individual agreement (that must be presented to the employee with at least 2 days in advance)	Up to BRL 3,135 and above BRL 12,202.12 with a university degree	Salary/working hours reduction of 25%, 50% or 70%	25%, 50% or 70% of the unemployment insurance amount
		Between BRL 3,135 and BRL 12,202.12, or higher monthly salary without a university degree	Salary/working hours reduction of 25%	25% of the unemployment insurance amount
	Collective negotiation (collective bargaining agreement negotiated with the union)	All employees regardless their monthly salaries	Any salary/working hours reduction different than the ones above	(i) Reduction of less than 25%: there is no right to the Benefit; (ii) Reduction between 25% and 49%: 25% of the unemployment insurance amount (iii) Reduction between 50% and 69%: 50% of the unemployment insurance amount (iv) Reduction above 70%: 70% of the unemployment insurance amount
Temporary suspension of employment agreements: Up to 60 days	Individual agreement (that must be presented to the employee with at least 2 days in advance)	Up to BRL 3,135 and above BRL 12,202.12 with a university degree	(i) companies with revenue of up to BRL 4,8 million over the past year (2019): 100% of the unemployment insurance amount (ii) other companies: 70% of the unemployment insurance amount. In this situation, the company must also pay to the employee a monthly allowance equal to 30% of the employee's salary	
	Collective negotiation (collective bargaining agreement negotiated with the union)	Different salary ranges than the one above		

Notes:

- Current maximum amount of the unemployment insurance: BRL 1,813.03.
- Companies must inform the Ministry of Economy and the employees' union in within 10 days counted as of the execution of the agreements.
- The monthly allowance does not have salary nature (i.e., it is not subject to labor and social security charges). The monthly allowance may be granted by the employer in all alternatives above, but it is only mandatory in the situation informed in the chart above.
- Employees' job stability: during the period of the salary reduction or temporary suspension of employment agreement and an equal period thereafter.
- Termination without cause may be performed during the employees' job stability period, however, it will result in the payment of the mandatory severance + an additional indemnification established in the MP 936.
- It is possible to adopt both alternatives (reduction of salary + temporary suspension of employment agreement) for the same employee if the limit of 90 days is observed.

*Provisional Measure (MP) No. 936/2020 Emergency Employment and Income Maintenance Program

Besides the alternatives brought by MP 936 issued in view of the COVID-19 pandemic, the Brazilian Labour Code already established the possibility to suspend the employment agreements for a period of 2 (two) to 5 (five) months for professional qualification (e.g. the participation of the employee in a course or professional qualification program offered by the employer). Over the course of the COVID-19 crisis, most employers have decided against employing this option. To adopt this alternative, there are several aspects that the employer must be aware of, including the necessity to negotiate a collective bargaining agreement with the employees' union. During the suspension of the contract, the employee may apply for a professional qualification scholarship granted by the Special Secretariat for Social Security and Labour, linked to the Ministry of Economy (for more information, please visit http://trabalho.gov.br/seguro-desemprego/modalidades/bolsa-qualificacao).

b. Redundancy.

Redundancy is considered a termination without cause in Brazil. There is no rule currently in place that forbids termination during the COVID-19 pandemic. Thus, companies may continue with to take such action during this period, upon the

payment of the mandatory severance. Although negotiations with unions are not mandatory to perform large scale/mass terminations, depending on the size of the company, location and union representing the employees, we recommend negotiating with the union before carrying out such terminations.

An alternative that may be adopted in large scale/ mass terminations, would be to negotiate with the union and implement an Incentivised Dismissal Program ("PDI"), where the company offers other benefits in addition to the mandatory severance, and employees who wish to receive these additional benefits, voluntary elect to be terminated, and also grant full release to the employment agreement.

c. Facility closure.
The Brazilian Labour Code provides that in the event of partial or temporary interruption of the business activity, or the closure of a company due to a determination of a public authority, the employer may consider the employment contracts to be extinguished and claim "fact or order of the Government" (Government Act – "Fato do Príncipe"). As a consequence, the compensation due to employees, related to this period, shall be paid by the respective public authority. We recommend that employers proceed with great caution when considering this option, because, in a court proceeding, it will be very difficult to obtain a favorable decision recognising this condition.

The most common procedure is to terminate the agreements without cause, upon the payment of the mandatory severance. Depending on the number of employees to be terminated, location of the company and the union that represents the employees, a negotiation of the terminations with the union is recommendable, as well as the alternative option to adopt the Incentivised Dismissal Program ("PDI") mentioned above.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

We recommend updating policies regarding health and safety measures in the workplace, implementing employee training programs, evaluating the need for work-related travel and in person meetings, accommodating employees of at-risk-groups or those who live with members of an at-risk group, adopting reduced in-office working hours, rotating shifts for (groups of) employees, flexibility in working hours and offering the option for teleworking, if possible.

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CANADA

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

Reopening Principles and Guidelines
On April 28, 2020, Prime Minister Trudeau released a joint statement with premiers across Canada on their shared public health approach to support reopening the economy. Governments will make decisions suited to their jurisdictions, geography, and disease activity. These decisions will be informed by experiences in other countries in Asia, Europe, and around the world – particularly those who had outbreaks earlier than Canada and who have achieved demonstrable successes. A shared key objective is to minimise the risk of another wave of COVID-19 that forces governments to re-impose severe restrictions, further damaging the social and economic fabric of communities.

The framework is guided by the following principles:
- Science and evidence-based decision-making
- Coordination and collaboration
- Accountability and transparency
- Flexibility and proportionality

The First Ministers agree that the following public health criteria will inform decisions to reopen the economy: Control the transmission of COVID-19; maintain the incidence of new cases at a level that the health care system can manage; sufficient public health capacity is in place to test; trace, and isolate new cases; expanded health care capacity for all patients, COVID-19 and non-COVID-19; supports in place for vulnerable groups/communities and key populations; workplace preventative measures; avoid risk of importation; and measures to engage and support communities in managing local disease activity.

Reopening Health and Safety Guidelines
While the Government of Canada has not outlined specific health and safety resources for the opening of the economy, the government website continues to provide helpful COVID-19 resources for businesses and workplaces.

For specific details on each province's reopening open, see links below.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

Government sites for staying up-to-date on COVID-19:
- Government of Canada
- Reopening Ontario after COVID-19
- Alberta – Updates on "Relaunch"
- Workplace guidance for Alberta's Relaunch
- British Columbia's Restart Plan
- Manitoba Roadmap for Restoring Safe Services
- New Brunswick COVID-19 Updates
- Newfoundland and Labrador COVID-19 Alert Level System
- Northwest Territories - Response to COVID-19
- Nova Scotia Updates for COVID-19
- Nunavut's Path Forward during COVID-19
- Renewing Prince Edward Island – COVID-19
- Quebec – Updates on Gradual Resumption of Activities – COVID-19
- Saskatchewan - Reopen Plan
- Yukon – COVID-19 Updates

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

Supporting businesses:
- ***Canada Emergency Wage Subsidy (CEWS)*** - Coverage of 75% of employee's wages – up to

$847 per week for eligible employers. The CEWS will allow employers to re-hire employees and avoid layoffs during crisis. The program will be in place until August 29. Eligible employers must demonstrate an eligible reduction in revenue to receive the subsidy.

o Eligible employers include:
- individuals (including trusts)
- taxable corporations
- persons that are exempt from corporate tax (Part I of the Income Tax Act), other than public institutions:
- non-profit organisations
- agricultural organisations
- boards of trade
- chambers of commerce
- non-profit corporations for scientific research and experimental development
- labour organisations or societies
- benevolent or fraternal benefit societies or orders
- registered charities
- certain Indigenous government-owned corporations that carry on a business
- partnerships consisting of eligible employers and certain Indigenous governments
- registered Canadian amateur athletic associations
- registered journalism organisations
- private schools or private colleges, and
- partnerships consisting of eligible employers (including partnerships where at least 50% of the interests in the partnership are held by eligible employers)
- *Public institutions are not eligible for the subsidy. This includes municipalities and local governments, Crown corporations, public universities, colleges and schools, and hospitals.

o Eligible reductions in the revenue include:
- In order to receive the CEWS, eligible employers must show a reduction of revenues in a particular qualifying period. The required reduction in revenue has been set at 15% for March 2020 and at 30% for April and May of 2020.
- The required reduction in revenue for each qualifying period can be calculated in one of two ways:

o 2020 reference period against the same month in 2019; or
o Reference period against the average of January and February of 2020.

Currently, the three Qualifying Periods are as set out below. Additional information about the CEWS extension to August 29, 2020 is expected to be announced soon.

Qualifying Period	Current Reference Period	Prior Reference Period*
March 15 to April 11 April 12 to May 9 May 10 to June 6	March 2020 April 2020 May 2020	March 2019 April 2019 May 2019

*may use an average of January and February 2020 revenue instead.

An eligible employee is someone who is Employed in Canada; Employed by the eligible entity in a qualifying period; and has not been without remuneration by the eligible entity in 14 or more consecutive days in the qualifying period.

- ***Temporary Wage Subsidy*** - The Temporary 10% Wage Subsidy is a three-month measure that allows eligible employers to reduce the amount of payroll deductions required to be remitted to the Canada Revenue Agency.

o Eligible employers include:
- individual (excluding trusts),
- partnership*,
- non-profit organisation,
- registered charity, or
- Canadian-controlled private corporation (including a cooperative corporation)**; have an existing business number and payroll program account with the CRA on March 18, 2020; and pay salary, wages, bonuses, or other remuneration to an eligible employee***.
- *Partnerships are only eligible for the subsidy if their members consist exclusively of individuals (excluding trusts), registered charities, other partnerships eligible for the subsidy, or eligible Canadian-controlled private corporations (CCPCs).
- **CCPCs are only eligible for the subsidy if they would have had a business limit for their last taxation year that ended before March 18, 2020, greater than nil (determined without reference to the passive income business limit reduction).

For more information on whether your CCPC would have a business limit, see Small Business Deduction in the T2 Corporation Income Tax Guide.

- For more information on whether your corporation is a CCPC, see Type of Corporation.
- ***An eligible employee is an individual who is employed in Canada.

- ***Extension of the Work-Sharing Program (WS)*** – The Government of Canada extended the maximum duration of the Work-Sharing program from 38 weeks to 76 weeks for employers affected by COVID-19. This measure will provide income support to employees eligible for Employment Insurance who agree to reduce their normal working hours because of developments beyond the control of their employers.

o Eligible employers for WS:

- be a year-round business in Canada for at least 1 year
- be a private business or a publicly held company, or
- have at least 2 employees in the WS unit
- Eligibility was also extended to:
- Government Business Enterprises (GBEs), also referred to as public corporations, and
- not-for-profit employers experiencing a shortage of work due to a reduction of business activity and/or a reduction in revenue levels due to COVID-19

o Eligible employees for WS:

- year-round, permanent, full-time or part-time employees needed to carry out the day-to-day functions of the business ("core staff")
- be eligible to receive EI benefits, and
- agree to reduce their normal working hours by the same percentage and to share the available work
- Eligibility was also extended to:
- employees considered essential to the recovery and viability of the business can now be eligible to participate in Work-Sharing (such as technical employees engaged in product development, outside sales agents, marketing agents, etc.)

- ***CANADA EMERGENCY RESPONSE BENEFIT (CERB)***

The CERB provides income support benefits for workers who suffer income loss due to COVID-19. This benefit combines the two previously announced emergency benefits (the Emergency Care Benefit and the Emergency Support Benefit) into one overarching income support benefit. The CERB is separate and distinct from the EI program. Therefore, an individual, if eligible, may be able to receive both the CERB and EI benefits in succession. Note an individual cannot receive both the CERB and EI benefits for the same period.

The CERB is a taxable benefit of $2,000 a month for up to 4 months (i.e. 16 weeks) available between March 15, 2020 and October 3, 2020. Although taxable, the tax will not be deducted when provided. Instead, individuals must report the receipt of the CERB when filing income tax for the 2020 year.

The CERB is available to both employees and self-employed workers who have stopped working for reasons related to COVID-19, regardless of whether they are eligible for EI. Examples of COVID-19 related reasons for work stoppage include, but is not limited to:

- Laid off from a job;
- Quarantined or sick due to COVID-19;
- Away from work to take care of others who are in quarantine and/or sick due to COVID-19; and/or
- Away from work to take care of children or other dependents whose care facility is closed due to COVID-19.

An individual who has voluntarily quit his or her employment is not eligible for the CERB. On April 15, 2020 the Federal Government expanded the eligibility requirements for the CERB. Now, individuals who are eligible for EI regular or sickness benefits are eligible for the CERB as well as individuals who received EI regular benefits between December 29, 2019 and October 3, 2020 and have exhausted all of their available entitlement or exceeded the period in which they could collect benefits. This means an individual who was out of work prior to the COVID-19 pandemic and is unable to find a job as a result may be eligible to receive the CERB.

An individual is eligible for the CERB if he or she:

- Is 15 years of age or older;
- Resides in Canada and has a valid Social Insurance Number;
- During the four week benefit period:
- Has stopped or will stop working due to reasons related to COVID-19, or;
- Are eligible for EI regular or sickness benefits, or;
- Have exhausted their EI regular benefits between December 29, 2019 and October 3, 2020
- Has not earned more than $1,000 in employment and/or self-employment income for 14 or more consecutive days.
- Did not apply for, nor receive, CERB or EI benefits from Service Canada for the same eligibility period;
- Has earned a minimum of $5,000 income in the last 12 months or in 2019 from one or more of the following sources:
- employment income;
- self-employment income; and
- provincial or federal benefits related to maternity or paternity leave.

The $5,000 does not need to be earned in Canada but the individual must at least reside in Canada. The federal government has encouraged provinces to allow individuals to receive other support payments at the same time as the CERB.

An individual does not need to have been laid off to receive the CERB. Employees who still have their employment but have been asked not to come into work are entitled to the CERB as long as they have not been paid.

* Note that the details of the above criteria are subject to change as the federal government implements new measures to continue to assist workers affected by COVID-19.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

Governments across Canada have provided directives and measures to combat the spread and effects of COVID-19. These measures include the provision of new leaves of absence, financial support for employers and employees, and the mandatory closure of businesses that have been deemed to be “non-essential”. The Government of Canada has also placed restrictions on travel outside Canada and the government is advising Canadians to avoid all non-essential travel. For those individuals who return or enter Canada, the government is imposing a mandatory isolation or quarantine. The mandatory quarantine will require people entering Canada to isolate for 14 days, whether they are symptomatic or not.

The federal and provincial governments have also released guidelines for workplaces to prevent the spread of COVID-19 and ensure that employees are not exposed to conditions that could be harmful to their health and safety. Each workplace must consider specific controls to keep employees safe from contracting or spreading COVID-19 in the workplace. Guidelines issued by governments include the following measures: physical distancing measures in the workplace; reorganisation of workspaces; increased worker and workplace hygiene; and discouraging people who are ill from entering the workplace.

The table on the following page provides links to government guidelines on health and safety practices in the workplace to combat the spread of COVID-19.

Jurisdictions	Link to Guidelines
Government of Canada	• Preventing COVID-19 in the workplace: Employers, employees and essential service workers • Risk mitigation tool for workplaces/businesses operating during the COVID-19 pandemic
Alberta	• Workplace guidance for Alberta's relaunch
British Columbia	• What employers should do • Preventing exposure to COVID-19 in the workplace: A guide for employers
Manitoba	• Workplace Guidance for Businesses • Information about COVID-19
New Brunswick	• COVID-19 Guidance for Businesses • Workplace health and safety, and the coronavirus
Newfoundland and Labrador	• Information Sheets for Businesses and Workplaces
Northwest Territories	• Emerging Wisely for Business
Nova Scotia	• COVID-19: working • COVID-19: occupational health and safety hazards
Nunavut	• COVID-19 Resources • Health and Safety Information for Employers
Ontario	• Resources to prevent COVID-19 in the workplace • Novel coronavirus (COVID-19) update
Prince Edward Island	• COVID- 19 Guidance for Business • Employers: COVID-19 Frequently Asked Questions
Quebec	• General information about coronavirus disease (COVID-19) • Questions and answers pertaining to employers and workers during the COVID-19 pandemic
Saskatchewan	• COVID-19 Information for Businesses and Workers • COVID-19 Workplace Information • Appropriate Use of PPE Guidelines • Information for employers on COVID-19
Yukon	• Workplace Health and Safety • COVID-19 Resources

See section 3 on "state aid" for sweeping socio-economic policy amendments.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

Physical Distancing and Workplace Modifications

Employers should promote physical distancing (keeping a distance of 2 metres from others). Physical distancing measures can be achieved by limiting the number of employees in the workplace and if possible enabling telework; avoiding multi-person meetings, limiting physical contact, and minimizing interpersonal interactions in the workplace; encouraging unidirectional travel in

hallways or aisles; where possible adopting contactless business models; installing physical barriers between employees and clients (e.g. plexiglass windows or cubicle partitions).

Discouraging people who are ill from entering the workplace. Employers should prevent symptomatic employees from attending at the workplace by providing written policies and procedures that employees must follow when they are sick, or have come into contact with someone diagnosed with COVID-19. Where it is feasible, employers should consider asking clients if they are ill or have symptoms of COVID-19 before they enter the workplace.

Workplace Hygiene and Cleaning Measures
Employers should promote good hygiene by encouraging regular and thorough handwashing. Workplaces should have access to soap and water or alcohol-based sanitizer, hand sanitizer stations should be placed in prominent places around the workplace, and high-touch surfaces should be frequently cleaned and wiped down. Examples of high-touch surfaces include doors handles, faucet handles, keyboards, and shared equipment. Clients who visit the workplace should also be encouraged to maintain proper sanitation practices. Where possible, employers must try and increase ventilation in closed spaces by opening windows or moving work outside.

Personal Protective Equipment
The use of personal protective equipment (PPE) is based on risk assessments of specific work environments and the risk of exposure to infection. For workplaces with occupational health and safety committees, employers should involve the health and safety committee when making these assessments. Where hazards related to COVID-19 cannot be eliminated through physical distancing and other hygiene measures, employers may consider the use of PPE in the workplace. If PPE is recommended, employees should be trained on the proper use of PPE.

Contact Tracing Tools
Contact tracing tools are being suggested as an effective way to combat the spread of COVID-19. In a recent statement, the Canadian Privacy Commissioners emphasized that while privacy laws are not a barrier to implementing effective pandemic responses, compliance with privacy legislation remains mandatory.

More recently, Canada's Privacy Commissioners released a Joint Commissioners' statement on Contact Tracing. With respect to implementing Contact Tracing, the joint statement recommends adherence to the following principles:

- Consent and Trust. The use of apps must be voluntary. This will be indispensable to building public trust.

- Legal authority. The proposed measures must have a clear legal basis and consent must be meaningful. Personal information should not be accessible or compellable by service providers or other organisations.

- Necessity and proportionality. Measures must be necessary and proportionate and, therefore, be science-based, necessary for a specific purpose, tailored to that purpose and likely to be effective.

- Purpose limitation. Personal information must be used for its intended health purpose, and for no other purpose.

- De-identification. De-identified or aggregate data should be used whenever possible, unless it will not achieve the defined purpose. Consideration should be given to the risk of re-identification, which can be heightened in the case of location data.

- Time-limitation. Exceptional measures should be time-limited: any personal information collected during this period should be destroyed when the crisis ends, and the application decommissioned.

Accountability and safeguards. Employers must ensure they have safeguards in place to protect personal information during the COVID-19 pandemic. Appropriate legal and technical security safeguards, including strong contractual measures with developers, must be put in place to ensure that any non-authorised parties do not access data and not to be used for any purpose other than its intended

Temperature Monitoring
On balance, an employer in Canada may screen

employees' temperatures during the pandemic for the purpose of providing a safer workplace for all employees. However, the screening must be conducted in a manner that respects employees' privacy and human rights. Below are a number of factors employers should consider before implementing temperature screening.

- What will you use to take the temperature? The device should be as accurate as possible. It should be able to screen employees quickly and be non-invasive. If possible, it should not require an employee to get close to other employees to take their temperatures. Generally, employers are using thermal forehead testing because it is fast and non-invasive.
- Where will temperatures be measured? If it is done at the door and there is only one door, it will likely cause a bottleneck, which may increase the risk of exposure to the virus. The screening area should be private, if possible.
- Some employers are providing employees with thermometers and asking them to take their temperature at home. If their temperature is above 37.8 C (or as recommended by Public Health), employees should be advised (i.e. through a policy) to call in sick or work from home. This could be combined with a health questionnaire to catch more potential cases of COVID-19, e.g. ***https://covid-19.ontario.ca/self-assessment/***. Another advantage of asking employees to measure their temperature at home is that it intrudes less on employee privacy. Some employers have developed an app that allows employees to take a health questionnaire at home, including a temperature check. Assuming employees pass the screening, they get a green signal on their phone which they can show at the door as they enter the workplace.
- Who will measure employees' temperatures? As stated above, it is better not to have one employee actually taking other employees' temperatures. First, it puts that employee at risk because they will likely have to get close to other employees. Second, that employee will be given access to many other employees' personal health information, which increases privacy concerns. Presumably that employee is not a nurse or a doctor who is qualified to take temperatures and protect personal health information. Still, if the employer wants to screen employees' temperatures, someone will likely be required to stand at the door and oversee the process. The employer may be able to hire a third party to screen employees. Alternatively, the employee(s) performing the screening should be trained, including on f symptoms, privacy and managing conflict, and be provided with gloves, masks and hand sanitizer.
- In addition to taking temperatures, the screener should also ask whether the employee has any flu-like symptoms or is otherwise feeling unwell. The screener should also ask whether the employee has had close contact with someone who has been diagnosed with, or is presumed to have, COVID-19. The screener could administer the Public Health self-assessment (above). An employee who has a temperature of above 37.8 C (or as recommended by Public Health) or who answers yes to any of the screening questions should be advised to return home. The employee should be provided with a mask and advised not to take public transit. The employee should be advised to self-isolate and contact their doctor or public health to see what further testing or treatment is recommended.
- Employees' temperatures and answers to health questions should not be recorded and retained. To the extent that records are necessary, they may include the names of employees who attended work and those who were sent home. Keeping records of temperature checks or other personal health information greatly increases privacy concerns.
- The temperature or other personal health information should not be used for any purpose other than determining whether or not the employee can enter the workplace.
- The results of the temperature screening and other personal health information should be kept confidential. Other employees should not be advised of this information, except as needed to do their job.
- If an employee refuses to be tested, what will the employer do? Normally, in order to enforce a temperature screening policy, that employee should not be allowed to enter the workplace. Will they be disciplined or simply instructed to work from home?
- The employer should develop a policy that covers all of the above and provide employees with the policy before they begin returning to the office.

Employee Training

Employers should consider what training will be needed for employees who are returning to the

workplace. Training should include instructing employees on new COVID-19 policies, new workplace policies, workplace re-opening guidelines, hygiene and sanitation policies, and responding to COVID-19 related workplace issues. Employers must also consider effective methods of communicating new policies and training programs to their employees. The policies should remain accessible to all employees and if possible should be posted on an accessible board or saved in an accessible online platform.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

In order to prepare for telework once business reopens, employers should draft telecommuting policies. The policy should address clear expectations for employee conduct and should set out steps to ensure the protection of company property and confidential information. Where telework is optional, the policy should address eligibility for telework and the procedure for requesting approval to work from home. The policy should also address telework as an accommodation for employees who request work from home arrangements due to a protected characteristic, such as a disability or family care obligations. In addition, employers should remind employees that they are expected to comply with all workplace policies, including health and safety policies and security policies.

In order to facilitate a clear understanding for all employees, employers must:

- Define the scope of employee duties and set out expected performance goals.
- Mandate a timeframe where all employees are expected to be working and available.
- Agree on the employee's expected or permitted work location(s). This will also allow the employer to ensure the workspace is in compliance with Occupational Health and Safety legislation.

Comply with Minimum Standards Rules

- Employers should keep track of the hours the employees are working in order to comply with minimum standards and rules with respect to overtime work.
- Employers must respect vacation and statutory holidays and allow employees to exercise their rights with respect to same.

Comply with Human Rights Obligations

- If remote work is optional or a privilege granted to employees, employers must ensure their decisions are fair and based on objective and non-discriminatory criteria.
- Work from home arrangements can also be implemented as a form of accommodation, where necessary or appropriate.

Occupational Health and Safety Measures

- Remote working environments are an extension of the workplace and employers should consider reasonable measures to promote workplace health and safety.
- Employers must conduct hazard checks to ensure the employee's workspace is free from hazards.
- For privacy reasons, conventional inspections by the Joint Health and Safety Committee will likely be inappropriate. Employers must consider alternative means to conduct inspections which may include providing an employee with a health and safety checklist or guidelines. The employee would then submit an inspection report and the parties could work together to resolve identified hazards.

Technology and Information Handling Practices

- Employers must review their technology policies and ensure they provide appropriate measures to protect business and confidential information. Employees should receive training to ensure the protection of confidential information.

Employee Privacy Protections

- Employers must adopt procedures that allow for adequate employee monitoring of productivity and hours while respecting employee privacy. Privacy laws place restrictions on the collection, use, and disclosure of personal information, and employers must be mindful of these boundaries. Employees should be informed of the monitoring and the purpose of the supervision.

Managing Employee Conduct and Performance

- Employee monitoring will allow employers to manage work performance and engagement. Supervisors should consider tracking employee

hours and providing instruction on productivity goals.
- In order to facilitate productivity, employers should consider:

o providing training on remote work habits;
o conducting meetings to update employees on productivity; and
o offering assistance to ensure employees are supported to effectively conduct remote work.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

Employers should work with their employees to create flexible work schedules, facilitate work from home arrangements, or provide their employees with a temporary leave of absence. Several Canadian jurisdictions have expanded statutory leaves for employees who are absent from the workplace because they are self-isolating, because they have family or child-care obligations, or as a result of other issues related to COVID-19. The nature of the request will dictate the leave of absence that will be appropriate. As a result of the COVID-19 pandemic, employees may be entitled to the following leaves:

- Short-term sick leave
- Long-term illness or injury leave
- Compassionate care leave
- Emergency leave

The details and requirements for these leaves vary by jurisdiction. Usually these leaves are unpaid. Where child-care obligations are pressing or lengthy, employees may be entitled to human rights accommodations on the basis of the protected ground of family-status. In addition, employers will often have policies that provide for more generous leave entitlements. Employers should asses their workplace policies that provide for leaves and, where they qualify, allow employees to access these leaves. Where the leaves are unpaid, the employee may be entitled to income replacement under government benefit programs.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

Courts and adjudicators will most likely weigh all of the relevant factors in the circumstances to determine whether the workplace created a greater risk of the worker contracting COVID-19 than the community at large. The Workplace Safety and Insurance Board sets out a number of factors that it will use to determine whether a worker's employment was a significant contributing factor to his/her COVID-19 condition. It is likely that the Ministry of Labour will enlist a similar approach when evaluating whether a worker has invoked a valid work refusal under the Occupational Health and Safety Act.

Factors include:

a) The nature of the worker's employment created an elevated risk of contracting COVID-19 • Has a contact source to COVID-19 within the workplace been identified? • Does the nature and location of employment activities place the worker at risk for exposure to infected persons or infectious substances? • Was there an opportunity for transmission of COVID-19 in the workplace via a compatible route of transmission for the infectious substance?

b)The worker's COVID-19 condition has been confirmed • Are the incubation period, the time from the date of exposure and the onset of illness, clinically compatible with COVID-19 that has been established to exist in the workplace? • Has a medical diagnosis been confirmed? If not, are the worker's symptoms clinically compatible with the symptoms produced by COVID-19? Is this supported by an assessment from a registered health professional?

A decision-maker must gather all of the relevant information in order to assess and weigh each piece of evidence to determine whether the worker's COVID-19 is work-related. The key issue to be determined, as part of the assessment of work-relatedness, is whether the worker's employment duties or requirements were a significant contributing factor in the worker contracting COVID-19.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

Action Plan: Steps to Take if Employee is a Confirmed Case of COVID-19

Step One: Tell the employee who tested positive not to attend the workplace until cleared to do so by a medical professional. Occupational Health and Safety legislation") sets out the duties of employers with respect to health and safety of employees in the workplace. Employers must take "every reasonable precaution in the circumstances for the protection of a worker. In the case of an employee that has tested positive for COVID-19, it is a reasonable precaution to not allow an employee to return to work until they have received clearance that the virus is no longer communicable from a medical professional. According to the Public Health Agency of Canada ("PHAC"), two consecutive negative laboratory test results, at least 24 hours apart, can be used to determine the end of the communicable period of COVID-19.

Step Two: Ask the employee to identify co-workers that they had close contact with and ask those co-workers to stay out of the workplace for 14 days. According to PHAC, any person who is within 2 metres of a COVID-19 case where the individual is experiencing respiratory symptoms (e.g. sneezing, coughing) is at risk of transmission. PHAC also states that a longer exposure time increases the risk of exposure to the virus. PHAC is currently advising that individuals without symptoms who have been in close contact with a COVID-19 case need to self-isolate for 14 days. At this time, however, PHAC has not released guidance on how a "close contact" is defined.

Step Three: Notify the joint health and safety committee. Under Occupational Health and Safety legislation, employers have a duty to provide the joint health and safety committee with information relating to hazards in the workplace. This duty must be balanced with the infected employee's right to privacy. Generally, employers should not identify the individual who has been confirmed to be a positive case of COVID-19. The objective is to provide the joint health and safety committee with sufficient information about the risk of transmission in the workplace. The fact that certain employees have potentially been exposed to COVID-19 can be provided. The dates of the exposure and the extent of the circumstances of their exposure can also be disclosed.

Step Four: Notify other employees that have a credible transmission risk of COVID-19. According to PHAC, a person who has contact with an inanimate object, such as contaminated surfaces and objects, which can serve as the vehicle for transmission of COVID-19 viruses, is at risk of infection. Employees that have not been within 2 metres of a COVID-19 case, but have worked in the same workspace such that they have potentially had contact with a contaminated surface or object, should be informed of their potential exposure.

As set out above, the name or identifying information about the employee that is a confirmed case of COVID-19 should not be disclosed. However, sufficient information about the potential exposure to other employees should be disclosed in order for potentially exposed employees to seek medical advice if necessary.

Step Five: If there is reasonable evidence to suspect that the employee became infected through exposure in the workplace, report the illness to the ministry of labour and worker's compensation board. Workers who contract COVID-19 in the course of their employment may be eligible for loss of earnings benefits under worker's compensation legislation. Under most worker's compensation legislation, employers have an obligation to notify the appropriate authority within a specific time period after learning of a workplace accident or injury. Employers should ensure that they comply with notice and reporting obligations applicable in their jurisdiction(s).

Whether a worker is entitled to loss of earnings benefits under a worker's compensation regime will generally depend on whether there is a connection between the workplace and the worker's contraction of the virus. For example, in Ontario, the Workplace Safety and Insurance Board ("WSIB") has released a COVID-19 update, which states that entitlement to benefits because of COVID-19 will be determined by considering whether the nature of the worker's employment created a risk of contracting the disease to which the public at large is not normally exposed. In determining whether the nature of the worker's employment created an elevated risk of contracting

COVID-19, the adjudicator will consider:

- Has a contact source to COVID-19 been identified?
- Does the nature and location of employment activities place the worker at risk for exposure to infected persons or infected substances?
- Was there an opportunity for transmission of COVID-19 in the workplace via a compatible route o transmission for the infectious substance?

OTHER ISSUES.

Travel Restrictions
Monitoring travel will still be important for the purposes of limiting the spread of COVID-19 in the workplace. While employers may restrict business-related travel, restricting employees' personal travel is more problematic. During the COVID-19 pandemic, the Government of Canada is restricting travel to other countries to essential travel only. Employers may encourage employees to monitor the Government of Canada website and avoid non-essential travel. In addition, employers may require employees to report if they have been travelling, or will be travelling to high-risk areas, and must implement and advise employees of the company workplace travel policy and the requirement to self-quarantine when returning from travel outside Canada.

Providing Employees with Accommodations
Human Rights legislation in all Canadian jurisdictions prohibits employers from discriminating against employees on specific grounds. As a result of the COVID-19 pandemic, employees may face a number of challenges including being at a greater risk of contracting COVID-19 as a result of having a weaker immune system, or increased child-care obligations and responsibility for sick relatives. Actions against persons who have contracted COVID-19, or refusals to provide accommodations for employees at a greater risk of contracting COVID-19 and employees with family and child-care obligations, may constitute discrimination.

For employees facing challenges as a result of the COVID-19 pandemic, employers must consider accommodations that may include work from home arrangements if possible, modifying the employee's workstation to reduce the risk of infection, or allowing the employee to utilise a statutory job-protected leaves or company leaves.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
In Canada, the terminology furlough is not commonly used. Instead layoffs are, by nature, temporary. For a full discussion on temporary layoffs, see section "Redundancy - layoffs" below.

b. Salary reductions.
When an employer unilaterally reduces an employee's wages it risks a claim of constructive dismissal from the employee.

In determining if the reduction constitutes constructive dismissal, the courts will consider:

- A wage reduction that is not significant in relation to the employee's overall income and is accompanied by other increases will not likely result in a constructive dismissal.
- Whether the employment contract allows the employer to make unilateral changes to the employee's wages.
- Whether the reduction is temporary or permanent. There must be a valid, good faith, business justification for the change and the employee must also be told the change is temporary. The shorter the change, the less likely that the change will be considered constructive dismissal.

c. Redundancy.
Layoffs.

When COVID-19 effects begin to impact supply chains, employers may be considering temporary layoffs to save costs, or even permanently terminating members of its workforce.

- In unionised workplaces, collective agreements typically anticipate temporary layoffs and terminations, permitting employers to impose

them within a negotiated framework that preserves seniority and job security.
- In non-unionised workplaces, layoffs are considered a constructive dismissal unless there is an express or implied term in the employment contract permitting their use. It remains to be seen whether a layoff in the context of mandatory COVID-19 workplace closures would be treated as a constructive dismissal by courts. It is possible that courts may find that an implied layoff term exists in the employment contract for such circumstances.

Where layoffs are permitted, they must be temporary. Minimum standards legislation dictates minimum requirements regarding notice, compensation during the layoff and the maximum duration of the layoff.

Terminations.

When the employer terminates:
- A unionised employee, the collective agreement will dictate seniority rights, bumping rights and termination entitlements.
- A non-unionised employee, the terminated employee will be entitled to statutory notice of termination (or pay in lieu), statutory severance pay (in some jurisdictions) and common law or contractual notice. Some jurisdictions have statutory termination notice exceptions where the termination is due to a business closure or unforeseen event. Statutory unjust dismissal protections may not apply where the termination or layoff is due to lack of work.

Mass/Group Terminations or Layoffs.

In both the unionised and non-unionised setting, if the layoff or terminations affects a group of employees, statutory group or mass termination obligations may arise. These obligations can include: advance notice of the group termination to the government; a few jurisdictions require the employer to implement a joint planning committee with its workers to address issues arising out of the group termination; and the employer will be required to provide its affected employees with group termination notice and/or individual notice in advance of termination.

Reprisals.

Some jurisdictions are implementing job protection legislation during the COVID-19 pandemic. For example, Ontario has implemented a Declared Emergencies and Infectious Disease Emergencies Leave which prohibits reprisals against employees who take COVID-19 related leaves. Laying off or terminating an employee who takes such a leave may constitute a reprisal exposing the employer to potential liability.

Discrimination.

Human rights claims can arise if the employer terminates the employment of an employee who has (or is assumed to have) contracted COVID-19.

Facility closure.

All Canadian jurisdictions have declared a state of emergency or a public health emergency forcing the closure of certain businesses during the COVID-19 pandemic. Each jurisdiction has a unique list of mandatory business closures. To determine whether a business is permitted to open, employers must monitor the government websites for the provinces and territories in which their businesses operate. Where a business decides to remain closed, employers must comply with their duties with respect to layoffs and the accompanying obligations if those layoffs exceed the permitted statutory layoff period and are deemed to be terminations.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

Keep up with new developments

As governments continue to make changes to existing legislation and health and safety guidelines, it is essential for employers to stay up-to-date with changes that may affect their workplaces and businesses. Most Canadian jurisdictions have instituted re-opening plans, and with each jurisdiction having different re-opening criteria and

health and safety obligations, it is imperative for employers to keep apprised of which re-opening measures are applicable, and when they come into force. Employers should continually monitor government orders and directives as well as public health websites to ensure they are in compliance with re-opening guidelines and health and safety measures.

Have a Plan

In order to provide for a successful re-opening of the workplace, employers must develop re-opening plans that suit the characteristics of their workplaces. Re-opening plans should include updated health and safety measures; updated workplace policies and training; COVID-19 hazard identification in the workplace; provision for human rights accommodations; updated leave policies for employees experiencing COVID-19 related challenges; updated privacy policies and guidelines for dealing with information related to COVID-19; and methods for effective communication channels to keep employees, clients, and other stakeholders updated and informed.

Maintain Health and Hygiene Practices

In order to ensure a safe operating environment, employers must be diligent about maintaining health and hygiene practices. Employees should be trained on updated health and safety guidelines and posters can be placed around the workplace that educate and encourage good personal hygiene.

Maintain Compliance with Statutory Employment obligations

Employers should ensure that they continue to comply with the different legislative obligations and minimum standards that apply to their workplaces. While the pandemic may have altered the way businesses and workplaces operate, employers must continue to follow applicable employment standards and meet relevant legal obligations.

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CHILE

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

Companies must always maintain the required sanitary and environmental conditions in the workplace to protect the life and health of its employees. Therefore, companies must comply with applicable regulations and, in particular, with:

- the nationwide health alert;
- the several resolutions of the Ministry of Health that have established sanitary measures to prevent the spread of COVID-19;
- the recommendations for action in the workplace from the Ministry of Health;
- the sanitary protocols for the operation of companies by the Ministry of Economy;
- the sanitary protocol for Cleaning and Disinfecting issued by the Ministry of Health;
- the instructions by the regional health authorities ("Seremi de Salud");
- the instructions for transit permits in zones under quarantine by the Ministry of Interior and Public Security and the Ministry of National Defense;
- the safe-passage permits and authorisations to move through a specific area once curfew has been established; and
- the resolutions by the Ministry of Finance which indicate areas or territories affected by an act or declaration of authority, and the activities or establishments exempted from the stoppage of activities, in order to access the benefits referred to in Law No. 21,227 (special status to receive unemployment insurance benefits when labour contracts are suspended).

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

Employers are encouraged to monitor current updates on following Spanish language sites:
- www.minsal.cl • www.dt.gob.cl

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

Unemployment insurance benefits are available in exceptional circumstances (e.g. suspension of labour agreements). For more information, please visit:
https://www.cariola.cl/wp-content/uploads/2020/04/COVID-19.-UNEMPLOYMENT-INSURANCE-TEMPORARY-RULES.pdf

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

The Government has established several quarantine periods in many places throughout the country, as well as extensive testing controls.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

All existing measures (as of June 2020) as provided in the various guidelines issued by Chilean health authorities, are detailed in section I. Emergency Measures above.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

As from April 2020, a new law is in force to regulate remote work. Employees are entitled to disconnect and rest at least 12 hours, and employers must provide the work tools and assume connection costs. This will certainly be an option when reopening.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

Medical leaves are permitted to cover sickness periods, including childcare in some cases. When an employee is under a medical leave certificate, the salary is covered by the social security system (capped amounts/rates apply).

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

An employee cannot refuse to work, except if granted with a medical leave certificate. However, if an employee reasonably considers that the employer has not taken the necessary health protection measures, and believes to be at serious risk, the law allows for the employee to leave the workplace. Employers can challenge this action before in court or before the Department of Labour.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

The employer must report to the health authority (or by means of the administrator of the labour accidents insurance) any accident or professional disease that occurred at the workplace; including COVID-19 infections.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
By agreement with employees.

b. Salary reductions.
By agreement with employees.

c. Redundancy.
Permitted except as it regards employees covered by the special unemployment insurance status, when the labour contract is suspended.

d. Facility closure.
Permitted. It is important to point out that when the closure has not been imposed by the authorities, the employer shall continue paying salaries.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

- provide opportunities for working remotely, if possible;
- avoid in-person meetings;
- taking vacation in advance (by agreement or imposed by the employer and applicable to all employees);
- training on health prevention measures;
- travel restrictions, except in case of a business emergency;
- flexible working shifts to ensure social distancing;
- prohibition on the use of collective lunch areas or break rooms;
- mandatory use of masks and gloves and handwashing policies.

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CHINA

I. EMERGENCY MEASURES

As the shadow of the COVID-19 pandemic still hangs over the world and continues to have a profound impact across societies and industries, lockdowns are gradually being eased in some countries. In China, businesses are resuming operations, schools are reopening, and in general, all seems to be back to new normal. However, the COVID-19 crisis has catapulted us into a new future with a myriad of challenges, especially for rules and practice in employment, as they are closely connected to people's livelihoods, state policies and economic developments, which have been badly hit by the epidemic. The traditional employment model borne out of the industrial age, is outdated and clumsy in the face of platform employment, telework and various flexible employment. The current employment regulatory regimes and rigid identification of "employment relation" lag behind the changing reality and may trigger controversies when applied to new matters. The employment system for enterprises also faces multiple challenges: salary reduction, redundancy and suspension of work may lead to further labour disputes; countless policies, judicial practices vary in different cities push refinement of employment compliance; and new issues like employment discrimination, dissemination by social media, and data privacy etc. cause unforeseeable problems that are deeply troubling Chinese enterprises.

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

In February 2020, the Ministry of Human Resources and Social Security ("MOHRSS"), jointly with the All-China Federation of Trade Unions released Guiding Opinions on Enterprise's Work Resumption during the Prevention and Control of COVID-19 Pandemic ("Opinion"), which requires enterprises to learn about situations where employees are being quarantined or under emergency measures adopted by local governments, and also inspires enterprises to proactively explore methods of stabilising jobs. Various local governments released protective measures and outbreak responses in the process of work resumption, such as strengthening workplace ventilation, provide protective gear and hand-washing facilities, sterilise workplace, dormitory, and cafeteria, avoid or minimise people gathering and collective activities. As a result, China has entered the "new normal" with more than 26 million rural residents having arrived in the workplace[1], and employers should pay close attention to the latest reopening policies issued by local governments from time to time.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

For latest updates, please refer to the (English version) link of State Council of the People's Republic of China ("PRC"):
http://english.www.gov.cn/news/topnews/202005/30/content_WS5ed2465fc6d0b3f0e949920f.html

II. STATE AID

Government subsidies and special relief resources allocated to support employers, and workers, in their efforts to maintain employment and pull through the crisis.

The unemployment insurance contributions may be returned to companies, if such enterprises are qualified and have not had any layoffs or only small-scale layoffs. From February 2020, each province (except Hubei Province) may exempt small- and medium-sized enterprises (SMEs) and micro firms from making contributions to three types of social insurance (pension, unemployment, and work-related injury) borne by employers, for a period up to the end of December and dividing (by half) the contributions to three types of social insurance borne by large enterprises for a period up to June

[1] Over 95% of migrant workers resume work, China Daily, available online at:
http://english.www.gov.cn/news/topnews/202006/01/content_WS5ed4b216c6d0b3f0e9499332.html

2020. Hubei Province may exempt all types of insured employers from making contributions to three types of social insurance borne by employers for a period up to June 2020. Enterprises that have material difficulties with their business, may apply to defer their social insurance contributions.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

It is mandatory for individuals and enterprises to report to nearby medical or disease control and prevention institutions, if a patient becomes infected or is suspected to be infected with the COVID-19 virus. Among other municipal governments, the Shanghai Municipal government issued a guideline for employers for work resumption including preparing protective equipment, setting up a leading team for pandemic control and collecting employees' information regarding their health and whereabouts during the 14 days before work resumption.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

Employers resuming operations are required to implement epidemic prevention and control measures such as ventilation and disinfection, temperature monitoring and equipping workers and staff with sufficient protective gear throughout all working facilities. It is inevitable that the employer will collect health and travel information from employees, and therefore, the employer shall keep the personal data collected strictly confidential.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

Telework raises challenges for Chinese employment regulatory regimes since they were written in such a way that does not specifically distinguish between work environments. General rules for working hours, employees' data and health protection still apply in teleworking. Even if employees have flexible work arrangements when working from home, comprehensive or flexible working hour systems would not automatically apply. The employer is obliged to pay overtime salary if overtime work is required, regardless of workplace.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

For employees who are confirmed to be infected, an asymptomatic carrier, suspected of infection or having close contact with the COVID-19 virus, employers shall pay them their normal salary during their quarantine or medical observation period. After the end of quarantine, if the employee remains sick and fails to return to work, the medical treatment period-related regulations shall apply. The Beijing Municipal Government released a policy regarding paid parental leave, allowing one employee per family to work remotely in order to care for children under 18 years old, and requiring the employer to pay the salary based on their normal attendance during the remote work period. However, this policy was formulated when school openings had been postponed, and is likely outdated since schools began to gradually reopen in May.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

In the absence of any compulsory obligations imposed on employers as to how to handle such employment relations in this situation, it is advisable that employers negotiate with employees to reach an amicable solution, such as arranging for work from home, paid annual leaves, beneficiary leaves, or non-paid leaves. In addition, according

to a judicial opinion released by the Beijing High People's Court, where the employee fails to return to work for a relatively long period, the employer may pay the employee's basic living fees from the second salary payment cycle, normally, the second month.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

Under PRC Law on Control and Prevention Infectious Disease, if employers should identify an infected employee, they should report it to the relevant medical institution. However, employers shall not publicise or disseminate employees' personal data without authorisation, which may infringe the individual's legitimate interests as protected by the PRC Civil Code. Only the State Council, health administrative department at provincial level and government, at or above county level, have the right of publicise the relevant information.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
Chinese law does not recognise the concept of suspension. Employers may refer to regulations on "Suspension of Work and Production" and negotiate with employees who fail to provide labour after using up all leaves, according to the salary standards of Suspension of Work and Production, that is, in the first salary payment cycle, normally, the first month, the employer pays their normal salary; from the second month, the employer may pay basic living costs (equal to or less than the minimum monthly salary) according to local regulations.

b. Salary reductions.
Guiding Opinions issued by High Court of Shanghai Municipality stressed that during this special period to combat the COVID-19 pandemic, employers may reduce the salary after reaching an agreement with their employees through democratic consultation with the staff representatives' congress, trade union, or staff representatives. Otherwise, the employer can only reduce salary with the employee's consent.

c. Redundancy.
Redundancy only applies to the four situations specified under Article 41 of PRC Employment Contract Law and where more than 20 or 10% of the total employees are dismissed. In any event, the employer shall complete the consultation procedures and file the redundancy plan with the local labour administration authority.

d. Facility closure.
An early dissolution of a legal entity is statutory cause for an employer to terminate the employee's employment contract. Under this scenario, the employer's shareholder shall resolve the termination, file the liquidation committee, and conduct liquidation and deregistration, afterwards.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

In first quarter of 2020, the Chinese government adopted policies to restrain social activities and advocated for employers to arrange for employees to work from home, for pandemic prevention purposes. Some employers attempted to permanently arrange for supportive employees to work at home afterwards, as they accumulated telework experience during this period. There is no official guidelines or mandatory rules to cope with employment under this scenario. In this regard, updating the company's internal policies and procedures is essential in order to respond to potential legal risks. First, the employer shall determine positions that will implement telework and address them as such in employee handbooks or the employment contracts. Second, the employer shall set up detailed management rules specifically for employees working from home, such as rules of timely reporting working hours and progress, rules of overtime application, etc. Third, employees' personal data and privacy protections as well as protections for employers' trade secrets shall also be considered. It is therefore advisable that employers obtain written consent before collecting, storing, or using employees' personal data and formulate a confidentiality policy for personal computer and mobile phone usage. Lastly and highly controversial, involves identification of an employee's work-related injury while he/she is working at home, whether employers may require employees to confirm the safety of their environment in writing, from time to time, and whether they may evaluate the same periodically.

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COLOMBIA

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

From 25 March 2020 until 1 July (00:00), different mandatory preventive isolation measures have been implemented throughout the country restricting most activities, allowing some under precise conditions to guarantee the life, health and survival rights of all inhabitants, while trying to minimise the impact of the COVID-19 epidemic on health systems, social services and overall economic activity[1]. All professional and technical occupations, general services and retail trade are among the few activities exempt as from 1 June, and is understood as reflecting the entirety of the nation's reopening.

Thus, the Colombian government permitted a gradual reopening of different activities on a stage-by-stage basis, as long as the companies had fulfilled the protocols and the authorities had granted the necessary permissions.

In addition, the Ministry of Health and Social Protection has declared the National Health Emergency as of 12 March and until 31 August (Resolutions 385 and 844), which:

- restricts all international and domestic flights during the emergency period, with some specific exceptions (force major or humanitarian reasons);
- significantly limits travel between cities; and
- suspends the pertinent administrative procedures followed by most authorities.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

During this Health Emergency, Lopez & Asociados has granted access to the public to the firm's online newsletters, in order for employers to gain insights on the latest COVID-19 related legal developments:

- English version: ***https://lopezasociados.net/eng/news-3/***
- Spanish version: ***https://lopezasociados.net/actualidad-2/***

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

On two separate occasions in 2020, the Colombian government declared a nationwide State of economic, social, and ecological Emergency, allowing the President to take any decision required to cope with the COVID-19 crisis. As a result of the powers afforded to address this pandemic, the government further approved exceptional aid in order to provide support and to minimise the economic impact of the outbreak:

Regarding the unemployed:

- access to the Layoff Protection Mechanism has been simplified and its scope has been magnified, while the requirements for access to the severance aid payment (one month of salary payed yearly by the employer to a fund) have been moderated. Lastly, economic aid for the unemployed, up to USD $430 (approximately two months of minimum wage) has also, under certain conditions, been extended.

[1] Decrees 457, 531, 593, 636, 689 and 749 of 2020.

Regarding the formal sector (e.g. encompasses all jobs with normal hours and regular wages, and are recognised as income sources on which income taxes must be paid):

- for the months of April and May 2020, employers, employees and independent workers in Colombia could contribute with a reduced pension rate of 3% (regularly 16%), which will only be considered for minimum pensions (1 minimum salary).
- for the months of May, June, July and August 2020, the government has granted a subsidy of 20% or more to the income of every employer in the country, financially affected by the outbreak of COVID- 19. Once the authority has verified the fulfillment of the minimum conditions, the employer could be entitled to receive a subsidy equivalent to (approximately) USD $95 per qualified employee.
- to pay the legal service bonus in June 2020, the government created a subsidy in favor of employees earning the monthly minimum wage up to US $260 (approximately), which is equivalent to (approximately) USD $58 per qualified employee.
- finally, for those employees whose employment contracts have been suspended, the government will grant aid up to (approximately) USD $42, on three occasions (3x).

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

The Ministry of Health and Social Protection issued Resolution 666 of 2020 to adopt the General Biosecurity Protocol as a means to mitigate, control, and adequately manage the COVID-19 pandemic, which has been received as a novel approach in the region in order to effectively cope with the risks of the virus. Broadly, Resolution 666 requires from companies:

- the design and implementation of a suitable Biosecurity Protocol;
- the adoption of administrative measures to reduce the employees' exposure to COVID-19;
- the update on the matrix for the assessment, valuation and control of occupational risks;
- the request to the Occupational Risks Insurance Companies (ARL by its acronym in Spanish) for support and assessment;
- the creation of interaction protocols for the company's suppliers, clients and external providers; and
- the consolidation and update of a complete database.

Furthermore, local governments may have additional requests or limitations applicable to both companies and inhabitants of the region, respectively, according to the current infection rates and the DORSCON levels (Disease Outbreak Response System Condition), which has already transpired in some sectors in Bogota and other cities (Cali and Cartagena) nationwide.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

Aiming at the fulfillment of their obligations, companies have designed innovative protocols to prevent the expansion of the COVID-19 virus. Among the measures taken, they have established:

- frequent temperature checks;
- daily health reports logged in a database by employees, contractors, suppliers and, in general, any individual in the company's facilities;
- rational use of Personal Protective Equipment (PPE);
- physical distancing (two square meters of space per person);
- gatherings limited to up to five people;
- shift work rearrangements to avoid unhealthy working times and crowds;
- continuous sanitation and disinfection of workplaces; and
- provisions on alcohol and sanitising elements.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

As of 1 June, most services can now be provided throughout the country under certain conditions, while employers have been persuaded to maintain measures for remote work and teleworking for as long as possible during the National Health Emergency. Home-based work and teleworking are two different and separate labour arrangements in Colombia. The former is occasional, temporal, and has been used broadly during the pandemic. On the other hand and during the COVID-19 Emergency, teleworking conditions have been relaxed. Normally, the parties should agree to, or at least have a view towards policies, concerning exceptional shift work rules, occupational risks, labour accident reports, work equipment and extraordinary allowances (payment of utilities, wi-fi), among others (Law 1221 of 2008).

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

The provisions that the Colombian government has enacted to support most common COVID-19 employee issues are by some means limited:

- as of now, Colombia's government has not created any special leave for parents that would allow them to take care of their children during school closures, which could likely be extended until August (most schools in Colombia have the normal long break at the end of the year);
- in any case, Colombian law recognises paid leave when the employee is unable to perform work as a result of a calamity that, for the employee, should be external, unforeseeable and unpredictable;
- the government included COVID-19 as a work-related disease exclusively for workers in the health sector. This classification essentially impacts the amount of the payment that the employee may receive in case of a medical-leave, or a disability support pension, as a consequence of the disease;
- a difficult and common situation facing employees, who are neither infected nor entirely healthy, but who also present symptoms of the COVID-19 virus. In those cases, even when they do not receive an unable-to-work certificate, employers concede a paid isolation measure.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

Having the severity of the General Biosecurity Protocol that every employer needs to adopt previously to call their employees back to work to their facilities, they should not have a reasonable excuse or fear of returning. Therefore, any refusal could be a reason to initiate a disciplinary procedure. However, those employees categorised as a vulnerable person to the virus, according to the Resolution 666, are legally allowed to work remotely.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

The Colombian government requires health reports to be logged in a database and updated daily, exclusively to control and prevent the spread of COVID-19, requesting specific information concerning details about livelihood, location, health symptoms and results of any COVID-19 testing, among others. Therefore, certain mobile applications have been developed to easily track such valuable data (e.g. CORONAPP, at a national level or GABO in Bogota), which everyone should download and keep up-to-date.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

In order to guarantee the rights of employees, the Ministry of Labour has announced extraordinary investigative procedures (Rigorous Labour Audits) that carry with them severe penalties for violations thereof.

a. Furloughs.
Colombian Law specifies seven circumstances in which a contract of employment could be suspended. During the COVID-19 outbreak, there are, in particular, three that may be used:

- First, the employer could be prevented from any service by a force majeure. In this event, a notice must be sent to the Ministry of Labour, so they may verify the force majeure.
- Second, if the activities have been suspended up to 120 days, the employer should petition the Ministry of Labour for authorisation to suspend the contracts of employment, based on technical, economic, or other reasons beyond their will, prior to the commencement of such suspensions.
- Third, the parties to the contract may freely and willingly agree to the suspension of the contract.

The effect of the suspension of the contract of employment, for any reason, will mainly be a cost reduction, as the employer will not have to pay any salary, wages, entitlements to annual paid leave (vacations) or severance payments to the employee.

b. Salary reductions.
The Colombian government has not enacted any changes with respect to the possibility for the parties to the contract of employment to reduce the salary, or even adjust the shift work to the current and real working conditions. Therefore, as long as any agreement is reached freely and willingly, the parties to the contract may acquiesce to temporarily reducing the employee's salary.

c. Working time arrangements.
During the National Health Emergency, the parties to the contract could agree to institute special conditions for shift work, in order to avoid crowds in public transportation and workplace settings, as well reducing the overtime payment.

d. Redundancy and Facility closure.
Finally, the law establishes a collective dismissal procedure for employers in case of complete or partial facility closures. Employer should petition the Ministry of Labour for authorisation to terminate the contract of employment of a large number of employees, depending on the headcount, while proving the grounds for the collective dismissal.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

We recognise four principles that should be applied in any reactivation plan: graduality, reasonability, timeliness, and clarity in the protocol to be implemented. Moreover, based on the UN recovery plan and the ILO four-pillar policy framework, the following general steps are recommended:

- First, companies should analyse each activity in the light of the General Biosecurity Protocol, with the aim of structuring their own reactivation plan accordingly.
- Second, having a suitable company-wide protocol in place will harmonise the employment and administrative arrangements for every employee. Such agreements could include the reduction of shift work, salaries, aids or allowances, the implementation of permanent teleworking measures or the organisation of worktime between the employees. Lastly, the parties to the contract of employment could also agree to its termination, providing for an expedited activation process that also avoids any anticipated claims. Whichever strategy is adopted, when the company is structuring any agreement with their employees, it is critical to foresee any eventual claim based on a lack of willingness to adhere to the agreement; therefore, a virtual signing

protocol should be in place to guarantee that the employees are entering into the employment agreement freely and willingly.

- Third, in case the company should notice an economic impact due to the COVID-19 pandemic, it is highly recommendable to analyse the opportunities available to employers to apply for aid and relief measures which the Colombian government has created in order to provide support to the formal sector.

All things considered, each measure should be analysed carefully and on a case-by-case basis. It is equally imperative that employers remain well-informed of the current and ongoing changes to the law, enacted to cope with the emergency.

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CZECH REPUBLIC

I. EMERGENCY MEASURES

Employment law will no longer be the same. The COVID-19 crisis has accelerated changes to existing regulations towards a more digitised working environment, home office, online meetings, and more. The Czech Labour Code is currently not prepared for such a working environment and must be amended to allow employers to react flexibly to other circumstances, which are similar to those we are facing today (e.g. use of electronic signatures, home office, health and safety). Employers should use the current situation for updating their policies and procedures, including establishing relationships with employees, improving health and safety requirements and procedures.

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

Emergency measure issued by the Ministry of Healthcare no. MZDR 15757/2020-19/MIN/KAN – Duty to cover nose and mouth:

- inside buildings (except at home);
- using public transport;
- any place where the distance between 2 persons (at least) is less than 2 meters (except for members of household).

There are other exceptions based on age and occupation, e.g. children in kindergarten, employees performing work at the same place, when keeping a distance of at least 2 meters from one another.

Ministry of Healthcare Emergency Measure No. MZDR 20020/2020-1/OVZ – Prolongation of validity of the affidavits issued during the State of Emergency regarding health capacity to work for 30 or 90 days. As the employees could not receive their occupational medical exams (initial or periodical) during the State of Emergency, they were allowed to provide an affidavit instead. They now have a certain amount of time following the end of the State of Emergency to receive a standard medical exam.

The Czech version of EU guidance for a safe return to the workplace is available at the Ministry of Healthcare website, along with the Ministry of Healthcare's Guidelines on how to prepare the workplace.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

- Updates by the Ministry of Healthcare are available in English at: ***https://koronavirus.mzcr.cz/en/***
- For updates by the Government on which restrictions are currently valid, please visit: ***https://www.vlada.cz/cz/epidemie-koronaviru/dulezite-informace/mimoradna-opatreni-_-co-aktualne-plati-180234/***

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

- The "Antivirus" Employment Support Programme offers State benefits for employers whose employees cannot work as a result of imposed obstacles and other reasons related to COVID-19.
- The Attendance Allowance benefit is available to parents whose children under the age of 13 stayed home due to COVID-19 related school closings. During the COVID-19 State of Emergency, this benefit was increased from 60% to 80% of reduced average earnings.
- Possibility for employers to defer social insurance payments.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

- Mandatory covering of nose and mouth (see section I above for more details);
- Compliance with the limit of the maximum number of persons at large events (e.g. concerts, festivals);
- Medical certificate with a negative COVID-19 test result or requirement to stay in quarantine when coming to the Czech Republic from specified countries. The list of countries is regularly updated by the Ministry of Healthcare) at: ***https://koronavirus.mzcr.cz/seznam-evropskych-zemi-podle-miry-rizika-nakazy/***

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

- The current emergency measures compel employers to ensure adherence to protocols regarding social distancing at the workplace. If social distancing is not possible, employees must order employees to wear masks while working onsite;
- More frequent disinfection of common facilities;
- Broader use of home office and technical measures for distant communication; and
- Temperature monitoring, though it has not been widely implemented.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

Teleworking is possible only by mutual agreement between employer and employee. Entering into a written agreement by which further conditions of teleworking are regulated, is recommended. Issuing an internal policy is also suggested, including mainly, rules regarding occupational health and safety and regulations on data protection while teleworking.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

Quarantine and medical leave are among the many obstacles impacting an employee's ability to work. Payment of salary compensation (60% of reduced average earnings) during the first 14 days is provided by the employer and thereafter by the government by means of the social insurance. The Czech government provides childcare benefits to parents whose children, under the age of 13, stayed home due to COVID-19 related school closings.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

Only an employee whose fear is reasonable, may be entitled to refuse to work (e.g. the employer does not ensure their safety). Employees would otherwise breach their employment contract by not working.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

An employee is not legally obliged to notify his/her employer that he/she was infected, but he/she has to notify the Regional Hygiene Station, which in turn will decide who else should be notified and possibly quarantined. If the employer is aware of the infection, only those employees who could be reasonably in danger should be notified (to avoid panic and protect the infected employee's privacy).

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
In general, employers may apply for state support if their employees cannot work as a result of obstacles imposed for the prevention of COVID-19 (decreased demand for goods and services, quarantine, etc.) and related restrictive measures adopted by the government (e.g. closure of stores, prohibition of certain business activities). The actual link to the prevention of COVID-19 does not have to be justified (e.g. it is sufficient to declare or document the decrease of demand for goods and services during the relevant period from 12 March 2020 until the end of August 2020). Employers are entitled to state benefits in amount of 60% or 80% of the salary compensation paid out (i.e. the compensation paid to employees for the time they could not work), and up to CZK 39.000 or CZK 29.000, depending on the types of obstacles imposed.

b. Salary reductions.
The employer can unilaterally reduce the salary to 80% if it suffers from a shortage of materials or other resources, and up to 60% in case of decrease in demand of products and services. Other salary reductions depend on how the salary was determined: if it was stipulated in the salary statement or through an internal policy (unilateral document), it can therefore be changed without the employee's consent, but such a reduction is limited. On the other hand, if the salary was established in an agreement (employment agreement, salary agreement, etc.) a reduction of any kind can only be done with the employee's consent.

c. Redundancy.
The employer may dismiss the employee for redundancy. In this case, the employee is entitled to receive a severance payment at least in the amount stated by the Czech Labour Code (one to three monthly earnings depending on the length of employment).

d. Facility closure.
In such cases where the decision to close is made by the employer, the employer is therefore obliged to pay the employees' full salary.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

Travel Restrictions
- New rules effective from 15 June 2020 are online at: ***https://www.mvcr.cz/imgDetail.aspx?docid=22251929***
- Czech citizens: medical certificate with a negative COVID-19 test result is required when returning from RED countries;
- European Union citizens and foreigners with either a temporary or permanent residence in the EU: medical certificate with a negative COVID-19 test result is required when coming to the Czech Republic from RED or YELLOW countries;
- Open borders with Austria, Germany, Hungary and Slovakia.

Smart Quarantine
- Testing of the new system for early detection, isolation and quarantine, and identifying persons/contacts of which the virus may have been transmitted.

"E-Face Mask" Mobile Application
- The application is based on Bluetooth technology and can help to quickly find contacts at risk.

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FRANCE

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

- The French Ministry of Labour has provided detailed guidelines for various businesses and facilities. These outline specific health and safety measures to implement in order to reopen while ensuring the security of workers and customers. The guidelines are tailored to the specificities of the business activity.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

- Flichy Grangé Avocats is updating its website regularly with information on how to reopen workspaces safely, and is hosting webinars through the L&E Global network covering the various legal questions and challenges that are raised.

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

- The major government assistance has been in the form of the "Short Time Work" or "Activité Partielle" scheme that allows employers affected by the pandemic to be reimbursed by the State for the wages paid to employees who cannot continue to work full time.
- Relief packages have also been enacted by parliament for many small businesses.
- There have been deferred or even cancelled social charges and contribution dues for certain categories of businesses.

III.HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

- A decree from 11 May 2020 also provides for certain health and safety measures that must be respected by establishments open to the public:
- The operator must implement measures to slow down the spread of the virus. This includes the hygiene measures defined in the decree, i.e.:

- regular hand washing with soap and water (access to which must be facilitated by the provision of single-use towels) or by hydro-alcoholic hand gel;
- systematically cover your nose and mouth by coughing or sneezing into your elbow;
- Blowing one's nose in a disposable tissue to be disposed of immediately in a dustbin;
- Avoid touching your face, especially your nose, mouth and eyes;
- Being reminded that masks must be worn systematically by everyone when the rules of physical distance cannot be guaranteed;

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

- The common measures include providing masks and requiring that they be worn indoors, providing

disinfectant gel and wipes, and facilitating the flow of people in workspaces so as to allow for social distancing.

- The return to workspaces has been progressive, with many businesses continuing remote work if possible.

- Employees are being trained on the proper use of protective gear and new protocols for working safely.

- Temperature checks are a grey zone in French law, as they raise some legal issues regarding privacy and personal data.

- Contact tracing has been put in place at a national level.

IV. TELEWORKING

- Policies and procedures for telework once the business reopens.

- Some businesses with desk-workers are continuing 100% telework until September 2020. The Prime Minister indicated that this should remain the "principle" if possible, for the moment.

- The Ministry of Labour has provided guidelines and Q&A's to help with setting a framework for employers and workers.

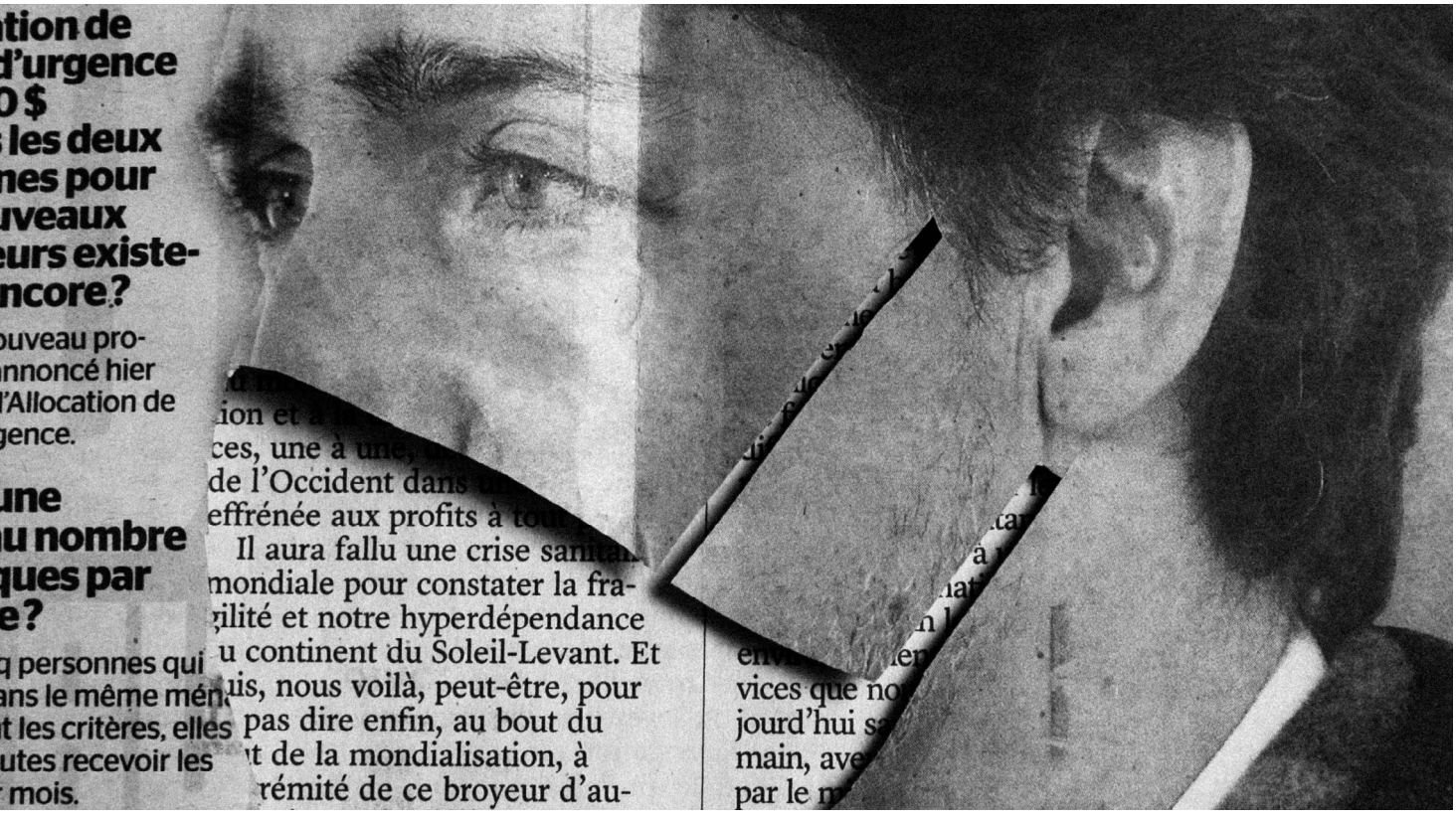
- Collective bargaining or companywide agreements may provide for additional rules and procedures. Some companies are negotiating such agreements on telework for it to continue on a partial basis well into the future.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

- An employee sick with COVID-19 is put on standard French sick leave, where the State social security and company benefits are paid to the employee. The applicable collective bargaining agreement may provide for the maintaining of salary for several months.

- The special authorisations for absence due to childcare will be granted only to employees to



whom the school or the town hall can provide a certificate demonstrating that the school or daycare is closed or unable to welcome children. These employees will be counted as remaining on "short time work".

- However, parents who do not wish to send their children to school despite it being reopened will have to find an arrangement with their employer: if it is not possible for them to balance childcare and remote work, then the days at home will have to be deducted from their vacation accrual.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

Employees who have unjustified fears should be reassured, but since they are bound by an employment contract they must submit to the order to return to work or face disciplinary action.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

The government has put in place guidelines for handling an employee displaying symptoms. Companies should however formalise their own ad hoc protocols. The employee is to be isolated, put in contact with a doctor and then sent home. The occupational health services should be contacted and contact tracing will be activated.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs:
it is not possible to furlough an employee without pay. Short time work can be used, subject to administration approval.

b. Salary reductions:
salary reductions are not possible without the employee's consent.

c. Redundancy:
economic layoffs are possible if they are justified by a real and serious economic rationale that can be demonstrated. Standard dismissal procedures outlined by the French labour code must be followed.

d. Facility closure:
If this will result in job losses, there must be an economic rationale. If it only results in a change in work location for employees, this can still constitute a modification of their contract and procedures might need to be implemented.

Note that businesses that were forced to close down by government orders were and are entitled to a host of benefits: short time work for the employees impact and various stimulus packages to help offset a part of the economic fallout resulting from the closure.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

- Businesses should update their unique professional-risk evaluation document.

There are important policies to update, in particular regarding health and safety measures in the workplace, working hours, and remote work. It may be necessary to amend the company handbook/ internal regulations accordingly.

- The staff representatives (works council) should be informed and consulted on measures and changes.

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GERMANY

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

Pursuant to the latest resolution by the federal government, dated 27 May 2020, the federal states are responsible for setting the guidelines that shall be applicable in their state. Therefore, the rules differ by region. In general, most facilities can reopen, but hygiene and distance rules apply. Companies are obligated to have a hygiene concept. The direct contact between employees or customers must be avoided wherever possible. Where close contacts take place, special measures must be in place to minimise the risk of infection, e.g. through wearing a mouth and nose cover. If possible, teleworking should be allowed by employers.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

The federal government has a website, where you can find the latest resolutions and information on COVID-19, however, the majority of this website is only available in German:
https://www.bundesregierung.de/breg-de/themen/coronavirus

On the websites of the federal states, you can often find their local orders on COVID-19 measures in English:
https://www.berlin.de/corona/en/

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

Employers can apply for short-time work allowance for their employees as a compensation in case of temporary loss of work. The amount of the short-time working allowance is in principle, 67% of the employee's salary, with extended entitlements in 2020 for lengthy periods of short-time work. This financial aid shall secure continued employment in times of work loss, in order to avoid terminations for operational reasons. Employees may also have compensation claims under the German Protection against Infection Act, e.g. in cases of a quarantine ordered by the authorities that prevent the employee from working. Solo self-employed, freelancers and small companies are entitled to emergency financial aid of up to €9,000 or €15,000 (depending on the number of employees), paid by the respective federal state.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

Under the German Safety and Health at Work Act, employers are obligated to assess the risks to the safety and health of their employees in the workplace and take the necessary measures based on this assessment. In the framework of pandemic preparedness, employers have to identify and take additional measures where necessary. More information can be found about this topic, e.g. in the National Pandemic Preparedness Plan on the website of the German Robert Koch Institute, a well-recognised German institution.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

Typical measures include increased possibilities for telework on the one hand and distance rules and improved hygiene at the company premises on the other hand (e.g. recommendations on frequent hand washing, providing disinfectants at the workplace, etc.). It is recommended to keep a distance of 1.5 meters between employees and customers. If and where such distance cannot be maintained, the employer must ensure protection by other means (e.g. face masks, workplace modification, etc.). The employer can order the employees to wear face masks, but individual employees may refuse in case of unreasonable strain, e.g. in case of asthma.

In general, the employer does not have the right to ask employees about any specific health related questions. However, in case of a coronavirus diagnosis, the employer may request information regarding this so that he can fulfil his duty to protect the health interests of the other employees. Precautionary measures, such as checking the employee's body temperature, currently require the consent of each employee, as such measures constitute a processing of personal data. Also, the works council may have a right of co-determination. Employers normally may send employees home in order to protect the health and safety of other employees in the workplace. However, the employee being sent home is entitled to continued payment of remuneration.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

Employees have no legal right to work from home under German law. At the same time, the employer cannot unilaterally order employees to work from home. Therefore, telework requires either an individual agreement between employer and employee or a company agreement with the works council, which has a co-determination right when home office is introduced. Where telework takes place, the requirements of employee protection remain unaffected. In particular, this applies to working time requirements and workplace protection. The statutory maximum working hours as well as the minimum rest periods and breaks must also be observed for telework. Workplace requirements also remain the same (lighting, wall distances, equipment, etc.). The employer must also ensure data protection is maintained in the home office. It is generally possible to delegate these obligations to the employee to some extent, as the employer has no general right to access the employee's home. However, the employer remains liable and should at least check the health and safety requirements on a spot check basis.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

Regarding quarantine, the applicable rules mainly depend on whether the employee is actually ill during this period. If the employee is ill during quarantine, he is to be treated the same as any employee on regular sick leave and is entitled to continued remuneration for a period of up to six weeks. This continued remuneration is paid by the employer. If an employee is quarantined only as a precautionary measure, but is not actually ill, he is not on sick leave. The employer is still obligated to continue paying the employee, but may request compensation from the authorities under the German Protection against Infection Act. If the employee has the option of telework and is not ill during quarantine, he remains obligated to work.

If the employee cannot arrange necessary childcare by others, despite reasonable efforts by the parents, the employee has the right to refuse to work, though an entitlement to continued remuneration towards the employer is only possible under narrow conditions and then only for a short time, for just a few days. However, under a new provision in the

German Protection against Infection Act, which was introduced in light of COVID-19, employees can apply for a state compensation payment in the amount of 67% of their lost net earnings (max €2,016 per month). This claim initially existed for a duration of 6 weeks, but was recently extended for up to 20 weeks.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

The employee can only refuse to work without breaching his contract, if it would be unreasonable for him to work. This requires a considerable, objective danger for the person concerned or at least serious objectively justified suspicions of danger to life or health. For example, the mere coughing of colleagues will probably not suffice.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

The coronavirus is subject to the official obligation to notify the authorities in accordance with the German Protection against Infection Act. When a doctor suspects a case, he must immediately inform the responsible health authority, giving the personal data of the patient, as it has extensive authority to initiate measures to combat the disease, including in the employer's company. There is no obligation for the employer to inform authorities of an infection. This will not be necessary in any event as the doctor/lab carrying out the testing will notify authorities.

For data protection reasons, the employer may in principle not disclose the name of infected employees to third parties/the workforce. Instead, this would normally have to be anonymised. The authorities may however approach the employer to identify contact persons, which may then need to be disclosed in order to follow up on infection chains.

OTHER ISSUES.

If authorities close down worksites because of the coronavirus, the employer must continue to pay its employees. This is because the employer bears the operational risk, whilst employees retain their remuneration entitlement even if they are unable to work. However, the employer may have a claim for reimbursement against the authority according to the German Protection against Infection Act. In addition, employers may have the option of applying to the Federal Employment Agency for short-time work benefits. Short-time work can be ordered for a maximum of one year. As mentioned above, the amount of the short-time working allowance is in principle 67% of the salary with extended entitlements in 2020 for lengthy periods of short-time work. Companies and businesses must apply with their responsible employment agency for short-time work, if necessary.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
Instead of a furlough, the key tool during the crisis in Germany was and is so-called short-time work. Short-time work can be introduced in the event of a temporary reduction of working time (partially or fully) based on a collective or individual agreement. If short-time work is validly introduced, a short-time work allowance (KUG) will be paid by the labour agency for up to 12 months. The allowance is usually 60% or 67% (with children) of the net wage difference (capped at social security income ceiling). In 2020, higher KUG amounts may be possible depending on the duration of short-time work. Short-time work requires a significant loss of working hours, which results in loss of remuneration. It needs to be based on economic reasons or an unavoidable event, which results in a temporary loss of working time of at least 10% of the employees of the business in the calendar month; further, employees need to be affected by a loss of remuneration of more than 10% of their gross remuneration. KUG is only possible if there is a legal basis, e.g. a collective agreement or provisions in an employment contract or a newly concluded individual agreement. The labour agency has to be

notified on the basis of standard forms, which have to be submitted at the latest by end of the month for which KUG shall be first claimed.

b. Salary reductions.
The employer may agree on salary reductions with employees. These however cannot be enforced unilaterally. During the current crisis, salary reductions are the preferred method of choice, especially with regard to high earning employees, as short-time work generally does not make sense in light of applicable caps for KUG benefits.

c. Redundancy.
A redundancy due to the current situation (compulsory redundancy) requires a reason and has to be socially justified. The crisis alone is not automatically a justification for a permanent elimination of roles, unless the employer can prove that the work will fall away for the foreseeable future, e.g. at least for the next 9 to 12 months. Temporary work reduction will not justify redundancies, but will only merit short-time work arrangements. If short-time work would be sufficient to bridge a temporary reduction of workload, a termination would be disproportionate and therefore invalid. This only applies to employees who have been employed for more than six months in a business unit with usually more than ten employees.

d. Facility closure.
If the employer can no longer maintain the business and therefore can no longer employ the healthy employees who are willing to work, its obligation to pay remuneration remains. It is in default of acceptance, even if it cannot employ the workforce for technical reasons through no fault of its own. The employer bears the "business risk", i.e. the risk of not being able to operate his business. Employees therefore receive their normal remuneration, including variable remuneration components such as commissions, even during the unexpected compulsory break. The aforementioned compensations in accordance with the German Protection against Infection Act, only arise in the event of an officially ordered closure of the facility due to risk of infection. In principle however, if an employer needs to close down a facility, it may wish to consider whether short-time work may be possible.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

If there is an agreement on the provision of work in the form of teleworking, which is to apply only for the period of impairment caused by COVID-19, the employer should reserve the right to withdraw the agreement. With regard to health and safety in case of teleworking, the employer should inform the employee comprehensively on occupational safety and should ask the employee to confirm that their workplace at home complies with legal requirements. Compliance with occupational safety should be defined as a condition for teleworking. It should also be agreed that the employer is granted a right of access for possible inspection of the occupational safety, which, unless agreed upon, does not exist due to the fundamental protection of the home under the German Constitution.

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HONG KONG (HKSAR)

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

The Hong Kong Special Administrative Region Government (the "HKSAR Gov") has gradually allowed resumption of operation of schools (by phases from 5 May), amusement game centres, fitness centres, places of amusement, places of public entertainment such as cinemas, bars or pubs, mahjong-tin kau premises, beauty parlours and massage establishments (from 8 May), bathhouses, "party rooms", karaoke establishments, and clubs or nightclubs (from 29 May), and their operations are subject to conditions to promote social distancing. Most of the recreational facilities such as sportsgrounds and playgrounds have remained closed as of mid-June. Details of some of the guidelines are set out in Question 4.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

The website ***https://www.coronavirus.gov.hk/eng/index.html*** has been set up to provide updates on local infection situation, videos of government press conferences and health tips for citizens etc.

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

The HKSAR Gov had announced a series of measures which include in particular an Employment Support Scheme to (i) subsidise employers who have been making mandatory provident fund ("MPF") contributions for employees to avoid massive layoff in the labour market. Subject to a cap of HK$18,000, such subsidy is payable to employers and calculated based on 50 per cent of the corresponding employee's monthly salary and shall be provided for a period of six months, subject to the employer's undertaking to spend all the wage subsidies on paying wages to the employees and not to lay off; (ii) provide a one-off subsidy to self-employed persons who made MPF contributions; and (iii) support the unemployed by a temporary relaxation to the asset limits of the Comprehensive Social Security Assistance Scheme. Also, the HKSAR Gov had announced proposals on providing a one-off relief grant to sectors which have been identified to have been severely affected by COVID-19, including passenger transport and aviation. Additionally, the HKSAR Gov will extend for three months the deadline for payment of tax due in April to June 2020.

III.HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

- The HKSAR Gov, by virtue of its powers under section 8 of the Prevention and Control of Disease Ordinance (Cap.599), has announced public health emergency regulations including:

- The Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap.599C) and the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (Cap.599E), which place a person who arrives at Hong Kong from a place (i) in China other than Hong Kong, or (ii) outside China, under quarantine for a period of 14 days beginning on

the day of arrival if the person has stayed in a specified place on or 14 days before the day of arrival. Cap.599C and Cap.599E are currently set to expire at midnight on (i) 7 July 2020, and (ii) 18 September 2020, respectively.

- The Prevention and Control of Disease (Requirement and Directions) (Business and Premises) Regulation (Cap.599F), which enables specific directions to be set in relation to the catering business and other scheduled premises such as fitness centres and karaokes. As of June 19, catering premises are required to implement measures to promote social distancing by maintaining at least 1.5 metres between tables or by making other partition arrangements. A person must wear a mask except when consuming food or drink on the premises; body temperature screening of persons entering the premises shall be conducted and hand sanitizers must be provided. More restrictive social distancing controls apply to bars and pubs.

- The Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap.599G), which, as of June 19, save for stated exceptions, prohibits group gatherings with over 50 persons in public.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

Employers has a duty to, so far as reasonably practicable, ensure the safety and health at work for all employees. In Hong Kong, employers typically maintain social distancing policies (e.g. by having virtual meetings, work-from-home arrangements) and arrange disinfection procedures to take place regularly. In addition, if any employee is found to have developed fever or respiratory symptoms, employers may require such employees to stay home and report on whether they are infected.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

There are no mandatory guidelines or regulations on this aspect.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

Where an employee has contracted the disease, his employer should grant him sick leave in accordance with the Employment Ordinance (Cap.57) and the relevant employment contract. Where an employee is subjected to quarantine, but does not contract any disease during quarantine and therefore no sick leave being granted, the Employment Ordinance does not provide for wage arrangements in such circumstances. The HKSAR Gov encourages employers to be considerate and show understanding to such employees' situation and make flexible arrangements, including where practicable allowing employees to work from home or granting paid leave to them.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

The Employment Ordinance does not provide for absence from work out of fear of possible infection. However, it requires an employer not to assign to a pregnant employee duties injurious to her pregnancy if she can produce a medical certificate with an opinion indicating her unfitness to do such work. In view of the special situation, the employer should, as far as possible, work out with the pregnant employee mutually agreeable arrangements.

If an employee unreasonably refuses to work, it may be a ground for summary dismissal by the employer.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

Employers do not have a statutory duty to report confirmed or suspected cases of infection. As Employers have responsibilities to protect the health of their employees and visitors, it is generally justifiable for employers to collect temperature measurements or limited medical symptoms of COVID-19 information of employees and visitors solely for the purposes of protecting the health of those individuals. The data collected should be necessary, appropriate and proportionate and must not be kept for longer than may be reasonably required. Personal data collected for fighting or combatting COVID-19 must not be used or disclosed for other unrelated purposes, unless express and voluntary consent is obtained from the individuals concerned or exemptions under the Personal Data (Privacy) Ordinance apply. Disclosure of the name and personal particulars of an infected employee is generally considered as unnecessary and unproportionate use of personal data.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
There is no provision under the Employment Ordinance on no pay leave and it remains for the parties to reach a mutually agreeable arrangement. If an employee's remuneration depends on his being provided by the employer with work, and no work is provided to him and no wages is paid for more than half of the total working days in any four consecutive weeks or one-third of the total number of normal working days in any 26 consecutive weeks, he shall be taken to be laid off and may be entitled to severance payment.

b. Salary reductions.
Salary reduction is prohibited under the Employment Ordinance save for certain specific exceptions. Failure to pay wages on time willfully and without reasonable is an offence. That said, an employer may reach an agreement with the employee for the variation of terms of employment including a change in salary level.

c. Redundancy.
The redundancy laws of the Employment Ordinance will apply. Eligible employees will be entitled to statutory severance payment and all employees made redundant shall be entitled to termination payments under the statue and their own employment contracts. Any decision to terminate an employee's employment should never infringe any anti-discrimination ordinances.

d. Facility closure.
The change in work location may, depends on the circumstances, amount to a material change of the terms of employment and require the employee's consent.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

In light of the challenges brought by COVID-19, employment policies should be transparent, up to date and readily accessible to employees to avoid unnecessary disputes. Employers are encouraged to be understanding and considerate to the individual employees' situation, and make flexible arrangements.

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INDIA

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

- The Central Government of India as well as respective State Governments, in the last 2 months, has imposed several lock downs within the country, as a measure to combat the rapid spread of COVID-19. However, in order to ensure that the economic adverse effects are somewhat restricted, the Central Government, vide a notification dated May 30, 2020 ("Central Government Notification") has announced a strategy to re-open facilities in a phased manner in areas outside containment zones (with the lock down being extended up to June 30, 2020 in the designated containment zones). While multiple State Governments have also passed similar orders with respect to phased re-opening of facilities, some States (e.g. Telangana, West Bengal and Mizoram) have however extended the lock down for an additional period of time.

- The Central Government Notification provides for certain guidelines and standard operation procedures that are to be mandatorily observed whilst resuming operations. Examples are: (a) wearing of face covers; (b) following social distancing measures; (c) working from home as far as possible; (d) staggered work hours at offices, industrial and commercial establishments; (e) provision of thermal scanning, hand wash and sanitizers at all entry and exit points in common areas; and (f) frequent sanitisation of entire workplace. In light of the guidelines prescribed under the Central Government Notification, the Ministry of Health and Family Welfare by means of a notification dated June 04, 2020 has also prescribed detailed standard operating procedures to contain the spread of COVID-19 ("SOPs").

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

- The optimal approach to keep track of the latest updates and notifications with respect to COVID-19 is to keep a check on the Central Government's and respective State Government's websites, where such notifications are published. IndusLaw, as part of its own COVID-19 response process, has also been tracking the notification and orders, and our analysis of some of them can be found here: ***https://induslaw.com/publication***

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

- The Central Government on May 13, 2020 announced a special economic and comprehensive package of USD 270 billion which is equivalent to 10% of India's GDP, to revive and boost the Indian economy which has predictably been impacted due to COVID-19 ("Package"). The Package was introduced as a part of the Government's Self-Reliant India Movement. As a part of the Package, the Indian Government has granted several relief measures to different sectors to boost the economy and aid the employers to revive the losses that they have suffered due to Covid-19.

- Further, with respect to social security contributions, certain relaxations have been brought in place to provide relief to both employers and employees during this crisis. Under the provisions of the Employees' Provident

Fund Act, 1956 and the rules and schemes made thereunder (**"EPF Law"**)[1]: (i) the rate of provident fund (PF) contribution has been reduced to 10% instead of 12% for the month of May, June and July 2020; (ii) penalties for late filing/payments have been removed for the lock down period; (iii) employees are permitted to claim advances from the PF account, subject to certain limitations. Certain compliances under Employees' State Insurance Act, 1948 and certain state specific labour laws such as the profession tax law and labour welfare fund law, have also been eased out for the benefit of both the employees and the employers.

- Certain States have currently exempted specific kinds of factories from complying with the provisions related to daily and weekly working hours, subject to certain limitations and conditions. This has been done with the intent of providing an opportunity for businesses to increase their productivity levels in the near future.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

- Various protocols and measures have been mandated both by the Central as well as several State Governments. The SOP of the Ministry of Health and Family Welfare of the Central Government can be found here: ***https://bit.ly/2C75Ps5***

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

- Apart from complying with the mandatory requirements under the Central Government Notification and the SOPs which inter alia include provisions with respect to frequent sanitation, fumigation, health checks, restricted meetings, reduced cafeteria services and various other social distancing measures, most employers are now focusing on ensuring work from home protocols (including home infrastructure) are robust and they adequately comply with prescribed standards.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

- Although the Central Government as well as certain State Governments (with stricter restrictions) have permitted private and commercial establishments to re-open and resume operations, most sectors have reconciled that working from home would be a reality for the near future for most of their employees. To that end, Central and State Governments have actively encouraged employers from all sectors to ensure that employees who can work from home continue to do so. While no specific guidelines or protocols have been notified by the Government with specific reference to teleworking as yet, we expect to see the situation change soon.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

- From a general industry and legal perspective, with respect to COVID-19, employees affected by COVID-19 will be considered to be on paid leave. There are also strict quarantine measures that have to be mandatorily adopted, as prescribed by various Government executive orders. There is however no clarity as yet on whether an unfortunate condition such as COVID-19 would affect any other leave entitlements of employees.

[1] The EPF Law is a social security legislation wherein both employers and employees of certain establishments are required to contribute 12% employee's compensation (certain components of the compensation) to a government-controlled social security fund.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK

- Given that the Central Government and respective State Government have eased the lock down restrictions, an employer, who has been permitted to remain operational, has the right to take disciplinary actions (subject to the provisions of applicable laws, employment contracts of employees and the organisation's internal policies) against employees who refuse to report to work unless: (i) such employees have been infected with COVID-10; or (ii) such employees reside in designated containment zones; or (iii) it can be established that the employer itself is not enforcing adequate health and safety measures as prescribed by the Government.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

- When one or a few employee(s) who share a room/ close office space is/are found to be suffering from symptoms suggestive of COVID-19, the employer must immediately inform the nearest medical facility (hospital/clinic) or call the state or district helpline. While the suspect case(s), if assessed by health authorities as moderate to severe, will be treated as per health protocol in an appropriate health facility, necessary actions by employers for contact tracing and disinfection of work place will have to be undertaken as well. In such instances, employers must also abide by all other instructions issued by the appropriate public health authority. As a best market practice, employers may also consider disclosing to other employees if there are positive cases inside the workplace without ever disclosing identity and other personal information.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

- The below-mentioned cost reductions strategies are commonly followed by employers in India. However, each of them has certain limitations and must be undertaken in accordance with due process established under law. At the outset, it is important to state that Indian labour and employment legislations categorise employees into 'workmen' and 'non-workmen' with service conditions of workmen employees being subject to far greater statutory protection. The service conditions of non-workmen/managerial employees are governed mainly by their employment contract and the internal policies of an organisation.

a. Furloughs.

- Furloughs (or as commonly known as 'lay off' under per Indian laws) are a frequently used cost-reduction strategy adopted. Under law, the term 'lay off' is inter alia defined as the failure, refusal or inability of an employer, on account of a natural calamity or for any other connected reason, to give employment to a workman on its rolls. With respect to workmen employees, the law prescribes processes and compliances/ payments for lay off with respect to certain categories of establishments such as factories, mines and plantations. A non-workman employee can be placed in this process by way of a mutual agreement.

b. Salary reductions.

- Salary reduction is one of the most commonly implemented cost-reduction strategies as it has the least impact on the employees from a financial perspective, in comparison to the other cost reduction strategies. For a workman employee, a salary reduction amounts to a change in service condition of the workmen and before implementing the same; the employer is required to give them a notice of change, the time period of which is 21 days (but may vary for certain States). Further for non-workmen/ managerial employees, the employer will be required to execute individual mutual agreements with the concerned employees to amend the terms of their employment contract to record the reduction in their salaries. That

being said, certain Government notifications have specifically discouraged salary reductions during the crisis. Given that, specific legal advice should be taken for a nuanced analysis.

c. Redundancy.

- The laws with respect to termination of services of employees due to redundancy are far more stringent for workmen employees as compared to non-workmen/managerial employees. In order to terminate the services of a workman employee, certain requirements under law need to be fulfilled (retrenchment compensation, notice pay etc.) along with provisions of the employee's employment contract, organisation's internal policies, certified standing orders (if applicable). A non-workmen/managerial employee can be dismissed as per his/her employment contract (i.e. as per the notice period requirements specified therein) and in accordance with the organisations' internal polices (to the extent applicable).

d. Facility closure.

- Closure of a facility/industrial establishment is usually the last resort for an employer for reducing its operational cost. Depending upon the market conditions and the business requirements, the employer may also choose to shut down a particular section of the establishment. For both permanent and partial closure of an establishment, various compliances and filings under the Indian employment laws and company law need to be undertaken by the employer. Further, the nature of compliances also differs depending upon the type of establishment and geographical location. In certain cases, prior approval of the government authorities is also required.

work from home agreements. Till the time the pandemic is not considerably contained and to the extent possible, employers should allow employees to work remotely. However, internal policies of the organisation should be amended inter alia to ensure that the employees: (a) are available during work hours to attend virtual meetings /discussions or calls; (b) do not travel without applying for leaves as it may disrupt continuity of work; (c) employees are appropriate dressed for video conferences; (d) sanctity of company data is always maintained; and (e) there is no conflict of interest in any manner. Travel with respect to business requirements should also be restricted unless it is urgently required for business purposes. Additionally, organisations may also consider modifying its leave policies and overtime policies to accommodate contemporary demands. Further, having a dedicated team which keeps track of government notifications, guidelines and standard operating procedures is also helpful for both employer and the employees to comply with the same.

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VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

- In order to ensure continuity of operations and to ensure the safety of its employees, it has become important for employers to update their internal policies and practices in line with applicable laws in light of the Covid-19 crisis. This has in several instances compelled employers to also execute

ITALY

I. EMERGENCY MEASURES

The current situation is very serious and the measures implemented have been granted as a short term response to this crisis, however they will need to be strengthened. In this regard, we continue to wait for further intervention by the Government in order to address the colossal layoffs that will follow the end of the dismissal ban.

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

- Law no. 40/2020 (ratifying with some amendments Law Decree no. 23/2020);
- Law Decree no. 34/2020 (regarding economic measures to help with the reopening and measures supporting employees);
- Decree of the Prime Minister dated 17 May 2020 (regarding the reopening schedule and modalities, implementing Law Decree no. 33/2020);
- Law Decree no. 33/2020 (regarding the reopening schedule and modalities, and fines related to breaches of the mandatory provisions);
- Law Decree no. 23/2020 (temporary measures to support companies' cash flow and provisions related to the employer's liability in the event of contagion in the workplace); and
- Law Decree no. 18/2020 (regarding, above others, measures supporting employers and employees).

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

Please refer to the following websites:

- ***www.salute.gov.it*** (Health Ministry);
- ***www.lavoro.gov.it*** (Employment Ministry);
- ***www.gazzettaufficiale.it/dettaglioArea/12*** (Official Law Journal, COVID-19 Thematic Area);
- ***www.inail.it*** (National Institute for Insurance against Accidents at Work); and
- ***www.linkedin.com/company/lablaw/*** (see Document Section of LABLAW's LinkedIn profile for guidance).

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

For employers:

- Fund to save the employment levels of companies owning historical trademarks, having more than 250 employees and facing financial difficulties;

- Relief measures to contribute to remuneration costs, including social costs, of companies particularly affected by the pandemic in order to avoid dismissals during the length of the crisis (please note that individual and collective dismissals are suspended until 17 August 2020);

- Collective agreements at company level or at territorial level shall provide a different reorganisation of working time due to changed economic-productive needs of the company, using part of such reorganised working time for the attendance of training courses. The costs for the attendance of such training courses, including social contributions, shall be borne by a proper Fund;

- Employers that suspend or reduce the time worked in light of the COVID-19 emergency during 2020, may request an economic indemnity from the Government to be paid to the employees, to partially integrate the remuneration lost (e.g. temporary mass layoffs, called "Cassa Integrazione" in Italian legal parlance). Accordingly, employees should be entitled to 80% of the remuneration due to them, as indemnity for the hours not worked. Such a

measure is granted up to a maximum of 18 weeks until 31 October 2020;

- The ban on dismissals (individual or collective) for objective reasons has been extended up to 5 months (previously it was for 2 months), starting from 17 March 2020, and, for the same period, those still pending, started after 23 February 2020, are suspended;

- As a way to effectively manage the restart of activities, it is possible to renew or extend until 30 August 2020 the fixed-term agreements in place as of 23 February 2020, even in the absence of the conditions required by Article 19 of Legislative Decree 81/2015;

- Contributions for April and May 2020 have been suspended until 16 September 2020, for companies that suffered a reduction in turnover of more than 33% or 50% in March 2020, depending on whether they had revenues of less or more than €50 million;

- In order to ensure the necessary cash flow to companies based in Italy affected by the COVID-19 epidemic, the company SACE S.p.A. provides guarantees until 31 December 2020 in favor of banks, national and international financial institutions and other authorised entities, for loans of any kind to the aforementioned companies. A company that benefits from the guarantee, undertakes to manage employment levels through trade union agreements.

For employees:

- From 5 March to 31 July 2020, and for a continuous or split period not exceeding 30 days in total, employees with children not older

than 12 years are entitled to a leave, with 50% of the remuneration (allowance paid by INPS). In addition, employees with children up to 16 years old have the right to abstain from work for the entire period of suspension of childcare services and schools, unpaid, with a ban on dismissal and the right to keep their job.

- As an alternative, the employee may choose to receive one or more bonuses to cover the costs of baby-sitting services for children up to 12 years old, up to a maximum of €1,200 gross, to be used for services from 5 March through 31 July 2020.
- There is an increase in the permits available for assistance of disabled family members. The ordinary 3 days of paid monthly leave, covered by imputed contributions, provided by law for such cases, have been increased by an additional 12 days to be enjoyed in May and June 2020.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

The mandatory measures declared in Article 2, paragraph 14, of Law Decree 33/2020 (the protocols having been attached to the Prime Minister's Decree dated 17 May 2020) to be adopted by employers are set out in specific sector protocols and the Protocol signed by the Government and social parties on 24 April, with the aim of containing the COVID-19 virus.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

The implementation of the measures referred to in the aforementioned protocols (e.g. temperature monitoring, social distancing, use of masks and gloves and plexiglass separators) will fulfill the employer's mandate with regards to the obligations to protect employees. It may lead, however, to modifications in the workplace and adjustments to time organisation, that could and should be prudently implemented, together with the unions. With reference to measuring employees' temperatures, as well as carrying out serological tests on employees, particular attention must be paid to data processing and privacy issues.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

Smart working is highly recommended whenever it is compatible with the employee's tasks. Law Decree no. 34/2020 specifically provides that:

- Until the end of the epidemiological emergency caused by COVID-19 (currently until 31 July 2020), working parents employed in the private sector who have at least one child under the age of 14, provided that there is no other parent in the household benefiting from income support instruments in the event of suspension or cessation of work or that there is no non-working parent, are entitled to carry out the work as smart working even in the absence of individual agreements, subject to compliance with the information obligations provided for in Articles 18-23 of Law 81/2017, and provided that this mode is compatible with the characteristics of the benefit.

- In addition, although limited to the duration of the COVID-19 epidemiological emergency, and in any case no later than 31 December 2020, the same simplified conditions of smart working, governed by Articles 18-23 of Law 81/2017, may be applied by private employers to any employment relationship.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

As provided for in Article 26, paragraph 1, of Law Decree no. 18/2020, the quarantine period with active surveillance or the period of fiduciary home stay with active surveillance of private sector employees, shall be treated as an illness for the purposes of the economic treatment provided for under the law, and cannot be counted for the purposes of the grace period.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

There are no official guidelines on this. If the employer has implemented all the necessary safety measures, while always prioritising the use of smart working in all cases where it is compatible with the tasks carried out by the employee, a refusal not motivated, for example by proven health reasons, could lead to disciplinary action for insubordination. However, it is always advisable to consider, with caution, the need for the employee to be onsite when there are equally satisfactory alternatives.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

If an employee is found to be infected, it will be necessary to isolate him/her from the other employees, to inform the competent Local Health Authority, and await their instructions on how to handle the employee's situation, accordingly, thus allowing doctors to trace any contacts and define the contagion dynamics. The data must be processed in compliance with the GDPR.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
As customarily provided by the applicable NCBA or in accordance with any emergency laws (e.g. the abovementioned parental leaves) that may apply.

b. Salary reductions.
Not applicable.

c. Redundancy.
Both individual and collective dismissals for objective reasons are prohibited until 17 August 2020 (subject to further extensions).

d. Facility closure.
Given that the emergency regulations have finally provided for the option of using the temporary layoff fund for a maximum of 18 weeks, it is possible to close the plants for the whole period, since employees are guaranteed 80% of the salary, to be paid by INPS (National Social Security Authority).

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

- Implement protocols and update policies, including the DVR (risk evaluation document);
- Inform and train employees;
- Institute smart working policies; and
- Limit business trips.

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JAPAN

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

In Japan, the state of emergency declared on 7 April 2020 was lifted on 25 May, and now is the phase to increase the level of socio-economic activities gradually by relaxing the request to stay home, to conduct gatherings and to limit the use of facilities, on the basis that "the new lifestyle" is well-established in society and the economy as a whole. From the legal perspectives, under the state of emergency, the governors requested various measures, but there have been no statutory directives enacted to combat the COVID-19 pandemic restricting activities of business and individuals and/or imposing specific obligations on employers. There are no sanctions (e.g. fines or penalties) for non-compliance with any of these measures. Everything is just a request and not an order and therefore cannot be required. Please note, however, that requests, guidance and/or recommendations announced by the government, including those for the purpose of combating COVID-19 would be commonly considered as the guidelines that should be followed, regardless of whether sanctions could be applied or not, and therefore it would be advisable for employers to take careful but flexible measures in a practical manner, especially in the course of returning to work.

Basic Policies for Novel Coronavirus Disease Control was decided by the government on 28 March 2020, which presents measures to be taken to combat the COVID-19 pandemic. The English summary of the latest policies on May 25 is available at:
https://www.mhlw.go.jp/content/10900000/000634753.pdf

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

The latest information on COVID-19 in Japan is available at:
https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/newpage_00032.html

II. STATE AID

Government subsidies and special relief resources allocated to support employers, and workers, in their efforts to maintain employment and pull through the crisis.

Japan currently has an "Employment Adjustment Subsidy" system, which has been revised to help businesses suffering as a result of COVID-19. The system is designed to help employers avoid termination by covering part of their employees' salaries (in general up to a maximum of JPY8,330 per employee per day, and for a maximum of 100 days in any 12 months, but disregarding days in the period 1 April to 30 June 2020, if the subsidy was requested in that period) during the period the employees are furloughed. In order to be eligible, the employer must have a labour agreement with an employee representative, or union if there is one, and its monthly business activities (evaluated by reference to factors such as sales volume and/or sales amounts) must have decreased by 10% due to COVID-19, when compared to the same period in the previous year, if the request for the subsidies was submitted in the period 24 January 2020 to 31 March 2020, 5% if the request was submitted in the period 1 April to 30 June 2020 and 10% thereafter. The subsidy is paid to the employer; the rate of the subsidy being between 50% and 100% of the payment the employer is required to make during the furlough (i.e. at least 60% of the employee's average wage), the actual amount being calculated based on whether the company is a small or medium sized company or a large company, the total number of the employer's

employees, the dates covered by the payments and whether the company has terminated any employees. Application for the subsidy is made to the competent Prefectural Labour Bureau or Employment Service Center.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

In general, an employer has a statutory duty to give appropriate consideration to ensure that its employees are physically safe at their place of work. There have been no statutory directives enacted to combat the COVID-19 epidemic, imposing specific obligations on employers. The declaration of state of emergency authorised the governors in the areas affected to request (not require) that residents stay home except for essential tasks; businesses can be requested that they "thoroughly implement infection control measures"; but this is just a request and not an order and therefore cannot be required.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

Measures to satisfy the COVID-19 obligations might include collecting information on employee's health and physical condition, asking employees to work from home or a safe location, installing temperature meters or other health risk detection methods for employees and visitors (subject to compliance with possible data protection requirements), and implementing staggered commuting times; which measures to take would have to be determined on a case-by-case basis. Although the state of emergency has been lifted, employers are still expected to reduce the number of the employees attending their workplaces and avoid the Three C's (i.e. closed spaces with poor ventilation, crowded places with many people nearby and close-contact settings such as close-range conversations). Examples of the advisable measures to be taken by employers when gatherings are to be held include (i) limiting the number of the people and providing proper instructions for entering/leaving, (ii) preventing crowded places with many people nearby, (iii) making attendees wash their hands and wear masks and (iv) ventilating a room.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

Neither policies nor procedures are required for telework. Telework remains an option as one of the advisable measures to be taken by employers, which fully depends on their decision and discretion.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

No specific rights or obligations arise out COVID-19. If an employee is too sick to work in general, they should and would be asked to take sick leave. There is no statutory obligation to pay salary for sick leave. However, if an employee is "able to continue working" but the employer orders the employee to take a leave of absence based on its own judgment and in light of its obligations to provide a safe working environment (including the situation where the employee is infected or suspected of being infected, or has had close contact with an infected person but is not yet reasonably suspected of being infected), the case is considered as furlough, where the payment referred to in section VI part a. (below) is obliged. There is no statutory right to paid or unpaid leave or to look after school-age children affected by COVID-19. The government is providing special benefits to employers that provide extra paid leave for parents, who have children affected by school closures relating to the COVID-19 crisis, for the period from 27 February to 30 June 2020.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

An employee may not refuse to attend to their place of work unless ordered to do so by the employer, regardless of any actual or perceived risk of infection. The employee could also take paid annual leave, but the employer must not coerce the employee to do so. The company's works rules should set out the procedures for requesting and granting leave.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

Employers need to be particularly careful that they do not inadvertently disclose an employee's medical condition without the employee's consent, e.g. by having them work from home where it could be deduced by others that the employee is infected with COVID-19. An exception for a data folder (an employer or medical professional in respect of an employee's health data) could be applied for the purpose of preventing the spread of COVID-19, if the acquisition or transfer is considered to be necessary for the protection of the life, health, or property of an individual and it is difficult to obtain the consent of the data subject, or as required by a state agency or a local government to perform their legal duties, or by an individual or a business operator entrusted by either of them for that purpose, and obtaining the consent of the data subject is likely to impede the performance of those duties.

OTHER ISSUES.

The Japanese government has banned foreigners from entry into Japan (including those with work permits, and those with spousal visas or permanent residency who left Japan on or after 3 April 2020) if within the 14 days before entry, they have been in any of the 111 countries and regions on a list issued by the Ministry of Justice; these countries include the US, the UK and most EU nations. These rules are subject to change.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
A unilateral reduction in working days or working hours (including furloughs) is permitted only if based on reasonable grounds. A material reduction in business activity, or a requirement to furlough employees as a result of COVID-19, or a government order (but not a request) may constitute reasonable grounds, but each case would have to be examined based on its own facts. If an employer reduces an employee's working days or hours, or the employee is absent from work due to a cause attributable to the employer, even if there are reasonable grounds for such reduction or absence, the employer must pay the employee: (i) for a reduction in days worked, at least 60% of the employee's average wage for the days the employee does not work; and (ii) for a reduction in hours worked in a day, normal salary for the hours worked, but not less than 60% of the average wage for the day.

b. Salary reductions.
In general, a unilateral reduction in salary is not allowed and neither can an obligation be waived based on the employee's employment contract. However, an employer and employee are otherwise free to voluntarily agree on payment terms for a reduction in working days, hours and salary.

c. Redundancy.
The COVID-19 crisis does not provide an employer with any additional rights to terminate an employee. Termination of employment must be objectively reasonable. In the case of redundancy, termination must be based on a cause that would objectively be considered reasonable, and must generally satisfy four tests:

- there must be a genuine and significant economic need for the termination;
- the employer must have taken all reasonable steps to avoid the termination, e.g. reassigning the employee(s) to other roles, reduction of payments other than salary and reduction in hiring;
- if only some employees from within a discrete group in the affected business are being terminated, the criteria for selection of those to be terminated must be fair and not discriminatory; and
- the employer must have consulted with the affected employee(s) and any labour union.

Terminating an employee as a result of a reduction in, or reorganisation of, the employer's business resulting from COVID-19 is, depending on the situation, unlikely to be considered objectively reasonable and/or satisfy the four tests. Therefore, the employer should seek to agree on a voluntary termination with the affected employee, including an appropriate severance payment.

d. Facility closure.
Facility closure can be considered as an example of furloughs or redundancy.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

In Japan, each employer is strongly expected to maintain employment. Terminating employees in Japan is generally a difficult process and it is advisable to seek the advice of local counsel or a specialist employment law advisor before doing so. While no enforceable directives with restrictions have been enacted to combat the COVID-19 pandemic, an employer has a statutory duty to take appropriate measures to ensure a physically safe environment at their place of work, in accordance with guidance and recommendations provided by the government as well as business associations. In practice, each business association is preparing guidelines setting out measures to combat COVID-19 in accordance with the type of business, respectively.

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LUXEMBOURG

I. EMERGENCY MEASURES

On 18 March 2020, the Luxembourg government declared the "state of emergency", which has been extended for a period of 3 months by the law of 24 March 2020, enabling the government to quickly implement temporary regulations to deal with the exceptional situation in relation with the Covid-19 pandemic.

In this context, the government had to take urgent measures to help companies to face the reduction of their activity, maintain the economic situation of the country and avoid terminations of employment contracts.

Therefore, many of these regulations concern labour law aspects, and the last months have been very challenging for employers, who had to adapt gradually to these new measures, and face a difficult economic situation at the same time. Indeed, due to the urgency, many regulations lack precision and are subject to different interpretations.

Despite the different state aids, some employers, to save their business, will have no choice but to proceed to terminations for economic reasons, which leaves the question open whether the measures taken are sufficient.

From another perspective, this exceptional situation has permitted to develop new ideas regarding our way of working and organisation in the offices, especially through teleworking. To be seen whether this will have a long-lasting effect in the post-crisis period.

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

- The declaration of the state of crisis, as well as all health measures in response to the pandemic have been introduced by means of the Amended Grand-Ducal Regulation of 18 March 2020. A consolidated version is being updated regularly, incorporating all amendments (first, the restrictions, and then the lifting of restrictions): ***http://legilux.public.lu/eli/etat/leg/rgd/2020/03/18/a165/consolide/20200529***

- As of today, the following aspects are affected by the Regulation: limitations of groupings of people, measures concerning establishments open to public, limitation of economic activities, other protective measures, sanctions etc.

- Furthermore, a multitude of measures has been taken by the government in many different fields of law. A list of all labour law and COVID-19 related specific laws, regulations and amendments (only in French) can be found on our website: ***https://kleyrgrasso.com/covid-19/droit-du-travail/***

- The state of crisis has been extended until 24 June 2020 included by the Law of 24 March 2020 : "Loi du 24 mars 2020 portant prorogation de l'état de crise déclaré par le règlement grand-ducal du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le COVID-19. ».

- Currently, the house of representatives is discussing two bills of "COVID-19 laws" which will supposedly confirm the end date of the state of crisis, by which some measures taken during the state of crisis are supposed to be either extended or even adopted permanently (such as leave for family reasons, etc.).

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

- All official communications from the government concerning COIVID-19 are published on this website (English version available):
- ***https://coronavirus.gouvernement.lu/en/citoyens.html***

- It contains all communications form the government, as well as extensive FAQ sections in English.

Further sources of information for updates include:
- Guichet, a government institution for administrative questions, has all the necessary information pages concerning Covid-19 measures (in English): ***https://guichet.public.lu/en/support/coronavirus.html***
- ***https://guichet.public.lu/en/actualites/2020/avril/20-coronavirus-droits-obligations-employeurs-salaries.html***
- The employment agency ADEM publishes a detailed FAQ about short-time work. ADEM: COVID-19 – Short-time working – FAQ (English)
- A list of all COVID-19-related laws, regulations, amendments, circulars etc. divided by field of law can be found on our website: ***https://kleyrgrasso.com/news/covid-19/***

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

- A comprehensive list of state measures can be found in the following table (in English), provided by the Government: ***https://meco.gouvernement.lu/dam-assets/dossiers/Tableau-stab-9avril-EN.pdf***

- All updates concerning state aid should be accessible here:
- ***https://coronavirus.gouvernement.lu/en/entreprises.html***

- One of the Government aid measures that has had the biggest impact on labour law is the short-time working scheme, which has been specifically adapted to the COVID-19 situation. (For more information, see point 11e)

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

- All health and safety measures concerning COVID-19 are continually updated and amended in the Amended Grand-Ducal Regulation of 18 March 2020, of which a consolidated version is being updated regularly: ***http://legilux.public.lu/eli/etat/leg/rgd/2020/03/18/a165/consolide/20200529***

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

- The Labour Code provides that the employer is obliged to ensure the health and safety of employees in all work-related aspects and take the necessary measures for the protection of the health and safety of employees (Articles L.312-1 et seq. of the Labour Code). This general rule also applies in the current exceptional circumstances of the COVID-19 pandemic.

- Additionally, the Government decided in a Grand-Ducal regulation from 17 April 2020 that the employer has in addition specific obligations regarding health and safety at the workplace during the state of emergency (i.e. between 16 March and 24 June 2020 for now) linked to the COVID-19 epidemic.

- The employee must concretely review the circumstances in which employees may be exposed to the virus and implement the measures necessary to avoid or, failing this, limit the risk as much as possible.

More particularly, employers must ensure that:
- The rule of distance (2 meters minimum) must imperatively be respected. If not, people should wear masks or any other protective equipment to cover mouth and nose, which should be available to employees,

- premises and floors are regularly cleaned, work surfaces are cleaned and disinfected, employees are provided with soap, water and hydro-alcoholic gels,
- set up workstations and other premises or workplaces in which employees are likely to exercise their professional activity set up collective protection equipment which ensures the protection of employees in relation to other people,
- inform and train, in collaboration with the staff delegation, the employees on possible health and safety risks, the precautions that need to be taken, the wearing and use of protective equipment and clothing, as well as hygiene measures taken in the context of these exceptional circumstances linked to the COVID-19 epidemic and give them the appropriate instructions, post signs indicating the risks and the preventive measures taken in relation to these exceptional circumstances linked to the COVID-19 epidemic.

• However, there is no obligation for employers to conduct testing protocols or temp scanning.

• It is to be noted that the implementation of the above rules is subject to the control of the Labour Inspectorate (ITM- Inspection du travail et des Mines) and the Occupational Health and Environment Division of the Health Ministry. In the event of a breach, companies may be subject to administrative and criminal sanctions (fines and imprisonment under certain circumstances).

• The following guidelines have been published with regard to health and safety obligations for employers:
- Ministry of Health: Temporary health recommendations, including specific guides per business sector. Unfortunately, it is only available in French at this time,
- Inspectorate of Labour and Mines (Inspection du travail et des mines) : Safety guide for employers (only in French),
- Service de Santé au travail multisectoriel (in French):
https://www.stm.lu/news/covid-19-documents-utiles/

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

• As of today, despite recommendations from the Government to implement teleworking whenever possible for reasons of health precautions, there is no “right to teleworking” in Luxembourg. In fact, employers may refuse employees requests for teleworking.

• Employers may however impose teleworking on their employees for health and safety reasons, if possible and compliant with their functions and employment contract.

• Different rules are applicable whether the employee is working from home on a regular basis or only occasionally. If the employee works from home on a regular basis (for example the employee is working every Friday from home would be a regular regime), an addendum to the employment contract must be signed and the employer should respect a certain number of obligations governed by the legal provisions of a Grand-Ducal regulation dated 15 March 2016. Therefore for occasional teleworking (which was applicable during the Coronavirus crisis), no specific arrangements need to be organised, apart from the respect of the confidentiality and data protection points. It is however recommended to communicate some common guidelines/a policy to the employees working from home on an occasional basis; this is relevant from an insurance perspective if the employee has a work-related accident while working from home. Ideally, the employee should confirm his start and end time of a working day spent at home (by e-mail (sent to the line manager), via the clocking system etc.).

• It is important to note that as in Luxembourg many employees are cross-border workers, working from home (i.e. from another country) may have tax or even social security implications for them leading to a possible loss of salary, if the duration of work performed from home exceeds a certain number of days per year. Although the Luxembourg government managed to negotiate

with France, Germany and Belgium for the non-application of the usual tax-regime during the state of crisis, it is unclear as of today what would be the tax implications in the future once the business reopens.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

- Employees who are infected with COVID-19 and/or need to be quarantined, need to contact a medical professional by phone, and through a "teleconsultation", the medical professional will issue a sick leave certificate for the employee.

- With regard to employment law, this situation is treated like any other sick leave.

- In the context of the measures adopted by the Government to contain the spread of the COVID-19 coronavirus, a specific procedure has been set up to allow parents to take leave for family reasons if they do not have any solution to look after their child(ren) under 4 years old, or aged from 4 up to 13 if it has not been possible to find them a place in a childcare structure for the period from 25 May to 15 July 2020. This special leave is treated as sick leave and the employer is reimbursed 100% by the National Health Fund.

- If the employee is not sick, it is always possible to ask him/her not to come to the office. If telework is not possible the employer would have to grant to this employee extraordinary leave.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

- Employees may not refuse coming to work out of fear, provided the employer has implemented all required health and safety measures. (Article L. 312-1 of the Labour Code).

- However, according to Grand-Ducal regulation from 17 April 2020, in the event of a serious, immediate and unavoidable danger, an employee may leave his/her workstation or the dangerous area without being sanctioned. Any termination on those grounds will be deemed abusive.

- Such behaviour from the employee may however in our view only be acceptable if the employer has not taken the necessary measures in relation with the COVID-19 epidemic to protect the employees and/or if due to specific circumstances the employee was indeed be in a "serious, immediate and unavoidable danger" (for example a business trip in a high risk zone).

- Possible disciplinary measures may thus only be considered on a case-by-case basis.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

- Employers are not required to notify authorities. In fact, the CNPD, the national commission for the protection of data in Luxembourg, considers that employers must refrain from collecting in a systematic and generalised manner, or through individual inquiries and requests, information relating to possible symptoms or health information presented by an external person or an employee as well as their relatives.

- The CNPD's guidelines concerning COVID-19 can be found here (in English):
- ***https://cnpd.public.lu/en/actualites/national/2020/03/coronavirus.html***

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
The exact mechanism of furloughs does not exist in Luxembourg. However, there is a possibility for short-time work (see point 11 e.)

b. Salary reductions.
No specific rule has been implemented enabling employers to unilaterally reduce salaries due to Covid-19.

Salary reductions can be agreed upon by signature of a contract amendment by mutual consent.

Otherwise, the usual procedures in case of unilateral modification of an essential part of the employment agreement apply (and which is the same procedure as for a dismissal).

c. Redundancy.
Please note that during COVID-19, while a company benefits from short-time work, the employer undertakes not to do any dismissal for economic reasons as long as the State aid is granted.

Otherwise, if the employer wants to dismiss at least 7 or more employees over a period of 30 days or at least 15 or more employees over a period of 90 days, they must apply a collective redundancy procedure, which basically entails 4 steps:

- informing the National Employment Agency (ADEM) and the staff representatives or the employees directly if the business regularly employs less than 15 persons;
- negotiation of a social plan;
- implementing the social plan;
- requesting tax exemption for voluntary departure or severance pay, if applicable.

Please note that during the COVID-19 crisis, the deadlines which are normally applied during the negotiation of a redundancy plan are suspended within the framework of a collective redundancy, such as:

15-day limit for negotiations of redundancy plan, and in absence of agreement, signature of non-conciliation report, submission of the case to the National Conciliation Service, summons to meet with the conciliation committee, deadline of maximum 15 days until decision is reached (signature of redundancy plan or redundancies).

This means for businesses employing 15 or more employees that, during the sanitary crisis, it is not possible, without the approval of the employee representatives, to dismiss for economic reasons more than 6 employees over a period of 30 days or 14 employees over a period of 90 days.

For more Information:
https://guichet.public.lu/en/actualites/2020/avril/03-coronavirus-suspension-delais-procedure-collective.html

d. Facility closure.
Yes, the usual procedures apply.

e. Short-time work

To maintain employment, and avoid redundancies, the Luxembourg labour law foresees the possibility for companies to use different short-time working schemes under certain conditions, and according to the difficulties they meet.

For the time of the pandemic (and until 30 June 2020), the Government has implemented a specific scheme for short-time work due to COVID-19. The application procedures are fast-tracked, simplified and generalised, in order to accelerate the employers' access to help.

The employment agency ADEM has published a detailed FAQ about short-time work. ADEM: COVID-19 – Short-time working – FAQ (English)

Further information and the needed forms are available on guichet.lu:
https://guichet.public.lu/en/entreprises/sauvegarde-cessation-activite/sauvegarde-emploi/chomage-partiel-technique/chomage-partiel-coronavirus.html

For the period after 1 July 2020, the Government has announced to replace the currently applicable "short-time work for COVID-19 reasons" by a slightly amended version of another existing mechanism, called "Short-time working due to structural economic problems".

To benefit from this amended mechanism, companies that also intend to terminate employment contracts for economic reasons will normally have to present a recovery plan (small businesses), or even a job retention plan

(for businesses of 15 or more employees); for a job retention plan, the approval of the employee representatives (or unions in case a collective bargaining agreement exists) is requested.

In addition, apart from the sectors which are the most affected by the crisis, the possibility for companies to request short-time work will be limited to a specific percentage of employees which is decreasing over time.

There will be simplified or even ultra-simplified digital procedures available.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

In order to optimize the working condition of employees when returning to work after the confinement, we recommend the following.

- In open space structures, we highly recommend a gradual return to work scheme, such as alternating working groups (groups alternating between office time and teleworking)
- Providing all necessary health and safety material (see above)
- Placing partitions between work areas, wherever a distance of 2 meters cannot be ensured
- Enabling employees who are vulnerable to work from home as much as possible
- While the employer may not prohibit employees from travelling internationally, we would advise to provide health and safety recommendations and information and encourage employees to carefully consider them.

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MEXICO

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

Technical Guidelines for Health and Safety in the Work Environment issued by the Ministry of Labour and Social Welfare (Lineamientos Técnicos de Seguridad Sanitaria en el Entorno laboral): States principles and strategies on health promotion, protection and care, which should be considered for the development of the Health and Safety Protocol.

COVID-19 Workplace Action Guide issued by the Ministry of Labour and Social Welfare (Guía de Acción para los Centros de Trabajo ante el COVID-19): Recommendations to contain the dissemination of COVID-19 in the workplace.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

- Official Gazette of the Federation;
- Publications in the official website of the Ministry of Labour and Social Welfare;
- Publications in the official website of the Ministry of Health.

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

On 22 April 2020, the Internal Revenue Service issued the Miscellaneous Tax Resolution (Resolución Miscelanea Fiscal) whereby individuals were granted the right to perform the annual tax return declaration until June 2020.

The Mexican Social Security Institute also agreed to defer payments of fees with interest based on the term requested by the employer.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

- Guidance, training and organisation of employees to prevent and control the spread of coronavirus;
- Implementation of Health and Safety measures (e.g. cleaning measures, temperature monitoring and other testing, wearing masks, social distancing, etc.);
- Self-assessment of the systems provided by the government, in which the authority will be able to determine whether the company complies with sufficient elements and measures to return to their activities (www.gob.mx/nuevanormalidad and/or www.desi.economia.gob.mx/esenciales).

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

- Engineering or structural measures;
- Administrative and/or organisational measures;
- Personal protection equipment;
- Training;
- Health promotion;
- Planning and management.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

Telework remains an option; therefore, the employer has the power to implement such policies at its sole discretion, respecting labour, social security and personal data protection rights. There are a few Sections in the Federal Labour Law regarding telework, so it is important to document, in writing, the working conditions for the employee.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

Due to the suspension of activities ordered by the Federal Government, many companies in Mexico have decided to grant unpaid leave to those workers who do not want to work (even if they are considered as part of an essential activity) or for any other personal reason related to COVID-19. Mexican legislation does not contemplate childcare and medical leave for employees "affected" by COVID-19, unless the employee is infected.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

Once the employer reopens facilities, the employee has the obligation to return to his/her work. If the employee refuses to work, he/she can be sanctioned according to the Internal Regulations (Reglamento Interior de Trabajo), which, to be mandatory, should be duly registered before the Labour Board. Moreover, the employer is entitled to terminate the labour relationship without responsibility, if the employee is absent more than three times / four days in a period of thirty days, without the permission of the employer or justified cause.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

According to the Technical Guidelines for Health and Safety in the Work Environment issued by the Ministry of Labour and Social Welfare, the employer shall implement measures to ensure that employees who are infected or have symptoms, shall be located in an isolated place in order to be checked by a doctor.

The Guidelines also established that the employer shall provide mechanisms for non-discrimination, in regard to employees who are, or were, infected.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
The Federal Labour Law does not expressly state the grants of Furloughs (leaves). However, the employer is entitled to grant such leaves, according to its Internal Regulations (with or without payment), unless the employee is infected, in which case he/she will enjoy all the established benefits.

b. Salary reductions.
The Federal Labour Law includes extensive provisions to protect employees' rights, by expressly providing that (a) employees' rights are not subject to waiver or demotion; and (b) when in doubt, the interpretation most favorable to the employee shall prevail.

The Federal Labour Law determines certain minimum rights that must be granted to every employee in Mexico. Notwithstanding the above, there is the possibility of executing an agreement between the employee and the employer, regarding a salary reduction, as long as it does not imply the employee will be receiving any benefit below what is established by law.

c. Redundancy.
Employee termination is only possible if the employer has a justifiable cause. Termination payment is calculated depending upon the cause of termination:

- Voluntary resignation: The employer must pay all due benefits, including sales incentives, on a prorated basis up to the termination date. If the employee has at least fifteen years of seniority, he/she is also entitled to a seniority premium of twelve days of salary for each year of service, capped at twice the minimum daily salary in force.

- Termination with cause: The employer has to pay all due benefits, including commissions, on a prorated basis until the date of termination, and the seniority premium of twelve days of salary for each year of service (but with a cap at twice the minimum daily salary, under the same terms explained above).

- Termination without cause: Employees who are terminated without cause are entitled to the following lump sum severance: (i) three months of the employee's daily aggregate salary, plus: (ii) twenty days of the employee's daily aggregate salary for each year of service; (iii) a seniority premium of twelve days of salary for each year of service (but with a cap at twice the minimum daily salary, under the same terms explained above), and (iv) due benefits.

d. Facility closure.
1. Section 434, subsection II, of the Federal Labour Law, states that in case of notorious and obvious inability to pay, the employer must request approval from the Labour Board to collectively terminate the labour relationships with the employees, and will have to initiate a procedure to obtain a resolution from the labour authority determining whether there is a collective termination corresponding to such a cause.

In the first scenario, the Labour Board will agree with the collective termination and will condemn the employer to pay the following:

- Due benefits;
- 90 days of integrated salary;
- Seniority Premium.

In the second scenario, the Labour Board will not authorise the collective termination and will condemn the employer to pay the following:

- Due benefits;
- 90 days of integrated salary;
- 20 days of integrated salary per year of service;
- Seniority Premium.

2. The closure of the workplace will entail the termination of employment relationships without constituting a justified cause for it, so the employer shall pay the compensation as provided in the Federal Labour Law, which includes: (i) constitutional compensation consisting of three months of integrated salary; (ii) 20 days of salary for each year of services provided; and (iii) the seniority premium equivalent to 12 days of salary for each year of services rendered, calculated at a maximum ceiling of twice the minimum wage, when the employee's salary exceeds that amount.

Additionally, the employer will have to pay the severance payment, which includes the due benefits to the date of termination, such as wages, Christmas bonus, vacations, vacation premiums and any another benefit to which the employee is entitled to receive. Sometimes, to facilitate the process and obtain the consent of the employees, companies provide an additional amount that would be paid to the employees, but takes the form of a liberality, rather than an obligation to do so.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

- Pay the respective severance payment in the case of dismissal without cause;
- Negotiate with trade unions the payment schemes, work shifts, benefits, etc.;
- Update internal policies;
- Follow the recommendations issued by the government;
- Implement Home Office schemes.

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NETHERLANDS

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

- All measures concerning COVID-19 are laid down in emergency decrees, which allow our municipalities to safeguard the public order. These emergency decrees for example regulate the reopening of companies concerning contact professions (11 May), restaurants (1 June), primary schools (8 June), and gyms (1 July). They also imply the measures to be observed by the facilities. Any facility that reopens has the obligation to safeguard 1,5 meter distance between people as much as possible. The emergency decrees empower the authorities to fine citizens who do not adhere to the rules.

- The Dutch Minister for Welfare, Public Health and Family has recently drafted a special emergency corona law. The law is scheduled to come into force on July 1 2020.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

- Medical information and, for example, the latest figures on the number of infections, can be found on the website of the National Institute for the Public Health and the Environment (RIVM).
- All the news concerning COVID-19 from the cabinet can be found on the Government website.
- Coronavirus updates in connection with companies can be found on the Government website for business.

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

- Companies and entrepreneurs (as defined for income tax purposes, which includes self-employed consultants) are permitted to apply for tax deferrals in light of the COVID-19 pandemic. As soon as a company has filed its request (which is possible after receiving a tax assessment), the Dutch tax authorities will defer collection of tax. This applies automatically, to all income tax, corporate income tax, wage tax, Social Security contributions and VAT assessments for a period of three months. Penalties relating to deadlines set before a deferral was granted will not have to be paid. These deferrals of tax by the Dutch tax authorities also apply to Social Security contributions.

- Self-employed professionals can apply for a support package. They can apply for a special loan and a three-month subsidy. This subsidy is called the Temporary bridging measure for self-employed professionals (Tozo). For the requirements check the Government website.

- The most important subsidy for employers is the NOW-subsidy. Employers can claim NOW for a substantial compensation of their wages, if they are dealing with a turnover decrease. NOW 1.0 was initially introduced for the months March, April and May 2020 and is extended with NOW 2.0 for the months June through September 2020. The NOW 2.0 can be applied for from 6 July 2020. The requirements can be found on this website.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

- An employer has a statutory duty of care, to offer employees a safe and healthy work environment. In the current times in which employees could be at risk of infection, this duty of care can imply to inform employees about hygiene measures such as washing hands, using paper towels, coughing in their elbow and to refrain from shaking hands.

- Another important obligation is to keep 1,5 meter distance from one another and the measures that prohibit any types of gatherings, which also must be observed in work environments. These requirements are now laid down in a temporary emergency decree, but might be adopted by the act of July 1 (see question 1).

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

- Employees and employers are requested to work from home as much as possible, unless they perform vital occupations like healthcare. This is only advised not mandated, so it is not legally binding and cannot be enforced by law. Nevertheless it is implemented in most companies. Face masks are not obligated, except when using public transport. Most employers provide disinfectant hand gel and additional cleaning measures such as frequently cleaning handles. The rules of keeping 1,5 meter distance and no gatherings still need to be abided by. To guarantee this, some companies make use of a special schedule to make sure that not too many employees are in the workplace at the same time.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

- The advice from the Government to work from home, will be valid at least until 1 September 2020. Under the Dutch Working Conditions Act, an employer must ensure that an employee has an ergonomically sound workplace. An employer must provide the correct work equipment, such as an ergonomic chair, desk and/or keyboard. This obligation also exists when employees work from home, except when employees only work from home incidentally.
- The Dutch Data Protection Authority has not yet disclosed its opinion about the matter of monitoring employees at home. It is likely that this is not allowed without notifying them prior. Also the employer will need a legitimate reason for monitoring and the monitoring needs to be necessary. A legitimate reason could, for example, be abuse of the internet or e-mail use. The necessity means that software may not be used to check whether an employee is sitting at his computer.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

- Whenever an employee gets infected, his leave is considered sick leave. The employer must pay at least 70% of the salary. Whenever one person of a household gets ill, the whole household needs to stay in quarantine, until everyone is free of symptoms for 24 hours.

- If an employee takes necessary care of a sick family member, the employee is entitled to short-term care leave. This short-term care leave amounts to twice the number of working hours per week within twelve months. During this leave the employer must pay at least 70% of the salary.

- There is an ongoing discussion about whether an employer needs to pay the salary of an employee that is not sick, but is quarantined and cannot work. The main rule is that an employee has the right to his salary, even when he is not working, unless it is caused by something that the employee is accountable for (which is rarely the case). Whether it is something that the employee is accountable for, will have to be determined on a case-by-case basis.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

- An employee cannot refuse to go to work because he fears infection. The employer can try to minimise the fear by pointing out all measures that they have taken to prevent contamination. If the employee still refuses to come back to work, the employer can give the employee a warning and indicate the consequences if he does not appear at work, which could be to stop continuing to pay wages.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

- The employer doesn't have to inform the authorities in any form regarding an infected employee.

- The EU General Data Protection Regulation prohibits an employer from keeping track of employees that are infected with corona. An employer can only record the fact that an employee is ill, but not any other circumstances. This Act also prohibits the employer from informing other colleagues about the illness of the specific employee.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs
It is not possible to oblige an employee to take unpaid leave. Referring to question 7, it will usually be considered paid sick leave or paid short-term care leave.

b. Salary reductions
In the Netherlands, there are 3 ways to alter the terms of employment (such as the salary):

1.With the explicit consent of the employee;

And unilaterally:

2.By using the so called "unilateral changes clause" that was agreed upon in the employment agreement, employee handbook or collective bargaining agreement. With such a clause, the employer reserves the right to change the employment contract unilaterally if the importance to the employer if doing so is so great as to outweigh, by the standards of reasonableness and fairness, the employee's interests which are harmed by the changes. It is possible that the circumstances due to COVID-19 could lead to such importance to the employer. However salary reduction is generally not permissible, which is confirmed in recent case law.

3.In the absence of such a clause, a unilateral change can be reached if the employer makes a reasonable proposal which the employee (acting as a "good employee") can not refuse. It is possible that circumstances due to COVID-19 can lead to such a reasonable proposal , but still salary reduction is generally not permissible.

c. Redundancy
Financial problems due to COVID-19 can lead to redundancy. This can be reasonable ground for dismissal on poor business conditions. Employers who make use of the NOW-subsidy, will be suspended from their subsidy if they terminate employees during the same time period.

d. Facility closure
Financial problems due to COVID-19 can lead to facility closures. This can also be a reasonable ground for dismissal based on poor business conditions.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

- Employers should be aware of their obligation to continue to pay salaries even when the employee isn't working due to COVID-19-circumstances. Unless the employee is accountable for not being able to work. This is rarely the case.

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NORWAY

I. EMERGENCY MEASURES

This spring, Norwegians experienced a time when their government enacted new regulations regarding furloughs and sickness benefits in a manner that was remarkable and swift. Due to both the COVID-19 pandemic and also the oil crisis, Norway is facing a period in which permanent redundancies and permanent dismissals are imminent, and will likely involve court cases specifically related to the selection of which employees will be redundant and which employees will be entitled to stay with the companies. As long as COVID-19 continues to impact our everyday lives, employment law will be marked by issues of social benefits, employers' contributions and economic support for companies struggling to survive.

All indications point to the fact that Norwegian employment law will be required to consider alternative ways of performing work – enhanced digital interoperability and a renewed freedom to work from home. It is now quite clear that the experience of temporarily working from home will likely transform into more permanent solutions. The employer's responsibilities related to HSE at the home office and working time outside the office is still uncertain in today's evolving legal landscape. There is a need to improve regulations governing both the employer's responsibilities, and also the right to control employees' workspace outside the office.

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

As a result of the COVID-19 epidemic, diverse decrees and guidelines have been put into effect. The Act on Infection Control (LOV-1994-08-05-55) provides a legal basis for the government establish rules regarding infection control. The most important regulation adopted thus far as a result of the COVID-19 crisis, is the Directive on infection control measures due to COVID-19 (FOR-2020-03-27-470), which regulates issues such as quarantine, isolation, and various prohibitions against public events, the effects of which impact working life as such, since the Directive is applicable to any person or business physically located in Norway. Further, the legislator adopted the Temporary Act as a means to regulate and control the consequences of COVID-19 (called the "Corona-Act"). This law has, during the course of this current crisis, provided a legal basis for the government to rapidly adopt regulations without having to go through the legislator. However, this law was just recently repealed, on 27 May 2020.

In addition to the particular COVID-19 legislative measures with a provisional purpose, the ordinary rules in the Working Environment Act and the Act on Temporary layoffs still apply - together regulating the rights and duties of working life. The government has recently adopted a proposal that would make some minor changes to the rules on temporary layoffs, with effect as from 1 September 2020.

When it comes to reopening workplaces, the Norwegian Labour Inspection Authority has published a guide for employers, in English, at: ***https://arbeidstilsynet.no/en/safety-and-health/corona-virus-information-for-workers-and-employers/***

In addition, the Labour Inspection Authority has issued specific guidelines on reopening offices (available in Norwegian only) at: ***https://arbeidstilsynet.no/tema/utforming-av-arbeidsplassen/rad-ved-tilbakeforing-til-arbeid-for-kontorarbeidsplasser/***

The Institute of Public Health has released an English version of the workplace guidelines at: ***https://www.fhi.no/en/op/novel-coronavirus-facts-advice/advice-and-information-to-other-sectors-and-occupational-groups/workplace-advice/***

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

The government has created an English language information site, where enterprises can keep track of the latest updates regarding government measures and proposals of all types:
https://www.regjeringen.no/en/topics/koronavirus-covid-19/id2692388/

In addition, the Norwegian Institute of Public Health has launched a similar website with important information on COVID-19 is published daily at:
https://www.fhi.no/en/id/infectious-diseases/coronavirus/

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

Various measures of state aid have been implemented in order to provide assistance to employers and enterprises during this unprecedented global crisis (e.g. postponing deadlines for payment of diverse company taxes, in addition to providing state guarantees, compensation packages and loans to specific sectors on a vast scale). Information about these national measures is available online at:
https://www.regjeringen.no/no/tema/Koronasituasjonen/nasjonale-tiltak/id2693684/?expand=factbox2693813

With working life specifically in mind, the legislator has adopted amendments to the Act on Pay during Temporary Lay Offs. The employer's payroll during the temporary layoff period has been reduced from the original 15 working days to 2 working days (as of June 2020). Following this lay off period, employees are entitled to 18 days of full salary up to six times the basic (national insurance) amount paid by the National Welfare Administration. As of day 21, the employee is entitled to unemployment benefits, which have also increased slightly during this period. In summation, these amendments have removed a major part of the economic burden imposed on employers and employees as it relates to temporary layoffs. These changes have provided employers with the incentive to carry out temporary layoffs instead of proceeding with redundancies, which in turns has been effective in providing additional employment protections during the COVID-19 pandemic.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

The Act on Infection Control (LOV-1994-08-05-55), along with the Regulation on Infection Control Measures (FOR-2020-03-27-470) and the Regulation on Performing Work (FOR-2011-12-06-1357) set out the many health and safety measures applicable to employers. These regulations are relevant for all enterprises located in Norway, see also:
https://www.fhi.no/en/op/novel-coronavirus-facts-advice/advice-and-information-to-other-sectors-and-occupational-groups/workplace-advice/

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

We are not aware of any measures typically implemented by employers other than the recommendations from the Government and health authorities detailed above. Employers are, pursuant to mandatory law, obliged to consider the situational risks inherent in the workplace. The risk of infection will vary from one enterprise to another, and employers must carry out specific concrete evaluations.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

The Government has, during the COVID-19 pandemic, encouraged employers to arrange for their employees to work remotely, in particular, for employees who use and rely on public transport. In early June, the Government encouraged employers to normalise the working situation, thus recalling their employees back to the workplace, in cases where this is the operational standard. In practice, many employers have followed the Government's advice on recalling employees. However, many employers will likely to allow employees, who prefer a more flexible arrangement, to continue to work from home. It should be noted that there is a regulation on home office, (FOR-2002-07-05-715), which sets forth the rules regarding a separate written agreement (in addition to the employment agreement) and working environment. The regulation does not apply to situations to brief or casual work from home, but applies instead to more permanent arrangements.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

As a general comment, many employers have been able to manage a host of issues through flexible arrangements (home office, if possible) and working hours. As a result of this flexibility, employees in quarantine, with children at home, or have otherwise been affected by COVID-19, have managed to perform their work relatively close to normal. Employees who have fallen ill from the COVID-19 virus, benefit from the rights afforded to them pursuant to the ordinary rules on sickness leave and benefits as set out in the relevant legislation. The requirement of quarantine has, however, challenged the interpretation of the rules. Hence, the authorities have provided guidance resulting in some practical advice for employers. Firstly, the authorities have advised that employees who are in a group not at risk of being sick, may be entitled to sickness benefits in certain circumstances. Secondly, employees quarantined by the health authorities, may be entitled to sickness benefits if certain conditions are met. The authorities have, however, encouraged employers to enable employees to work from home, if possible.

A large part of the workforce has been forced to contend with the closing of schools and daycare centres across the country. Employees impacted by these measures are entitled to parental leave for childcare and their rights have been somewhat extended. As of 11 May, most schools have reopened, and therefore these measures are less relevant at this time. However, schools and kindergartens have restricted their business hours as they gradually reopened, necessitating the need for greater flexibility in the workplace.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

An employee who fears infection and refuses to work, albeit unnecessarily from a medical point of view, is violating his/her duty to work. This may serve as an objectively justified ground for dismissal if the violation is severe enough. The employer should in these cases provide a written warning to the employee, stating that such behavior is unacceptable. If the employee still refuses to return to work, the employer should summon the employee to a consultation meeting and consider dismissal.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

The GDPR establishes strict limitations on the disclosure of information concerning an employee's heath condition. Please note that exemptions from the ordinary rules applicable in such cases and have not, to date, otherwise been adopted.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
An employer suffering from temporary lack of work tasks may have a legal basis for short-term layoffs. Temporary layoffs imply that the employee's duty to work and right to salary is temporary suspended. An employer may carry out temporary layoffs for a maximum period of 26 weeks. The employees affected, may have the right to unemployment benefits according to the National Insurance Act.

b. Salary reductions.
An employer cannot impose salary reductions unilaterally. In order to carry out salary reductions, the employer is required to obtain consent from the employee, or is obliged to follow the procedures related to dismissals prescribed by law, including having a justifiable cause and carrying out consultations with the employee representatives.

c. Redundancy.
Employers with a need for cost reductions, may carry out a redundancy process if certain requirements are met. A redundancy includes collective dismissals, and the employer has the burden of proof that the redundancy is necessary, and must carry out consultation meetings with the employee representatives and/or hold individual consultation meetings with those employees who will be impacted. Next, a decision should be made as to whether the dismissals are necessary, with consideration given to both the employer's needs as well as the situation that the employees are faced with. An important limitation is that the employer shall offer other suitable vacant positions if such work is available. If a court considers that the employer had other suitable vacant positions, the dismissals will most probably be deemed invalid.

d. Facility closure.
It is within the employer's managerial prerogative to decide whether a business shall exist or not. If a decision on facility closure implies dismissals, the rules described in section c. above, will apply. It should be noted that courts are often reluctant to overrule an employer's business assessments.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

Most employers in Norway have already settled the holiday period. Our recommendation going forward, is to carry out proper assessments on the recurring temporary layoffs, and the need for labour based on a long-term perspective. COVID-19 has significantly impacted the Norwegian economy and, as a result, employers will need to implement a cost reduction strategy. If the measures include redundancy and dismissals, the employer should begin to plan how they intend to carry out this process. Employers should further asses how the work will be organised when the employees return from holiday, including consideration of whether employees shall be permitted to work from home.

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POLAND

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

- Decrees, orders or guidelines prepared by competent Ministries in cooperation with the Main Sanitary Inspectorate are available here: ***https://gis.gov.pl/aktualnosci/wytyczne-zamieszczone-na-stronach-poszczegolnych-ministerstw-we-wspolpracy-z-gis/.***

- These documents provide reopening guidance/ mandates for certain industries, such as the beauty sector, bars and restaurants, and day care facilities.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

- Official government websites, such as ***https://www.gov.pl/web/koronawirus***, where the Government recommendations are published, as well as contact with the National Labour Inspectorate, the Main Sanitary Inspectorate or the Social Insurance Company. One can also visit the Main Sanitary Inspectorate's website: ***https://gis.gov.pl/.***

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

Current anti-crisis regulations introduce various forms of state support, including:

- Co-financing of the remuneration for employees affected by economic downtime or reduced working time;
- Allowance for self-employed and workers (except for employees);
- Payment of social security contributions taken over by the state, postponed, divided into instalments or cancelled;
- Additional care allowance;
- Temporary suspension of loan instalment payments;
- Non-returnable loan up to PLN 5,000 for micro entrepreneurs.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

- Employers must organise tasks in such a way as to ensure safe and hygienic working conditions on the one hand, and on the other - to ensure the continuity of the establishment's operations. At the beginning of May, the Chief Labour Inspector issued recommendations regarding return to work. Accordingly, the employer should, inter alia: re-assess occupational risk taking into account new types of risk, including mental health and psychosocial risks, create an action plan including appropriate security measures, and provide appropriate prevention measures.

- Moreover, based on the Council of Ministers' Decree, employers are obliged to provide employees with disposable gloves or hand disinfectants and to ensure a distance of at least 1.5 m between workplaces. Employees are also required to cover their nose and mouth with pieces of clothing, masks or helmets while providing direct customer service.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

- In most workplaces, frequent disinfection of surfaces and rooms takes place. Moreover, although it is not based on any legal regulation or guidelines of the authorities, many workplaces introduced epidemiological control surveys for employees, workers and visitors or temperature checks. The obligation of self-control checks for the employees is also a popular solution among employers in Poland.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

- In Polish labour law there are two types of work form home. The first type is "telework", that may be introduced on the basis of an agreement with trade unions, or when there are no trade unions at the facility - in the regulations consulted with employee representatives. Telework should also be agreed for individual employees in their employment contracts. Alternatively, irrespective of the agreement with trade unions or the regulations, telework might be also introduced with regard to individual employees upon their request.

- Based on the provisions of law, in the case of telework, the employer is responsible for OHS conditions, as well as for providing the employee with all the necessary equipment (unless the employee has agreed to use their own equipment (BYOD) in exchange for a cash equivalent) and technical support. The employer also bears the costs of maintaining and operating the equipment. The employer determines the principles of protection for the data transferred to the teleworker and if necessary carries out an instruction training in this area. The employee confirms in writing that they have become familiar with the data protection principles.

- The second type of work from home – "remote work" was officially introduced into the Polish labour law by the Act of 2nd March 2020 on Combating COVID-19. It is meant to be a flexible alternative to the overregulated telework and indeed became very popular among employers and employees and still remains an option. However the currently binding regulations do not specify the conditions for performance during remote work. Therefore some claim that the rules of telework should apply accordingly in this case. It is recommended that in such a case employers collect employee statements that they have appropriate OHS conditions to perform remote work and they undertake to keep confidentiality of data processed at work. Arguably employers should provide employees with the necessary equipment and refund for the operating costs.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

- **Quarantine:** If a quarantined employee is able to work and performs work from home, they are entitled to full remuneration for the work done. However, based on the applicable regulations, all persons in quarantine may be treated as temporally unable to work and therefore may apply for sick pay or sick benefit.

- **Medical leave for employees affected by COVID-19:** A person infected with COVID-19 virus is qualified as unable to work due to illness. Therefore they are entitled to sick pay or sick benefit.

- **Childcare:** Parents and caregivers of disabled children up to 18 years old are entitled to an additional care allowance in case of closing of a day care centre, children's club, nursery, school or other institution to which the child attends, or the impossibility of the daily caregiver or nanny to care for the child due to COVID-19.

- Other parents and caregivers are entitled to a care allowance based on general rules.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

- Employees are not allowed to refuse to work due to fear of infection. Of course, if the type of duty allow for it, such employees can agree with the employer to provide remote work. If employee refuses to work in fear of infection, they may suffer disciplinary consequences, including dismissal.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

- There are no specific legal provisions concerning informing of staff in case of a confirmed infection. However it is considered that in such case the employer should not inform the whole staff about the identity of the infected person. Only those who had direct contact with the infected and were estimated to be in a risk group should be informed that somebody (but again – without disclosing the identity) in their surrounding could be or is infected. These employees might, for example, be instructed to perform remote work or to watch themselves for symptoms.

- There is no explicit legal basis for employers to inform the sanitary inspection about COVID-19 cases. It should rather be assumed that since employers have no legal obligation to examine employees in this respect, the sanitary inspection should inform employers about COVID-19 cases, rather than vice versa. Of course, if the employer has doubts about a suspected or detected case, they may contact the sanitary inspection.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
Employees may be sent to unused leave. For this time they are entitled to the equivalent of vacation leave.

b. Salary reductions.
If justified by the employer's financial situation, an agreement on the application of less favourable terms of employment than resulting from the employees' employment contracts may be concluded. The Agreement should be concluded by the employer and the trade union representing employees, and if there is no such trade union - by employee representatives.

c. Redundancy.
There are no special redundancy rules concerning current COVID-19 crisis. General rules arising from The Act of 13th March 2003 on Specific Terms and Conditions for Terminating Employment Relationships with Employees for Reasons Not Related to the Employees shall apply. The Act refers to employers who hire at least 20 employees. On the basis of this Act, employees are entitled to redundancy pay. Moreover, if the number of people to be redundant exceeds the limit from the Act, the group redundancy procedure should be applied.

d. Facility closure.
Temporary facility closure, results in work stoppage at a plant. This means that employees are entitled to remuneration from the time of readiness for work. Employers who have suffered a drop in economic turnover as a result of work stoppage caused by COVID-19 may apply for subsidies aimed at protection of workplaces.

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PORTUGAL

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

With respect to measures particularly focussed on the field of employment and social security, Order 2875-A/2020 and Order 3103-A/2020 were initially issued implementing measures to safeguard social security for beneficiaries prevented from working by order of the health authority.

Publication of Decree-Law 10-A/2020 (which has been subject to multiple update amendments) and Cabinet Decision 10-A/2020 followed, which, in setting out various exceptional and temporary measures related to the COVID-19 epidemic, included social security measures for sickness and parenthood, in particular, allowances or support rules applicable in case of employee absences due to prophylactic isolation, illness, caring for children during school and nursery temporary closure and caring for family members, and other support measures for self-employed workers. It also included the possibility of teleworking without the need for an agreement between the employer and employee, and the possibility that the teleworking scheme can be "unilaterally determined by the employer or requested by the employee [...] provided that it is compatible with the tasks performed", though this wording raised a number of questions..

These were followed by Decree-Law 10-G/2020, which contains and rules the so-called "simplified lay-off" scheme, also subject to a few update amendments and regulated by Ordinance 94-A/2020.

With relevance to employment and social security, on that same date, Decree-Law 10-K/2020, which amended some of the previous provisions on absences, including those due to employees having to provide family support and care, and Decree-Law 10-F/2020 (also subsequently amended and updated), which established an exceptional and temporary regime for compliance with tax and social security obligations, were published.

The decrees which regulated the state of emergency and its extensions provided for the enhanced resources and powers of the ACT where this authority it considers that there are signs of unfair dismissals being pursued. During the calamity situation Law 14/2020 was published and approved also providing – in article 8-C added to Law 1-A/2020 – the same enhanced resources and powers of the Portuguese Authority for Working Conditions (the 'ACT') regarding dismissals. The duration of these new powers, at this time, is unknown. The ACT is also appointed as the competent authority to supervise compliance at the workplace with the COVID-19 preventive measures determined by the Portuguese Health State Department (Direção-Geral da Saúde hereinafter 'DGS') as per specifically determined by Dispatch 6344/2020 of June 16, issued by the competent cabinet ministries.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

Updates are available on:
https://www.mlgts.pt/en/content/coronavirus/21350/

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

The extraordinary and urgent measures approved Portuguese Government in response to the

COVID-19 pandemic, included, among others credit lines – totalling EUR 460,000,000 - to support companies' cash flows; credit lines with reduced interest rates for specific industries (tourism, catering and similar, travel, events and similar) or types of company (SMEs and midcaps) – Linha de Apoio à Economia COVID-19 – for a global amount of EUR 6,200,000,000 -.

Companies access to these lines of credit are conditional, among others, of maintenance of permanent jobs until 31-12-2020, in view of the proven number of these jobs on 01-02-2020 and not carrying out in this period collective or individual redundancy processes, unless under the lay-off regime.

As per public communication issued by the European Commission, "these schemes aim to limit the risks associated with issuing operating loans to those companies that are severely affected by the economic impact of the Coronavirus outbreak. The objective of the measures is to ensure that these companies have sufficient liquidity to safeguard jobs and continue their activities faced with the difficult situation caused by the Coronavirus outbreak"[2]. This financial aid is be channeled through banks and other financial institutions.

An extraordinary financial incentive to support normalisation of business activities has also been established for employers that have resorted to the crisis emergency measures of simplified emergency lay-off or extraordinary assistance for training. A one-time payment amount may be applied for to support the resumption of business activities of an amount of EUR 635 per employee.

Same employers (resorting to the simplified emergency lay-off or extraordinary assistance for training) are exemption from paying Social Security contributions that refer to the employees (and directors) covered by the measure.

Other employers may also benefit from the possibility of deferring their social security (and tax) payments[3], if they:

(i) engage less than 50 employees, in any case;
(ii) engage between 50 and 249 employees and have suffered a fall of at least 20% in e-billing turnover in March, April and May 2020, compared to the same period in the preceding year (or, for those who have not been operating for 12 months, the average for their operating period);

(iii) engage 250 or more employees, and have registered a fall of at least 20% in e-billing turnover in March, April and May 2020, compared to the same period in the preceding year (or, for those who have not been operating for 12 months, the average for their operating period) and additionally meet one of the following requirements:

a. are a private social solidarity institution or similar entity;
b. operate in an industry temporarily restricted or limited by Government determination (in the context of the pandemic prevention measures), or belong to the tourism or aviation sectors, and have effectively been closed; or

Unemployment benefits and all other social security system benefits which ensure a minimum standard of living, are extraordinarily renewed until 30 June 2020.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE AND MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

All businesses and organisations in the private and public, cooperative and social sectors, whilst

[2] See the communication, available at https://ec.europa.eu/commission/presscorner/detail/en/IP_20_506.
[3] Contributions normally due in March, April and May 2020, may be paid as followings: a) 1/3 of the amount to be paid in the month it is normally due; b) the remaining 2/3 being payable in equal and successive, interest-free instalments, according to one of the following two alternatives: (i) July, August and September 2020; or (ii) July to December 2020

employers that are responsible for coordinating Occupational Safety and Health Services under the legal framework promoting occupational safety and health, must follow the guidance issued by the DGS and organise appropriate contingency plans relating to SARS-CoV-2 infection and procedures to be followed in case of employees presenting symptoms of COVID-19 at the workplace.

The current pandemic has increased employer's occupational safety and health ('OSH') obligations.

Requirement for employers to adopt preventive measures deriving from the general duty to protect employees' safety and health:

- **Implementation of a contingency plan**

All businesses and organisations in the private and public, cooperative and social sectors are required to put in place a contingency plan, in accordance with DGS Guidance 006/2020. The gradual deconfinement's phases, implying the gradual return to face-to-face work, involve specific protection measures - along with the guidelines that have been issued for specific sectors - which should be reflected by employers in the contingency plans previously drawn up (the National Occupational Health Programme Coordination Team has issued guidelines of great practical use). Also particularly useful are the guidelines issued by the European Agency for Safety at Work, specifically the Guidelines on preventive measures for a safe and healthy return to the workplace[4].

Preparation of the contingency plan must involve OSH services and employee representatives or, if non-existent, the employees themselves and must include the contents indicated by the health authorities' guidelines – namely, the above referred DGS Guidance 006/2020.

The contingency plan must have been communicated to all employees and affixed at the workplace, where it may be visible and accessible to all.

OSH Services shall play an active role in responding to the pandemic within companies, in particular: (i) ensuring employees are informed and trained; (ii) defining additional prevention measures which prove necessary; (iii) ensuring medical surveillance; and (iv) identifying any cases of infection.

Employees' failure to comply with the contingency plan could constitute grounds for disciplinary action, without prejudice general liability under the law.

The DGS also issued rules applicable to employers that engage in specific activities, as is the case, for example, of:

- wholesale distributors and manufacturers of medicinal products for human use;
- hotels;
- restaurants, catering and similar establishments;
- cultural event premises;
- shops and other places with direct servicing to the public (customers);
- leisure resorts.

Other standards and guidelines are being issued at the pace of activities being resumed, according to the deconfinement plan applicable in each case. In most cases these are guidelines that are not limited to employee health protection.

On April 30, through Cabinet Decision 33-C/2020, the Government approved the strategy towards gradual deconfinement plan within the scope of the pandemic combat, defining a projected timeline for this strategy comprising 2-week block periods between each deconfinement stage (for assessing the impacts). All measures must and are being accompanied by specific operating conditions which, in many cases, involve the use of PPE, rules on social distancing in addition to the general conditions for the lifting of confinement measures, such as the availability in the market of protective masks and disinfectant gel, regular hygiene of spaces, among others. In many cases these are reflected in safety measures to be implemented by the entities, whilst employers, as Occupational Safety and Health (SST) rules.

- **Use of Personal Protective Equipment (PPE) by specific professionals**

[4] Available at https://oshwiki.eu/wiki/COVID-19:_Back_to_the_workplace_-_Adapting_workplaces_and_protecting_workers

On April, 3 2020 the DGS issued initial guidance on the use of PPE by groups of professionals, other than health professionals, defining a group of professionals for whom the use of PPEoutside health institutions is recommended, as well as professional groups with indication for use of face masks. With the gradual deconfinement measures the mandatory use of facial mask is being extended to a number of locations (e.g. shops, public transportation).

The Portuguese data protection supervisory authority (the 'CNPD') issued Guidelines on the collection and processing of employee health and private life data in the context of COVID-19 pandemic.

In summary, the guidelines indicate that in the context of the adoption of measures to prevent COVID-19 staff infection employers themselves must, neither proceed to staff temperature measuring or recording, nor to collecting other data concerning employee health (e.g., requiring staff to complete questionnaires on health condition) or possible situations or staff risk behaviour (which may indicate infection risk of the new coronavirus). In a somewhat contradictory direction, the Government passed a rule on this matter (new article 13-C of Decree-Law 10-A/2020, introduced by Decree-Law 20/2020) expressly providing that "in the current context of COVID-19 pandemic, and exclusively for reasons of protection of own and others health, employee's body temperature may be controlled for the purposes of access and permanence in the workplace". Recording temperatures measured is only admitted with the explicit permission of the employee in question (in a reference that seems to call for the employee's consent to this data processing operation that has raised strong criticism in view of the unbalance that typically occurs in the employer/employee relationship that makes it difficult for real freedom of consent to be guaranteed.

If the measured temperature is higher than normal body temperature – although the legal provision does not specifically indicate what this should be – the employer is allowed to deny the employee access to the workplace. Nothing else is regulated on the matter, namely nothing on how the resulting lack of work is to be understood or treated and this has, therefore, been a legal measure that has been greatly criticised.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

Amongst the measures taken by the Government is the decision to generalise the recourse to teleworking. At an initial stage before March, 19, employers were given the power to unilaterally determine that employees performed their work remotely, from home and employees were granted the option to provide telework, as long as compatible with the tasks performed. Once the state of emergency was declared, starting on March, 19, and as from the confinement starting point, a general duty to remotely work from home, regardless of the employment relationship was implemented and has been in force, in all cases where such form of work is compatible with the tasks performed. Initially introduced by Decree-Law 2-A/2020, mandatory remote work in such cases remained throughout the two successive state of emergency period renewals that followed and, after that, throughout the calamity situation that followed, and was kept as mandatory until May, 31. As from June, 1, remote work is kept as an option that may be determined by the employer. Remote work (in those same circumstances) must also be adopted at the request of the employee in certain cases (e.g. employees that are included in the COVID-19 risk group, namely, immuno-suppressed and those suffering from chronic disease who, according to the guidelines of the health authority, should be considered at risk, particularly cardiovascular patients, those affected with chronic respiratory diseases, cancer patients and those suffering from renal insufficiency).

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

Employees affected by COVID-19 will be subject to the rules that are generally applicable in case of sick leave.

Absences due to sickness are justified and if the absence extends for more than one month the employment contract is deemed to be suspended. The employee is entitled to sick leave allowance (paid by the Social Security), the amount of which will vary between 55% and 75% of the reference salary amount. Sick leave allowance entitlement starts on the first day of absence (unlike the general rule that provides that the allowance is only payable after the third consecutive day of sick leave).

The employee must comply with prophylactic isolation when there is a serious risk to public health, confirmed by the health authority. This situation is deemed equivalent to sick leave but in this case the employee is granted sick leave allowance equivalent to his or her full salary (100%). Nevertheless, if remote work is possible, the employee in prophylactic isolation will keep working, remotely, in which case salary will be due as when working at the employer premises. If, during the prophylactic isolation period the employee is diagnosed to be infected with COVID-19 then the situation will be converted into a sickness leave and sickness leave allowance will be payable, instead of the full prophylactic isolation allowance.

Employees that are absent from work to provide assistance to their child - children under 12 years old or, regardless of age, with a disability or chronic illness that are subject to prophylactic isolation are justified and employees are entitled to receive an allowance – for up to 14 days - .

Absences of employees that need to stay at home to look after childrden under 12 years old, or regardless of age with a disability or chronic illness, as a result of on-site school and extracurricular activities at a school or social assistance facility for early childhood or disabilities having been suspended[5] are justified, if employees cannot perform their job remotely, from home. Employer – as in other cases of absence - will not have to pay full the salary (except if employee works remotely, in which case, he/she will not be absent from work) but employees are granted an allowance equal to2/3 of their base salary, half of which is borne by the employer. The other half is borne by the Social Security, subject to a minimum amount equal to EUR 635 and a maximum of EUR 1905. The Social Security portion is delivered to the employer who pays the full assistance amount to the employee. Only one of the parents may be absent and receive the financial assistance, regardless of the number of children and if one of the parents can perform his or her work remotely, then the other may not benefit from this exceptional assistance.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

Where the case of offices or premises being forced to close does not apply and the employer has to meet all obligations relating to adequate SST protection in the current pandemic circumstances, and if the employee has no justifiable basis to do so (only the mere theoretical fear of infection), the employee cannot refuse to work.

In the event of refusal, the general rules on unjustified absences will apply, this also leading to disciplinary infraction.

It should be noted that nothing prevents employer and employee from agreeing on unpaid leave for a specific period or even being excused from work, without loss of salary.

Employees affected by immuno-suppression situations and those suffering from chronic disease - cardiovascular patients, those affected with chronic respiratory diseases, cancer patients and those suffering from renal - may justify their absence from work, by means of a medical declaration, as long as they cannot carry out their activity through remote work. This medical declaration must certify the worker's health condition that justifies the employee's special protection.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

[5] Creche and kindergarten school have meanwhile reinitiated

Under the data protection supervisory authority guidelines, employers themselves must strictly limit the processing of staff health data and collection and record of staff behaviour risk information (that might indicate COVID-19 infection) in scope the organisational safety and health services and the health authority (DGS) specific guidelines (particularly those on the contingency plans).

In such context OSH health professionals may:
(i) Evaluate employee health condition;
(ii) Request relevant information to assess employee's ability to render work in terms consistent with SST rules;
(iii) Adopt adequate proceedings to safeguard staff and third parties' health, whenever detecting symptomatic employees or in other justified cases.

The type and frequency of health evaluation measures must be determined by the OSH medical professionals according to: (i) scientific criteria adopted in their own clinical decisions; and (ii) national health authority guidelines.

Measures must be aligned with DGS and other health authority guidelines – on how employers can protect their employees and what measures they should take in the workplace to prevent further spread of the disease – and employers should not call upon themselves measures that result in the processing employee health data without being supported on specific legal provisions or on competent authority orders.

There are various aspects resulting from the steps companies must reflect in the contingency plan, which could involve procedures that require the processing of employees' health information.

By way of example, the company is required to establish an alerting procedure in case of employees with symptoms and epidemic contacts (consistent with the definition of a suspected case of COVID-19), "i.e., how to proceed with internal communication between:

- The symptomatic employee – or an employee identifying a symptomatic fellow employee within the company - and his or her direct line manager and the employer (or employer representative);

- (Internal) process for recording contact with the Suspected Case".

The CT, as a rule, prohibits employers from requiring employees to provide information on their private life or their health. However, the provision of information on employees' state of health, as such and in light of the GDPR, constitutes a special category of personal data, which is covered by a general principle of prohibition of processing. Processing this information is permitted when one of the exceptions to the prohibition, as listed in Article 9 of the GDPR, occurs and which, for this reason, is tantamount to a legitimate condition for the employer to be able to collect this information. According to Article 281 of the CT and the Legal Framework Promoting Occupational Safety and Health, particularly Article 15, on the one hand employers have a duty to protect the safety and health of their employees and to adopt the measures required for this purpose and, on the other hand, employees themselves have a duty to respect the orders and instructions from their employers in this regard. Therefore, the provision of information by the employee on his or her health condition and/or potential contact with people infected with COVID-19 falls within the scope of the exception set out in Article 9(2)(b) of the GDPR which permits the processing of health data when "required for the purposes of meeting obligations and exercising the specific rights" of the employer, as data controller, or of the employee, as data subject, in relation to labour, social security and social protection legislation.

Here, as with the implementation of the measures set out in the Contingency Plan involving the collection of information regarding employees, the employer must be limited to collecting strictly necessary data – which directly results from the regulations or guidance in question or decided by the authorities – for the specific purposes already indicated, and must not retain such data for longer than strictly necessary for same purposes, erasing them immediately afterwards. It also requires employers to provide the employees with a set of information on the processing of the collected personal data (including stating the purposes of data collection, legal basis for processing, categories of recipients, criteria used to define the data retention periods, among others) in order to comply with the information duties arising in their

capacity as data controller for the processing of personal data under the regulations on personal data protection.

The measures to be implemented must always take into account what has been defined in the contingency plan which, in turn, must already exist and have been prepared in accordance with the Guidance mentioned above, specifically the procedures to be followed in the event of a suspected case (point 6 of DGS Guidance 06/2020) and the monitoring procedure for close contacts (point 8 of the same Guidance).

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
The question has been raised as to whether an employer can require employees to take holidays as a result of the reduced company business activity. The specific regulations issued in the context of the current pandemic have initially given no answer to this question, so the general rules in the CT will apply.

As a rule, holidays are scheduled by agreement between the employer and employee. In the absence of an agreement, the employer may unilaterally schedule holidays, but must do so in the period between 1 May and 31 October (unless an applicable Collective Bargaining Agreement or the opinion of consulted workers' representatives permits a different period).

Regarding tourism-related activities and in the absence of an agreement, employers are required to schedule 25% of the holiday period to which employees are entitled (or a higher percentage if resulting from a Collective Bargaining Agreement) between 1 May and 31 October, which is taken consecutively.

b. Lay-off (Salary reductions).
A simplified lay-off scheme was introduced allowing for employers that are facing sharp business reduction or temporary business closure resulting from the pandemic outbreak to proceed to:

i) reduction of the workforce normal working hours, or
ii) suspension of employment contracts and to access public financial support.

Employers may resort to the above measures when under business crisis resulting from:

a) Full or partial business halt, resulting from a global supply chain interruption;
b) Full or partial business halt caused by suspension or cancellation of orders or bookings (where the use of the company or premises production or occupation capacity is reduced by more than 40%);
c) Abrupt and significant fall of at least 40% in the company turnover (in the previous 30 days prior).

The assistance takes the form of co-payment by social security of the compensation payable to the employee, calculated on the following basis:

In the event of the contract being suspended, the employee receives compensation equivalent to 2/3 of salary or, if higher, to the minimum guaranteed salary of EUR 635, up to the maximum limit of EUR 1905), 70% of which is paid by social security and 30% by the employer;

In the event of reduced working time, the employee is paid proportionally for the hours worked, and is only entitled to additional compensation to the extent required, together with this payment, to make up to 2/3 of the amount earned in consideration of the work performed (subject to a minimum of EUR 635 and a maximum ofEUR 1905). When it exists, the compensation is shared between social security and the employer at the respective ratio of 70% and 30%.

If the applicable measure is combined with a training plan supported by the IEFP, an IEFP-funded grant is added, of EUR 131.64 per employee, to be shared equally between the employee and the employer.

Employers may only benefit from assistance when their contributions and tax payments are up-to-

date and in compliance with Social Security and the Tax and Customs Authority. For this purpose, and until 30 April 2020, debts created in March 2020 are not included.

c. Redundancy.
Employers that benefit from the emergency simplified lay-off assistance cannot proceed with employee redundancy measures for the duration of the lay-off and during a 60-days period following the end of the lay-off measure.

d. Facility closure.
Employers whose facilities were subject to mandatory closure due to the pandemic outbreak were allowed to resort to the emergency simplified lay-off assistance. Once the deconfinement measured determined that re-opening was allowed, employers needing to prolong lay-off assistance were required, as a pre-condition (subject to the material grounds to continue resorting to the measure, e.g. abrupt turnover fall) to effectively open within 8 days following the end of the mandatory closing measure.

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ROMANIA

I. EMERGENCY MEASURES

During the state of emergency and the state of alert some activities were not permitted. As the situation develops and industries are resuming activity the Government issues orders that target each type of activity that will resume and general guidelines for employers.

- General rules on the conduct of employers are included in Law no. 55/2020 that declared the state of alert. The Law allows employers to order employees to work from home, to change their workplace and work hours as long as the employees agree to these changes. Collective employment agreements remain applicable for the entire duration of the state of alert period and for an additional 90 days after the state of alert will be lifted. This will ensure stability for both employers and employees.

- Protective masks are mandatory at the workplace with the exception of employees that do not share a working space with anybody, employees that are performing activities in conditions of extreme temperatures or that require a great amount of physical activity and also employees with health conditions that may lead to respiratory difficulties. Additional individual protective gear may be required for specific employees with high exposure to risk factors. Soap and disinfectants should be widely and readily available to employees.

- The general guidelines on the employer and employee conduct during the state of alert were introduced by the Joint Order of the Minister of Employment and the Minister of Health no. 3577/831/2020. The order includes a series of mandatory obligations for the employer on how to organise the activity during the state of alert such as ensuring the existence of special access corridors for employees that are designed to reduce congestion at the entrance, or the proper cleaning, disinfecting and venting working spaces. The order recommends employers with more than 50 employees to use individualised working hours that allow employees to start work at 3 different hours. The employer must properly inform the employees on the safety rules that are mandatory during the state of emergency and should ensure that the employees follow the mandatory rules. The order gives general guidelines on how the employer should act in case of suspicion of infection with COVID-19 or in case of confirmed infection with COVID-19, including how and when the workplace could be reopened. The order also includes a series of obligations for the employees regarding their individual conduct. The employers will check the temperature of all employees at the beginning of the working program and will not allow any employee that has a temperature higher than 37.3°C to enter the workplace. Also the employer will not allow any employee that presents respiratory infection symptoms to enter the workplace.

- The general guidelines for the activity performed by employees in open space areas were introduced by the Joint Order of the Minister of Economy and the Minister of Health no. 1731/832/2020. Employers are also recommended to use individualised working hours. All common areas should be disinfected every 4 hours, employees that use desks that are facing front to back or back to back should have at least 1.5 m between them and employees that use desks that are facing front to front should be separated by screens that should be disinfected every day. Lunch breaks will be organised in such a manner that if the employees use a common space they should be at a distance of at least 2 m of each other. The same Joint Order introduces rules on how hospitality facilities should be organised and on how self-care facilities that are allowed to function should be organised.

- Orders regulating other industries such as transport, dental care, education, or sports were also issued when a specific activity was allowed to resume.

All new normative acts are published in the Official Monitor available at ***http://www.monitoruloficial.ro/article--e-Monitor--339.html.*** In order to stay up-to-date on this fast paced area of the law, the Official Monitor should be checked daily.

II. STATE AID

Employees that had their individual employment agreement suspended due to direct or indirect measures taken in order to limit the risk of Covid-19 infection were granted an indemnity of 75% of their salary but no more than 75% of the average monthly salary for 2020 during the state of emergency period. This indemnity continued to be granted to affected employees in industries that are not yet reopened even after the state of emergency ended.

- The state also subsidises part of the salary for the employees that resume their activity after the suspension of their individual employment agreement. The employer can receive from the state 41.5% of the employee's salary for up to 3 months after the employee resumes the activity if that employee was suspended for at least 15 days. The employer should not dismiss the employee until 31st of December 2020 in order to benefit from this state aid, with the exception of employers that have seasonal activities. Employers that hire individuals over the age of 50 years that were dismissed as a result of the pandemic can receive 50% of the salary of their new employee, but no more than 2.500 lei, for 12 months if they continue the employment for a minimum of another 12 months. The same state aid is available for employers that hire unemployed individuals (that are registered as such at the Unemployment Authority) between 16 years and 29 years and also for employers that hire Romanian nationals that were dismissed for reasons that are not related to their conduct by foreign employers while working in a foreign state. Employers that do not comply with the requirement of maintaining the employment for the required duration will return the amounts received from the state plus the legal interest rate.
- Additional benefits such as prolonged terms for the payment of state and local taxes were also granted to companies in order to limit the effects of the pandemic.

III. HEALTH AND SAFETY MEASURES

As mentioned the use of protective masks is mandatory at the workplace with the exception of employees that do not share a working space with anybody, employees that are performing activities in conditions of extreme temperatures or that require a great amount of physical activity and also employees with health conditions that may lead to respiratory difficulties. Additional individual protective gear such as gloves and face shields might be required in certain cases.

- The employer should check the temperature of the employees at the beginning of the work day and employees that have a temperature higher than 37.3°C will not be allowed to enter the workplace as will be the employees that have respiratory infection symptoms. The employees are required by the Joint Order no. 3577/831/2020 to accept the temperature check.
- Social distancing rules are also functional at the workplace, with some specific regulations such as the following requirements: open space offices where employees that are positioned front to back or back to back should be distanced at least at 1.5 m and employees that are positioned front to front should be separated by protective screens and cafeterias where employees should be distanced at least at 2 m of each other. The social distancing rules apply also to the transport of the employees.
- In order to further protect employees that interact with a large number of individuals (such as supermarket workers), protective screens might be required. Working spaces, common use areas (such as locker rooms and cafeterias) frequently touched surfaces and shared tools should be regularly disinfected. When possible the rooms should be ventilated. Employees that

resume activity will be retrained regarding their health and safety. Health and safety procedures and general plan should be revised in order to limit the specific risk for each employer.

- In addition to all the legally mandatory health and safety measures the employers can also limit the travel of their employees to only urgent and necessary cases, cancel previously booked training courses that are not mandatory, reduce the number of employees that are included in team activities, organise meetings using electronic tools. The employer can also restrict access to certain areas for certain employees.

IV. TELEWORKING

Teleworking is highly recommended by authorities. During the state of emergency the employer was exceptionally allowed to order their employees to work from home without their consent and without an addendum to their individual employment agreement. During the state of alert the employer can still order the employee to work from home, however now the employee must consent. The decisions issued during these periods included details on how teleworking will be implemented, working hours, how the employees will report their daily activity, how the employer can check the employee's activity, how the employee should organise their home workspace in order to comply with health and safety requirements, how the employee should handle confidential, private or sensitive data, what devices and apps could or should be used during teleworking. From May 15th employee consent is mandatory, most employers opted to sign addendums to individual employments agreement in order to keep teleworking as an option for the future even after the state of alert ends. Teleworking was widely used even in companies where this type of activity is uncommon.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

- Employees that are quarantined are self-isolating for mandatory legal reasons or have tested positive for COVID-19 all benefit from paid sick leave. During this time their individual employment agreement is suspended and they receive an indemnity of 75% of their salary. For the initial 3/5 days the indemnity is paid by the employer, the rest is paid by the national health fund. Since all positive cases are admitted to hospitals, employees will not benefit from sick leave for childcare as they would for any other medical condition of the child (the child will be in hospital and the parent will not be allowed to stay with the child).

- Employees can express their concern on specific health risks and the employer should analyse those claims however the employee cannot legally refuse to work based on these concerns. If the employee does not perform their activity they are not entitled to their salary and most employers have internal regulations stating that after a certain number of days of absence the employee can be dismissed for disciplinary reasons.

- If an employee tests positive the authorities will notify the employer of the positive result in order for the employer to take all the mandatory actions required, including notifying all other employees that were in close contact with the employee that tested positive. The identity of the employee that tested positive will not be disclosed to other employees that were not in close contact for confidentiality reasons.

- Parents were entitled to paid time off in order to care for their children under the age of 12 years during the school year, because all schools were closed from the 12th of March. The parent that was granted paid time off received an indemnity of 75% of their salary but no more than 75% of the average daily salary. The school year ends on the 12th of June and after that the parents will not be granted paid time off.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS

A RESULT OF COVID, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
According to the Labour Code the employer can suspend individual employment agreements due to the temporary reduction of Company activities or to a temporary lockout of the Company. The reduction of activity or the temporary lockout both have to be caused by economical, technological or structural reasons, or by other similar reasons. The current socio-economic situation is considered a justified reason. During the suspension the employer should pay an indemnity of at least 75% of the employees' basic salary. Also the employers can reduce the weekly work time from 5 working days to 4 working days with a corresponding reduction of the salaries, if the reasons for the reduction of the activity span for more than 30 days. These are general rules that do not depend on the pandemic situation.

b. Salary reductions.
Salary is an essential part of the employment agreement and can only be reduced with the consent of the employee by signing an addendum to their individual employment agreement.

c. Redundancy.
Both individual and collective dismissals can be used during this period without special restrictions. However the employer must still observe all mandatory rules when they make positions redundant. In cases where the employer benefited from state aid the dismissal is not forbidden, the employer is only required to return the amounts received and the legal interest rate if they did not keep the employment for the required period of time.

d. Facility closure.
No specific limits on facility closures due to the pandemic.

VII. BEST PRACTICES

- Employers are recommended to include in their internal regulations provisions that allow them to implement specific rules during exceptional situations (such as restricting access to specific areas, requiring employees to take additional safety measures, limit contact between employees). The newly included provisions should be general enough to be able to be enforced in different types of situations but also specific enough to be useful when exceptional situations might arise.

- It is recommended for employers to negotiate with employees individualised working programs (the employee starts the working program at different hours) or uneven working programs (the employee works for a different number of hours each day, within the limits of the 40 hours/ working week), in order to limit contact between employees and the time spent in common spaces.

- Teleworking, if possible, should continue even after the epidemic situation is no longer urgent. This practice in the long-term can be used as a cost cut measure as the company will require smaller workspaces.

- A good practice is to use stable work teams for specific assignments and to limit the interaction between work teams. In person meetings should only be organised if absolutely mandatory. During collective negotiations the negotiating teams should be limited to fewer participants for each meeting.

- As mentioned the employers can limit work-related travel to only essential and urgent cases and they can also postpone training or identify training options that can be done through electronic means.

- When hiring new employees it is recommended to use the maximum legal trial period, as during a trial period an employee may be terminated without cause. In addition, it is recommendation is to use fixed-term employment if possible.

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SINGAPORE

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

Laws and regulations

1. Infectious Diseases (Workplace Measures to Prevent Spread of Covid-19) Regulations ("Workplace Measures Regulations")
2. Infectious Diseases (Measures to Prevent Spread of Covid-19) Regulations
3. Covid-19 (Temporary Measures) Act 2020

Government advisories and guidelines

4. Ministry of Manpower website
5. Ministry of Health website
6. Ministry of Trade and Industry website

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

https://www.mom.gov.sg/covid-19
https://www.clydeco.com/insight

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

Set out below is a summary of the employment-related subsidies provided by the Fortitude Budget:

1. Enhancements to the Job Support Scheme
The enhancements to the Job Support Scheme are as follows:

- Extension of the Job Support Scheme pay-outs for one additional month in August 2020, resulting in a total coverage of 10 months of wages.
- Firms that cannot resume operations immediately after the circuit breaker period (including retail outlets, fitness facilities and cinemas) will receive wage support of 75% until August 2020 or when they are allowed to re-open, whichever is earlier.
- Re-classification of firms in the Job Support Scheme tiers. Firms in more severely impacted sectors such as aerospace, retail and marine and offshore sectors will now receive wage support of either 75% or 50% depending on the sector. Such firms only received wage support of 25% previously.

2. SGUnited Jobs and Skills Package
Under the SGUnited Jobs and Skills Package, it is intended for approximately 40,000 jobs, 25,000 traineeships and 30,000 skills training to be created.

a. **SGUnited Jobs** – Out of the 40,000 jobs to be created, it is expected for 15,000 to be from the public sector and 25,000 to be from the private sector.
b. **SGUnited Traineeships** – Out of the 25,000 traineeships to be created, 21,000 will be for the SGUnited Traineeships Programme catered to local first-time job seekers and 4,000 for the SGUnited Mid-Career Traineeships Scheme catered to local mid-career job seekers to learn new skills and start new careers.
c. **SGUnited Skills** – This provides training courses to help jobseekers upgrade their skills while looking for a job. A training allowance of S$1,200 will be provided for the course duration to cover basic expenses.
d. **Hiring Incentive** – Employers who hire local employees who have completed the SGUnited Traineeships and SGUnited skills training courses will be able to receive subsidies. For eligible employees under the age of 40, the subsidy will be 20% of the monthly salary of those employees for 6 months, capped at S$6,000 in aggregate. For eligible employees who are 40 and over, the subsidy will be 40% of the monthly salary of those employees for 6 months, capped at S$12,000 in aggregate.

3. COVID-19 support grant
During discussions with employees, employers can inform employees who will be losing their jobs, who will be placed on no-pay leave or who will face significantly reduced salaries that they may be able to receive up to S$800 per month for 3 months from the Singapore government.

4. Foreign worker levy waiver and rebate
The foreign worker levy waiver and rebate will be extended for businesses who are not allowed to resume operations on-site immediately after the circuit breaker period. Such businesses include those in the construction, marine and offshore, and processing sectors. The waiver and rebate are as follows:

a. June 2020 – 100% waiver and S$750 rebate.
b. July 2020 – 50% waiver and S$375 rebate.

5. Deferment of higher Central Provident Fund (CPF) contribution rates
The planned increase in CPF contribution rates for senior workers will be deferred by one year, from 1 January 2021 to 1 January 2022.

The CPF Transition Offset scheme will also be deferred until after the CPF higher contribution rates take effect.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

Please see section 5 below.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

A summary of the Safe Management Measures is set out below:

1. Implementing a system of Safe Management Measures
To provide a safe working environment and minimise risks of further COVID-19 outbreaks, employers must implement a system of Safe Management Measures in a sustainable manner for as long as necessary, including:

a. Implementing a detailed monitoring plan – to ensure compliance of Safe Management Measures and that non-compliance and risks are resolved in a timely manner.
b. Appointing Safe Management Officer(s) (SMO) – to assist in implementing, coordinating and monitoring the systems of Safe Management Measures and resolving non-compliance and risks in a timely manner. The SMO should also keep records of inspections, checks and corrective actions taken.

2. Reducing physical interaction and ensuring safe distancing
Where possible, employers must ensure that:
a. Employees work from home.
b. Meetings are conducted virtually and physical meetings are minimised.
c. Events and activities involving close and prolonged contract amongst participants (e.g. conferences, seminars, exhibitions and social gatherings at the workplace) are cancelled or deferred.
d. Special attention is given to vulnerable employees to enable them to work from home.

Where employees cannot work from home, employers must ensure that the following are implemented:

a. Staggered working and break hours to reduce possible congregation of employees in all common spaces (e.g. entrances, exits, lobbies, canteens and pantries).

Staggered working and break hours must be implemented over at least three one-hourly blocks, with not more than half of the employees reporting to work within each one-hour block (e.g. reporting times from 7.30am to 8.30am for group 1, 8.30am to 9.30am for group 2 and 9.30am to 10.30am for group 3, with corresponding staggered timings for lunch, other breaks and end of work).

Where possible, reporting and ending timings should not coincide with peak-hour travel.

If staggered working and break hours are not possible, employers must implement other measures to reduce congregation of employees at common spaces (e.g. arrange for different groups of employees to arrive/depart through different entrances/exits).

b.Implementing shift or split team arrangements. There must not be any cross-deployment or interactions between employees in different shifts and teams at all times, including outside of work.

If cross-deployment cannot be avoided, additional safeguards must be taken (e.g. ensuring no direct contact with cross-deployed employee).

c.Minimising need for common touchpoints in the workplace. Where physical contact is needed, additional safeguard must be taken (e.g. frequent disinfection of common touchpoints).

Where physical interaction in the workplace is required, employers must ensure:

a.Clear physical spacing of at least one metre between persons at all times by demarcating safe physical distances via visual indicators or through physical means at workstations, meeting rooms and common spaces.

3. Supporting contact tracing requirements

a.Record proximity data on phones to help identify close contacts of COVID-19 patients and reduce transmission. Employers should encourage employees to download and activate the TraceTogether app.

b.Control access at workplace by limiting access to only essential employees and authorised visitors. The SafeEntry visitor management system must be used to record entry and exit of all employees and visitors.

Employees and visitors who are unwell must be refused entry to the workplace.

4. Requiring personal protective equipment (PPE) and observing good personal hygiene

a.Employers must ensure that everyone entering the workplace including employees and visitors wear a mask and other necessary protective equipment at all times. Employers must also ensure that there are sufficient masks for all employees at the workplace at all times.

b.Employers should encourage employees to observe good personal hygiene.

5. Ensuring cleanliness of workplace premises

a.Employers must step up cleaning of workplace premises by ensuring regular cleaning and disinfecting of common spaces and shared machinery and equipment before changing hands. Cleaning and disinfecting of spaces where physical meetings are held and meals are taken must be done after each meeting or seating.

b.Provision of cleaning (e.g. hand soaps and toilet papers) and disinfecting agents (e.g. hand sanitisers) must be available at all toilets and hand-wash stations and human traffic stoppage points within the workplace (e.g. entrances, reception, lift lobbies, etc.), respectively.

6. Implementing health checks and protocols to manage potential cases

a.Employers must conduct regular temperature screening and declarations for all employees and visitors. Employees and visitors must declare: (i) their overseas travel history during the past 14 days; (ii) if they have been issued with a quarantine or isolation order, Stay-Home Notice, or medical certificate for respiratory symptoms; and (iii) if they have a close contact who is a confirmed case. Declaration records must be kept for at least 28 days.

b.Employers must adhere to prevailing travel advisories.

c.Employers must ensure that employees do not clinic-hop and that they only visit one clinic for check-ups if unwell.

Employees who have visited a clinic must submit records to their medical certificates and diagnoses to employers, including if they were tested for COVID-19 and the test results.

d.Employers must have an evacuation plan to manage employees who are unwell or suspected cases. Employers must record such cases as part of Safe Management Measures.

e.Employers must have a follow-up plan in the event of a confirmed case. Upon being notified of a confirmed case, employers must immediately vacate and cordon off the immediate section of

the workplace premises where the confirmed case worked and carry out thorough cleaning and disinfecting of all areas exposed to the confirmed case, in accordance with the National Environment Agency's guidelines.

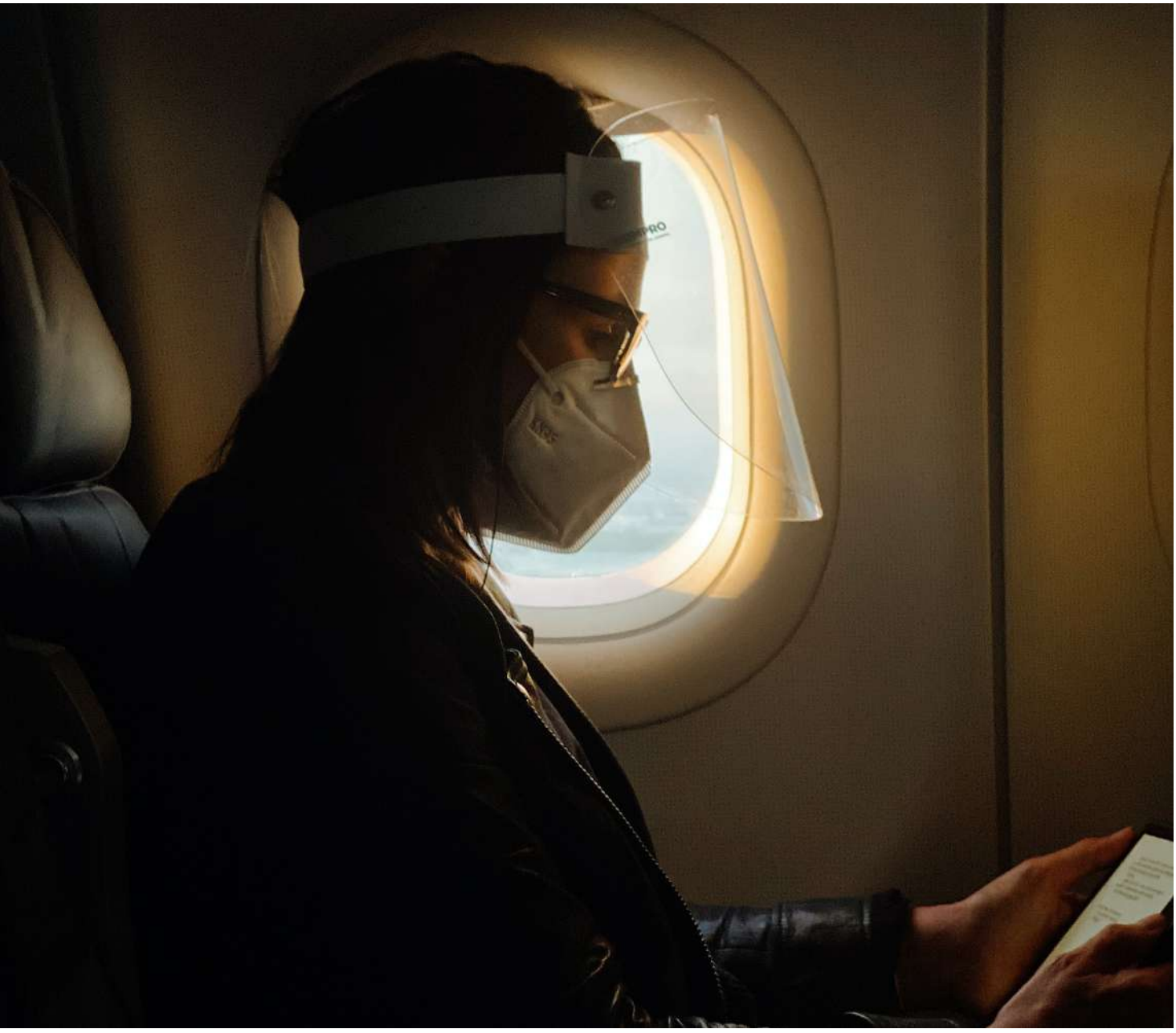
A checklist of the Safe Management Measures can be found here. Employers must ensure that all measures are in place and communicated to employees prior to resuming work.

In addition to the above, employers in the manufacturing sector, with customer-facing operations or in the transportation sector must adopt certain sector-specific measures.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

- Working from home must still be the default mode of working. Employees who have been working from home must continue to do so. Employees may only go to the office where there is no other alternative.
- Employer must provide facilities necessary to allow the employee to work in their place of residence unless not reasonable practicable to do so.



- For employees who are still unable to work from home, employers should review work processes, provide the necessary IT equipment to employees and adopt solutions that enable remote working and online collaboration.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

- Employees who are on medical leave or on home quarantine orders due to COVID-19 should be treated as being on paid medical leave leave, as part of the employee's medical leave eligibility under their employment contracts, collective agreements, or under the Employment Act.
- Where employees have used up their paid medical leave benefits, employers are encouraged to consider providing medical coverage as the employee concerned may face financial hardship during this time.
- Employees who fear infection and refuse to work.

Employers must:

- As far as reasonably practicable, allow natural ventilation of the workplace during working hours.
- Take temperature of every individual entering the workplace and check if they have any specified symptoms.
- Collect contact details of individuals entering the workplace.
- Refuse entry to febrile individuals or individuals who display any specified symptoms or who refuse to comply with temperature taking or provide their contact details.
- Implement safe distancing measures
- Ensure febrile individuals or individuals who display specified symptoms:
- Wear a face mark;
- Leave the workplace immediately; or
- If not possible to leave immediately, isolate the individual.

Please refer to the section 6 regarding teleworking above. Generally, employees should not be expected to report to work unless teleworking is not an option.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

Employees or other individuals who are (i) febrile; or (ii) have any specified symptoms must not enter the workplace.

Where an employee is feeling unwell, is febrile or has any specified symptoms, this should be reported to the employer. The employer should leave the workplace and consult a doctor immediately. Employers must track and record these cases of illness as part of their Safe Management Measures.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
While employers are able to ask their employees to temporarily stop work, they would still have obligations towards their employees. This includes:

(i) paying the employee at least 50% of their gross salary during the days that they are temporarily laid off.
(ii) Asking employees to take up to 50% of their earned annual leave.
(iii) Implementing the layoff period such that it does not exceed 1 month at any one instance subject to review.

b. Salary reductions.
Salary reductions should generally only be implemented where the employer is facing extremely poor or uncertain business conditions that are likely to be long-term.

Where employers implement salary reductions, they would need to notify the Ministry of Manpower if:

(i) They are registered in Singapore; and
(ii) Have at least 10 employees,
And

(1) Implement cost-saving measures that result in:
a. More than 25% reduction in gross monthly salary for local employees; or
b. More than 25% reduction in basic monthly salary for foreign employees.

Where employers receive Job Support Scheme pay-outs, they are expected to use these to support employees' salaries and a failure to do so may lead to lower future pay-outs. Errant employers may also be denied future payouts and may have their work pass privileges curtailed.

c. Redundancy.
Employers are strongly encouraged to consider alternatives before redundancy. Such alternatives include training employees, redeployment, implementing a flexible work schedule or a shorter work week or temporary layoffs.

Employers who are in sound financial position should continue to pay retrenchment benefits according to their existing employment contracts, collective agreements, memoranda of understanding, or the prevailing norms for retrenchment benefit (ie between 2 weeks and 1 month salary per year of service).

In respect of employers whose businesses are adversely affected, the employer should work with the employee (or the employee's union, if applicable) to renegotiate for a fair retrenchment benefit linked to the employee's years of service.

Employers in severe financial difficulties may provide a lump sum retrenchment benefit. Instead of linking retrenchment benefit to employees' years of service, a lump sum of between one and three months of salary could be provided, taking into consideration the Job Support Scheme pay-outs that employers have received and their financial position.

d. Facility closure.
Please refer to our comments on 'Furlough' above.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

- Employers should strive to update their employment policies and procedures to account for teleworking arrangements. This would help to align employer and employee expectations on what is required from both parties in respect of teleworking.
- From a practical aspect, employers may wish to check with their insurers to ensure that their existing work injury insurance covers injuries arising out of employment when the employee works from home as injuries sustained while teleworking would generally be eligible for compensation under the work injury compensation framework.

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SPAIN

I. EMERGENCY MEASURES

The COVID-19 crisis has definitely changed employment relations in a number of ways, and we believe that some of these changes will become permanent in time. The pandemic has proven, for example, that teleworking actually is effective, and that it implies a number of benefits for the parties. Concerning employees, a greater flexibility and better work-life balance; for the employer, a decrease in fixed costs and also more flexibility. Of course, this new reality needs now to be further regulated in order to avoid abuse by any of the parties, but we definitely see a new panorama of employment relations ahead of us.

On the other side, the virus has substantially altered the country's economy and year 2020 may unfortunately be the start of a long-term financial crisis that will probably affect a high percentage of work loss and a change of working conditions, in order to adapt to the new reality.

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

- The state of alarm was declared on 14 March 2020 through Royal Decree 463/2020, of March 14, which restricted the free movement of people and the closure of venues and businesses. Nowadays, the state of alarm has been extended until June 21th, 2020. All restrictions are being progressively eliminated through the "Plan for the Transition to a New Normality (divided into 4 stages). The different stages are regulated in the following Orders:

- Order SND/388/2020 of May 3rd establishes the conditions for some business and services to open to the public, as well as for the practice of professional and federated sport during Stage 0. ***https://www.boe.es/eli/es/o/2020/05/03/snd388.***
- Order SND/399/2020 of May 9th for the easing of certain national restrictions established after the declaration of the alarm status during Stage 1 of the Plan for the transition to a new normality. ***https://www.boe.es/eli/es/o/2020/05/09/snd399***
- Order SND/414/2020 of May 16th, entered into force for the easing of certain national restrictions established following the declaration of the alarm state during Stage 2 of the Plan for the transition to a new normality. ***https://www.boe.es/eli/es/o/2020/05/16/snd414***
- On June 6, 2020, Order SND/507/2020 was published, amending various orders to make certain national restrictions more flexible and to establish territorial units progressing to Stage 2 and 3 of the Plan for the transition to a new normality. ***https://www.boe.es/eli/es/o/2020/06/06/snd507.***

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

The Government website publishes the most up-to-date news related to Covid19: ***https://www.lamoncloa.gob.es/covid-19/Paginas/index.aspx***

- In addition, it is possible to see the latest news regarding unemployment benefits for employees affected by an ERTE in the SEPE webpage: ***http://www.sepe.es/HomeSepe/COVID-19.html***

- On the following link it is possible to see the latest regulations and orders published in Spain: ***https://www.boe.es/biblioteca_juridica/codigos/codigo.php?id=355&modo=2&nota=0&tab=2***

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

- **Unemployment benefit:** Employees affected by a Temporary Workforce Restructuring File (ERTE) due to COVID-19 will be entitled to an unemployment benefit up to 70% of their base salary for the first 180 days and 50% thereafter. Employees will be entitled to this benefit even if they lack the minimum period of paid employment necessary for it. The period during which employees receive such unemployment benefits will not count as towards "regular" unemployment used by the employee, which has a maximum period of use.

- **Minimum Vital Income:** Royal Decree Law 20/2020 of May 29th, grants an aid called Minimum Vital Income (MVI) "ingreso mínimo vital" as a benefit aimed at preventing the risk of poverty and social exclusion of people living alone or integrated into a unit of coexistence, when they are in a situation of vulnerability because of the lack of sufficient economic resources to cover their basic needs. The amount of the MVI will depend on the income each family has, so the State will contribute with the amount missing to reach the guaranteed minimum.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

- Royal Decree 463/2020 restricted the free movement of people and the closure of venues and businesses not considered essential. Companies have the obligation to inform, as soon as possible, about the existence of the risk and to adopt organisational or preventive measures that, temporarily, avoid situations of social contact, without the need to stop their activity. Companies have the obligation to guarantee health and safety in the workplace, according to the Action Procedure for Occupational Risk Prevention Services against exposure to COVID-19 that was published on February 28.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

- The preventive measures that should be adopted in the workplace will depend on the specific working conditions of the position. Notably, the Ministry of Health published a document entitled "Procedure for the prevention services of occupational risks of exposure to SARS-CoV-2 ", which includes a series of preventive measures that must be adopted in the workplace. These prevention measures can be categorised as organisational measures, which includes applying measures to minimise contact between workers, such as organising shifts during working hours, redistributing spaces to guarantee the safety distance of 2 meters, reorganising tasks and facilitating remote working, etc.; collective protection measures, such as providing physical separation barriers, like windows, screens, transparent curtains and applying a more exhaustive cleaning service; and as personal protection measures, such as imposing the use of a masks, gloves and disinfectant gel for each worker. There are also Protocols with preventive measures for the trade sector to reopen depending on each specific sector.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

- Work from home is one of the priority measures that the government has established to address the impact of COVID-19 and must be a priority over temporary termination or reduction of

activity. On an exceptional basis, in order to implement remote work, the risk evaluation of the workplace will be done by a self-evaluation carried out voluntarily by the worker himself.

- In any case, when employees work-from-home due to COVID-19, the employer must guarantee that the measure should be temporary and extraordinary, and must be therefore reversed when the exceptional circumstances (COVID-19) cease to occur and must be in compliance with labour law and the applicable collective agreement. However, the Statute of Workers establishes that if teleworking wasn't put in place as a temporary measure in the employment contract, the employer must have a written agreement in with its employees. The measure must not involve a reduction of rights in health and safety or a reduction in professional rights (salary, working day - including the registration of the working day which should keep to be registered-, breaks, etc., and companies must guarantee the necessary measures in order to be able to work from home. Work-from-home employees should not be required to cover costs for the necessary technical services of teleworking

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

- Royal Decree-Law 6/2020 published on March 11th 2020, establishes in Article 5 that in order to protect public health, the periods of isolation or contagion of workers caused by the COVID-19 will be considered as a situation equivalent to work accident, exclusively for the economic benefit of the Social Security system for temporary disability. This economic benefit (sick subsidy) will be up to 75% of the employee's base salary. In addition, vulnerable individuals qualify for sick leave if their job puts them at risk of contracting COVID-19. Vulnerable individuals are considered those with cardiovascular pathologies, high blood pressure, diabetes, chronic lung disease, immunodeficiencies, cancer processes in active treatment. All individuals applying for vulnerable status must provide a medical certificate in order to receive the sick subsidy.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

- In the event that working conditions in the company imply a serious and imminent risk for the employees' health and safety, it is permissible for an employee or for the works council to suspend working activities for those individuals that may be affected by coronavirus (article 21.1 of the Health and Safety Act). However, fear of infection alone does not trigger the effect of the aforementioned articles. If an employee merely fears infection and refuses to work, he or she could in principle be sanctioned. To the extent this sanction could be considered unfair, due to the reasonableness of the matter, is uncertain. We would advise that employers warn the employee prior to issuing a sanction.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

- Employers must adopt the measures and provide the necessary instructions so that, in case of serious, imminent and unavoidable danger, workers may stop their activity and, if necessary, leave the workplace immediately. An employer must ask that the worker to stay home and immediately communicate their situation to the health authority. Notwithstanding, the employer must communicate this situation to the risk prevention service, so that they may adopt the measures they deem appropriate (Article 21 of Law 31/1995, of November 8, on Occupational Risk Prevention).

OTHER ISSUES.

- In order to promote work-life balance, the Government recognised the workers' right to receive a reasonable accommodation and/or reduction of working hours, for employees who can prove duties of care for their spouse, partner and relatives to the second degree of consanguinity. This reduction may reach up to 100% of the working day. A reasonable accommodation must be requested by the employee - specifying

scope, content and justification. Examples of a reasonable accommodation include: change of shift, change of schedules, flexible hours, midday break or continuous workday, change of function, etc. These measures will remain in force for three months following the end of the state of alarm.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.

- Employer and employee must agree to specific vacation/holiday dates. Generally employers must prepare the company calendar at the start of the New Year, including employee holiday days. However, due to COVID19, an exceptional measure was adopted in the Royal Decree 10/2020, establishing that companies must grant, from March 30, 2020 and until April 9, 2020 (both days included), a recoverable paid leave to those

employees working on non-essential activities. This paid leave is recoverable, which means that employees must recover those hours enjoyed as paid leave once the state of alarm finishes.

- Companies that have applied an ERTE to their employees due to force majeure related to COVID-19 will be able to benefit from up to the 100% social security contributions if on February 29, 2020 the employer has less than 50 workers, and the 75% of the contributions in the case that the employer had more than 50 employees.

b. Salary reductions.

- Employers can implement salary reductions as a cost-reduction strategy due to COVID19. However, this strategy is understood as a permanent measure and not as temporary and it must be implemented by way of an employment agreement or following the substantial change of labour conditions procedure.

c. Redundancy.

- The Government has ruled that the use of ERTE due to COVID-19 will not allow companies to make business dismissals on this basis. In addition, it foresees special conditions regarding the unemployment benefits for employees affected by ERTE and exemptions for companies that have made an ERTE, as we have explained above. However, these extraordinary measures shall be subject to the company's commitment to maintain employment levels for a period of 6 months following the re-activation of the company's normal activity. This commitment isn't violated where an employment contract is terminated on the basis of disciplinary dismissal, resignation, retirement or total permanent disability of the worker, and in the case of temporary contracts where the contract is terminated on the basis of the scheduled end date of the project, or the performance/work/service has been completed. Companies that fail to fulfil this commitment will be forced to reimburse the total amount of the contributions provided by the Government, as well as surcharge and the corresponding delayed interest.
- As stated above, it is not possible to terminate any labour contract due to force majeure or objective reasons related to COVID-19, including economic, productive, technical and organisational causes until June 30, 2020. Such a terminated will be considered unfair dismissal.

d. Facility closure.

- Employers can proceed with a facility closure. However, if dismissals are not implicit, employees will either need to be put on ERTE or salaries paid during the closure.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

- In order to promote a safe return to work we suggest companies take into account the new reality that has unfolded due to COVID-19 - updating company policies including those related to telework, wage/hour issues and vacation accordingly.

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SWEDEN

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

There are no general decrees, orders or guidelines issued by the Swedish Government regarding reopening facilities or operations. Since no facilities have been forced to close by the authorities in Sweden, there are also no orders regarding opening up facilities. All closures have been made on a voluntary basis.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

Updates are available on the Public Health Agency website:
https://www.folkhalsomyndigheten.se/the-public-health-agency-of-sweden/

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

The Swedish Government has adopted specific regulations regarding short time working arrangements that shall apply during 2020. Short time working arrangements subject to these specific regulations are referred to as short-term layoffs and entitle employees to retain more than 90% of their salary, even if their hours of work are reduced by 20%, 40% or 60%. During May, June and July 2020, the working hours can be reduced by 80% as a temporary measure. The short time working arrangement is an alternative to dismissal and means that the business, and its employees, agree that the employees shall, temporarily, have reduced hours of work and salary. The state funded financial support covers most of the costs for the reduced working hours during this period, which entails that businesses may temporarily cut their salary costs by half (approximately). In order for a business to receive state funded financial support when utilising short time working arrangements, employers will have to submit an application to, and for approval from, the Swedish Agency for Economic and Regional Growth. The financial support paid by the state is calculated based on the employee's ordinary salary, however, without consideration of any salary in excess of SEK 44 000 per month. The financial support will mainly be paid out for a period of up to six months, but an extension of support for up to three months will be possible should the financial difficulties persist. The new regulations entered into effect on 7 April 2020, but may be applied retroactively from 16 March 2020. As such, the new regulations on short time working arrangements and so-called short-term layoffs will provide businesses with alternatives to dismissal, should it be necessary to temporarily discontinue operations.

ALLOCATION OF COSTS FOR SHORT TIME WORKING ARRANGEMENTS ACCORDING TO THE SWEDISH MINISTRY OF FINANCE

Level	Reduction of working hours	Reduction of salary	Employer	State	Employer's reduced cost of labour
1	20%	4%	1%	15%	-19%
2	40%	6%	4%	30%	-36%
3	60%	7.5%	7.5%	45%	-53%
4	80%	12%	8%	60%	-72%

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

There are no requirements mandated by law. However, the Public Health Agency of Sweden recommends that all employers take measures to limit the spread of the Coronavirus (see below for examples of such measures).

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

Measures typically implemented by employers can be, for example, to set up information for members, staff, customers and other visitors, mark distance on the floor, furnish or otherwise create space to avoid congestion, hold digital meetings, offer the opportunity to wash hands with soap, as well avoid group gatherings, especially in confined spaces. Temperature monitoring is not a common practice in Sweden, since such data can be considered sensitive personal data. While some employers have recommended that their employees should wear face masks, compliance seems to be the exception rather than the norm.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

Employers are encouraged to use teleworking if possible and many employers in Sweden have adopted a policy for employees to utilise teleworking, until the situation with the Coronavirus has subsided. Employers who offer their employees the option to work from home, are still responsible for their employees' work environment. As such, employers should be responsive to employees' requests to borrow or buy a better computer screen, keyboard, chair or other related work equipment. Employees still have an obligation to observe the duty of loyalty towards their employers, even if they are working from home, which means that they have to maintain security levels and keep the employer's information confidential.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

If an employee has symptoms of COVID-19 or otherwise feels sick, the employee should call in sick. During the period of illness, the employee will receive sick pay from the employer during the first 14 days, and then compensation from the Swedish Social Insurance Office. If an employee's child is sick, the employee can stay home to take care of the sick child. Such time is considered as temporary parental leave and entitles the employee to parental benefits from the Social Insurance Office. If a close relative is sick, there are special regulations under which the employee can be on unpaid leave, for a short period, in order to take care of a sick relative.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

Such refusals shall of course be taken seriously, and the employer is responsible for taking measures to make sure that the workplace is a safe environment for employees to perform their work. If the employer has taken reasonable measures, and the employee still refuses to come in to work and is without a valid reason for doing so, it can ultimately be considered as a breach of the employment agreement, giving rise to a cause for dismissal.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

Information regarding infected employees is considered sensitive personal data which should not be processed by the employer unless there is a specific reason to do so. Generally, the processing and disclosure of such data is unlawful and should therefore be avoided.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
Short-term layoffs are an alternative to dismissal and entitle employees to retain almost 90% of their salary, even if their hours of work are reduced by 20%, 40%, 60% or 80%. Full furloughs are generally not utilised, since an employee who is released from work is still entitled to full salary and benefits.

b. Salary reductions.
Salary reductions are offered as part of the short-term layoffs scheme. Other salary reductions can also be applied, but generally require the employee's consent.

c. Redundancy.
Employees can be made redundant due to the negative financial impacts of the Coronavirus. Employers who wish to make employees redundant in Sweden, need to follow the last-in-first-out principle. Once redundant, the employees are entitled to full salary and benefits during the notice period. There is no statutory severance in Sweden.

d. Facility closure.
Employers are free to close down their facilities, but still need to pay employees' salary, even if the employees are not working. Support for salary costs can be obtained under the short-term layoffs scheme.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

- If the employer qualifies for support under the short-term layoffs scheme, the employer should apply for state aid under this relief program.
- If possible, employees should be encouraged to work from home and instructed to avoid all unnecessary travel.
- Many employers have already signed agreements with new hires, who are planning to begin working following the end of summer (2020). Such employers should re-evaluate if these hires are still needed, since it is much easier to terminate the employment agreements of new hires before any work commences, unless the employer will place such new hires on a "probationary" period at the start of their employment.

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SWITZERLAND

I. EMERGENCY MEASURES

Switzerland was affected by the Coronavirus (COVID-19) outbreak beginning in late February 2020. In response to the crisis, the Swiss government enacted rather harsh lockdown measures, which included travel restrictions, border closures, the closing of schools, shops and restaurants, among others. The economic impact of the COVID-19-related measures was cushioned by short-time working compensation and loans for companies impacted by the pandemic. Many employers consciously decided to rent smaller premises in search of office space and quickly switched to home office (remote work) arrangements for their employees. Indeed, 50% of the Swiss workforce was working from home during the peak of the epidemic. Experience in this regard has been consistently positive, so that homeworking will very likely continue even after the COVID-19 crisis has ultimately passed. While many companies are struggling with liquidity problems as a result of the crisis, the large waves of redundancies that had been predicted, have, fortunately, not yet materialised. However, only in the months to come, will we be able to accurately assess the true economic consequences of COVID-19.

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

In March, the Federal Council issued measures to combat the spread of the coronavirus (COVID-19 Regulation 2) - legal restrictions and requirements such as bans and rules of hygiene and conduct were implemented. Since 27 April 2020, the Federal Council has gradually relaxed the measures and re-opened establishments and facilities that had to be closed during the lockdown.

Every facility which is accessible to the public needs to have a protection concept in place that minimises the risk of transmission. The obligation to draw up a protection concept also applies to those establishments and facilities that did not have to interrupt their activities. Standard protection concepts are available on the website of the State Secretariat for Economic Affairs. The website is available in German, French and Italian:
https://backtowork.easygov.swiss/

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

The website of the Ministry of Health contains updated information on the current situation in Switzerland and abroad, with the news about the latest measures and regulations, including explanations, contact information and links to instructive websites. The site is available in German, French, Italian and English:
https://www.bag.admin.ch/bag/de/home.html

The website of the State Secretariat for Economic Affairs contains an overview of all press releases on the coronavirus as well as information on financial aid for companies, short-time work, measures for job seekers, compensation for loss of earnings for self-employed persons and employees, measures in the area of labour law, health, protection at the workplace, information on protection concepts and more. The site is available in German, French and Italian:
https://www.seco.admin.ch/seco/de/home/Arbeit/neues_coronavirus.html

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

The following government subsidies and special relief resources have been put in place in Switzerland to support employers and workers in their efforts to maintain employment and pull through the crisis:

• Financial Support For Companies

Emergency Aid by Means of Guaranteed COVID Bridging Loans – With bridging loans (COVID-19 loans), affected companies are supported as unbureaucratically, specifically and quickly as possible. Applications for loans can be submitted until 31 July 2020. Loans of up to CHF 500,000 are disbursed within a short period of time and are 100% secured by the Confederation. The interest rate on these bridging loans is currently 0%. Bridging loans exceeding the amount of CHF 500,000 are 85% secured by the Confederation. The lending bank contributes 15% of the loan. Such loans can amount to up to CHF 20 million (including CHF 500,000 from COVID-19 loans) per company and therefore require a more comprehensive bank audit. For these loans, the interest rate is currently 0.5% on the loan secured by the Confederation.

Deferment of Payment of Social Security Contributions – Companies affected by the crisis are granted a temporary, interest-free deferral for the payment of social security contributions.

Liquidity Buffer in the Tax Area – Businesses have the possibility to extend payment periods without having to pay interest on arrears. For this reason, the interest rate for value added tax, customs duties, special excise taxes and incentive taxes is waived during the period from 21 March 2020 to 31 December 2020. The same regulation applies to direct federal taxes from 1 March 2020 until 31 December 2020.

Measures in the Area of Occupational Pension Schemes – The Federal Council has also decided that employers may temporarily use the employer contribution reserves they have built up to pay employee contributions to the occupational pension scheme. This measure should make it easier for employers to bridge liquidity shortages. The measure has no effect on employees; as under normal circumstances, the employer deducts their contribution share from their wages and the entire contributions are credited to them by the pension fund.

• Short-Time Work

A company may temporarily reduce the working hours of its employees or cease operations completely if the company gets into financial difficulties, without fault. Employees affected by short-time work receive compensation from the unemployment insurance, amounting to 80% of the wage loss. The maximum annual salary insured, amounts to CHF 148,200 per year.

Due to the coronavirus pandemic, the application process for short time work has been simplified and the range of beneficiaries widened. Some short-time work emergency measures have already been lifted and others will end on 31 August 2020. However, companies will continue to apply for short-time work to safeguard jobs that are at risk due to the COVID-19 crisis.

• Compensation for Loss of Earnings for Self-Employed Persons

Self-employed persons who suffer loss of earnings due to official measures to combat COVID-19 are compensated in the following cases: i) medically prescribed quarantine; and ii) forced business closure. The compensation corresponds to 80% of the income and amounts to a maximum of CHF 196 per day.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

According to article 6a of the COVID-19 Regulation 2, establishments and businesses which are publicly accessible, must prepare and implement a plan for precautionary measures. Such measures include home office, social distancing, hygienic actions, etc.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

According to Article 6 of the Swiss Labour Law Act, the employer is obliged to prevent any impairment to the health of his employees. He therefore has to take all measures which are appropriate and reasonable under economic circumstances. The employer must additionally ensure that the measures provided by the Federal Council and the Ministry of Health are observed and implemented at the workplace. These measures include:

- home office (if possible)
- social distance at the workplace (at least 2 meters or additional measures such as minimising contact time, etc.)
- hygiene measures (regular washing and disinfecting of hands, work surfaces, doorknobs, elevator buttons, stair railings, coffee machine and other work equipment, especially if used by various employees, as well as routine ventilation).

In particular situations, the use of protective equipment such as gloves, masks or goggles may be advisable. However, such equipment, unlike in other countries, is not generally required in Switzerland.

Special regulations apply for employees at high risk. Persons over 65 years of age and all persons with high blood pressure, chronic respiratory diseases, diabetes, diseases and therapies that weaken the immune system, cardiovascular diseases and cancer are considered as particularly at risk. Employers must allow employees at high risk to work from home. If a person at high risk is only able to perform his/her work at the workplace, the employer must adapt the workplace or working procedures accordingly, to ensure that the person is adequately protected. If the employer fails to do so, the employee at risk must be placed on leave with continued salary. Employees at high risk must provide their employer with a personal declaration to that effect. The employer may request a doctor's certificate.

Information sheets for employers as well as health check lists are available for employers on the website of the State Secretariat for Economic Affairs in German, French and Italian:
https://www.seco.admin.ch/seco/de/home/Publikationen_Dienstleistungen/Publikationen_und_Formulare/Arbeit/Arbeitsbedingungen/Merkblatter_und_Checklisten.html

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

The Federal Office of Public Health recommends that home offices be approved and made possible during the pandemic. Swiss law does not have any special provisions in place regarding the home office. The Swiss Supreme Court recently ruled that an employer must contribute to rent and other costs of the home office such as internet, if the employee is not provided a working space at the employer's premises and therefore, is obliged to work from home. Whether this also applies to the home office during the pandemic is unclear. We highly advise to regulate the conditions of working at home in a separate agreement with the employees.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

Quarantine – Employees are entitled to compensation in the event of interruption of employment due to a quarantine ordered by a doctor or a public order. Loss of earnings is regulated in accordance with the Income Compensation Act and paid as a daily allowance. The daily allowance corresponds to 80% of the income and amounts to a maximum of CHF 196 per day. The compensation is limited to 10 daily allowances.

Child Care – Parents who had to interrupt their employment due to school closures in order to care for their children were entitled to compensation. On 11 May 2020, it became mandatory for public schools in Switzerland to have been re-opened, and since 6 June 2020, grandparents are no longer advised to stay away from their grand-children. Therefore, the special compensation for childcare is, for the moment, no longer in place.

Medical Leave – Employees suffering from COVID-19 receive paid medical leave. The length of the paid medical leave is dependent on whether the employer has a daily per diem sickness insurance in place, which normally covers 80% of the salary for a maximum of 720 days. If no such insurance is available, the length of the paid medical leave depends on the years of services. In the first year of service, the entitlement amounts to three weeks of full pay.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

Healthy employees who do not belong to a risk group may not simply stay away from work for fear of infection. However, employers have a duty to protect the health of their employees and need to take the necessary appropriate measures (see section III. Health and Safety Measures, above). If home office is not an option and the employee refuses to work despite the fact that adequate protection measures have been put in place, the employer does not need to continue paying the employee's salary. Whether or not a termination for cause may be justified depends on the specific circumstances.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

There is no mandate for the employer to notify authorities if an employee is infected. If possible, we advise to obtain permission from the infected employee to inform members of the workforce and co-workers about the infection.

OTHER ISSUES.

Canceling of holidays due to travel bans – In principle, the employer can insist that an employee already takes planned vacation days, as long as the vacation allows the employee to recover, even if the employee cannot pursue his/her original holiday plan due to travel bans.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.
According to Swiss employment law, the employer may in principle, determine the time of the holidays. In doing so, he must take into account the wishes and needs of the employees. If the employer determines the time of the holidays, he must give sufficient advance notice. Under normal circumstances, holidays must be determined at least three months in advance. Some scholars argue that during the pandemic the three months rule does not apply. As of today, there is not case law or pending claims before the courts on this issue.

b. Salary reductions.
Salary reductions cannot be introduced unilaterally by the employer. The employer either needs the consent of the employee or is required to introduce a salary reduction by giving notice, and at the same time, offer new employment with a lower salary. Salary reductions need to be economically justified.

c. Redundancy.
There are no special regulations on redundancy during the pandemic. Swiss labour law upholds the freedom of both parties (employer and employee) to terminate the employment in accordance with the contractual arrangements. Special consultation obligations apply in case of collective redundancies.

d. Facility closure.
There are no special regulations regarding facility closures during the pandemic.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

The “best practice” depends on many factors such as industry, size of company, possibility to work from home, etc. for many companies, one very helpful measure of support was the possibility to apply for short time work compensation and the possibility to work from home. The latter should be accompanied by clear instructions regarding work time, workplace environment, expense regulations and reporting.

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UNITED KINGDOM

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

The 'COVID-19 Secure' guidelines apply to different workplaces and are intended to ensure that workplaces (and those working in them) are as safe as possible during the coronavirus pandemic. The 8 sector-focussed guidelines, which are all broadly based on the same key themes, impose significant responsibility on employers to ensure individuals are able to return to a safe workplace and system of work. The 5 steps to working safely guide sets out practical actions for businesses to take, in conjunction with the COVID-19 Secure guidelines relevant to their workplace.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

Employers can find the latest updates to Government guidance on business support - how to run your business safely, and can follow the Government guidelines on working safely during coronavirus.

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

The UK Government has implemented several measures, which employers may be able to access for financial business support including: making claims for wages through the Coronavirus Job Retention Scheme (currently for up to 80% of employees' wages plus any employer National Insurance and pension contributions, if they are on furlough leave because of COVID-19); delaying VAT and some other tax payments without incurring a penalty; claiming back employees' coronavirus-related Statutory Sick Pay through the Coronavirus Statutory Sick Pay Rebate Scheme; state-backed bailout loans for both SMEs (small and medium sized businesses) and for large businesses. Business rates relief and grant funds are available for certain businesses and sectors - these are handled differently in England, Scotland, Wales and Northern Ireland.

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

Employers are under a legal duty "so far as is reasonably practicable" to provide and maintain safe places of work, safe systems of work and adequate facilities for welfare, and to provide employees with sufficient information and training. The law requires employers to:

- undertake a risk assessment;
- set up safe systems of work, informed by their risk assessment;
- implement those safe systems of work;
- keep those systems under review.

The government has issued guidance to assist employers with their legal duties on how to run your business safely during the Coronavirus pandemic. Employers should follow the steps set out in the relevant guidance for their workplaces, taking into account the size and type of their business – but this does not replace existing health and safety law. In addition, compliance with the guidance is not a "safe harbour" and employers may still be liable at

common law for negligence and/or breach of the health and safety legislation.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

Some employers are nominating an individual who is responsible for monitoring and ensuring compliance with COVID-19 rules and regulations. Employers are also consulting with employee representatives/a health and safety committee on safety issues. Where social distancing requirements cannot be achieved in the workplace, employers are taking steps to manage transmission risk - making physical workplace modifications (e.g. putting barriers in shared spaces) and adopting other measures to minimise the number of contacts each employee has (e.g. creating workplace shift patterns or fixed teams). In addition to providing training on the new workplace procedures, employers are communicating clearly on safety issues to ensure employees understand what is required and that they feel safe. Once the safety procedures are in place, employers must monitor to check that the workforce is complying with the safety rules, and intervene quickly if workers are not acting appropriately.

Many employers are exploring temperature checks, antibody testing and the use of contact tracing apps, but these raise significant privacy issues. The Information Commissioner's Office has published workplace testing guidance which recommends that organisations planning to undertake testing and processing health information should carry out a data protection impact assessment focussing on the new areas of risk, and should only retain the minimum amount of information necessary.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

Businesses are expected to ensure people work from home if at all possible, and to take all reasonable steps to support teleworking. Employers have the same health and safety obligations to employees working from home as those in the workplace. Employers should:

- ensure employees have the right equipment (such as remote access to work systems), that relevant guidance is followed, and provide online health and safety training modules designed for working from home - for those working at home on a long-term basis, the risks associated with using display screen equipment must be controlled ,which includes undertaking workstation assessments at home;
- discuss homeworking best practices, and have a homeworking policy - with advice on matters such as screen positioning, taking breaks from display screens and identifying risks - that is communicated to staff;
- look after employees' physical and mental wellbeing by keeping in regular contact with staff on their working arrangements, and their welfare and personal security;
- include employees in all necessary communications, and help them stay connected to the rest of the workforce.

Employers should also be mindful of data security considerations that arise. In addition to personal data security issues, there are wider categories of information risk, such as in relation to confidential information and trade secrets.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

Unless they are well and able to work from home, employees will be entitled to Statutory Sick Pay (and may also be entitled to the employer's company sick leave and pay) if they are:

- sick and diagnosed with coronavirus, or have coronavirus symptoms;
- self-isolating because a member of their household has coronavirus symptoms, or on an official instruction, because they have been in contact with someone who has tested positive with coronavirus;
- shielding because they are classed as extremely vulnerable and were notified they should follow the shielding measures.

There are a few options available for employees who need to care for a dependant who is sick or children who are unable to go to school. Employees who are unable to work because they have caring responsibilities resulting from COVID-19 can be furloughed under the Coronavirus Job Retention Scheme. The other options would involve employees taking unpaid leave, such as dependant's leave (they can take a "reasonable" amount of time off when pre-arranged care for a dependant has unexpectedly become disrupted or terminated) or employees with at least one year's continuous service could take parental leave (they can take up to 4 weeks' leave in a year, in blocks of a week).

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

If the employee is able to work from home then they should do so and be paid in full. If they cannot, the issue should be treated carefully. There may be health and safety reasons for employees not wanting to attend the workplace, such as a confirmed case of the virus or they have genuine health concerns which make them more vulnerable, or they live with vulnerable family members. From an employment law perspective, failure to obey reasonable and lawful management instructions is a breach of contract. Therefore, unless the employee has a good reason not to attend the workplace, an employer would be entitled to discipline the employee for refusing to attend, and might also be entitled to withhold wages.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

Employers should keep staff informed about cases and infection risk in the organisation, but in most cases it will not be necessary to name the individual, and their identity should not be disclosed. Employers should not provide more information than necessary - they should simply inform staff that an employee has the virus and that appropriate precautions should be taken. This is because information about an employee's health is a 'special category personal data' and it can only be processed, including by being disclosed, in restricted circumstances.

OTHER ISSUES.

As pregnant women have been "strongly advised" to socially isolate, avoid travelling on public transport and work from home where possible, employers should allow pregnant women to work from home if possible. Where the nature of their role means that they cannot work from home and there is no suitable alternative work available that they could do from home, the employer should consider medically suspending the employee on full pay.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID-19, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.

The Government Coronavirus Job Retention Scheme has enabled employers to place employees on furlough and claim up to 80% of their salary up to £2,500 per month as a grant. When the amount that can be claimed under the Scheme is reduced from August onwards, then ultimately removed on 31 October 2020, employers may consider extending furlough on a self-funded basis, which is possible provided employees agree to being furloughed. If they will be on reduced pay, you will need a new furlough agreement which they may be willing to agree to as an alternative to redundancy.

If the employer has a contractual right to lay off without pay, this could be relied on, but you should consult with employees and give them reasonable notice of lay off.

b. Salary reductions.
Employers can reduce pay with the employee's agreement which should be evidenced in writing. Alternatively, if you recognise a trade union for collective bargaining purposes, you may be able to agree to the change with the union. If the employer has already formulated a proposal to dismiss as redundant, or to force change by dismissing and re-engaging, any employees who do not agree to a salary reduction, then collective consultation obligations are arguably triggered.

c. Redundancy, including facility closure.
There must be a genuine redundancy situation, i.e. a reduction or cessation in the requirement for employees to carry out work of a particular kind, or a need to shut down all or part of the business in which the employee works. Alternatives to compulsory redundancy should be explored first (including seeking volunteers for redundancy, seeking agreement to staff working on reduced hours and/or reduced salaries on a temporary basis).

If an employer is proposing to dismiss 20 or more employees at one establishment within a 90 day period, the collective consultation obligations will be triggered: consultation with employee representatives must commence at least 30 days (for between 20 and 99 dismissals) or 45 days (for 100 or more dismissals) before the first dismissal is proposed to take effect. Whether or not collective consultation is required, employers will also need to engage in consultation on an individual basis with employees at risk of redundancy.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

Most health and safety policies and practices will need to be amended to reflect the approach to controlling the risks presented by COVID-19. Workers should be involved in assessing workplace risks and in the development and review of workplace health and safety policies in partnership with the employer. Other policies that may need updating include sickness, disciplinary and grievance, travel, homeworking and Bring Your Own Device policies. To avoid discrimination and equality issues arising out of return to work plans, employers must be mindful of the particular needs of different groups of workers and individuals, and must ensure that their plans do not disadvantage certain protected groups or individuals with a protected characteristic.

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UNITED STATES

I. EMERGENCY MEASURES

DECREES, ORDERS OR GUIDELINES IN EFFECT AND PERTAINING TO REOPENING FACILITIES.

The White House has issued non-binding Guidelines for "Opening Up America Again". The Guidelines strongly encourage states to authorise reopening only after objective data suggests COVID-19 infections have decreased to an acceptable level and hospitals are not overwhelmed by COVID-19 patients. The Guidelines further encourage states to authorise businesses to reopen in three phases. During each phase, states should monitor various metrics, such as new confirmed COVID-19 cases and hospitalisations, to ensure reopening has not triggered a resurgence of COVID-19 infections. Assuming no resurgence at a given phase, states would permit businesses to progress to the subsequent reopening phase. The Guidelines also outline employer responsibilities discussed below. The U.S. Center for Disease Control ("CDC") also continues to provide non-binding guidance related to COVID-19 quarantine, isolation, and related issues and employers should consider that guidance in developing protocols for reopening their businesses.

The Guidelines identify both specific and general employer "responsibilities" to ensure safe re-openings. During all phases, employers should: 1) implement policies to address (a) social distancing and protective equipment, (b) temperature checks, (c) testing, isolating, and contact tracing, (d) sanitation, (e) use and disinfection of common and high-traffic areas, and (f) business travel; 2) not allow employees with symptoms of COVID-19 to physically return to work until cleared by a medical provider; and 3) have a process in place for workplace contact tracing following an employee's positive test for COVID-19. The Guidelines provide additional specific guidance during each phase of the re-openings, including information directed toward specific industries.

OPTIMAL APPROACH TO KEEP TRACK OF THE LATEST UPDATES.

In addition to the White House guidance, states and localities have many specific requirements, which in some instances are also industry based. General concepts include health screening questions, mandatory or suggested temperature taking, postings, social distancing (including customer requirements in a retail setting), sanitation, face coverings and procedures for handling employees who do become ill. Please consult Jackson Lewis's COVID-19 Advisor for such requirements.

II. STATE AID

GOVERNMENT SUBSIDIES AND SPECIAL RELIEF RESOURCES ALLOCATED TO SUPPORT EMPLOYERS, AND WORKERS, IN THEIR EFFORTS TO MAINTAIN EMPLOYMENT AND PULL THROUGH THE CRISIS.

CARES ACT

Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act addresses a multitude of ways in which the federal government seeks to support businesses impacted by the pandemic and employees affected by COVID-19. Key areas of interest for employers relate to business loans, unemployment benefits, retirement plans, tax credits and executive compensation. A full analysis of the CARES Act's key areas of interest for employers is available on the Jackson Lewis website here.

Below are additional Jackson Lewis resources to help navigate the CARES Act:

o CARES Act Leaves Out Bail Out of Private Union, Multiemployer Pension Plans

o Paycheck Protection Program Loans: Basics for Small Businesses, Sole Proprietorships
o COVID-19 Related Tax Credits; Deferral of Payment of Employer Social Security Tax
o Update: COVID-19 Related Tax Credits, Deferral of Payment of Employer Social Security Tax, Other Tax Issues

FFCRA

On March 18, 2020 President Trump signed the Family First Corona Response Act (FFCRA) into law, requiring certain employers to provide their employees with paid sick leave and expanded family and medical leave for specific reasons related to COVID-19. The FFCRA creates two new emergency paid leave requirements in response to the COVID-19 global pandemic that will remain in effect from April 1, 2020 through December 31, 2020. "The Emergency Paid Sick Leave Act" (EPSLA) entitles certain employees to take up to two weeks of paid sick leave. "The Emergency Family and Medical Leave Expansion Act" (EFMLEA) amends Title I of the Family and Medical Leave Act, 29 U.S.C. 2601 et seq. (FMLA) and permits certain employees to take up to twelve weeks of expanded family and medical leave, ten of which are paid, for specified reasons related to COVID-19.

Analysis of the FFCRA is available here:
o DOL Publishes FAQs on Families First Coronavirus Response Act
o DOL's FAQs Provide More Details About Small Employer Exception Under FFCRA
o Department of Labor's Latest FAQs Expand "Health Care Providers" and Define "Emergency Responders" Under FFCRA
o DOL Publishes Additional FAQs, Making Clear That Employees on Furlough or Layoff Are Not Eligible for FFCRA Paid Sick Leave or Expanded FMLA
o DOL Issues FFCRA Poster

III. HEALTH AND SAFETY MEASURES

REQUIREMENTS MANDATED BY LAW OR ANY OFFICIAL GUIDANCE.

The CDC has issued new Guidance with detailed instructions on cleaning and disinfecting public spaces, workplaces, businesses, schools, and homes in preparation for reopening following COVID-19 shutdowns. The Guidance includes a Cleaning and Disinfection Decision Tool that distills the advice into a flow chart with different recommendations depending on whether the area is indoors, outdoors, frequently used, and the type of surface involved.

Additional information on CDC recommendations for employers and best practices is available on the Jackson Lewis website: CDC Issues Guidance on Preparing to Reopen Workplaces, Businesses, Schools After COVID-19 Shutdown.

MEASURES TYPICALLY IMPLEMENTED BY EMPLOYERS AND THE ASSOCIATED LEGAL RISKS, LIMITATIONS, OBLIGATIONS AND ISSUES TO CONSIDER.

Social Distancing Measures
Employers should consider how best to achieve social distancing measures through installation and use of physical barriers, changes in staffing occupancy (e.g., 25%-50% of capacity), and procedures for use of common areas (e.g., limiting the number of individuals entering a room and prohibiting congregation in common areas). Some measures that may be helpful include staff rotations (e.g., having some staff work Monday, Wednesday, and Friday in the workplace while the remainder are remote, with a switch occurring on Tuesday and Thursday), and setting up a path of travel or flow that prevents individuals from coming in close contact when traveling through hallways or stairwells. Employers also may want to consider installing physical barriers in open office environments and analysing the air flow patterns of ventilation systems. For some workplaces where social distancing measures are unlikely to be achieved, the employer may want to consult with a health consultant or infectious disease expert, to ensure identification of appropriate controls that fully consider any unique designs or issues with the workspace or the type of work being performed.

If the employer is in a jurisdiction that has an applicable state or local predictive scheduling law, it will have to consider whether the schedule change will trigger advance notice or premium pay

obligations under that predictive scheduling law. Some, but not all, jurisdictions have issued recent guidance relaxing advance notice and premium pay obligations for changes due to COVID-19 reasons. As is often the case, a key consideration in the process is clear communication with employees, preferably in writing.

For more on social distancing and employee safety protocols, a recording of a recent Jackson Lewis webinar on the topic is available ***here***.

Contact Tracing Apps/Social Distancing Wearables
As to contact tracing, many employers are considering various apps, wearables, and other technologies to assist with distancing, screening, and contact tracing. Employers should consider these technologies carefully. In particular, employers should confirm their understanding about how the technology works, the kind of information collected, and the safeguards the vendor has in place if it is storing information. Note also, that in the case of contact tracing, some apps may track the geolocation of employees which raises significant privacy issues. Employers need to ensure they are not violating state anti-tracking laws and consider employee expectations of privacy.

For more on the privacy/security concerns of this technology, a full analysis is available on the Jackson Lewis website ***here***.

COVID-19 Testing
On April 23, 2020, the EEOC updated its COVID-19 informal guidance and stated that during the pandemic, employers may administer a COVID-19 test before permitting employees to enter the workplace but should ensure that any such test is accurate and reliable in order to be considered job-related and consistent with business necessity. Employers may review guidance from the U.S. Food and Drug Administration about what may or may not be considered safe and accurate testing, as well as guidance from the CDC or other public health authorities. Importantly, accurate testing reveals only if the virus is currently present; a negative test does not mean the employee will not acquire the virus later. On June 17th, the EEOC issued updated guidance regarding antibody testing before permitting employees to reenter the workplace. An antibody test constitutes a medical examination under the ADA. In light of CDC's Interim Guidelines that antibody test results "should not be used to make decisions about returning persons to the workplace," an antibody test at this time does not meet the ADA's "job related and consistent with business necessity" standard for medical examinations or inquiries for current employees. Therefore, requiring antibody testing before allowing employees to re-enter the workplace is not allowed under the ADA.

Additional information on the EEOC guidance on COVID-19 testing and other COVID-19 related concerns is available on the Jackson Lewis website ***here*** and ***here***.

Temperature Monitoring
Measuring an employee's body temperature is a medical examination and ADA-covered employers that collect this information have a duty to treat it as confidential medical information consistent with the requirements of the ADA. This means that it should not be kept in the employee's personnel file, it should be reasonably safeguarded, deleted when no longer needed, and disclosed only in limited circumstances. If the employer is subject to the California Consumer Privacy Act ("CCPA"), collecting this information from California residents may raise a CCPA issue depending on how the health screening is conducted (i.e. by the employer or a third-party vendor). If the health screening is conducted by the employer, the employee should be provided a CCPA notice specifying the categories of personal information collected as part of the health screening the purposes for which that personal information will be used. If the employer has previously provided a CCPA notice to employees, that notice should be reviewed to confirm it will cover the health screenings. If the health screenings are being conducted by a third-party, exceptions under HIPAA and the California Confidentiality of Medical Information Act ("CMIA") may apply, and employers should review those exceptions carefully.

It is important to note that states and localities have specific requirements regarding temperature monitoring and other forms of health screening. Organisations should consult with local counsel before implementing a health screening program, to ensure compliance in the jurisdiction where the organisation operates. For additional guidance on temperature monitoring/more expansive COVID-19 screening programs, check out Jackson Lewis's Key Components of a COVID-19 Screening Program.

IV. TELEWORKING

POLICIES AND PROCEDURES FOR TELEWORK ONCE THE BUSINESS REOPENS.

An employer does not have to return all employees to the workplace at once and may instead choose to have some employees work remotely. An employer that elects to phase employee returns to the workplace while having other employees work remotely must take steps to articulate and document the legitimate, non-discriminatory reasons why they permitted some, but not, all employees to continue to work remotely. To accomplish this, employers should analyse their operations to identify those positions and business function(s) requiring in-office work and those that can continue, for a period of time, to be performed remotely. The focus should be on positions and duties, and not on individuals. The logic and rationale underlying these business judgments are the employer's legitimate, non-discriminatory reasons that will be cited to rebut potential discrimination claims.

Employers are not required to excuse an employee from performing an essential function of the job, even if the employer temporarily excused performance of certain essential functions by permitting telework during the pandemic to slow or stop the spread of COVID-19. For more on this topic, visit the Jackson Lewis's privacy blog for a Work-From-Home Checklist During the COVID-19 Pandemic.

V. MANAGING COVID-19-RELATED EMPLOYEE ISSUES

MANAGEMENT OF QUARANTINE, CHILDCARE AND MEDICAL LEAVE FOR EMPLOYEES AFFECTED BY COVID-19.

Below is a rundown of several types of circumstances that would require an employer to provide or considering providing leave for an employee, and the appropriate course of action:

o The government has advised that the employee stay home because they fall in a vulnerable population category.

If an employee provides notice that they are unable to come to work because they fall in a vulnerable population category, the employer should engage in the employee in the interactive process. The employer may be obligated to provide a reasonable accommodation, particularly if the request is due to a medical condition or is pregnancy-based. Employers should consider whether these employees can work remotely and/or whether another accommodation is available. These employees may be eligible for paid sick leave under various laws, including the FFCRA. Importantly, an employer may not compel an employee to stay home simply because he or she falls into a "vulnerable population" category; doing so may result in a violation of the Age Discrimination Employment Act (ADEA), ADA and/or Pregnancy Discrimination Act (PDA). The EEOC's Technical Guidance provides that an employer is not allowed to exclude an employee from the workplace "solely because the employee has a disability that the CDC identifies as potentially placing him at 'higher risk for severe illness' if he gets COVID-19."

o The employee is caring for a parent who is old and could get sick or lives with someone who falls in a vulnerable population category.

The employer should determine if the employee is eligible for paid or unpaid leave under various laws, including sick leave laws, the FFCRA and/or the Family and Medical Leave Act of 1993 (FMLA). The employer should provide appropriate request and/or designation forms for any applicable leaves. If leave is not available and/or has been exhausted, the employer may consider other alternatives such as telecommuting or another accommodation. Generally, under the ADA an employer does not have to accommodate a family member's medical condition. However, state and local law should be reviewed for possible greater protections than are found under federal law.

o The employee's child's day care (or school) is closed and he/she needs to take care of the child or help with schoolwork.

The employee may be eligible for paid sick leave under various laws, including leaves available

under FFCRA. If the FFCRA applies, the employer should provide an FFCRA request form. In addition, some state and local laws provide for either paid or unpaid leave in connection with school closures. If leave is not available, the employer should consider the employee and/or media relations impact of discharging the employee, especially if the employee truly has a childcare obligation.

o The employee has been exposed to COVID-19.

Under current CDC guidance, having contact with someone who may have been exposed ("contact with contact"), but who is not exhibiting symptoms himself or herself, does not create a risk requiring or recommending self-quarantine, and therefore does not necessarily preclude the employee from coming to work. However, employers should also review state or local recommendations and endeavor to be reasonable under the specific circumstances.

o The employee's spouse has COVID-19.

Under current CDC guidance, the employee should self-quarantine for 14 days after last exposure (meaning, generally, 14 days after the spouse is considered no longer contagious or the employee last had contact with the spouse while the spouse was contagious). Thus, if verified, this would constitute a legitimate reason for the employee to remain home. The employer should determine if the employee is eligible for paid sick or unpaid leave under various laws, including sick leave laws, the FFCRA and/or the FMLA, as well as company policy and/or a CBA.

o The employee has a medical condition and needs to work from home as an accommodation.

If an employee has a condition that could be a disability, the employer has an obligation to consider and provide a reasonable accommodation. Reasonable accommodations are required if the disability limits the employee from performing essential job functions or otherwise enjoying the benefits of equal employment. The employer does not have to provide an accommodation that poses an undue hardship. As with any accommodation request, the employer should engage in the interactive process with the employee. If the employer has been allowing employees to work remotely, it may be more difficult to deny this accommodation now.

o The employee has COVID-19.

Under current CDC guidance, the employee should self-quarantine if they have COVID-19 or symptoms of COVID-19. Employees should not return to work until they have met the criteria to discontinue home isolation and have consulted with a healthcare provider and state or local health department. Under current CDC guidance, the employee should not return until either Option 1: (a) no fever for at least 72 hours, (b) respiratory symptoms improved, and (c) at least 10 days since symptoms first appeared; or Option 2: (a) no fever, (b) respiratory symptoms improved, and (c) 2 negative tests. Some employers may consider extending this time frame before allowing an employee to return to work. This requires discussion of a number of factors, including current CDC recommendations and the employer's work environment. The employee may be eligible for paid or unpaid leave under various laws, including sick leave laws, the FFCRA, and/or the FMLA. The employer should provide appropriate request and/or designation forms for any applicable leaves.

EMPLOYEES WHO FEAR INFECTION AND REFUSE TO WORK.

Non-clinical fears, anxieties or general desires to avoid exposure to COVID-19 while commuting or working are not likely to trigger affirmative legal protections and employers may be entitled to discipline employees who fail to return to work. However, employers should still be concerned about such employees bringing negligence claims alleging their employers failed to provide a safe workplace. Asking employees to explain the reasons underlying their unwillingness to return will provide employers an opportunity to understand and address employee safety concerns that might underlie future negligence claims.

DISCLOSURE OF EMPLOYEES WHO ARE INFECTED.

Employers have been struggling with exactly what information they are permitted to disclose

to a public health agency when an employee is diagnosed with COVID-19. The EEOC in April, advised that, at least under the Americans with Disabilities Act, employers may disclose the employee's name to the public health agency. However, employers will still need to be mindful of other more stringent state restrictions and privacy concerns. The EEOC also said that a temporary staffing agency or contractor that places an employee in an employer's workplace may notify the employer if it learns the employee has COVID-19. Employers should, however, continue to take steps to limit the number of people who know the name of the employee. While it is important to conduct a close contacts analysis and notify co-workers and other individuals who may have come into contact with the employee, employers should not disclose the employee's identity. The EEOC also addressed several other important related questions in its updated "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws."

OTHER ISSUES.

Employers may require employees to disclose if they are experiencing COVID-19 symptoms. The EEOC has stated that employers may ask employees about symptoms pursuant to CDC and other public health official guidance pertaining to COVID-19 to determine whether the employee would pose a direct threat to health in the workplace. State agencies have agreed with the EEOC's approach. For example, in California, the Department of Fair Employment and Housing confirmed that employers may ask employees if they are experiencing COVID-19 symptoms.

VI. COST-REDUCTION STRATEGIES

TO WHAT EXTENT CAN EMPLOYERS IMPLEMENT THE FOLLOWING COST-REDUCTION STRATEGIES AS A RESULT OF COVID, AND WHAT ARE THE PRIMARY LIMITATIONS ON EACH?

a. Furloughs.

Under many employment statutes, "furlough" is not defined. Webster's Dictionary defines a furlough as "a temporary leave from work that is not paid and is often for a set period of time." Many employers are using the term "furlough" to inform employees of temporary layoffs with set return dates. Even if the time the employee will not be working, and will not be paid, is brief, furloughs can also involve significant issues.

Under the Fair Labor Standards Act (FLSA), employers do not have to pay non-exempt employees who are furloughed. Additionally, employers do not have to pay exempt employees who are furloughed for a full workweek if the employee does not perform any work during that week (including responding to emails or calls). Any required payments must be provided to furloughed employees on the next regular payday, even if there is a gap in working days. Temporary furloughs also may be a qualifying event for medical plans, triggering the Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA is a health insurance program that allows eligible employees and their dependents continued benefits of health insurance coverage during job loss or a reduction of work hours. Therefore, an employer considering a furlough should check its plan document or consult with its insurance broker and issue COBRA notices if necessary. Implementing furloughs may trigger the requirement to issue advance written notice to employees and certain government agencies under the federal Worker Adjustment and Retraining Notification Act (WARN Act). The WARN Act applies to employers with at least 100 employees (excluding part-time employees) who work an aggregate of at least 4,000 hours a week. It requires 60 days' advance written notice of a plant closing or mass layoff at a single site of employment to affected non-union employees, union representatives, and certain government officials if at least 50 full-time employees comprising at least one-third of the workforce at the site suffer an employment loss as defined by the WARN Act. An exception to the notice requirement, under which an employer bears the burden of proof, is available for "unforeseeable business circumstances." For many businesses, the COVID-19 crisis may qualify as an unforeseeable business circumstance. Under this exception, notice is still required, but employers are only required

to provide "as much notice as is practicable" (i.e., employers are allowed to provide fewer than 60 days' notice). Employers may be liable for damages under the WARN Act for any period of unjustifiable delay in issuing the notices.

Additional resources for navigating furloughs during COVID-19 available on the Jackson Lewis website:

- What Employers Should Know About Furloughs, Layoffs, and WARN Act Obligations in Light of COVID-19
- Unforeseeable Business Circumstances Excused Employer's WARN Act 60-Day Layoff-Notice Requirement

b. Salary reductions.
Salary reductions are a possibility. Despite the unprecedented nature of the pandemic, federal and state employment laws still apply.

- Non-exempt employees (i.e. hourly employees entitled to overtime under the FLSA and similar state law): Wages cannot drop below minimum wage ($7.25 per hour at the federal level (higher levels apply in some states); Must still be paid overtime.
- Exempt employees (i.e. salaried (not hourly) employees not entitled to overtime pay under the FLSA and similar state law – such employees generally perform one of the following activities: executive, administrative, professional, computer or outside sales duties): Threshold minimums must still be met ($684 per week at the federal level; higher thresholds apply in some states); Failure to meet the thresholds risks compromising the exempt status and triggering requirement to pay overtime; Wage and salary changes should be made one-time and be prospective, not retroactive or manipulative to avoid loss of exempt status; We recommend that all employers communicate wage and salary reductions in writing, even though all states do not require itl; Employees are not required to accept reductions in pay, so employers need to be prepared for how they will respond in this eventuality.

Many states have workshare programs that allow employees with reduced wages or salaries to receive partial unemployment. For non-exempt employees, the reduction is straightforward, as they are only paid for hours worked. For exempt employees, employers need to be aware that partial workweeks must still be paid in full, so reductions need to be made in full-week increments. Employees may need to be notified in advance – it is important to check state requirements.

It is important for employers to be aware of how their policies and state law impact the use and accrual of PTO or vacation. In addition, depending on the size and scope, reductions can trigger WARN/mini-WARN (state WARN laws – more on the WARN Act under section 11a. "Furloughs").

c. Redundancy.
There are no restrictions on an employer's ability to collectively dismiss its employees. However, the WARN Act requires covered employers to provide 60 days' notice in advance of covered plant closings and mass layoffs to: 1) the affected workers or their representatives (e.g., a labor union); 2) the dislocated worker unit in the state where the layoff or plant closing will occur; and 3) to the local government. For further information on navigating redundancy and the WARN Act, check out. Jackson Lewis's special report on The Federal WARN Act and Related COVID-19 Issues.

d. Facility closure.
See redundancy discussion above.

VII. BEST PRACTICES

TIPS, RECOMMENDATIONS AND COMMON PITFALLS.

The following checklist represents a high-level overview of issues to guide your thinking about how to re-open most effectively while mitigating your business and compliance risks:

Develop a Return to Work Plan
- Consider reopening and other orders specific to your state and/or county
- Procure supplies and make workplace modifications required for safe operations
- Identify individuals who will be brought back to work using neutral selection criteria
- Identify those who can continue to work remotely; consider more formal telework plans
- Determine changes to exempt status, compensation and schedules (e.g., staggered shifts)

- Consider workshare and unemployment insurance implications
- Determine updates that must be made to I-9

Employment Verification Forms and E-Verify
- Anticipate unique needs of various vulnerable employee populations
- Notify employees of return to work with established dates and, if they were terminated, rehire documents

Implement Policies and Practices to Ensure Safe & Lawful Return to Work and New Operating Realities
- COVID-19 related protocols (screenings, medical inquiries, temperature checks, fitness for duty, use of Personal Protective Equipment (PPE), modified work practices to enhance social distancing and address infection control)
- Prepare/update existing policies to address new laws related to use of leave and/or accommodations (FFCRA leaves, state/city mandated supplemental sick leaves)
- Develop policies related to off-duty conduct
- Impose appropriate limits on business travel (domestic and international), in-person meetings, seating proximity
- Train employees on new policies, protocols and rules
- Consider job description updates to reflect changes in job duties and essential job functions
- Consider how to adhere to regulations on changes in terms and/or conditions of employment for any employees on temporary visas
- Update immigration sponsorship policies to account for new business realities
- Create business continuity plan(s)

Anticipate Responses to COVID-19 Related Scenarios Upon Employees' Return to Work
- Whether an employee's health, contacts or behaviors raise safety concerns
- Employee leave requests for school closures, illness, to care for others or because they are or live with an individual in a vulnerable population
- Employees who are capable of but unwilling to work from home
- Employees who are asked to report to work but prefer to and able to work from home
- Employees who share rumors or concerns of employees or customers being sick
- Employees requesting information about another's (employee/customer) health condition
- Employees engaging in collective or other protected activity to raise safety concerns
- Non-exempt employees emailing and/or working outside normal business hours

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