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TM

TRENDS

LEGAL MAGAZINE

EMPLOYMENT
LAW

POST-COVID-19

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— INTRODUCTION —

by LFN Executive Director
Rafael Truan Blanco

Employment Law has traditionally been a specialty subject to constant legislative modifications and updates. Specialists in this area are accustomed to an intense dynamic of legislative changes, sometimes advances or setbacks in workers' rights, sometimes important modifications that allow employers to improve their relations with workers or provide them with greater flexibility in times of crisis. However, neither employers nor workers were prepared for the legislative tsunami caused by the pandemic generated by the spread of the COVID19 virus.

Not only have we been confronted with a profound and temporary transformation of labour legislation, but also with a dramatic change in the way we work. The irruption of teleworking, which was already timidly appearing before 2020, seems to be a phenomenon that is here to stay and will have to be duly regulated in the short term. While measures and legislation are being prepared to deal with future relations between workers and employers, and while this exceptional situation lasts, a good number of legislative measures remain in force aimed at alleviating the crisis, protecting workers, and allowing employers to alleviate the severe losses that this crisis has generated.

In this newsletter, prepared by the Employment Practice Group of The Law Firm Network, we offer an analysis of the existing legislation around the world because of the appearance of COVID 19. A useful guide that allows the head legal counsel and the human

resources director of companies with subsidiaries or interests in various countries around the world, to obtain a global vision of the legislative situation and to draw their attention to the changes that the different legislators have introduced.

This guide would not have been possible without the impetus of the two cochairs of the LFN Employment Group Laura Binnie Associate Solicitor and employment law specialist at the UK law firm Blandy & Blandy and Alice Mlýnková Partner and employment law specialist at the Czech law firm LTA LEGAL S.R.O, and naturally to all members of the Employment Group who have contributed.

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EMPLOYMENT

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On-line Magazine

COVID-19 IN COLOMBIA: THE NEW UNIVERSE OF WORK

by Luis E. Nieto & Manuela Chavarro

INTRODUCTION

Covid-19 pandemic has compelled employers and employees to adopt a new vision for work. Thanks to the pandemic measures adopted to mitigate and reduce the effects of the COVID-19, many companies and government agencies have maintained themselves through the ongoing crisis by having their employees working from home.

Now, almost one year later after the beginning of the outbreak, many employers and employees have realized that home office and teleworking measures have been so efficient that they are considering maintaining them in the future.

Even though there is no regulation for home office in Colombia, in July of 2020 the Ministry of Labor has pronounced that it will file a draft bill at the Congress that rules home working or, a least, treats it as teleworking according to Law 1221 of 2008.

Bear in mind that the Colombian government has unveiled around USD 3.7 billion in measures to mitigate and reduce the

effects of the outbreak and still there are subjects unresolved or completely avoided by the Government such as rules or regulations for medical leave of absence due to COVID-19.

Are there any state-aid programs for employers in Colombia?

In May of 2020, the Ministry of Finance and Public Credit issued Decree 639 of 2020, creating the Formal Employment Support (PAEF) to support and protect formal employment.

The PAEF was created as one of the tools in labor matters, under which its beneficiaries will receive a monthly monetary contribution, up to three times. This program aims to support and protect the country's formal employment during COVID-19.

It consists of a subsidy created by the Government that seeks to provide employers with a contribution that may be requested once a month during the months of May, June, July, August, September, October, November and December 2020, and January, February and March 2021.

In the beginning, the PAEF consisted of monetary support, whose value was up to 40% of the monthly minimum legal wage for each employee. However,

through Resolution 2162 of 2020, the Ministry of Finance set up new requirements, the duration and the procedures for implementing the PAEF.

Now, the amount of the state contribution has changed. Per Resolution 2162 of 2020 the contribution for the general economic sector shall be as follows: for men 40% of the monthly minimum monthly legal wage equivalent to COP \$363,000 per each male employee, and for women 50% of the monthly minimum monthly legal wage equivalent to COP \$454,000 per each female employee.

What are the rules or regulations surrounding remote working during the pandemic in Colombia and how do you foresee this developing over the rest of this year? Is home-office





ordered by state authorities or rather “just” recommended?

Even though there is no regulation for remote working in Colombia, the Colombian Government has encouraged companies to operate under such arrangements to prevent the virus's spread, according to Circular

Letter No.021 of 2020.

The general guidance is that any activity that employees can perform remotely should be done from home. However, this will depend on the employer's policies.

The Colombian Government has been promoting teleworking and homeworking regimes. Additionally, the Ministry of Labor has informed that it will file a bill before Congress that will rule home working.

As a general rule, if the employee works from home on an occasional, temporary and exceptional basis, this will be considered as a "home office" arrangement according to Article 6 Law 1221 of 2008. If the employee works continuously and permanently from home, this shall be considered as teleworking.

Bear in mind that teleworking is an established and regulated form of labor in Colombia under Law 1221 of 2008 and Decree 884 of 2012. It had existed in the Colombian labor market long before COVID-19 erupted.

Even though the home office is not regulated under Colombian Labor legislation, it is considered a new phenomenon. The Ministry of labor has established that home office shall be occasional, temporal, and exceptional. Therefore, home office is usually regulated through the employer's internal policies.

It is important to mention that home office under Colombian legislation is commonly considered a benefit for the employee, so how did this home office phenomenon begin? When Colombia went into lockdown in 2020, the Government and businesses faced a legal difficulty that generated the need to adopt a remote working system for employees. However, not all companies reached the legal prerequisites for teleworking as defined by Colombia law.

Teleworkers must have the same working conditions and rights as on-site employees, which means that there should be the same salary and statutory benefits for the same positions and profiles. Therefore, the



employer shall grant the teleworker all the necessary tools to carry out their work obligations, such as laptops, an ergonomic chair, and a telephone line. Also, the employer shall verify employees' home work stations with the advice of the Labor Risk Manager.

As mentioned, we foresee that the home office will continue during the rest of 2021, as it is considered a stopgap government measure in response to the crisis. As we see it, sooner or later, the Colombian Government will adopt home office as a permanent form of employment once the pandemic is over.

Is it possible for employers in Colombia to order employees to participate in COVID quick tests and/or vaccination?

The Ministry of Labor has ruled that employers cannot request COVID-19 test and/or vaccination to employees, following the instructions and guidelines provided on Circular Letter No.022 of 2021.

In Accordance with Resolution 666 of 2020 of the Ministry of Labor, and the recommendations made by international organizations, employers shall protect employees and their families from the contagion of COVID-19. Therefore, if there is a possibility of the employee being infected, the employer can send an employee to be tested for COVID-19.

The preceding, since the employer should identify its employees' health conditions and implement measures that ensure the continuity of activities and employees' integral protection.

Another exception is if an employee has symptoms, it is possible to send him/her to be tested, covering all expenses. In this case, the employer must inform the employee of said circumstance. It is vital to mention that this matter cannot hinder the continuity of employment.



According to the Ministry of Labor, it is not feasible to require an employee or provide a COVID-19 test as a requirement of access or continuity in employment. Likewise, COVID-19 testing cannot be used as a form of discrimination or violation of fundamental rights.

Therefore, even though the employer must implement measures, mechanisms, and protocols to protect its employees' lives and health. The employer cannot oblige its employees to participate in COVID quick tests and/or vaccination.

Summary

The Colombian government gives subsidies, allows home office, and does not oblige employees to participate in COVID quick tests and/or vaccination. It comes into our mind how can workplace safety and health standards be maintained for workers conducting their duties remotely? Are there enough labor regulations that protect employees from employer abuse?

Therefore, we can conclude that the government appears undecided about introducing home office as permanent employment status. Still, both government and companies

understand that the nature of work is changing and that both shall recognize this sector.

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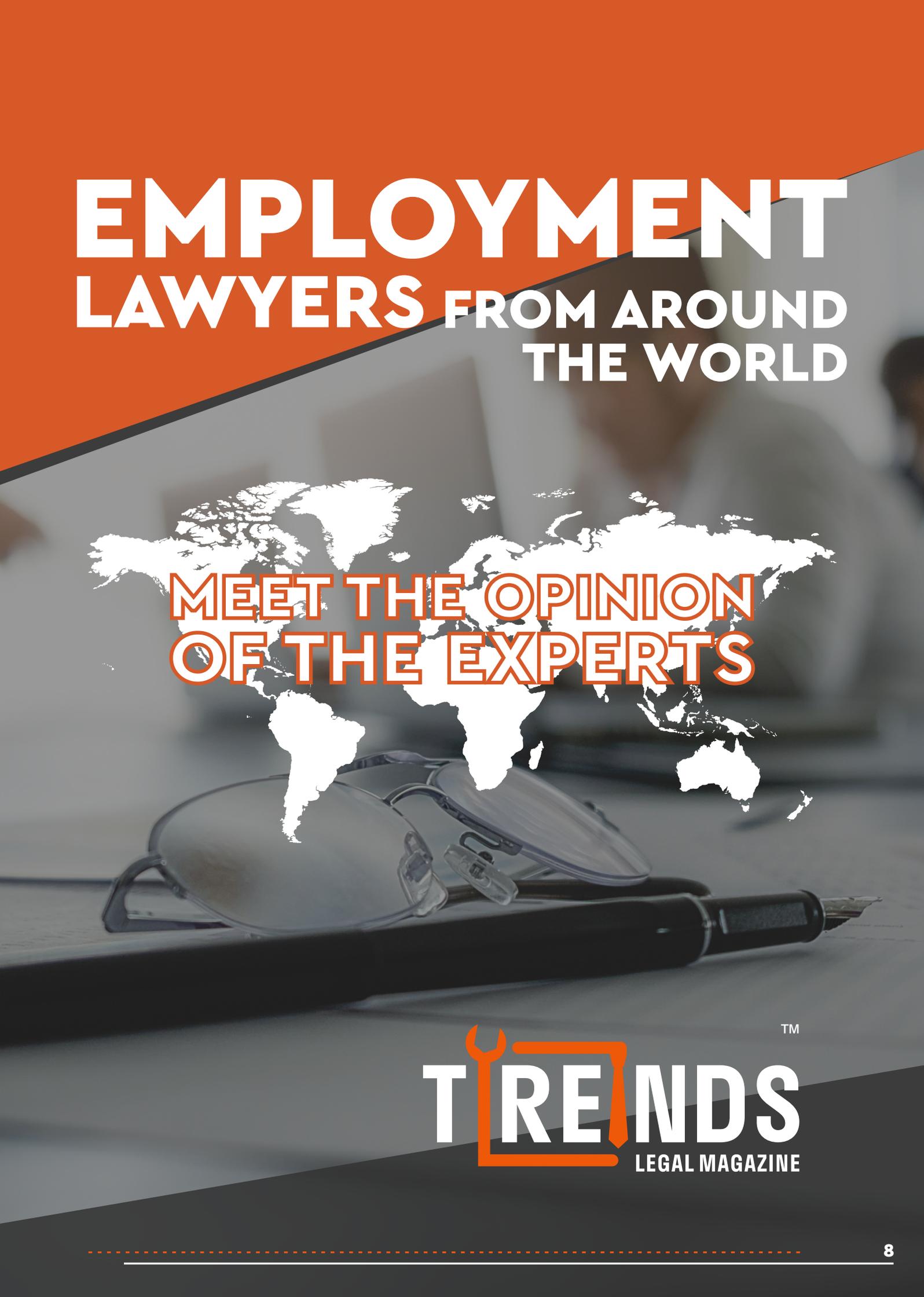


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EMPLOYMENT LAWYERS FROM AROUND THE WORLD



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EMPLOYERS IN THE CZECH REPUBLIC MAY ONLY ALLOW ENTRY TO THE WORKPLACE TO PERSONS WITH A NEGATIVE TEST

by Alice Mlýnková, Ph.D.

Note: The article was submitted to printing and reflects information valid on 15 April, 2021. An overview of the currently valid rules and restrictions, including additional explanations, can be found at: <https://covid.gov.cz/en/situations/employment>.

The Czech Republic has handled the 2020 spring wave of the COVID-19 epidemic quite well. The positive results unfortunately led to exaggerated optimism and to premature abolishing of all measures. In light of the growing number of positive cases, restrictions were reintroduced in October 2020. These have however to a certain extent proven unfunctional, due to which restrictions had to be introduced at the beginning of March 2021, which can be equated with a hard lockdown. This included a considerable limitation of free movement of persons and a prohibition of an even greater number of services, as well as the introduction of compulsory testing for almost all employers and the toughening of the obligation to wear protective respiratory equipment. Alice Mlýnková, an attorney-at-

law specializing in employment law, provides below explanations of current issues that Czech employers need to deal with.

Has there been any special direct amendment of your national employment legislation preventing employees from dismissals during the pandemic? Do you experience more dismissals at your clients recently? What are your predictions in this regard?

There have been no legislative amendments in the Czech Republic concerning dismissals, and thus the legislation remains quite strict as to the employers. The most common COVID-related ground for dismissal is the redundancy of the employee due to lack of work. In such case, the employee is entitled to 1-3 months' pay as severance pay, based on the length of the employment relationship.

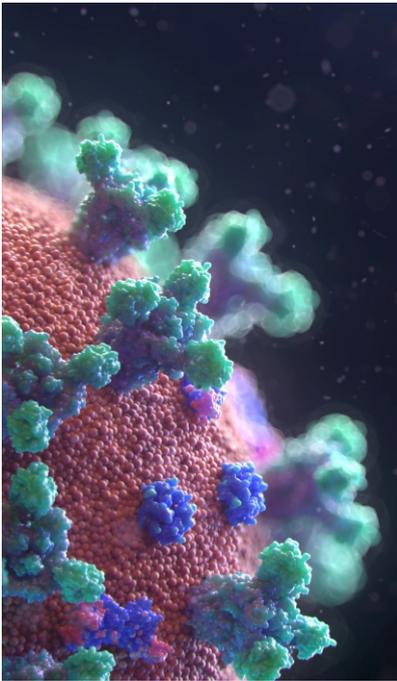
Since March 2020, the government has been operating a scheme for unemployment support called Antivirus, which compensates the employers affected by the governmental restrictions (e.g. closed establishments) for the incurred costs of employees, aiming to prevent dismissals. Nevertheless, it's expected that after this scheme is terminated, there will be a sharp increase in

dismissals, notwithstanding the currently debated amendment which would continue to compensate the employer's costs of employees ("Kurzarbeit").

What are the rules or regulations for medical leave of absence due to COVID-19? Are employees entitled to any financial support from an employer or the state during such sickness leave and if so, for how long? Does the same apply to quarantine/isolation?

In case of absence, be it due to COVID-19, quarantine, or isolation, the employee is entitled to partial wage compensation (simply put, this is 60% of their pay, applying certain reduction limits). This compensation is in the first 14 calendar days provided by the employer, and subsequently it's covered by the Social Security Administration. In order to motivate the employees to adhere to the isolation and quarantine orders, a further scheme called "Izolačka" has been introduced, which entitles the employee to a special compensation for the days in March and April 2021 that they've spent in quarantine or isolation, up to a maximum of 14 days.

A number of employers face employee outages caused by the employees caring for their children due to the closure of kindergartens and elementary schools. During this



absence, the employees are entitled to a so-called nursing compensation, which is fully covered by the Social Security Administration.

What are the rules or regulations surrounding remote working during the pandemic in the Czech Republic and how do you foresee this developing over the rest of this year? Is home-office ordered by state authorities or rather “just” recommended?

The Czech Labour code practically does not regulate home office. That is despite the fact that the government has clearly called for home office wherever possible. Based on the governmental opinion, there cannot be a blanket order for home office, and so this remains “merely” strongly recommended. The employers must therefore, when using home office, rely on reaching an agreement with the employee. The most pressing problems, resp. the risks, are associated with ensuring that OHS are adhered to and that the employee’s costs of home office are compensated, precisely because there is no legislation or regulation which would lay down any deviations from the general rules. The practice of the financial authorities is not very helpful either, as it often conflicts with flat-rate reimbursement

arrangements for home-office services.

Is it possible for employers in the Czech Republic to order employees to participate in COVID quick tests and/or vaccination?

During March 2021, the employers were ordered to carry out compulsory testing of all employees in the workplace, at minimum once per week. This obligation was introduced gradually for employers based on their size. From 6 April, 2021, this obligation will be even for the smallest employers, independent contractors or non-profit organizations, and apply to all persons in the employer’s workplace, including external suppliers. The government is currently also considering shortening the interval of the tests. Tests carried out by a healthcare professional are covered by public healthcare insurance; the so-called self-tests designed to be used by lay persons are partially subsidised by insurance companies.

Vaccinations are at the moment not covered by any legislation. Vaccinations thus remain voluntary and vaccines are currently being distributed mainly to seniors above a specified age or to seriously ill persons, healthcare workers and other

professionals, who are critical for the state’s infrastructure.

Summary

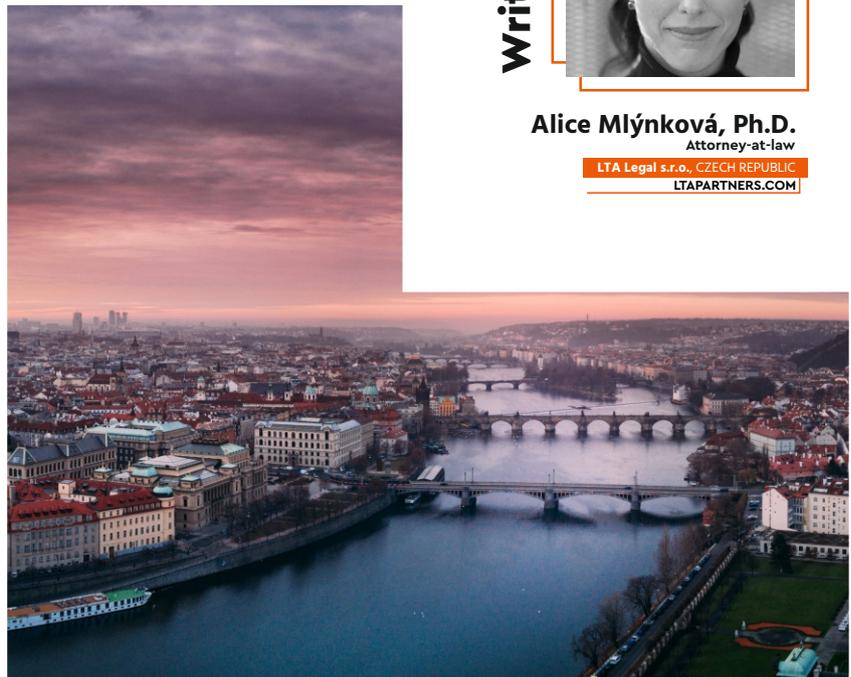
At the moment, all employers in the Czech Republic are subject to strict rules, especially rules concerning the obligation to ensure the testing of all employees and other persons, as well as the obligation to provide masks or respirators to be used in the workplace. In addition, the employers face outages in work force, caused by quarantine or sickness of their employees, or possibly by the need to care for their children in light of the closure of schools. The situation is not made easier by the lack of any legislation which would cover home office. While there are a number of governmental schemes to support business and employment, these are criticized for being ineffective and overly bureaucratic. Therefore, following the easing of the restrictions, we can anticipate that a number of employers won’t be able to fully restore their business activities.

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CORONAVIRUS FUELS LONG AWAITED REFORMS IN HUNGARY

by Hédi Bozsonyik



Hédi Bozsonyik leads Szecskay Attorneys at Law's market-leading employment practice. Most of the practice's matters involve big international companies and Hédi combines top-drawer work with other transactional support areas (e.g. corporate, commercial, etc.). Hédi's global overview and approach attracts new global clients mainly from the TMT, Manufacturing and Automotive sectors.

Are there any state-aid programmes for employers in Hungary?

There are several state subsidies available (or were available in the earlier phase of the pandemic). In the earlier phase, the short-term work (Kurzarbeit) subsidy was made available on the basis of German examples, and the R+D subsidy was available to all non-state-budgetary employers where research and development was carried out. The so-called job-creating wage subsidy was made available with the aim of creating jobs (i.e. to hire the unemployed). Most recently, sector specific wage subsidies and sector specific subsidies were made available for the industries that were the most severely hit by the pandemic. There are also sector specific tax reliefs on wages.

Has there been any special direct amendment of your national employment legislation preventing employees from dismissals during the pandemic? Do you experience more dismissals at your clients recently? What are your predictions in this regard?

There is no direct ban or restriction on dismissals in Hungary, although they are prevented in an indirect manner. Most state subsidies require a black out period: employers must typically guarantee - in return for the aid - that the subsidized employee will remain employed during the subsidized period and thereafter for an additional period and that the employees' salary will be not lowered.

There is a shortage in the workforce in Hungary, in all sectors. The pandemic affects different sectors to different



degrees and responses were also very different. In our experience most employers considered the economic downturn to be temporary and often tried to retain their workforce at significant financial sacrifices. Dismissal, even mass redundancies, were more frequent during the earlier phase of the pandemic and mainly in the sectors most affected by the epidemic (e.g., hospitality, tourism, automotive) where demand has fallen drastically.

What are the rules or regulations surrounding remote working during the pandemic in Hungary and how do you foresee this developing over the rest of this year? Is home-office ordered by state authorities or rather "just" recommended?

In Hungary ordering home office work is based on the decision of the employer. However, organizing home office work is recommended during the state of emergency, which has been extended until May 23.

Under the transitional home-office regime, employees and employers may agree to deviate from practically all the rules of teleworking defined by the Labour Code. The labour safety rules concerning telework and home office do not have to be applied during the



emergency situation. The employers' only remaining obligation is to inform the employees about the rules of non-hazardous and safe working conditions necessary for working and the employees must take these into consideration when choosing a place to work. Employers, at their own discretion, may also reimburse the employees costs incurred in connection with the telework (typically internet costs related to telework, rent of an apartment or its overhead). This benefit is tax-free up to an amount equalling 10% of the monthly minimum wage until the end of the state of emergency.

During this past one year of the pandemic, home office work has been widely spread and encouraged, and administrative burdens and also the risk that employers take on when employing teleworkers has been lowered and eased. Many employers in Hungary plan to continue to have their employees working from home, at least partially. We expect that at least some of the long-awaited developments that were fuelled as a result of the pandemic will remain in force and will also continue to be applicable when the state of emergency and the restrictions are lifted.

Is it possible for employers in Hungary to order employees to participate in COVID quick tests and/or vaccination? What are the rules or regulations for medical leave of absence due to COVID-19? Is COVID-19 recognized as an occupational disease under Hungarian law? Can be an employee held liable in the event of infecting another colleague? Is an employer obliged to provide protective equipment to employees such as face-masks or other measures?

There is no Covid-specific legislation in Hungary. Covid related sicknesses and the attendant sick leave are treated under the general rules. Absences must be certified, sick leave is paid in the first 15 days by the employer and thereafter by the health fund.

Also, it is the employer's fundamental obligation to ensure safe and healthy working conditions. But how far can and should one go to meet this obligation? These are, in our experience, currently the biggest

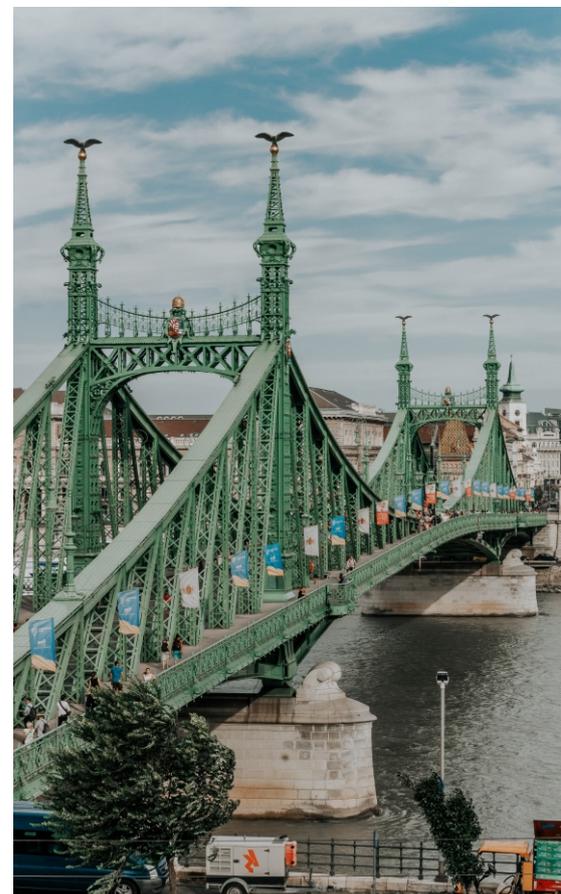
challenges for employers. There is no Covid-specific legislation to offer guidance. On April 1, 2021, the Data Protection Authority issued guidance and declared that, when necessary, on the basis of a risk analysis, in certain jobs it may be considered a necessary and proportionate measure to request employees to present their vaccination certificate. No copy may be prepared though, and the data cannot be retained nor transmitted to third parties.

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THE IMPACT OF COVID-19 ON LABOUR IN INDIA

by Siddhartha George & Amit Kiran

At the very outset, it should be noted that India follows a 'quasi-federal' form of government, where the subject of labour and employment falls under the purview of both Central and State Governments. As such, during the pandemic, there were often overlapping actions taken by the Central Government and various State Governments. Additionally, Indian employment legislations create a distinction between 'workmen' and 'non-workmen' employees, roughly the equivalent of blue collar and white collar employees, with stronger statutory protections afforded to the former.

Are there any state-aid programmes for employers in India?

No, there is no direct state aid programmes for employers in India. As an indirect measure to support

employers, the Central Government of India introduced the measures below:

- 1 Reducing employer contribution rates for statutory provident fund programs vis a vis their employees;
- 2 Temporarily funding qualified employer contributions to statutory provident funds with respect to 'workmen' employees; and
- 3 Temporarily freezing the initiation of new proceedings to penalise employers for delays in making statutory contributions.

Has there been any special direct amendment of your national employment legislation preventing employees from dismissals during the pandemic? Do you experience more dismissals at your clients recently? What are your predictions in this regard?

No, there have been no direct legislative amendments during the pandemic. However, both the Central



and State Government issued orders to employers directing them to treat all employees as 'on duty' for the duration of the national lockdown and indirectly encouraging them to not terminate employees under a specific disaster management legislation. However, these orders were judicially challenged and the matter remains sub judice.

While we did experience some dismissals during the national lockdown, their impact was outsized in traditional businesses, such as manufacturing, education, etc, and has mostly stabilised now.

What are the rules or regulations for medical leave of absence due to COVID-19? Are employees entitled to any financial support from an employer or the state during such sickness leave and if so, for how long? Does the same apply to quarantine/ isolation?

Statutorily, employees in India are entitled to a fixed number of medical leaves for sickness. While this number varies from State to State, it is on average twelve (12) days, during which the employee continues to be entitled to their wages and any additional perquisites due to them. While some States increased the number of



How can the current situation affect remuneration of employees in India?

medical leaves to twenty eight (28) days, this was not universally adopted. Further, certain State Governments issued orders explicitly requiring employers to grant paid leaves to employees during the lockdown period.

There are no restrictions on applying the aforementioned medical leave towards quarantine or isolation.

During the pandemic, the Central Government eased the rate of employee contribution to statutory provident fund schemes and the rate of tax deduction at source for employee salary payments, thereby temporarily increasing the employee's take home salary, without an actual increase in remuneration. Additionally, the Central Government eased the withdrawal restrictions on previous contributions to such schemes to boost employee liquidity.

With respect to employers, remuneration in many cases was either slashed or temporarily frozen to account for business disruption, although we do see some return to normalcy at present.

What are the rules or regulations surrounding remote working during the pandemic in India and how do you foresee this developing over the rest of this year? Is home-office ordered by state authorities or rather "just" recommended?

At present, there are neither no Central rules or regulations requiring remote working during the pandemic nor are such rules likely to be passed. While during the early days of the pandemic, Central and State Governments had permitted operationalising business with fifty percent (50%) working capacity, presently, remote working is only recommended and not mandatory. However, with the second wave of Covid-19 cases in India, certain State Governments, such as Maharashtra have mandated work from home arrangements.

Is it possible for employers in India to order employees to participate in COVID quick tests and/or vaccination?

While employers cannot force their employees to participate in testing and vaccination, employers may initiate disciplinary action against the employees for failing to do so, on the grounds of misconduct (i.e. endangerment of their fellow employees, failure to comply with instructions, etc.). However, this remains a grey area and is likely to see some judicial challenge as vaccination



at present is voluntary and has not been made mandatory under law.

Is COVID-19 recognized as an occupational disease under India law? Can be an employee held liable in the event of infecting another colleague?

Presently, Covid-19 isn't recognised as an occupational disease under existing statutory regulations, and as such, traditional workmen's compensation legislations are inapplicable.

As per the orders passed under specific disaster management regulations, employees can be criminally liable for infecting colleagues, provided that such infection is a result of intentionally failing to follow Government directions in this regard (i.e. breach of quarantine, failure to wear masks, etc.) However, we believe that such penal action is rather unlikely.

Is an employer obliged to provide protective equipment to employees such as face-masks or other measures?

No, while the Central and State Governments have issued standard operating procedures with respect to businesses, employers are only required to ensure that their employees follow the standard operating procedure vis a vis wearing protective equipment, as opposed to being obligated to provide the equipment themselves. However, practically, several employers do supply protective equipment to employees as a matter of best practice.

What are the biggest challenges in relation to employment law issues in India, given the circumstances of the past year?

The circumstances around the last year have seen a delay in the

implementation of the four (4) labour codes (the "Codes"), an attempt by the government to consolidate forty four (44) existing labour legislations into the Codes, each pertaining to: (i) wages, (ii) social security, (iii) industrial welfare and safety, and (iv) industrial relations, in order to ensure uniform compliance requirements across legislations and to improve the ease of doing business in India. While the Codes have already been notified, their implementation may be delayed for upwards of one (1) year, thereby leaving some ambiguity regarding the transition of existing employment models to one compliant with the Codes.

Additionally, we foresee some challenges regarding disciplinary action, protection of employer intellectual property, and restriction of access to confidential information during this time, considering the changing work environment, i.e. partially in-person and partial remote working.

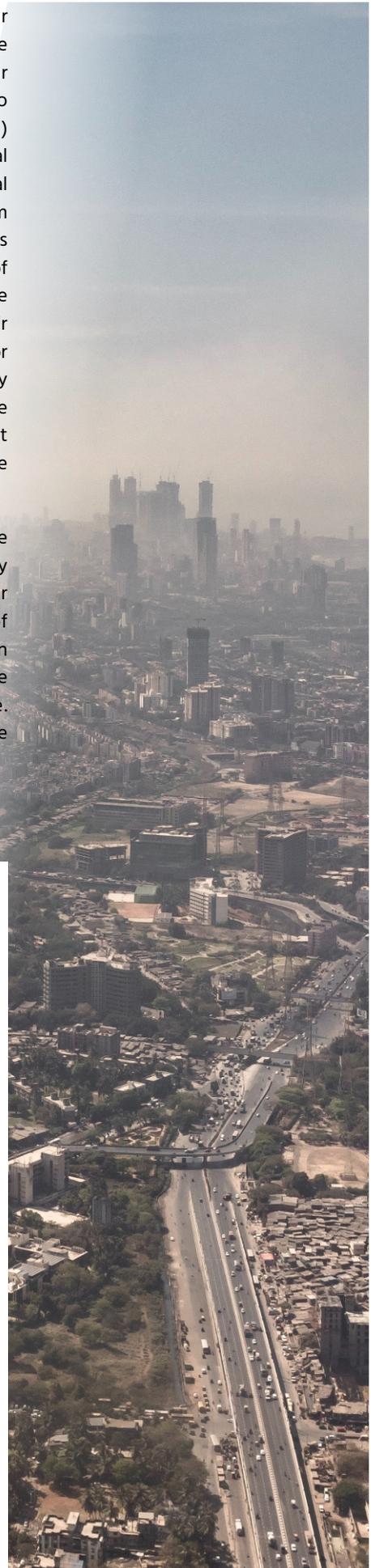
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IRISH 2021 EMPLOYMENT TRENDS

by Richard Lee & JJ McLoughlin

As elsewhere, Irish workplaces witnessed unprecedented disruption in 2020 with the onset of the COVID-19 pandemic. Since that time, Irish society has faced some of the most stringent restrictions in Europe. Now, with the reopening of many workplaces and businesses tentatively scheduled for the summer months, we take a look at the current state-of-play, outlining both the key challenges facing employers over the coming months and the longer-term workplace trends, accelerated by the pandemic, that may be here to stay.

Richard Lee and JJ McLoughlin are members of BHSM LLP's Employment & Benefits practice, advising domestic and international corporate clients in contentious and non-contentious issues that arise in all aspects of the employer and employee relationship.

Are there any state-aid programmes for employers in Ireland?

The Government of Ireland (the Government) has introduced a number

of support schemes for employers in Ireland in light of COVID-19.

Currently, qualifying employers can avail of the Employment Wage Subsidy Scheme (EWSS), which will run until 30 June 2021.

Under the EWSS, employers whose turnover has fallen by 30% or more can apply for a flat-rate wage subsidy for their employees, based on the number of qualifying employees on the payroll. Qualifying employees can include seasonal staff and new employees. In circumstances where an employee has more than one place of employment, each employer can apply for the EWSS irrespective of that employee's other jobs.

The subsidy amount provided to employers will depend on the gross income of each employee. The current subsidy rates are:

Gross pay per week	Revised subsidy rates
Less than €151.50	No subsidy applies
€151.50 - €202.99	€203
€203 - €299.99	€250
€300 - €399.99	€300
€400 - €1,462	€350
Over €1,462	No subsidy applies

What are the rules or regulations for medical leave of absence due to COVID-19? Are employees entitled to any financial support from an employer or the state during such sickness leave and if so, for

how long? Does the same apply to quarantine / isolation?

Public health advice directs that employees showing symptoms of COVID-19 should not go to work and should instead contact their local doctor and / or isolate. There is no statutory obligation on employers to provide sick pay to employees who cannot work due to COVID-19, so any entitlement to sick pay will be determined by the contract of employment in place.

Employees who do not have a contractual entitlement to sick pay can apply for COVID-19 enhanced Illness Benefit from the Department of Social Protection.

Employees with caring responsibilities who are unable to attend work because they must care for a sick child or other relative are entitled to ask an employer for paid leave. Where an employer is unable to provide paid leave, employees can request statutory leave. Categories of statutory leave that an employee may avail of in qualifying circumstances include force majeure leave, parental leave, and parent's leave.

The Government, the Workplace Relations Commission and the Health Safety Authority have all asked that, to the extent practical, employers show flexibility with regard to employees' working arrangement requests due to the COVID-19 pandemic. Examples



include offering employees paid compassionate leave, altering shifts to allow employees to coordinate caring responsibilities, allowing employees to rearrange holidays, allowing employees to work remotely, and allowing employees to take paid time off that can be worked back at a later date.

What are the rules or regulations surrounding remote working during the pandemic in Ireland and how do you foresee this developing over the rest of this year? Is home-office

ordered by state authorities or rather “just” recommended?

The Government’s Living with COVID-19 Plan (the Plan) sets out 5 levels of restrictions that correspond to the severity of COVID-19 in a location. Under Levels 3, 4 and 5 of the Plan, employees are advised to work from home unless it is essential to go to work in person. Ireland is currently at Level 5 restrictions.

In January 2021, the Government published its National Remote Work Strategy (the Strategy). While the Strategy does not have legislative

force, its publication is a large step towards making remote working a permanent option in Ireland. The Strategy outlines key actions to be taken by the Government to promote and facilitate remote working in Ireland, which include:

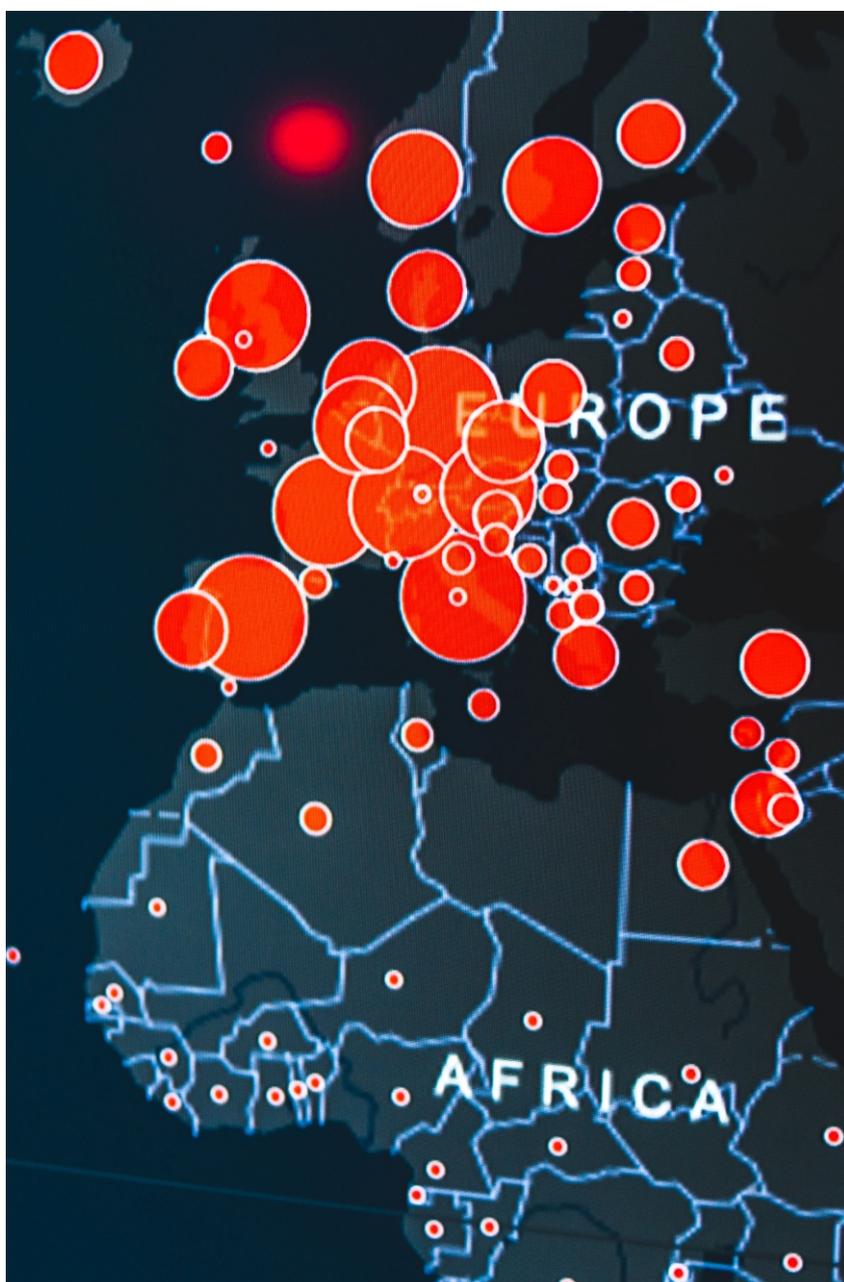
- ▶ introducing legislation to provide employees the right to request remote working (expected in Q3 of 2021);
- ▶ introducing a legally admissible Code of Practice on the right to disconnect from work (since published 1 April 2021);
- ▶ investing in remote work hubs across Ireland;
- ▶ accelerating the delivery of high-speed broadband throughout Ireland;
- ▶ reviewing the tax treatment of remote working in the Budget 2022; and
- ▶ mandating that home and remote working should be the norm for 20% of public sector employees.

Code of Practice on the Right to Disconnect

Following the publication of the Strategy, new legally admissible Code of Practice on the Right to Disconnect (the Code) came into effect on 1 April 2021. The Code gives employees the right to switch off from work outside of normal working hours, including the right to not respond immediately to emails, telephone calls or other messages. The Code applies to all types of employment, whether employees are working remotely or not.

Enshrined in the Code is:

- ▶ the right of an employee to not routinely perform work outside their normal working hours;
- ▶ the right not to be penalised for refusing to attend to work matters outside of normal working hours; and
- ▶ the duty for both employers and employees to respect another person’s right to disconnect (e.g. by



not routinely emailing or calling outside normal working hours).

Employers are encouraged to engage proactively with employees and/or their representatives to develop a Right to Disconnect Policy that takes account of the particular needs of the workplace and its workforce.

Is it possible for employers in Ireland to order employees to participate in COVID-19 quick tests and / or vaccination?

It is essential to note that an employee cannot be forced by his / her employer to take a COVID-19 test and / or vaccination. Any steps taken to do so would come with considerable legal risk to the employer.

The Irish Constitution enshrines specific rights including the right to autonomy, bodily integrity, and privacy. The Irish State also has a general duty to protect individuals' right to work and earn a livelihood from unjust attack. There may also be reasons why an employee would refuse to take a COVID-19 test and / or vaccine such as medical or religious grounds (which would attract the protection of employment equality legislation).

Whilst an employee has various rights protected by the Constitution, most notably a right to bodily integrity in this context, an employer will also need to give consideration to its duty to ensure the safety, health, and welfare at work of other staff members under section 8 of the Safety, Health and Welfare at Work Act 2005.

In implementing policies and procedures to uphold this duty, an employer should review existing policies and procedures / COVID-19 plans and carry out a risk assessment to analyse if there is a business need to have employees in close proximity and vaccinated, or if alternative measures should be adopted such as remote working or redeployment of

employees. Alternatively, any protocol drawn up in relation to workplace vaccinations should be communicated to employees who should be encouraged to be vaccinated in order to protect the health & safety of the general workforce.

However, the underlying principle remains that an employer cannot order employees to participate in COVID-19 quick tests and / or vaccination without risk of potential employment law claims or raising serious constitutional issues.

Is an employer obliged to provide protective equipment to employees such as face-masks or other measures?

On 30 November 2020, the Government published the COVID-19 National Protocol for Employers and Workers (the Protocol). The Protocol outlines steps that employers and employees should take before a closed workplace reopens to ensure that they can return to work safely and sets out minimum standards needed in every workplace to manage and prevent the spread of infection.

Measures, systems and controls that an employer must put in place include:

- ▶ Appointing at least one lead employee representative to assist in the implementation and monitoring of safety measures;
- ▶ Developing and / or updating the workplace's COVID-19 Response Plan, the occupational health and safety risk assessment, and the safety statement;
- ▶ Providing COVID-19 induction training for all staff;
- ▶ Putting in place temperature testing in line with public health advice;
- ▶ Putting in place any mass COVID-19 testing needed in line with public health advice;
- ▶ Putting in place appropriate hygiene facilities;
- ▶ Providing for physical distancing



across all work activities of at least 2 metres to the extent possible;

- ▶ Installing physical barriers in circumstances where 2 metre distancing is not possible;
- ▶ Keeping a log of contacts to help with contact tracing;
- ▶ Arranging for regular cleaning of the workplace; and
- ▶ Providing Personal Protective Equipment (PPE) and protective clothing where there is an identified COVID-19 exposure risk and in line with public health advice.

Inspections of workplaces can be carried out by both the Health Safety Authority and the Workplace Relations Commission.

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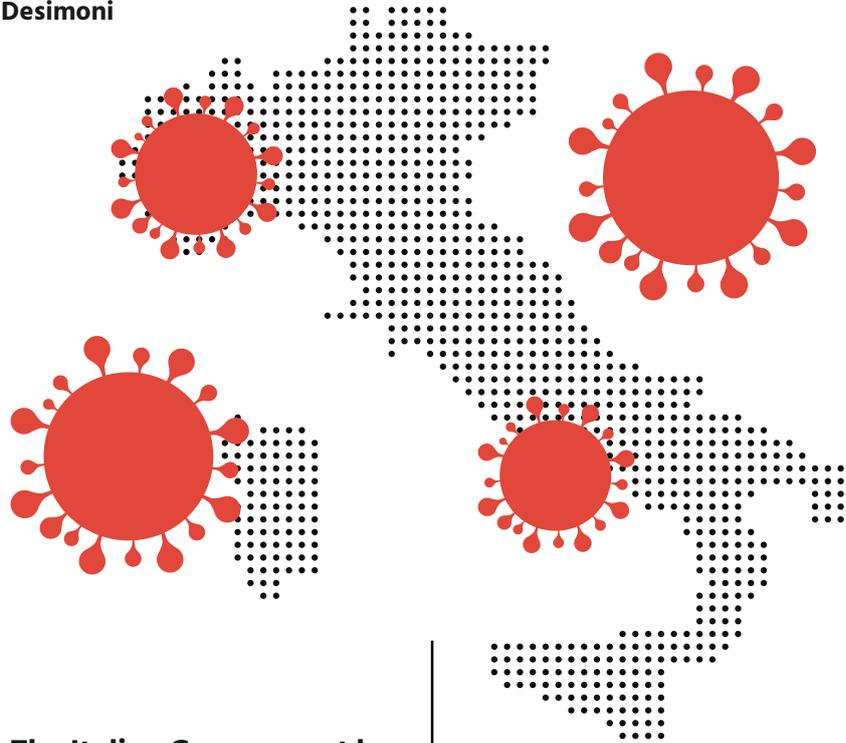


THE BAN OF DISMISSALS IN ITALY AS A CONSEQUENCE OF COVID -19 PANDEMIC

by **Domenica Cotroneo & Jacopo Desimoni**

Despite the start of vaccinations, the spread of the Covid-19 pandemic in Italy has not ceased, but continues to produce significant effects not only on people's health, but also in the labour field. In fact, many companies went bankrupt, others have significantly reduced their activities, with great economic prejudice for workers.

The contribution of **Domenica Cotroneo**, Head of the Labor Department of **Cocuzza & Associati**, and **Jacopo Desimoni**, Junior Associate of **Cocuzza & Associati**, clarifies two of the most significant aspects in Italy, concerning the ban of dismissal and the vaccination obligation for employees.



The Italian Government has introduced a series of measures in order to contain the social effects of the ongoing health emergency due to the spread of the COVID-19 pandemic.

Has there been any special direct amendment of your national employment legislation preventing employees from dismissals during the pandemic?



One of the most important measures introduced by the Italian Government during this period of pandemic is the prohibition, for all companies, regardless of the number of their employees, to dismiss employees for economic reasons.

The ban, initially introduced with art. 46 of Decree Law no. 18 of 17 March 2020 and repeatedly extended by the following Decrees enacted by the Italian Government, lastly has been extended by Decree Law no. 41 of 22 March 2021 until 30 June 2021.

Despite this general ban, there are some exceptions which allow companies to terminate legitimately the working relationships, also during this period of pandemic.

As a matter of fact, the ban does not include: 1) dismissals for "disciplinary" reasons; 2) dismissals ordered during or at the end of the probationary period and apprenticeship period; 3) dismissals for exceeding the protected period; 4) dismissals for reaching retirement age; 5) dismissals of domestic workers and executives.

In addition to the above, this general ban does not include: 1) dismissals ordered after the permanent closure of the business activity; 2) dismissals ordered as a consequence of



bankruptcy; 3) the termination of the employment relationships after the signature of a general agreement of, so called, "Incentivo all'Esodo" with the most representative confederations at a national level.

Do you experience more dismissals at your clients recently?

Due to the prohibition to dismiss employees for economic reasons, we have experienced a significant reduction in the number of dismissals among our clients. This significant reduction is due to the fact that this is a generalised and unconditional ban, which concerns all the companies, regardless of the sector or the number of their employees.

However, we have experienced a significant application of the procedure related to the so-called "Incentivo all'Esodo".

In fact, according to the emergency rules, the companies have the chance to terminate the employments relationships if a general agreement of, so called, "Incentivo all'Esodo" - i.e. an agreement with which the companies involved declare that the employees that will accept the termination of their employment relationships will receive an economical incentive to leave - with the most representative confederations at a national level is reached.

This kind of agreement will be effective regarding the employees who will expressly declare to join it.

The provision regarding the Incentivo all'Esodo is an "exceptional" provision and it will be effective until 30 June 2021.

The employees who expressly declare to join the general agreement will be granted with the unemployment allowance (so-called "NASPI").

What are your predictions in this regard?

Currently, we are unable to make any certain prediction, because the COVID-19 pandemic is still present in Italy, and the number of people who test positive to the virus is still high.

Probably, the vaccination, which started in Italy at the end of December 2020, will produce its first significant effects during the second half of the year.

Therefore, in our opinion, the ban will be renewed at least until the end of October 2021, with a great damage for companies.

Summary

The Italian Government has introduced the prohibition, for all companies, to dismiss employees for economic reasons. Due to this general ban, there is a significant application of the procedure related to the so-called "Incentivo all'Esodo", which allows companies to terminate the employment relationships also during this period of pandemic.

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THE BINDING NATURE OF THE VACCINATION IN THE LIGHT OF THE CURRENT LEGAL CONTEXT

by **Domenica Cotroneo & Jacopo Desimoni**

Despite the start of vaccinations, the spread of the Covid-19 pandemic in Italy has not ceased, but continues to produce significant effects not only on people's health, but also in the labour field. In fact, many companies went bankrupt, others have significantly reduced their activities, with great economic prejudice for workers.

The contribution of Domenica Cotroneo, Head of the Labor Department of Cocuzza & Associati, and Jacopo Desimoni, Junior Associate of Cocuzza & Associati, clarifies two of the most significant aspects in Italy, concerning the ban of dismissal and the vaccination obligation for employees.

As happened in the rest of the world, also in Italy the spread of the COVID-19 pandemic has introduced a series of questions related to the employers' power within the workplaces.

Is it possible for employers in Italy to order employees to participate in COVID quick tests and/or vaccination?

One of the most important issues concerns the possibility, for employers, to order employees to participate in COVID-19 quick tests.

First of all, it is necessary to underline that, in the Italian legal system, there are no provisions which confer this power to the employers.

Especially, due to the fact that such tests represent the treatment of personal data related to employees' health, the Italian Data Protection Authority has specified that employers may require to the employees to

participate in COVID-19 tests only if ordered by a competent doctor, who is the only person who may establish if there are the necessary conditions to request this kind of tests.

In the light of the above, employers may not impose to their employees the participation in COVID-19 tests, because this participation may be imposed only after an assessment made by a competent doctor.

Instead, there is a greater complexity regarding the employer's power to order the employees' vaccination.

The Italian Constitution clearly states that no one may be obliged to receive a medical treatment (including vaccination), if it is not expressly provided by law.

To this regard, the Italian legal system does not provide any legal provision which obliges the generality of people to be vaccinated against the COVID-19 virus.

In addition, we have to consider that Italian Government has already adopted some legal provisions which identify the measures suitable to prevent the spread of the COVID-19 virus in the workplace (use of mask, social distancing, etc.) and the vaccine is not included among these measures.

Moreover, it is useful to point out that employers may not manage the timing and especially the methods of the vaccination, because the decisions in this area are an exclusive prerogative of the National Health Authority.

In the light of the above, we must exclude the existence of the employer's power to impose the employees' vaccination.

The situation is completely different with regard to the medical personnel.

In fact, the Decree Law no. 44 of 1 April 2021 has established the mandatory nature of the vaccination for medical personnel.

The vaccination may be excluded or postponed only in case of danger for the employee's health, certified by a competent doctor.

For medical personnel, because of the particular nature of the duties performed, as well as of the workplace in which they operate, the risk of contagion derives directly from the work.

Furthermore, we have to consider that medical personnel work every day with vulnerable people, probably affected by some important pathologies.

The abovementioned provision has also established a penalty in case of refusal of the vaccination. In fact, in case of refusal, the employer must assign the employees to different duties which do not represent a risk of contagion, with conservation of the

retribution.

However, if it is impossible to assign the employee to different duties, the employer must suspend the employee from work, with also the suspension of the retribution. The suspension will cease only if the employee agrees to the vaccination or, if not, until the completion of the national vaccination plan, but, in any case, no later than 31 December 2021.

Summary

Employers may not impose to their employees the participation in COVID-19 tests and/or vaccination. With regard to the medical personnel, the Italian Legislator has expressly stated the employers' power to impose vaccination to the employees. In our opinion, this is the only way to justify this kind of power.

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LABOUR NEW AGE

by Carla Martins Costa

The Covid-19 pandemic has forced the Governments to (re)regulate and restructure labour relations.

In Portugal, in the beginning of the pandemic in 2020, a set of new legal rules were created and implemented to assist employers in maintaining employment posts.

This legal regime has, meanwhile been successively amended.

In a simplified manner we highlight further (I) the Governmental supporting measures; (II) dismissal prevention measures; (III) Covid-19 absences; (IV) remote working; (V) Covid-19 quick tests; and (VI) protective equipment.

I Are there any state-aid programmes for employers in Portugal?

Within the new emergency COVID-19 quarantine, in January 2021, the Portuguese Government reinforced the measures already in place, essentially through five mechanisms:

1. Extraordinary support to the progressive recovery of activity:

- for employers in a situation of business crisis;
- extended from 30 June to 30 September 2021;
- engrossing new exemptions regarding the contributions to Social Security in the tourism and culture sectors, from March to May 2021, in case of:
 - loss of turnover up to 75%; and,
 - losses equal to or higher than 75% (partial reduction of 50% in such contributions).

2. Simplified Lay-off:

At the beginning, this regime was applicable to companies that had been

fully or partially closed due to a legislative or administrative order.

Now, these measures have been extended to companies or establishments that have been obliged to stop, in whole or in part, their activity (i.e. in more than 40% compared to the month prior the application) as a result of the interruption of global supply chains, suspension or cancellation of orders, and in sectors suspended or closed by law or governmental order.

The relevant application for such benefit must have been filed during March and April 2021.

This regime was also extended to directors with tax and social security statements regularised, and with employees under their charge. This is an innovation compared with the 2020 regime.

3. Reduction of activity extraordinary support:

This support was reactivated up to June 30, 2021, for self-employees, entrepreneurs, managers and directors, in the areas of tourism, culture, events and entertainment, not suspended or closed, but that have stopped their activity; and comprises a monthly financial support, renewable up to six months, and up to 438,81 Euros, per month.

4. Simplified support to micro-companies (with less than 10 employees):

A reinforcement of the support to micro-companies, which have benefited from the simplified lay-off in 2020, was introduced in the form of access to a third wage (665 Euros) for each employee, in the 3rd quarter 2021, to be accrued to the prior support granted for the 1st semester 2021 (corresponding to 1.330,00 Euros - two minimum wages, for each employee).

This support is granted by IEFP, I.P., (the employment protection institute)

upon filing of the relevant application. Payment is made in two instalments during six months, one instalment per quarter (upon verification of the relevant decrease of the volume of invoicing).

5. Extraordinary incentive to the normalisation of business activity:

This measure is addressed to employers which, in the first quarter of 2021, have benefited from the simplified lay-off or extraordinary support to progressive recovery.

Comprises an extraordinary incentive up to two minimum guaranteed monthly salaries for each employee, covered by the support, as follows:

- A** until 31.05.2021, in the amount of 1,330.00 Euros (2 x 665,00 Euros (minimum guaranteed monthly salary) and is payable in a 6-month period;
- B** between 01.06.2021 and 31.08.2021, 665,00 Euros in a single instalment, corresponding to the period of 3 months.
- C** exemption of 50% of social security contributions due by the employer, during the first two months.

The employers benefiting from these measures (i) may not terminate the relevant employment contracts, other than for just cause, and (ii) must maintain the employment level during the support period and within a subsequent period of 90 days.

This support is not cumulative with the lay-off regime foreseen in the Portuguese Labour Code and the support for progressive recovery of activity. However, if, at the end of three months, the employer also needs to apply for the progressive recovery support, such applicant shall not have to return the amounts received, but the new support is limited to one minimum guaranteed monthly salary (665,00 Euros) per employee, and 50% exemption from Social Security contributions during the first two months.

II Has there been any special direct amendment of your national employment legislation preventing employees from dismissals during the pandemic? Do you experience more dismissals at your clients recently? What are your predictions in this regard?

Employers benefiting from these Covid-19 measures have been legally prevented from terminating employment contracts through collective dismissal, extinction of the work post, unsuitability or otherwise, but not including: just cause; termination of commission service and, lastly, termination of fixed-term contracts.

This limitation is applicable during the supporting period and within the subsequent 90 days.

Our experience evidenced that many companies have preferred not to apply for the supporting measures and adjust their structure with the termination of labour contracts. We have seen many employers terminating fixed-term contracts, performing collective dismissals and entering into mutual agreements. Our experience also evidenced that companies who have suffered a downturn in orders had to apply to the support measures in order to maintain the work posts and their activity.

The result, recent studies estimate that unemployment rate in Portugal in April 2021 will be of 8.7%, and predict that until the end of the year it may come to reach 10.2%.

III What are the rules or regulations for medical leave of absence due to COVID-19? Are employees entitled to any financial support

from an employer or the state during such sickness leave and if so, for how long? Does the same apply to quarantine/ isolation?

Medical leave is applicable in case of (1) prophylactic isolation and (2) Covid-19.

1. Prophylactic isolation:

The employee must deliver to the employer and/or the Social Security authorities a prophylactic isolation certificate issued by the Health Commissioner or a provisional certificate issued by the National Health Service (SNS24).

The employee is entitled to an allowance in an amount corresponding to 100% of net reference remuneration, with a minimum of 65% of gross reference remuneration, during a period of up to 14 days.

This is also applicable to child or grandchild support.

The employer must also deliver the information to the Social Security authorities.

Employees that are able to work remotely will not be entitled to this benefit during prophylactic isolation.

Health sector employees working for third parties (public or private) and self-employed are excluded from this support.

2. COVID – 19:

In case of sickness the Health Services are to convey electronically, the Temporary Disability Certificate to the Social Security authorities.

Infected employees are entitled to sickness allowance corresponding to 100% of net reference remuneration, with a minimum limit of 65% of gross reference remuneration, for a maximum of 28 days from which the prophylactic isolation days, if any, are to be deducted.

After such period of 28 days, the allowance shall be calculated as follows (same percentages foreseen for other sickness):

Illness length	% of net reference remuneration
until 30 days	55%
from 31 to 90 days	60%
from 91 to 365 days	70%
more than 365 days	75%

Health sector employees although having no protection in a situation of prophylactic isolation are exempted from the need to prove that COVID-19 disease is a direct consequence of their activity; for these employees, the minimum support threshold is 70% of the gross reference remuneration.

IV What are the rules or regulations surrounding remote working during the pandemic in Portugal and how do you foresee this developing over the rest of this year? Is home-office ordered by state authorities or rather "just" recommended?

In October 2020, new legislation was approved establishing an exceptional and transitory regime with the view to reorganise the work places and minimise the risks of infection including:

- › mandatory remote working whenever possible;
- › implementation of staggered working hours in companies with 50 or more employees, and ensuring staggered minimum breaks of thirty minutes up to a limit of one hour between groups of employees;
- › other technical and organisational measures to guarantee physical separation among the employees, including the creation of permanent teams, rotating breaks and meals between teams or departments, among others.

The employer may unilaterally change

working hours that must remain stable for periods of at least one week, with the employer being unable to make more than one change per week.

Before implementing any change the employer must consult the employees involved, the workers committee, the trade union or inter-union council or trade union representatives as applicable.

It is foreseen that this regime will be applicable until December 31, 2021.

In the second quarter of 2020, in Portugal, the number of teleworkers represented 23.1% of the population employed.

On March 19, 2021, a proposal was submitted to the Portuguese Parliament seeking the amendment of the existing remote work legal regime, in order to guarantee a greater protection of the employee, including:

- › wider scope of protection in atypical forms of remote work;
- › increasing the employer's obligations to bear costs (telecommunications, water, energy, air conditioner and other);
- › mandatory payment of meal benefits (and other supplements), by the employer, in all circumstances.

Failure to comply with the obligation to adopt remote working during the state of emergency constitutes a serious administrative offence, with fines ranging from 2,040 Euros to 61,200 Euros.

V Is it possible for employers in Portugal to order employees to participate in COVID quick tests and/or vaccination?

Employers must comply with GDPR rules and principles. The treatment of health and other specially protected data is by rule not allowed.

In addition, to perform medical tests and examinations, the employer must



send a written request to the employee duly justified and any medical tests must be necessary, adequate and proportional for the protection and safety of the employees as well as of third parties.

Therefore, as a rule employers may not impose COVID rapid tests.

Specific circumstances may justify testing of some employees.

VI Is an employer obliged to provide protective equipment to employees such as face-masks or other measures?

Yes, by law the employer has the obligation to adopt technical and organisational measures that guarantee the physical distance and protection of employees, and to ensure the use of adequate individual protection equipment in situations where physical distance is manifestly impracticable due to the nature of the

activity.

Failing to comply with these measures will be considered a major administrative offence, subject to penalties varying between EUR 204.00 and EUR 612,000.00.

Summary

To address the adverse impact of Covid-19 pandemic, several legal measures to support employers and employees have been introduced. The more relevant are: I) extraordinary support to the progressive recovery of activity available until September 30, 2021; (II) expansion of the simplified lay-off regime to employers in total or partial stoppage of activity; (III) extraordinary support on reduction of activity extended to self-employees, entrepreneurs, managers and directors; (IV) simplified support for micro-companies; and, (V) extraordinary incentive to the normalisation of business activity.

Employers who have applied for the extraordinary incentive to the

normalisation of business activity are prevented from terminating employment contracts and are further obliged to maintain the employment level during the support period and within an additional ninety days thereafter.

A range of support measures were introduced targeting employees, self-employed, directors and domestic service employees who are unable to work due to COVID-19 illness including prophylactic isolation and absence.

Remote work is mandatory until the end of 2021, whenever possible.

The performance of tests and/or vaccination by the employer may conflict with the protection of employees' personal sensitive data. Accordingly, only in the light of a justified need and within the scope of the exception for processing health data by reason of the Covid-19 pandemic, may such personal data management be justified, recourse being gaged on casual criteria of necessity, adequateness and proportionality.

Since April 1st, 2021, the employer is obliged to provide protective equipment to employees, ensuring the use of adequate individual protection equipment in situations where physical distance is manifestly impracticable due to the nature of the activity.

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IMPACT OF COVID

ON SPANISH LABOUR LEGISLATION

by Maria Gomes Sousa

COVID-19 in Spain has generated a strong health, social and economic impact. Many companies have been hit by the health crisis and strong tensions have arisen that may limit their competitiveness and survival. As a consequence of this unexpected crisis, there has been a supply shock in the supply chains and a demand shock caused by lower consumption, which has reduced companies' revenues. All this has led to a reduction in productive activity, which has had a very negative impact on the labour market, increasing unemployment. Many institutions are currently working to establish economic reactivation strategies with the aim of mitigating the short- and

long-term impacts of the crisis caused by COVID-19. To manage this crisis, it will be necessary to establish both short-term policies and medium- and long-term policies that will pave the way for a strong and sustainable recovery. In this respect, it is essential to have quantitative and qualitative information on the behaviour of companies in the face of the economic effects of COVID-19. This will make it possible to know the needs and imbalances that may arise and thus efficiently manage resources to help boost the economy. Moreover, this information must be agile

and constant over time while the uncertainty lasts, given that it is not known with total certainty how long this health crisis will last. At the moment we are being told that from 9 May the state of alarm will be lifted in our country, but we will see what happens. For the time being we are with the vaccine, with the intention that by June everyone will be vaccinated.

We are at a time when decisions must be taken quickly, and what is decided will have important consequences in the future. The general objective of this article is to provide information on





national employment legislation preventing employees from dismissals during the pandemic? Do you experience more dismissals at your clients recently? What are your predictions in this regard?

There has been a limitation on the dismissals of workers who have been affected by temporary employment regulation proceedings (ERTE) filed based on Covid, as this type of proceedings have the advantage of applying for social security benefits, which entails a safeguard clause, not being able to dismiss workers who were affected by an employment regulation proceedings for 6 months, which have been accumulating since the pandemic began, but only for companies that have taken advantage of the social security exemptions.

Companies that proceed to dismiss workers who are affected by a temporary employment regulation proceeding (ERTE) or which do not comply with the clause on safeguarding employment, will be declared unfair and will have to return the exonerations of all workers affected by the temporary lay-off plan.

In the last few months, we are seeing dismissals for objective causes based on organisational, technical or production causes, leaving the pandemic reason a side or not using it as an economic cause.

What are the rules or regulations for medical leave of absence due to COVID-19? Are employees entitled to any financial support from an employer or the state during such sickness leave and if so, for how long? Does the same apply to quarantine/ isolation?

In Spain, in the event of positive for Covid test, you have to keep the

how the crisis generated by COVID-19 is impacting the business fabric of Spain, and all the measures that have been taken since March 2020.

Are there any state-aid programmes for employers in Spain ?

A Support Plan has been approved specially to support sectors such as tourism, hospitality, and commerce, with a series of employment measures, liquidity injections, tax deductions for the rental of premises, as well as tax deferrals for self-employed and small and medium-sized companies until at least October 2021.

Lines of guarantees are being granted for companies and the self-employed at very low interest rates to alleviate the situation that has arisen in across all

business.

Measures have also been adopted to allow entrepreneurs to renegotiate the payment of rents for premises, particularly those owned by large landlords or public companies.

The latest measures approved in March 2021 are extraordinary measures to support business solvency in response to the pandemic, including:

- Covid line of direct aid for the self-employed and companies.
- Covid line for the restructuring of financial debt.
- Fund for the recapitalisation of companies affected by Covid.
- New measures in the area of insolvency law to support the continuity of companies.

Has there been any special direct amendment of your

quarantine, which is currently 10 days, and the doctor will take you off medical leave. These periods will be considered as temporary incapacity due to common illness, regardless of their consideration with regard to the economic benefit as an exceptional assimilation to the contingency of an accident at work.

The full salary on the day of the sick leave will be paid by the employer, regardless of whether or not there was any actual work on the day of the sick leave. From the following day, the temporary incapacity will be paid by the entity that protects the professional contingency of the company's workers.

Illnesses suffered by personnel working in health or social-health centres as a result of the SARS-CoV2 virus infection during the state of alarm are considered as an occupational contingency derived from an accident at work.

What are the rules or regulations surrounding remote working during the pandemic in Spain and how do you foresee this developing over the rest of this year? Is home-office ordered by state authorities or rather "just" recommended?

In September the Homeworking Law was published. Since the State of Alarm was decreed in March 2020, it has been implemented exceptionally in those activities that allow it.

At such Law, third transitory disposition, remote work is established as a health containment measure derived from the Covid-19, in this case a homeworking contract should not be made and there is no payment of the expenses derived from the same.

It should be borne in mind that companies are taking this measure quite well, providing the necessary



means for their employees to be able to telework.

It is true that some Collective Agreements already included this measure, and now with the Homeworking Law, all Collective Agreements will regulate it.

How can the current situation affect remuneration of employees in Spain?

With the current situation, in which employees are in a situation of temporary employment regulation proceeding derived from Covid 19, either with their working hours reduced or with their work contract suspended, the workers receive unemployment benefits, and these unemployment benefits, at present the basis taken by the State Public Employment Service, is 70% of the contribution base during the entire benefit period. Under normal conditions, from the 181 day of benefit, the State Public Employment Service would lower the percentage to 50%.

It is true that there are companies that are adopting internal flexibility measures and are negotiating wage reductions with their staff without having to resort to the temporary employment regulation proceedings derived from Covid-19.

Is it possible for employers in Spain to order employees to participate in COVID quick tests

and/or vaccination?

In Spain, if a worker has symptoms or temperature of 37.5, according to the Ministry of Health, he/she should not go to work, contact his health centre, and it will be his/her GP who will indicate the day and time to have the PCR test, this in our public social security system.

Anyone can go to a private centre for antigen testing, PCR, but they will have to pay for it.

If it has to be taken into account that, due to the type of job or performance of the employee, the performance of the tests is essential in order to guarantee the safety of colleagues or persons entering the workplace, as is the case in the current pandemic situation, in this case the management of the company could establish them as compulsory.

In the case of vaccinations, they are not compulsory but voluntary. Under current Spanish occupational health and safety legislation, it cannot be concluded that an employer can force a worker to be vaccinated, but rather the opposite: the employer can, if he wishes, offer his employees vaccination against diseases not associated with the job, and they can accept this offer on a voluntary basis. This follows from the provisions of article 14 of the Law on the Prevention of Occupational Risks.

Is COVID-19 recognized as an occupational disease

under Spain law? Can be an employee held liable in the event of infecting another colleague?

From 11 March 2021, it was approved that workers who have been infected or are isolated due to quarantine by Coronavirus will be covered in the following way.

It is considered to be a sick leave due to common contingencies, but it is paid by the Social Security as if it were an occupational disease, i.e., 75% is paid from the first to the last day of the sick leave. Mutual insurance companies do not intervene in this sick leave process. Both the sick leave and the discharge are given by the family doctor, not by the mutual insurance company. The effective date is the date of the quarantine order, although your doctor can issue the sick leave report later. You must provide the company with a copy of the sick leave reports in the usual way.

Is an employer obliged to provide protective equipment to employees such as face-masks or other measures?

The Ministry of Health stipulated that Companies shall provide for:

- ▶ Safety distance. Work tasks and processes should be planned so that workers can maintain an interpersonal

distance of approximately two metres, both on entering and leaving the workplace and while in the workplace.

- ▶ Masks. The company must provide personal protective equipment (PPE) when the risks cannot be avoided or cannot be sufficiently limited by technical means of collective protection or by work organisation measures or procedures. The PPE must be appropriate for each activity.
- ▶ Hydrogels. Personnel must be provided with the necessary hygiene products to be able to follow individual recommendations, adapted to each specific activity. In general, it is necessary to maintain an adequate supply of soap, hydroalcoholic solution and disposable tissues.
- ▶ Cleanliness. Cleanliness should be reinforced in all rooms, especially on surfaces that are frequently touched: computers, windows, doorknobs.

What are the biggest challenges in relation to employment law issues in Spain, given the circumstances of the past year?

For the time being, temporary employment regulation proceedings (ERTE) based on Covid have been extended until 31st May 2021, which undoubtedly helps to maintain the jobs of the employees in the long term.

The Ministry of Labour has indicated its intention to extend them beyond 31 May 2021.

Perhaps the biggest challenge will be to keep the companies in business, without them finding themselves in a situation of insolvency that would lead to an insolvency proceeding.

At the moment, thanks to the Temporary Employment Regulation Proceedings derived from Covid 19, and the possibility of being exempted from social security payments, we have avoided a massive closure of companies and consequently a lot of redundancies, that would have increased enormously the number of existing unemployed workers.

Therefore, the biggest challenge is to keep companies in business and at the same time to avoid collective redundancies.

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COVID-19

AND THE RELATED CHALLENGES FROM AN EMPLOYER PERSPECTIVE



by Emre Gökhan Atayılmaz & Ertuğrul Aksoy
& Ramazan Burak Karagöz

The purpose of this article is to give a brief summary of the tremendous impacts of COVID-19 outbreak in relation to Turkish Labour Law from an employer perspective. As the world keeps striving to defeat the pandemic, Turkish employers are not exempt from the struggle. It has been more than a year since Turkey detected its first confirmed COVID-19 case and during that period of time, a number of measures have entered into force such as short-term employment option and support, unpaid leave and termination prohibition which are of paramount importance for the ongoing employment relationships.

Are there any state-aid programmes for employers in Turkey?

In March 2020, the President of Turkey announced that the government will furnish short-term employment allowance due to COVID-19 outbreak

and the application procedure will be simplified for the employers. On 26 March 2020, Article 41 of Law No. 7226 was published in the Turkish Official Gazette amending the Turkish Unemployment Insurance Law No. 4447. Accordingly, Provisional Article 23 of the Unemployment Insurance Law has entitled employers to apply for short-term employment allowance, which was one of the most important long-term measures introduced by the Turkish Government due to pandemic.

Normally, short-term employment is defined as the temporal shortening of employment period (at least by one-third) in a workplace by complete or partial suspension of its operations for at least four weeks. Under normal circumstances, this shall not continue longer than three months and the short-term employment request of the employer is due to general financial, regional, or sectoral crisis or force majeure cases. If all these requirements are met, employers are allowed to apply short-term employment in their workplace.

Initially, in compliance with this amendment and the subsequent President's Decisions, the aforementioned three-month-long period was extended until 31 March

2021. During this consistent and approximately one-year-long period of time, employers were entitled to apply short-term employment regime and pay their employees significantly less than they should in which the gap between was paid wholly or partially by the government. Needless to say that this helped a lot to the employers while struggling the severe financial conditions arising from the pandemic and its global effects on the global scale.

The amount of the short-term employment allowance was calculated by taking the average of employee's



daily gross income of last twelve months into consideration on top of which social security premiums apply. In that regard, daily short-term employment allowance was 60% of employee's daily gross average income. That said, this amount could not exceed 150% of the statutory gross minimum wage on a monthly basis. In addition, the application procedure for a short-term employment allowance was quite simple. Employers were required to prepare a Short-Term Employment Request Form and submit it to the Turkish Employment Agency which could also be sent via email. Further to the evaluation of the application, employers were notified of the results by the Agency along with the employees who were being subject to short-term employment allowance, respectively.

The government also introduced unpaid leave option for the employers as being a strong tool in their struggle against the financial difficulties. On 17 April 2020, Article 7 and Article 9 of Law No. 7244 was published in the Turkish Official Gazette amending the Turkish Unemployment Insurance Law No. 4447 and Labour Law No. 4857. In that regard, Provisional Article 10 of the Labour Law has entitled employers to send their employees on unpaid leave without obtaining their prior approval or consent. Hence, if an employee is furloughed, the employer was not obliged to keep paying his/her wage.



Instead, the employee was supported by the Employment Agency and Unemployment Insurance Fund as per Provisional Article 24 of the Unemployment Insurance Law. The daily support for an employee was TRY 39.24 in 2020 and is TRY 47.70 in 2021. As of today, we may confirm that the unpaid leave will remain in force at least until 17 May 2021 in accordance with the President's Decision No. 3592 published in the Official Gazette on 9 March 2021 and as per Provisional Article 10 of the Labour Law, the President may extend this period until 30 June 2021.

In addition, we would like to point out that Article 4 of the Law No. 7252 was published in the Official Gazette on 28 July 2020, amending Provisional Article 26 of the Unemployment Insurance Law. In that regard, employers who terminate short-term employment and unpaid leave were getting social security insurance premium support for each employee returning to his/her regular working hours. This was valid for a period of three months, but in each case until 31 December 2020 further to the return date. As per President's Decision No. 3246 published in the Official Gazette on 2 December 2020, the support period was extended to six months and the deadline was moved to 30 June 2021. Therefore, many employers who have previously applied for the recently ended short-term employment allowance and the ongoing unpaid leave are in fact still benefitting from its outcome.

Has there been any special direct amendment of your national employment legislation preventing employees from dismissals during the pandemic? Do you experience more dismissals at your clients recently? What are your predictions in this regard?

As stated above, Article 9 of the Law No. 7244 was published in the Turkish

Official Gazette on 17 April 2020 amending the Turkish Labour Law No. 4857. In that regard, Provisional Article 10 of the Labour Law has also prevented employers from dismissals, which remains one of the most important, long-term and employee friendly measures taken by the Turkish Government due to pandemic. Accordingly, an employee could only be dismissed for reasons stated in Section II of the first paragraph of Article 25 of the Labour Law. In addition, we should underline that any violation of the termination prohibition is subject to an administrative fine of monthly gross minimum wage (TRY 3,577.50 in 2021) for each employee whose contract is terminated. Moreover, the termination prohibition has a very limited number of exceptions and remains in force until at least 17 May 2021. The President may extend this period until 30 June 2021.

Section II of the first paragraph of Article 25 of the Labour Law is about termination reasons due to employee's behaviour and has the heading of "situations in contrast with moral and goodwill or other similar behaviour". In that regard, the employer may terminate the employment contract if, the employee; (I) falsely claims to possess qualifications or to satisfy requirements which constitute an essential feature of the contract, (II) makes a speech or takes an action constituting an offence against the honour or dignity of the employer, (III) sexually harasses another employee, (IV) assaults or threatens the employer, a member of his family or a fellow employee, (V) conducts a dishonest act against the employer, such as a breach of trust, theft or disclosure of confidential information, the employee commits an offence on the workplace which is punishable with seven days of imprisonment or more without probation, (VI) does not come to work for two consecutive days, or twice in one month on the working day following a rest day or for three working days in any month without the employer's permission or a valid



reason, (VII) refuses to perform his duties after being warned, (VIII) either wilfully or through gross negligence endangers work safety or damages machinery, equipment or other articles or materials in his care, whether these are the employer's property or not, and the damage cannot be offset by his thirty days' pay.

Subsequently, Article 5 of the Law No. 7252 was published in the Official Gazette on 28 July 2020, amending Provisional Article 10 of the Labour Law, and enlarged the scope of the exceptions of termination prohibition as follows; (I) expiration of definite term employment or service contracts, (II) closure of the workplace and termination of its business operations for any reason, (III) finishing construction or service procurement projects in accordance with the completion of work subject to a tender.

As of April 2021, the dismissal numbers at our clients are significantly less due to the above-mentioned measures. There is a growing trend of legal disputes and/or pending lawsuits focusing on the breach of the principle of equality. In that regard, certain employees claim that COVID measures such as short-term employment or unpaid leave were not equally implemented among their co-workers. They argue that employers try to enforce a simulated termination by

using other tools under law. Their argument is that the true reason for implementing such measures on specific employees is the fact that employers are willing to dismiss them, but due to termination prohibition, they may only apply certain pandemic related measures and hope for having resignation of the relevant employees. If the President does not prolong the termination prohibition term after 17 May 2021, we will most likely face a dismissal boom within the second half of May. Undoubtedly, many employers are waiting for the relevant measures to be lifted and once this happens, they will proceed with long-awaited dismissals.

What are the rules or regulations for medical leave of absence due to COVID-19? Are employees entitled to any financial support from an employer or the state during such sickness leave and if so, for how long? Does the same apply to quarantine/isolation?

In general, if an employee submits a medical report to his/her employer confirming the employee's sickness, Turkish Social Security Institution shall start to pay him/her a sick leave allowance after two days in compliance with Article 18 of the Turkish Social Insurances and General Health Insurance Law No. 5510. In that regard, absence of the employee shall

be recorded to his/her personnel file and the Social Security Institution shall be informed accordingly. As being absent due to his/her medical status, the Social Security Institution does not cover the employee's whole daily payment. Instead, it only covers half or two-thirds of it depending on the particulars of the case. Therefore, in practice, some employers prefer to compensate the remaining amount which is not covered by the Social Security Institution.

In case the employee is not able to provide a medical report, e.g. in case that the health care system becomes overburdened due to increasing number of COVID-19 patients, or in case the employee has COVID-19 symptoms and required to quarantine immediately, the employer may discretionarily grant administrative paid leave to his/her employee based on a less detailed examination of the workplace doctor, if any.

As for the quarantined employees, we should underline that there is no clear legal position. We believe the quarantined employees will be able to obtain a medical report and submit that report to their employers to support their absence from work. If so, the Social Security Institution shall pay the employees for the absence days from work starting from third day of the report date. The employer shall only pay for the first two days of sick leave in the quarantine report at normal sick pay rate, and the Social Security Institution shall cover the rest



of the sick leave period. In practice, some employers prefer to continue to pay the same salary to their employees who are on medical leave on the condition that the employees are not paid by Social Security Institution (to avoid double payment).

Recent quarantine periods in Turkey are as follows: Anyone who; (I) had contact with any coronavirus confirmed patient, (II) has recently been abroad, should stay isolated at home and stay away from public spaces for at least 10 days. If anyone starts showing symptoms of the virus within the quarantine period, s/he can go to a medical unit for the relevant tests. In that regard, for those with serious symptoms, i.e., for those who needs hospital care for at least 24 hours, self-quarantine shall last at least 14 days and may last up to 20 days, if the patient needs additional treatment in intensive care units.

Finally, if employees are quarantined due to an administrative decision (e.g., curfew for people over age 65), starting from the day of absence of the employees, in the first one-week period, employees will receive half of their weekly employment entitlement.



After the one-week period, employment will be deemed suspended. There is no upper limit for statutory suspension period under Turkish law. Upper limit for statutory suspension will be determined with the good faith principle. Hence, after a reasonable period of time following the one-week period, either the employee or the employer may terminate the employment contract immediately. Regardless of the party who terminates the employment, the employee will be entitled to receive its statutory severance payment.

What are the rules or regulations surrounding remote working during the pandemic in Turkey and how do you foresee this developing over the rest of this year? Is home-office ordered by state authorities or rather “just” recommended?

On 10 March 2021, the Regulation on Remote Working has been published in the Official Gazette. According to the new regulation; (I) remote working employment contracts should be concluded in writing in the beginning of an employment relationship, (II) if the expenses of remote working are not determined under the employment agreement, the employer shall bear these costs, (III) employment contracts based on work from a fixed office location can be converted into remote working contracts by mutual consensus of the employer and the employee, (IV) in the event of a force majeure, the employee's approval would not be necessary for remote working. In that regard, employers are not required to obtain employees' approval for remote working in the event of a force majeure. Currently, there is general view that the COVID-19 outbreak is a force majeure case, therefore employers may ask the employees for remote working without their consent.

That said, as for the expenses, we are of

the view that the employer should cover all work-related expenses of and provide all hardware and software needs, e.g. laptop, internet access, antivirus programs, video conferencing software, to its employees arising from remote working. Apart from those mandatory elements for conducting work such as necessary equipment, it is still not clear under Turkish law whether the employer should continue to provide the entire rights such as meal, benefit packages, car allowance etc. in the case of remote working, as the court practices of this relatively new regulation have not become established yet. Therefore, unless it is clearly agreed by the employer and the employee in writing, our view is that the employer should do so in the event of remote working due to force majeure. This will be the safest approach given the current uncertainty under Turkish law. To that end, employers should cover all work-related expenses arising from remote working.

We would also like to underline that under Turkish law, employees have the constitutional right to work. Therefore, employers cannot refuse an employee's request to attend the workplace, unless there is a valid reason. Keeping in mind that the court practices of this relatively new regulation have not become established yet, we recommend employers to follow guidelines of the Ministry of Labour and/or the Ministry of Health in respect of the interpretation of the concept of force majeure. In that regard, employers should allow employees to work in their workplace, unless promoted by governmental bodies. If an employer refuses access to the workplace, there is a risk that employees will claim that this amounts to the unlawful termination of their employment. Since employees have the right to attend the workplace, if this is the employee's normal place of work, any such remote working arrangement would need to be agreed with the employee and all other terms and conditions of

employment relationship would need to be maintained. If employers insist that an employee should remain at home and maintain remote working, they would be expected to pay the employee in full, i.e. keep providing him/her entire rights s/he benefitted before remote working.

Moreover, we would like to point out the vaccination issue in relation with remote working. Even though employers are obliged to protect the health and safety of their employees at their workplace as per Turkish Occupational Health and Safety Law No. 6331, implementing a remote working arrangement for employees who do not agree to be vaccinated is likely to be challenged by employees, as being discriminatory.

How can the current situation affect remuneration of employees in Turkey?

As we stated before, short-term employment allowance was affecting many employees, resulting in a considerable amount of loss in their pay cheques, a gap which was filled by the Unemployment Insurance Fund and/or Employment Agency until quite recently, ending on 31 March 2021. In addition, we should speak of unpaid leave which remains in force until 17 May 2021. In that regard, if an employee is furloughed per Provisional Article 10 of the Labour Law No. 4857, the employer is not obliged to keep paying his/her wage. Instead, the employee is supported by the Employment Agency and Unemployment Insurance Fund as per Provisional Article 24 of the Unemployment Insurance Law No. 4447. The daily support for an employee is TRY 47.70 in 2021. If the unpaid leave is not to be extended by 17 May 2021, many employers are going to face serious difficulties in respect of paying their employees' wages in full and as the short-term employment is no longer an option, they will most likely choose to terminate employment contracts of such



employees for whom they previously benefitted from unpaid leave.

Apart from above, some companies made decrease in the wages of the employees in order to lower the economic reflections of the pandemic since it has significant effects on the workplaces, decrease in sales opportunities, in demand and orders, economic activities in the country. According to the Labour Law, employers may maintain the employment contract by lowering the wages of employees provided that it is notified to relevant employees in writing, as this constitutes a substantial change in working conditions pursuant to Article 22 of Labour Law. However, in order for the wage reduction to be binding upon relevant employees, such employees must accept this notification in writing within six days thereupon.

Is it possible for employers in Turkey to order employees to participate in COVID quick tests and/or vaccination?

The answer to this question has several aspects. In accordance with the Turkish Occupational Health and Safety Law No. 6331, employers are obliged to provide a healthy and safe working environment to their employees. In that regard, one may argue that it shall not be subject to any dispute between

an employer and its employee to participate in COVID tests or vaccination in respect of their ongoing employment relationship. On a pure labour law basis, it can be argued that employers shall use their right to govern in order to establish a functioning, healthy and safe working environment. Therefore, as obliged by the law, they may make such demands to their employees for participating COVID tests or vaccination. That said, it shall always be kept in mind that ordering some individual to have COVID tests or get vaccine has other aspects beyond labour law. The legal analysis for answering this question is also subject to the constitutional law.

Article 17 of the Turkish Constitution states that the corporeal integrity of individuals shall not be violated except under medical necessity and in cases prescribed by law. In respect of this provision, individuals have a constitutional right to self-determination and protection of their physical integrity. Therefore, enforcing employees to take COVID tests or get vaccine must have some specific legal basis. Accordingly, we are of the view that employers lack legal basis for such demand, unless any specific amendment is made to the basic laws such as Turkish General Healthcare Law No. 1593, Turkish Labour Law No. 4857 or aforementioned Occupational Health and Safety Law No. 6331, none of which is on the government's agenda



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yet. In that regard, it should be underlined that denying employees' access to their normal place of work on the basis that they refuse to be vaccinated is likely to breach the abovementioned constitutional rights and may easily become subject to legal action against employers. Hence, it is not possible for employers to require vaccination or taking COVID tests from their employees before entering offices, facilities, factories, manufacturing plants etc., i.e. any workplace in general, without their explicit written consent. Furthermore, mandating vaccines as a condition of access to an employee's normal place of work would also be problematic from the labour law perspective because any employee consent gained in such circumstances may be deemed as "not freely given consent" before the court during any legal proceeding. Notwithstanding with the foregoing, if such written consent is to be obtained from employees, it shall be collected in compliance with the Turkish Law on Protection of Personal Data No. 6698.

We would like to highlight that under the Law on the Protection of Personal Data, health data is deemed to be sensitive personal data, and this includes obtaining information on whether an employee is vaccinated. In general, such data may only be processed by getting explicit consent of the data subject. In order to process health data without obtaining any explicit consent of the data subject, the data processor shall be a person subject to secrecy obligation and s/he shall only process such data only for the purpose of protection of public health. Therefore, all such data shall be obtained and processed only by workplace doctors or by the health personnel assisting them, who are under secrecy obligation in compliance with the Regulation on Duties, Authorisations, Responsibilities and Education of Workplace Doctors and Other Health Personnel. For sharing such data with the employer, the workplace doctor shall provide a privacy notice and obtain explicit

written consent of the employee in advance.

Finally, we would like to point out that Article 10 of the Law No. 7252 was published in the Turkish Official Gazette on 28 July 2020, amending Article 38 of the Occupational Health and Safety Law. In that regard, the effective date of the obligation to appoint a workplace doctor and an occupational safety expert for workplaces with less than 50 employees, which are classified as less hazardous, has been postponed until 31 December 2023. Therefore, it is not recommended, especially for workplaces without workplace doctor to attempt collect and process specific health data of their employees in respect of COVID-19.

Is COVID-19 recognized as an occupational disease under Turkey? Can be an employee held liable in



the event of infecting another colleague?

According to the Article 14 of the Social Security and General Health Insurance Law No. 5510, occupational disease is defined as temporary or permanent disease, physical or mental handicapped status, caused by a reason reiterated due to the quality of the work made or worked by the insurance holder or by the working conditions. Currently, scope of the recognition of COVID-19 as occupational disease is only limited to health personnel in Turkey. In that regard, employers would not be obliged to compensate in terms of occupational diseases, if their white or blue-collar employees were tested positive. As the court practices of this relatively new virus in respect of occupational diseases have not become established yet, this situation may change in the near future.

Holding an employee liable for infecting another co-worker is quite difficult and not only due to evidence law, please also keep in mind the relatively long incubation period of SARS-CoV-2. Therefore, we are of the view that such liability would only be taken into consideration, if an employee acts maliciously or in gross negligence or wilful misconduct, i.e. if s/he comes to work being aware that s/he is COVID positive and interacts with one of his/her co-workers in order to get him/her infected as well.

Is an employer obliged to provide protective equipment to employees such as face-masks or other measures?

As stated before, employers are obliged to provide a healthy and safe working environment to their employees, in accordance with the Occupational Health and Safety Law No. 6331, but as of April 2021, no amendment was made to the Occupational Health and Safety Law or secondary legislation on employers'

obligations in respect of the COVID related health and safety issues. That said, we recommend employers to ensure that their employees are regularly trained in respect of the COVID symptoms, provide them protective equipment, e.g. face masks, face shields or any other face coverings in general, disinfectant sprays and lotions, or even gloves if the nature of work requires their joint and excessive use of the same workplace equipment, as well as check in about their employees' health and safety conditions frequently.

On the matter of health data, we would like to highlight once more that such data is deemed to be sensitive personal data and may only be processed by getting explicit consent of the data subject. In order to process it without obtaining explicit consent of the data subject, such data shall be processed by persons subject to secrecy obligation and only for the purpose of protection of public health. Therefore, all such data shall be obtained and processed only by company doctors or by the health personnel assisting them. For sharing such data with the employer, the company doctor shall provide a privacy notice and obtain explicit written consent of the employee in advance. In that regard, if the employer is not obliged to have a workplace doctor and/or does not have one, please ignore our previous advice in respect of checking in employees' health conditions.

What are the biggest challenges in relation to employment law issues in Turkey, given the circumstances of the past year?

As stated before, legal disputes and/or pending lawsuits between employers and employees concentrate on breaches of the principle of equality and/or discrimination. In that regard, one of the biggest challenges in relation to employment law is the

employees claiming that they are not subject to COVID measures such as short-term employment or unpaid leave, but a simulated termination. The number of legal disputes arising from such claims is on the rise and does not seem to fall any soon. Furthermore, we would like to point out a candidate for becoming the biggest challenge in employment law issues very soon named unpaid leave. The termination prohibition and employers' option to send their employees on unpaid leave during this period was extended until 17 May 2021, but as of today, the President is entitled to prolong the term of this measure until 30 June 2021. If the government ends unpaid leave without strengthening the economy, it is quite likely that there will be a dismissal boom among many sectors, which will cause an overload of work for already struggling Turkish Labour Courts.

Summary

COVID-19 has significantly aggravated declining trends in labour force participation and employment. Ever since we became acquainted with the word pandemic in 2020, employment relationships are on the edge of considerable alterations. This process has started with new regulations set forth in respect of short-term employment and continued with termination prohibition, and unpaid leave as its alternative. Large share of firms across many sectors have put employees on leave, benefitting from government subsidies for those on unpaid leave. It proceeds following the Regulation on Remote Working which has entered into force quite recently and seems to carry on when the news about administration of vaccines is taken into consideration.

COVID-19 has a significant impact on commercial life as well and gives rise to risks and challenges for businesses from all sectors. The reduction in economic activity during the pandemic caused losses of employment. Throughout the pandemic, several

measures and legislative changes like the ones mentioned above were implemented in Turkey in order to protect both the companies and the employees. This can be considered as a double-sided issue as aiming to protect the interests of the employers and the employees at the same time. Even though employment protection measures are aimed to be entered into force by the official authorities in order to put out the fire in labour force, so far it fell short of the expectations from both the employers' and the employees' perspective.

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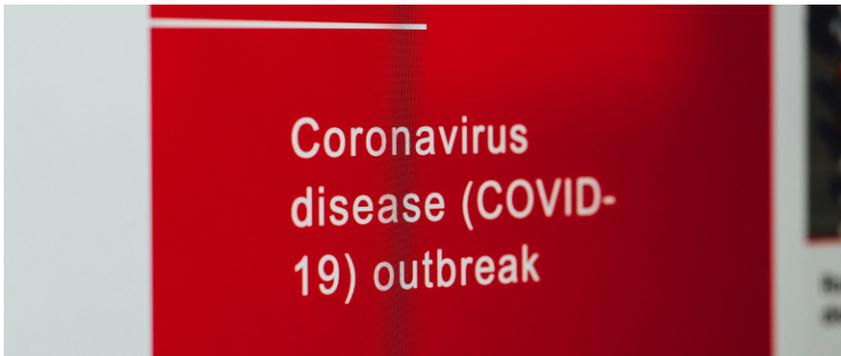
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COVID-19: EMPLOYMENT LAW RESPONSE IN THE UK

by Laura Binnie



Laura Binnie is an Employment Associate at Blandy & Blandy LLP, based in Reading, UK. She advises both employers and employees on a wide range of employment issues and strategic HR matters, with an emphasis on contentious work and the field of disability discrimination. Here, Laura answers three COVID-19-specific questions, in relation to UK's current employment law position.

Are there any state-aid programmes for employers in the UK?

Yes. Since March 2020, the Coronavirus Job Retention Scheme has been in place where employees can be placed on furlough (with their agreement), i.e. temporary absence. This can now apply for either some or all of their normal working time, with the Government funding up to 80% of the employee's usual wages or £2500 gross (whichever is the lower) accordingly for time spent on furlough. The Scheme has been widely used by employers and

extended a number of times; it is currently due to end on 30 September 2021.

What are the rules or regulations surrounding remote working during the pandemic in the UK and how do you foresee this developing over the rest of this year?

Government advice in the UK has been to 'work from home where possible' during all of the Lockdown periods. When emerging from Lockdowns, working from home has still generally been recommended, while other restrictions are eased first. Remote working has therefore become the 'norm' for many organisations since March 2020, but it has not been without challenges – for example, not all work can be done remotely and some employees may have medical concerns. A challenge has been to determine when employees may refuse to attend their workplace in light of the pandemic, and their employer's options in terms of their absence and pay.

While all employees are under a general obligation to follow lawful and

reasonable instructions given by their employer, there is also a duty on employers to protect their staff's health and safety and act reasonably.

If the individual has a 'protected characteristic' (under the Equality Act 2010, such as a disability), and/or is medically high risk, caution should be taken and specific medical advice sought to clarify the potential risks and to see what adjustments, if any, should be made to assist the employee in continuing to work. Risk assessments, tailored to the particular workplace, can also be very useful and may set some employees' minds at rest.

If an employee's anxiety prevents them from attending work, and no reasonable adjustments can be made, it is possible that they may be regarded as on sick leave and therefore entitled to sick pay (statutory or contractual) accordingly.

If there is no discrimination risk, and the Government advice is such that the employee could reasonably be asked to attend their normal workplace, then it is possible that the employee could be investigated for misconduct for their refusal to follow a reasonable management instruction. If the employee is not willing to attend work (without medical evidence supporting sickness absence), that absence would generally be unauthorised, meaning there would not be any entitlement to pay.

However, the context of the refusal to attend work should still be carefully considered. Where there is a legitimate concern impacting on an employee's willingness to work, informal communication is the starting point to see if the situation can be managed and an acceptable compromised

reached. While formal action can be commenced if necessary, certain sanctions related to the raising of health and safety concerns may amount to an unlawful detriment or even an 'automatically unfair' dismissal.

Going forward, there will be no general 'right' to continued remote working, if it is safe to return to the office. However, it is expected that there will be an increase in flexible working requests and it seems likely that many organisations will want to explore a 'hybrid' of mixed office and remote working in any event. A number of businesses are therefore revising policies on remote/office working expectations and will need to decide on the appropriate balance, bearing in mind that certain work cannot be done virtually. While home working has generally been successful and is certainly going to feature in post pandemic working life, it is also likely that face to face meetings (internal and external) will still be beneficial, for employee engagement and business growth.

Is it possible for employers in the UK to order employees to participate in COVID quick tests and/or vaccination?

Businesses with more than 10 employees can currently register for free quick COVID tests for staff to take, but the position is not mandatory and indeed, this would be unlikely to be justified.

With the UK's (so far) successful vaccine rollout, the largest in the country's history, continuing at pace, and as we are now starting to see a gradual easing of restrictions, there are proposals around COVID 'passports' being introduced for access to certain activities.

Employers will be conscious of existing health & safety legislation, under which they have a duty of care towards their employees to protect their health and indeed, anyone else on their



premises or affected by the business' operations. The possibility, however, of 'requiring' members of staff to be immunised against COVID-19 is far from straightforward and certainly would carry legal complications.

The UK Government has not made the vaccines mandatory, and therefore in principle, it would be difficult for employers to set out such a requirement, although it may be more likely to be justified in areas of 'front line' work such as hospitals or care homes. The approach may also be easier to justify and implement with regard to new hires, but such a drastic measure would still leave businesses in difficulty if some staff simply do not consent.

Employers will need to decide if they feel they have reasonable grounds to ask employees if they have been vaccinated, to do so or what their reasons for not doing so are. If employees agree to the collection and processing of their health data (under GDPR), employers should reflect this in their employment contracts and policies. Employers must not allow this data to be shared in any way, without an employee's express consent and they must take reasonable steps to ensure that it is not possible for employees to determine who has and has not been vaccinated based upon any information that is shared.

Practically, a period of adjustment when returning to the workplace and to a greater degree of normality is to be expected. To avoid unnecessary issues or potential claims, employers may wish to adopt a more patient and flexible approach (where possible)

when discussing and setting out timescales and expectations with employees. Proactive consultation and good communication with employees is always to be recommended, especially in these untested waters.

For example, disciplining an employee who opts out of receiving a vaccine may well result not only in an internal grievance and/or perhaps sick leave, but also possibly a claim for constructive unfair dismissal. Discrimination claims under the Equality Act 2010 could also be pursued, if the employee's decision is linked to any 'protected characteristic', for example a refusal on religious grounds or due to the fact that a disability prevents them from being vaccinated (or is the basis of their decision not to be).

While employers can certainly encourage staff to think about the benefits of receiving the vaccine (and the take up appears to be relatively high in any event), moving quickly to a mandatory approach is unlikely to be productive, especially in sectors without key workers. A more practical and useful approach may be to think about a full risk assessment in relation to future COVID risk at the particular employer's place of work, of which the vaccine will be an important, but not sole, factor. We would also suggest considering having a Handbook policy in relation to this so that employees understand the business' expectations and the ways in which they plan to reduce risk levels going forward.

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