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McKenzie.**

An abstract graphic consisting of multiple overlapping, wavy lines of varying thickness and opacity in shades of blue and cyan. The lines create a sense of depth and movement, resembling a digital signal or a data visualization. The background is a dark, solid blue.

# **COVID-19 Global Employer Guide**

Week commencing: 16 March 2020



Our Global Employment and Compensation Team is pleased to provide you with this global guide to 11 key issues facing employers amid the current COVID-19 pandemic. This guide covers 41 jurisdictions across the globe and deals with some of the most pressing issues employers are currently faced with, including the latest country updates from the past couple of days. In the words of our French colleagues: "*Pas de Panique*" – don't panic.

Use this guide to stay informed, but note that as this situation evolves, so too will the guidance and laws affecting employers in each jurisdiction. The information in this document has been compiled over the past few days; please note the date at the beginning of each country section when reading the guidance and please note the high level guidance in this document is not intended to be comprehensive legal advice.

- Are employees obliged to disclose themselves as a "risk-factor" to the employer?
- Can the employer demand that employees disclose themselves as being a "risk-factor"?
- Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?
- Can employees refuse to come to work?
- Can employees refuse to attend meetings or to travel?
- Can the employer send employees on suspension from work?
- When is the employer forced to shut down its operations?
- Does the employer have the obligation to report infections occurring in the business to the health authorities?
- Can the employer require an employee to see a doctor?
- If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?
- If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?

You can also visit the [Baker McKenzie Coronavirus Resource page](#) to access a wealth of reference materials around this topic.



Asia Pacific



EMEA



Latin America



North America



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Australia



China



Hong Kong



Indonesia



Japan



Malaysia



Philippines



Singapore



Taiwan



Thailand



Vietnam



# Australia



This guidance is stated as at 19 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

Yes.

  - Employees themselves have a duty under work health and safety (WHS) laws to take reasonable care for their own health and safety and to not adversely affect the health and safety of others. As such employees who are either infectious, or at high risk of being infectious, should disclose this information to their employer.
  - To ensure employees understand their reporting obligations, employers should develop a clearly communicated policy on what and when an employee is expected to inform their employer of risk factors.
- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes.

  - Employers have a statutory duty to ensure, so far as is reasonably practicable, the health and safety of their workers whilst they are at work.
  - Employers can issue a lawful direction to employees directing that they disclose themselves as being high risk for COVID-19. Employees must comply with lawful directions or measures imposed by their employer which are aimed at ensuring work health and safety.
  - In addition, employers should carry out a risk assessment if they become aware that an employee has been in close contact with a confirmed case or has visited a high risk area.
- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

We would not recommend that employers issue an instruction, or implement a policy, requiring employees to report their co-workers to their employer.

  - Such an instruction or policy could lead to the creation of a toxic work environment.
  - Employers should take care that their employees do not spread misinformation about fellow staff which may be hurtful and result in claims of unlawful discrimination, bullying or defamation.
- 4. Can employees refuse to come to work?**

Yes, in some circumstances.

  - In some circumstances a worker has the right to stop or refuse to carry out unsafe work. A worker has this right to cease work if there is a reasonable concern that the worker would be exposed to a serious risk to their health and safety from an immediate or imminent hazard. A worker must inform their employer as soon as they can that they have ceased work. A worker must also then be available to carry out suitable alternative work, such as working from home.
  - Employees who want to stay at home as a precaution need to come to an arrangement with their employer that best suits their workplace, such as making a request to work from home (if this is a practical option) or to take some form of paid or unpaid leave, such as annual leave or long service leave. Normal leave application processes in the workplace would apply.





# Australia



4. **Can employees refuse to come to work?** ■ If the employee does not enter into an arrangement with their employer or use paid leave, they would be considered to be on unauthorized leave and would not be entitled to payment in these circumstances
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5. **Can employees refuse to attend meetings or to travel?** Yes, in some circumstances.  
As above, in some circumstances, a worker has the right to stop or refuse to carry out unsafe work. A worker has this right to cease work if there is a reasonable concern that the worker would be exposed to a serious risk to their health and safety from an immediate or imminent hazard. A worker must inform their employer as soon as they can that they have ceased work. A worker must also then be available to carry out suitable alternative work, such as working from home.
- 
6. **Can the employer send employees on suspension from work?** Yes.  
■ It will not be appropriate for all workplaces to implement working from home arrangements.  
■ As a precautionary measure, employers may consider requiring certain employees (who may be otherwise fit for work) to take leave and stay away from the workplace. The question of whether these employee will need to be paid is discussed below.
- 
7. **When is the employer forced to shut down its operations?** An employer would be required to shut down its operations if government authorities determine that it is necessary to do so.
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8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?** No.  
■ COVID-19 has been declared a 'notifiable illness', meaning that an individual and/or the treating medical practitioner has a positive obligation to report the illness to the Department of Health. The Department of Health's position is that if an employee has COVID-19, they would have already been to a medical practitioner to be diagnosed with the virus and it would, therefore, have already been reported to the Department of Health by the medical practitioner.  
■ Notwithstanding this, SafeWork NSW is currently treating COVID-19 as a 'notifiable incident', which means that an employer is under a positive obligation to notify SafeWork NSW, as the State WHS regulator, if an employee has a confirmed case of COVID-19. SafeWork NSW is not a "health authority".
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9. **Can the employer require an employee to see a doctor?** Yes.  
Employees can be directed by their employer to obtain a medical clearance to ensure that they are fit for work and do not expose others to a risk of illness of injury. This may include being tested for COVID-19, provided this is reasonable and based on factual information about health and safety risks.



**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

Whether employees are entitled to be paid will depend on the reason why they are not working:

- Wherever possible, where risk factors are present, or an employee is awaiting the outcome of a test for COVID-19, but is otherwise able to work, employers may instruct employees to work from home and should pay them their usual pay.
- If an employee is displaying symptoms and is unfit for work, they can be treated as being on sick leave and will be entitled to sick pay according to the employer's usual policy (which must not be less generous than an employee's statutory sickness entitlements).
- If an employee who is fit, ready, willing and able to work has been asked not to attend work by the employer and they do not have a job that can be done remotely, they are entitled to be paid their usual pay. An exception may be if the employee is a casual employee.
- Employers may consider requiring certain employees (who may be otherwise fit for work) to take leave and stay away from the workplace. Whether or not an employee is entitled to pay in these circumstances is a vexed question.
  - Where an employee is fit, ready and able to perform work and is not a casual employee, then the employer must continue to pay them. Sick leave is reserved only for those employees who are actually unfit for work due to illness or disability. An employer can ask its employees to take accrued annual leave, but can only direct them to do so in limited circumstances - which vary depending on whether or not they are covered by an industrial instrument and the terms of their employment contract.
  - However, if an employee is required independently to self-quarantine by law (e.g., because they have arrived from an overseas destination or received a notice from a health authority under public health emergency legislation) and cannot otherwise work whilst on quarantine, an employer is not obliged to pay them. A potential exception to this is where the employer has in some way caused the imposition of the self-quarantining (e.g., where the employer required the employee to travel overseas). The employer and employee may agree that accrued annual leave be taken over this period.
- Genuine casual employees are engaged on a day-to-day basis, and would not be entitled to pay where an employer elects not to offer up further work as a precautionary measure.
- Under the *Fair Work Act 2009* (Cth), an employer has the right to stand down employees without pay in limited circumstances which include where there is a stoppage of work for which the employer cannot be held responsible. These provisions are relatively untested, but could apply in certain circumstances where the government decides that certain employers should shut down their businesses for a period of time. They will not apply where the employer makes a decision to stand employees down as a precautionary measure. Employers should consult with employees and any trade union of which their employees are members before implementing such drastic measures.



# Australia



**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

In these circumstances, the employer should make every effort to allow the employee to work from home, or adopt any other flexible work processes to permit the employee to work from home. Otherwise, the employer should permit the employee to take paid leave (i.e., annual leave or long service leave) or unpaid leave for a reasonable period. Employees who have parental responsibilities do have certain protections under Federal and State anti-discrimination laws.



# China



This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

Yes.

  - Employers are required to collect employees' health and travel information and employees also have an obligation to proactively provide such information.
  - Furthermore, in many cities (such as Beijing, Shanghai, Guangzhou, and Shenzhen), the local governments implement an individual health code system which can identify the individual's COVID-19 related health risk level based on the government's data platform. Employees are generally required to show their individual health code (at the low risk level) before they can enter into the office building/workplace. Employees with a health code of medium or high risk level may not be allowed to enter the office building/workplace or any other public places.
- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes.

  - Employers are required to collect employees' health and travel information and employees have an obligation to provide such information. An employer may use the government operated individual health code system to identify the employee's COVID-19 related health risk.
- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Yes.

  - Entities and individuals have a general obligation under the PRC Law on the Prevention and Treatment of Communicable Diseases (Communicable Diseases Law) to promptly report any infectious cases or suspected infectious cases to the disease prevention and control authority and medical institutions. Therefore, it should be permissible for the employer to issue an instruction or a policy requiring employees to report co-workers with flu symptoms to the employer, to fulfill such obligation.
  - Furthermore, employers arguably are required by the government to appoint a designated person(s) to observe the relevant co-workers' health status. In fact, an official from the National Health Commission stated in a press conference that this measure is required to contain COVID-19 in the workplace. However, this statement has not been documented in any formal government notice.
- 4. Can employees refuse to come to work?**

Generally no, unless the employee has justifiable reasons.

  - Pursuant to the relevant government notice, if an employee refuses to return to work without justifiable reasons (as defined below), an employer should first advise the employee that the employer has taken sufficient epidemic control and prevention measures and it is generally safe to resume work, and encourage the employee to return to work. If the employee still refuses to report to work without justifiable reasons, such absence can be deemed to be an unauthorized absence. Technically, the employer may take disciplinary action (up to summary dismissal) for the employee's unauthorized absence based on the company's policy. The justifiable reasons referred to above include employees being confirmed with or suspected of contracting COVID-19, employees having been in contact with confirmed or suspected cases, and employees being unable to



#### 4. Can employees refuse to come to work?

return to work in the office due to government quarantine orders or other emergency measures, such as a city lock-down, travel ban, or employees being isolated/quarantined after they return to the city where the employer is located pursuant to local policy.

- Practically, the All China Federation of Trade Unions has suggested that employers arrange for female employees who are pregnant or are nursing to work from home and to provide better protection for them during the COVID-19 outbreak.
- An employer may, at its discretion, allow employees who are reluctant to come to work, to work from home to the extent practicable. Alternatively, the parties may agree on a period of paid or unpaid leave, or otherwise adjust the employees' future rest days/weekends for them to take leave now.

#### 5. Can employees refuse to attend meetings or to travel?

Employees generally cannot refuse an employer's reasonable requests. An employer's request would probably be viewed as reasonable if it follows the rules regarding meeting and travel arrangements in a pandemic situation. So far the national government and many cities have issued notices in this respect.

- For meeting arrangements, the national government encourages employers to arrange meetings through video conference and reduce face-to-face meetings. If a face-to-face meeting must be held, employers should reduce the number of participants, shorten the meeting time, increase seat spacing, and ensure ventilation of the meeting venue and take efforts to control and prevent the spread of the COVID-19.
- For travel arrangements, employers are required by the national government to reduce travel arrangements to the extent possible. Employers should take into account the relevant government travel restrictions (with some examples listed below) from both the departing and arrival cities before arranging for employees to travel. Employees may have a justified reason for refusing to travel based on these travel restrictions.
  - 1) For domestic travel, the employee may be subject to isolation /quarantine for 14 days upon arrival at the destination place and/or return to the city where the employee is based pursuant to local policy.
  - 2) For international travel, in light of the global spread of COVID-19, certain local governments (such as the Beijing government) suggest that individuals adhere to the principle of "no travel if not necessary", and cancel international trips to countries or regions with epidemic situation if possible.
  - 3) All individuals who travel from aboard must undergo an isolated medical observation for 14 days upon arrival in Beijing; all individuals who are from or have travelled through countries listed to have a serious COVID-19 outbreak must isolate themselves at home or a designated place for 14 days upon their arrival in Shanghai.



## 5. Can employees refuse to attend meetings or to travel?

- In practice, an employer, when arranging employees to travel during a pandemic period, should assess whether there are government restrictions and isolation requirements in the departing and arrival cities, whether the travel is essential and whether there are any alternatives, whether there are any other risk factors, and what protection measures the employer may provide for the health and safety of the employees. After these assessments are undertaken and the decision is reasonably made in favour of travelling, the employee should follow the employer's instructions on the travel arrangements. The employer may be able to take certain disciplinary action against the employee if the employee then refuses to follow the employer's reasonable request.
- In the absence of detailed guidance in this area, in general, an employer needs to act reasonably when arranging meetings/travel. If an employer takes any disciplinary action against an employee for his/her failure to follow the employer's instructions, the employer would need to show to the labor tribunal or court that its decision and instructions were reasonable in the context of a pandemic situation.

## 6. Can the employer send employees on suspension from work?

The employer can suspend the employees' work in a few situations.

- If the employer identifies an employee with suspected symptoms, such employee should be immediately isolated and sent to the hospital for COVID-19 diagnosis. The employee who is confirmed with or suspected as having COVID-19 must be quarantined for medical treatment or isolated for medical observation as per the government requirement.
- If the employer identifies an employee who has had close contact with a COVID-19 case or suspected COVID-19 case, such employee must be isolated for medical observation as per the government requirement.
- If the employee is released from required quarantine/isolation but the employer decides to nevertheless send the employee home, the employer may instruct the employee to work from home if the employee can perform the work remotely, or the employer may otherwise arrange the employee to use annual leave (ideally upon agreement with the employee).
- If the employer suffers from difficulties in its production and operations due to the epidemic situation and decides to suspend all employees from work for a certain period of time, the employer may
  - (i) arrange the employees to use their annual leave
  - (ii) put the employees on leave by adjusting the rest days within the calendar year of 2020 (this means that employees can be deemed to take their rest days during the period of suspension. When the employee returns to work after the period of suspension, the employee can make up for the rest days taken (e.g., the employee may on weekends etc.); or
  - (iii) suspend its business operations and suspend the employees from work.

There are national and local rules regarding pay during the suspension period, e.g., when the employee is subject to mandatory medical treatment or observation, when the employee is released but still not able to work, or when the company chooses to arrange the employee to stay at home without arranging working. For information on salary payment requirements during the suspension period, please see Q10 below.





**7. When is the employer forced to shut down its operations?**

If an employee has symptoms of COVID-19, the employer's workplace may be required to be quarantined immediately. The office unit he/she works at may need to be closed depending on the medical observation on such employee. If an employee is confirmed as having COVID-19, depending on the seriousness of the epidemic situation, the employer may be ordered by the local government to close down the entire office. The employer may only re-open the office after the epidemic situation is under control.

**8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

Yes.  
An employer is under a legal obligation to prevent and control communicable diseases pursuant to the Communicable Diseases Law and its implementing measures. This obligation includes:

- Cooperating with the prevention and control measures taken by the disease prevention and control authority and medical institutions;
- Providing truthful information to the local disease prevention and control authority and medical institutions;
- Promptly reporting any infectious cases or suspected infectious cases to the disease prevention and control authority and medical institutions.

**9. Can the employer require an employee to see a doctor?**

If an employee has suspected symptoms, the employer should immediately isolate such individual and send him/her for COVID-19 diagnosis in a designated hospital. The employee will be quarantined for medical treatment if he/she is confirmed as having COVID-19. The employee will be isolated for medical observation if he/she is suspected of having COVID-19.

**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

Whether the employee is entitled to be paid depends on the reason why they are not working:

- If an employee contracts COVID-19, is suspected of contracting COVID-19, or is ordered to be isolated due to close contact with an actual or suspected COVID-19 case, the employer should continue paying normal salary and benefits during the treatment period or isolation period.
- If the employee is unable to return to work in the office due to government quarantine orders or other emergency measures, or the employee is required by government rules to self-isolate at home for 14 days upon arrival in the city of the employer's office, the default position is that the employer should continue to pay normal salary and benefits (note the employer may first arrange for the employees to use their paid annual leave during the relevant period). However, for employees who are unable to return to work in the office due to government quarantine orders or other emergency measures, and remain unable to return to work in the office after using up all available paid annual leave, subject to consultation with the employees (it is not clear what the exact consultation process is, but presumably no employee consent is required in such consultation), an employer may follow the work stoppage payment rules by paying full salary for the first payment cycle (i.e., the first month of work stoppage), and starting from the second month, the employer may start paying the minimum living allowance required under



**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

the local rules. Further to the above national requirements, based on the local policy in Beijing, for employees who stay in Hubei province but cannot perform work, starting from March 2020, employers in Beijing need to pay them no lower than twice the Beijing basic living costs.

- If the employer arranges the employees to work from home or to use their annual leave or the employer otherwise puts the employees on leave by adjusting the rest days within the calendar year of 2020, the employer should pay the employees their normal salary during the relevant period.
- If the employee refuses to come to work without justifiable reasons, this will be deemed to be an unauthorized absence. The employer is not obliged to pay the employee and may take disciplinary action against such employee in accordance with company policy. (Note, however, unless the employer otherwise dismisses the employee for the unauthorized absence based on company policy, the employer will still need to make social insurance contributions for the employee even during the period of unauthorized absence.)
- If an employer suspends business operations due to an epidemic situation, during the first pay cycle (i.e., the first month), the employer must pay salary as specified in the employment contract (i.e., employees must continue to receive regular pay). For the period beyond the first pay cycle (after one month), the employer must:
  - (i) pay salary no less than the local minimum wage to employees who have performed work and
  - (ii) pay a "living fee" to employees who have not performed work (the living fee amount shall be determined in accordance with applicable local regulations).

**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

Currently there is no national rule on this topic. Some local governments have issued a notice to provide some guidance in this area.

- In Beijing, each household may have one breadwinner to stay at home to take care of minors (defined as minor children who have to stay at home due to the postponed opening of kindergartens, primary schools, middle schools and high schools). Such arrangement will be treated as being subject to quarantine or other emergency measures taken by the government, and the employer should pay normal salary to the employee during such period. There is no clear time limitation for such period. Furthermore, during the relevant period, the employee's employment cannot be terminated unless for serious misconduct. If the employee's employment contract expires during the relevant period, the employment contract shall be automatically extended until the relevant period ends. Note, however, the employer may arrange such employee to work from home, or arrange a different or flexible work schedule for him/her to provide normal work, or arrange the employee to take leave by adjusting the rest days / weekends within the calendar year. In addition, the employees should ask their elder family members to take care of the minor children to the extent possible.
- Except for Beijing, currently there is no similar government notice that requires employers to pay salary for employees who need to stay home to take care of their minor children and cannot work in other major cities. Generally employers are encouraged to arrange with employees to work from home or arrange a different or flexible work schedule for them to provide normal work while taking care of their minor children.



# Hong Kong



This guidance is stated as at 18 March 2020

**1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

Yes.

- Employees may be a risk factor because they have symptoms of COVID-19, have been in contact with a confirmed case, or because they have visited a high risk area.
- In each case, our view is that an employee is under an implied duty (and may be under an express duty) to tell their employer.
- Employees should tell their employer if they are unable to work whether because of sickness or advice to self-isolate, or because they are in quarantine, according to the employer's usual absence procedures.
- To ensure employees understand their reporting obligations, employers should develop a clearly communicated policy on what and when an employee is expected to inform their employer of risk factors.

**2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes.

- There is no strict legal obligation on employers to demand this information but employers have a common law duty to take reasonable care of their employees' safety and to provide and maintain a reasonably safe place of work for their employees. Therefore, employers can make a lawful request to an employee to disclose himself/herself as being a "risk-factor".
- In addition, employers should carry out a risk assessment if they become aware that an employee has been in close contact with a confirmed case or has visited a high risk area.

**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Generally, no. For data privacy reasons, we would not recommend this.

- This instruction/policy may, however, be permissible in certain extreme circumstances, for example, if another employee in the workplace is suspected as having or confirmed to have COVID-19 and has not complied with a compulsory quarantine order. Any such policy in those circumstances would require a clear reporting channel within the employer organisation with limited access to the reported data, and a clear, limited retention period.

**4. Can employees refuse to come to work?**

Generally, no.

- However, the obligation employers have to preserve trust and confidence in the employment relationship means that employers should speak to employees to understand the reason for their refusal and whether they have genuine concerns.
- An employee may have a justified reason for not attending work e.g., if the employee is subject to a quarantine order by a Health Officer. In such a case, the employee could refuse to attend work.
- Some groups of employees such as pregnant women, those with compromised immune systems and those identified by WHO as having a higher risk of developing severe COVID-19 may have good reason for their refusal, and obligations under discrimination and health and safety law should be carefully observed in relation to those higher risk groups.





## 4. Can employees refuse to come to work?

- It is important to remember that employees have a duty to comply with the reasonable instructions of their employer. If an employee refuses to come to work, this may amount to breach of the employment contract. If an employer directs its employees to work in the office and takes appropriate measures to provide a safe place of work for its employees (in accordance with the Occupational Safety and Health Ordinance, (Cap. 509, Laws of Hong Kong)), we consider that a direction by the employer to require the employees to work from the office would be considered a lawful and reasonable direction by the employer.
- Practically, the employee may have a job which can be done from home and a solution would be to instruct them to do so. If they are not able to do so, you may be able to agree that they take annual leave. Alternatively, the parties could agree on a period of unpaid leave.
- However, if it is not possible to reach a satisfactory solution with an employee who is not at high risk, the employer may choose to begin disciplinary proceedings against the employee. In the current climate, we think it is quite unlikely that employers would take this step given the PR / ER implications. However, as the situation develops, and if many employees are perceived as using COVID-19 as an 'excuse' not to attend work but to request payment, a more assertive approach to managing refusals to work may be required.

## 5. Can employees refuse to attend meetings or to travel?

Generally, no, if this is required as part of their duties.

- However, please note our general comments to question no. 4 above and the need to preserve the relationship of trust and confidence. Employers should discuss any refusal with the employee. In light of the global spread of COVID-19 and the government's appeal to the public to avoid all non-essential travel, an employee may be justified in refusing to travel. Employers should note the current travel restrictions and quarantine measures in the relevant countries should they ask their employees to travel. Employees may also be subject to compulsory quarantine orders when they return to Hong Kong. Employers may also be liable to pay compensation if an employee contracts COVID-19 from attending meetings or travelling on business.
- All employers should assess whether travel to affected areas is essential. As a practical matter, most employers are banning non-essential travel. Employers should avoid sending those at higher risk of serious illness to any area where the virus is spreading. Risk assessments should be carried out.

## 6. Can the employer send employees on suspension from work?

- Employers may have a contractual right to ask employees to work from home or not to attend work at any point during their employment. This will depend on the wording of their employment contract.
- Even if they do not, it may be a reasonable instruction based on a risk assessment in the current circumstances to either instruct their employees to work from home if they have a job that can be done remotely and if not, to ask them not to attend work.



# Hong Kong



6. **Can the employer send employees on suspension from work?** ■ An employee who has been told not to work by their employer but is otherwise able and willing to do so should receive their usual pay and benefits (unless the employee has contractually agreed to go on unpaid leave).  
For information on paying other categories of employees, please see question no. 10 below.
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7. **When is the employer forced to shut down its operations?** The employer would be required to shut down its operations if the authorities so require. The Commissioner for Labour is empowered to issue a suspension notice against workplace activity that may create an imminent risk of death or serious bodily injury.
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8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?** No  
 ■ If an employee contracts or is suspected of having contracted COVID-19 "by accident arising out of and in the course of his employment" (i.e., the employee thinks he/she caught the virus at work), the employee should inform the employer immediately so that the employer can then notify the Labour Department in accordance with the Employees' Compensation Ordinance (which covers compensation for work injury/illnesses).  
 ■ At present there does not appear to be any obligation for an employer to report to another government department e.g., Department of Health. Under the Prevention and Control of Disease Regulation, there is a duty for **medical practitioners** to notify the Director of Health (Department of Health) and to provide information as required by health officers.
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9. **Can the employer require an employee to see a doctor?** If the contract of employment contains a clause providing the employer with the direct authority to do so, the employer could direct the employee to see a doctor in accordance with that clause. However, even if the employer has a contractual right to ask the employee to see a doctor, an employer could not force the employee to do so.
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10. **If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?** Whether the employee is entitled to be paid will depend on the reason why they are not working:  
 ■ Wherever possible, where risk factors are present, or an employee is awaiting the outcome of a test for COVID-19, but is otherwise able to work, an employer may instruct the employee to work from home and the employee should be paid usual pay.  
 ■ If an employee is displaying symptoms and has a medical certificate, he/she can be treated as being on sick leave and will be entitled to sick pay according to the employer's usual policy (which must not be less generous than an employee's sick leave/sick pay entitlements under the Employment Ordinance).  
 ■ If the employee has been asked not to attend work by the employer and he/she does not have a job that can be done remotely, he/she is entitled to be paid their usual pay.



**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

- If a doctor advises an employee to self-isolate and issues a medical certificate, the employee should receive sick pay in accordance with company policy (which must not be less generous than an employee's sick leave/sick pay entitlements under the Employment Ordinance).
- If an employee refuses to come to work without good reason, this may be treated as an unauthorised absence.
- Employees who deliberately visit a high risk area with the intention that they will then be told to isolate or put in quarantine should be warned that if they do go and do not have a job that can be done remotely, they will not receive any pay (other than statutory sick pay if eligible) for the period that they are unable to work due to quarantine/self-isolation or inability to return to Hong Kong. They will receive annual leave pay for their booked period. The employer may require them to take annual leave for the additional period they are unable to work if they have sufficient untaken annual leave, or it will be unpaid (save for statutory sickness allowance). If an employer intends to take this approach it should issue a clear policy of its position on pay in these situations.

**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

- The employer may allow employees to work from home if their job is one that can be done remotely.
- As a practical matter it would be possible to direct an employee to take his/her statutory annual leave, but this requires an employer to provide at least 14 days' advance notice under the Employment Ordinance (unless the parties agree to a shorter notice period). Whether the employer can direct the employee to take annual leave in excess of the statutory minimum will depend on the terms of the employment contract/policy.
- If the employee is not able to work, we consider that there would not be an obligation to pay the employee. It would be prudent to document the time off as an agreed period of unpaid leave with the employee.





This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

Yes, but only if the employer imposes such an obligation on them

  - Employees may be a risk factor because they have symptoms of COVID-19, have been in contact with a confirmed case, or because they have visited a high risk area.
  - In each case, our view is that, unless the employer has expressly instructed or issued an order in advance that an employee must disclose when a risk factor has occurred (e.g., if the employee has a high fever), the employee is not under an obligation to disclose this to the employer.
  - Employees should tell their employer if they are unable to work whether because of sickness or advice to self-isolate, or because they are in quarantine, according to the employer's usual absence procedures pursuant to the work rules or employer's specific instructions/orders.
  - To give effect to such a disclosure obligation and to ensure employees understand their reporting obligations, employers should develop a clearly communicated policy on what and when an employee is expected to inform their employer of risk factors.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Generally, yes.

  - Employers have a statutory duty to provide a safe and healthy work place and to ensure the safety of their employees. Therefore, employers may make a lawful request that their employees must disclose themselves as being a "risk-factor".
  - In addition, employers should carry out a risk assessment if they become aware that an employee has been in close contact with a confirmed case or has visited a high risk area.

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Generally, yes. However, we would not recommend this.

  - This action may be justified on the basis that the employer is imposing such an obligation in order to ensure the safety of its employees and there may be a certain need to request assistance from other employees when, for example, a particular employee seems to be hiding the fact that they are actually a "risk-factor". However, employers should note that such a policy may cause confusion amongst employees and may create an unharmonious working environment.



**4. Can employees refuse to come to work?**

Generally, no.

- Employees can only refuse to come to work if there is a clear risk to their health and safety which makes their work impossible to perform. For example, if there is a confirmed COVID-19 case in the work place and the employee's workstation is in close proximity to where the infected employee was located (i.e., same open space office) and the workplace has not been cleaned. If, however, it is possible for the employee to work remotely, for example, then the employee will have an obligation to work under the employment agreement.
- Alternatively, employees may be entitled to various forms of statutory and contractual leave (e.g., annual leave, sick leave, maternity leave, etc.) which the employee may be able to use depending on the circumstances.

**5. Can employees refuse to attend meetings or to travel?**

Generally, no.

- If however, meetings are located or the travel is to a region that is considered unsafe or if there is a grave and imminent danger to the employee in the respective region/destination, employees may refuse to attend meetings or to travel. Employers should note the current travel restrictions and quarantine measures in the relevant countries should they ask their employees to travel. Many organisations are instructing employees to avoid non-essential travel.

**6. Can the employer send employees on suspension from work?**

- If remote working has been implemented in the employer organisation and the employment contract allows for it, then the employer should first seek to direct employees to work from home.
- If home working is not possible for whatever reason, then the employer may instruct its employees not to work for a certain period of time. In this case, pursuant to the Labour Standards Act, the employer may be required to pay employees at least 60% of their wages as compensation unless the employer can prove that this is a force majeure situation.

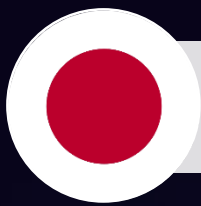
**7. When is the employer forced to shut down its operations?**

There are no specific requirements regarding an employer's obligation to shut down its operations. However, an employer will be required to shut down its operations if the authorities instruct or order the employer to do so.

**8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

No.

- There are currently no such reporting obligations imposed on employers (as opposed to doctors).



**9. Can the employer require an employee to see a doctor?**

Generally yes, but only if there is a reasonable ground for doing so in the circumstances.

- If there is a provision in the work rules which authorizes the employer to instruct an employee with certain symptoms to see a doctor, then the employer may do so pursuant to such provision. Even in the absence of such a provision, it may be justified for an employer to require an employee to see a doctor if this is necessary in order for the employer to discharge its obligation to ensure the health and safety of its employees.

**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

Whether the employee is entitled to be paid will depend on the reason why they are not working:

1. If the employer decides to suspend work temporarily: If (in the absence of any instruction or order of the relevant authority to suspend work), the employer decides to suspend work because an employee is suspected of being infected with COVID-19 or the employer is unable to continue operations due to COVID-19, we are of the opinion that the employer would still need to pay affected employees at least 60% of their wages as compensation although the specific circumstances would need to be assessed on a case by case basis (see also Q6).
2. Forced shutdown: A shutdown forced by the authorities would be deemed to be an unavoidable external reason. In such case, the employer would not be required to pay wages.
3. Refusal of the employee to come to the workplace: No. If an employee refuses to come to work without good reason (see Q4 above), this may be treated as an unauthorised absence.

**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

Technically speaking, it may constitute a breach of the employment contract by the employee if an employee is unable to work due to such reasons and therefore there is no need for the employer to pay wages. However, in light of the extraordinary circumstances brought about by COVID-19, most employers in practice are making arrangements on an individual basis with employees to help them manage the situation, including where possible, preserving their salary income.



This guidance is stated as at 19 March 2020

**1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

Yes.

- Employees may be a risk factor because they have symptoms of COVID-19, have been in contact with a confirmed case, or because they have visited a high risk area.
- In each case, the Malaysian Occupational Safety and Health Act (OSHA) (which applies to most businesses) mandates employees to ensure safety and health at the workplace. There is also the implied duty (and possibly an express duty) to tell their employer. Employees are also encouraged to do so under the 'COVID-19: Management Guidelines for Workplaces' (MOH Management Guidelines) issued by the Malaysian Ministry of Health (MOH).
- Employees should tell their employer if they are unable to work whether because of sickness or advice to self-isolate, or because they are in quarantine, according to the employer's usual absence procedures.
- To ensure that employees understand their reporting obligations, employers should develop a clearly communicated policy on what and when employees are expected to inform their employer of risk factors.

**2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes.

- There is no strict legal obligation on employers to demand this information but employers have a common law duty, and possibly under the OSHA, to take reasonable care of their employees' safety and to provide and maintain a reasonably safe place of work for their employees.
- Therefore, employers can make a lawful request for an employee to disclose themselves as being a "risk-factor".
- In addition, employers should carry out a risk assessment if they become aware that an employee has been in close contact with a confirmed case or has visited a high-risk area.

**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Generally, no. For data privacy reasons, we would not recommend this.

This instruction/policy may, however, be permissible in certain extreme circumstances, for example, if another employee in the workplace is confirmed to have COVID-19 and has not followed self-isolation advice. Any such policy in those circumstances would require a clear reporting channel within the employer organisation with limited access to the reported data, and a clear, limited retention period.

**4. Can employees refuse to come to work?**

Generally, no.

- However, the obligation employers have to preserve trust and confidence in the employment relationship means that employers should speak to employees to understand the reason for their refusal and whether they have genuine concerns.



## 4. Can employees refuse to come to work?

- An employee may have a justified reason for not attending work e.g. if the employee is subject to a quarantine order by a Health Officer. In such a case, the employee could refuse to attend work.
- Some groups of employees such as pregnant women, those with compromised immune systems and those identified by WHO as having a higher risk of developing severe COVID-19 may have good reason for their refusal, and obligations under health and safety law should be carefully observed in relation to those higher risk groups.
- It is important to remember that employees have a duty to comply with the reasonable instructions of their employer. If an employee refuses to come to work, this may amount to breach of the employment contract. If an employer directs its employees to work in the office and takes appropriate measures to provide a safe place of work for its employees, we consider that a direction by the employer to require the employee to work from the office would be considered a lawful and reasonable direction by the employer.
- Practically, employees may have a job which can be done from home and a solution would be to instruct them to do so. If they are not able to do so, the employer may be able to agree that they take annual leave. Alternatively, the parties could agree on a period of unpaid leave.
- However, if it is not possible to reach a satisfactory solution with an employee who is not at high risk, the employer may choose to begin disciplinary proceedings against the employee. In the current climate, we think it is quite unlikely that employers would take this step given the public / employment relations implications. However, as the situation develops, and if many employees are perceived as using COVID-19 as an 'excuse' not to attend work but to request payment, a more assertive approach to managing refusals to come to work may be required.

## 5. Can employees refuse to attend meetings or to travel?

Generally, no, if this is required as part of their duties.

- However, please note our general comments to question no. 4 above and the need to preserve the relationship of trust and confidence. Employers should discuss any refusal with the employee. In light of the global spread of COVID-19, an employee may be justified in refusing to travel.
- All employers should assess whether travel to affected areas is essential. As a practical matter, most employers are banning non-essential travel. Employers should avoid sending those at higher risk of serious illness to any area where the virus is spreading. Risk assessments should be carried out. Employers should note the current travel restrictions and quarantine measures in the relevant countries should they ask their employees to travel.
- Moreover, employers are encouraged to cancel or postpone non-essential travel and large meetings pursuant to the MOH Management Guidelines and the 'COVID-19: Social Distancing Guidelines for Workplace, Homes and Individuals' (Social Distancing Guidelines) issued by the MOH.



## 6. Can the employer send employees on suspension from work?

- Employers cannot legally prevent employees from attending work if no quarantine orders are issued by any registered medical practitioner.
- Where the employee appears to have symptom(s) of the COVID-19 but this is not medically-certified, the employer can consider placing the employee on paid leave. However, this should only be done where the employee shows obvious symptoms of COVID-19, as an employee generally has the right to work, and unjustifiably suspending an employee from work could result in constructive dismissal liability.
- Nevertheless, employers may have a contractual right to ask employees to work from home or not to attend work at any point during their employment. This will depend on the wording of their employment contract.
- Even if they do not, it may be a reasonable instruction based on a risk assessment in the current circumstances to either instruct their employees to work from home if they have a job that can be done remotely and if not, to ask them not to attend work.
- An employee who has been told not to work by their employer but is otherwise able and willing to do so should receive their usual pay and benefits (unless the employee has contractually agreed to go on unpaid leave).
- For information on paying other categories of employees, please see question no. 10 below.

## 7. When is the employer forced to shut down its operations?

- The employer would be required to shut down its operations if the authorities so require. Any officer authorized under the Malaysian Prevention and Control of Infectious Diseases Act 1988 (PCIDA) is empowered to order the closure of premises or do any other act to prevent the spread of the COVID-19.
- On 16 March 2020, the Malaysian Prime Minister announced a Restriction of Movement Order (Order) which will last from 18 March 2020 to 31 March 2020 (Restriction Period) and is effective nationwide. Unless the employer's business falls within the exempted categories under the Order and related regulations, the business premises have to be closed during the Order. However, to the extent practicable, employees can work from home.
- The Malaysian Health Director-General has announced that, outside of the Restriction Period, employers are not required to close their premises or business in the event of confirmed cases for COVID-19, and that carrying out disinfection procedures is sufficient.

## 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?

- COVID-19 has been declared to fall within the definition of "infectious disease" under the PCIDA, and Section 10 of the PCIDA (Section 10) requires any person who becomes aware of its existence to report to the officer in charge of the nearest district health office, government health facility or police station (Authorities). Under Section 10, persons who are required to report broadly include: (a) every person in charge of, or in the company of; and (b) every person not being a medical practitioner attending on, any suffering from an Infectious Disease.





**8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

- However, so far for COVID -19, the authorities have not expressly imposed such an obligation on individuals and companies to report. Our understanding is that, notwithstanding the wording in Section 10 which seem to impose the reporting obligation on non-medical practitioners, the MOH imposes the responsibility to report confirmed cases for COVID-19 on medical clinics and hospitals only. This position seem to be consistently reflected in the MOH Notification Form, which is Annexure 7 of the Guidelines 2019 Novel Coronavirus (2019 nCov) Management in Malaysia No. 2/2020, that has been prepared by the Ministry of Health. The Notification Form only provides for confirmation of patient details and signature, by medical practitioners.
- Practically, the existence of COVID-19 positive cases can only be confirmed through examination at designated medical clinics and hospitals in Malaysia. The Authorities are notified by these designated medical clinics and hospitals directly.
- Failure to notify the authorities regarding the existence of a COVID-19 case would amount to an offence under the PCIDA. Upon conviction, the offender will be liable to (a) in respect of a first offence, a fine and/or imprisonment for a term not exceeding two years; (b) in respect of a second offence, a fine and/or imprisonment not exceeding five years; and (c) in respect of a continuing offence, a further fine not exceeding RM 200 for each day during which such offence continues. The PCIDA does not prescribe the amount of fine to be imposed for the first and second offences.

**9. Can the employer require an employee to see a doctor?**

Generally, yes.  
The employee has an implied duty to adhere to the reasonable instructions of their employer. If an employee refuses to comply with a reasonable request (based on a risk assessment in the current circumstances), this may amount to breach of the employment contract and misconduct.

**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

- If the employee is required not to work at the request of the employer or government, without being medically-certified to be COVID-19 positive, the employee must continue to be paid.
- If the employee is medically-certified to be COVID-19 positive, the employer can instruct the employee to be on sick leave, and the employee's entitlement to payment will be based on the employee's statutory or contractual sick leave entitlements.
- If an employee refuses to come to work without good reason, this may be treated as an unauthorised absence, which will be without pay.
- Forcing employees to take unpaid leave or a pay-cut is a unilateral variation of their employment terms and employers run the risk of facing a constructive dismissal claim if they unilaterally impose such conditions. An employer should obtain the prior consent of its employees where it is seeking to require its employees to take unpaid leave or a salary reduction. These measures are typically implemented before the employer decides on more drastic cost-cutting measures, such as workforce reduction or business closure. Employers must be careful to ensure that the employee's salary does not fall below the minimum basic salary prescribed by the Minimum Wage Order 2020.



# Malaysia



**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

- The employer may allow the employee to work from home if their job is one that can be done remotely. However, the employer will have to discuss with the employee on whether the employee has alternative child care arrangements and assess the employee's ability to work efficiently.
- If the employee is not able to work and does not wish to utilize his/her annual leave, we consider that there would not be an obligation to pay the employee. It would be prudent to document the time off as an agreed period of unpaid leave with the employee.



# Philippines



This guidance is stated as at 18 March 2020

1. **Are employees obliged to disclose themselves as a "risk-factor" to the employer?** No.

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2. **Can the employer demand employees to disclose themselves as being a "risk-factor"?** Yes.  
On 31 January 2020, the Philippine Department of Labor and Employment (DOLE) issued Labor Advisory No. 04 - series of 2020 (Guidelines on 2019 Novel Coronavirus Prevention and Control at the Workplace). This advisory mandates measures employers must take regarding COVID-19 (e.g., precautionary measures, measures in workplaces where workers are evidently at risk of infection as well as providing guidance to employers on the care of workers who are sick or have a fever). Among other requirements, employers are required to monitor the health of their workers particularly those with a fever or other flu symptoms, and those who have travelled to or worked in countries with COVID-19 cases. Employers may use this directive to direct employees to disclose if they are exhibiting symptoms of COVID-19 or have had contact with someone diagnosed with COVID-19.

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3. **Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?** Yes.  
Pursuant to DOLE Labor Advisory No. 04 - series of 2020, employers are required to monitor the health of their workers particularly those with a fever or other flu symptoms, and those who have travelled to or worked in countries with COVID-19 cases. This is in line with an employer's obligation to provide a place of employment that is free from hazardous conditions that are causing or likely to cause death, illness or physical harm to its workers.

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4. **Can employees refuse to come to work?** Yes, if he/she refuses to work by reason of imminent danger in the workplace.
  - In connection with this, the Philippine President announced on the night of 16 March 2020 that enhanced community quarantine and stringent social distancing measures will be imposed over the entire Luzon, including the National Capital Region, effective 12:00 AM of 17 March 2020 to 12:00 AM of 13 April 2020. The President's Executive Secretary subsequently issued a Memorandum providing more clarity on the Enhanced Community Quarantine. The Memorandum provides, among others, that
    - 1) Mass gatherings shall be prohibited.
    - 2) A strict home quarantine shall be observed in all households, and movement shall be limited to accessing basic necessities.
    - 3) Only those private establishments providing basic necessities and such activities related to food and medicine production, i.e., public markets, supermarkets, groceries, convenience stores, hospitals, medical clinics, pharmacies and drug stores, food preparation and delivery services, water-refilling stations, manufacturing and processing plants of basic food products and medicines, banks, money transfer services, power, energy, water and telecommunications supplies and facilities, shall be open.



# Philippines



4. **Can employees refuse to come to work?**
- In all such open establishments, their respective management shall ensure the adoption of a strict skeletal workforce to support operations, as well as strict social distancing measures.
  - Business Process Outsourcing establishments and export-oriented industries shall remain operational, subject to the condition that strict social distancing measures are observed, their respective personnel are provided with appropriate temporary accommodation arrangements by 18 March 2020, and that a skeletal work force shall be implemented.
  - As such, unless an employer is included in the exempt establishments, all establishments in Luzon should close from 17 March 2020 to 12 April 2020, unless the order to stop operations is lifted or extended, but they can have their employees work from home.
- 
5. **Can employees refuse to attend meetings or to travel?**
- Yes, if he/she refuses to work by reason of imminent danger arising from attending the meeting or traveling. Please see discussion above on item no. 4 on strict home quarantine and mandatory temporary closure of establishments (subject to exemptions) currently imposed in Luzon.
- 
6. **Can the employer send employees on suspension from work?**
- Subject to our response in item no. 4 above, employers which are still allowed to operate may require all or some of their employees to work from home (if this is operationally feasible) as a telecommuting arrangement. In such cases, these working employees should be paid as if they report for work at the office. There is a DOLE report form for telecommuting arrangements. We are not aware of any strict timeline for the submission of the form. We suggest submitting the form as soon as possible, even by e-mail, if the employer implements a telecommuting arrangement.
- Employers may also implement flexible working arrangements (e.g., rotation of workers, reduced workhours/workdays, forced leave), provided they:
- 1) consult with their employees about the implementation of such arrangement
  - 2) notify the DOLE about the adoption of such arrangement at least one week prior to the arrangement's implementation and
  - 3) post a copy of DOLE Advisory No. 09, Series of 2020 (Guidelines on the Implementation of Flexible Work Arrangements as Remedial Measure Due to the Ongoing Outbreak of Coronavirus Disease 2019) in a conspicuous location in the workplace. Based on informal advice from the DOLE, the latter might not strictly enforce the one-week prior notice requirement.
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7. **When is the employer forced to shut down its operations?**
- See discussion in item no. 4 above on strict home quarantine and mandatory temporary closure of establishments (subject to exemptions) currently imposed in Luzon.



# Philippines



**8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

Yes.

- An employer is required to report to the government (i.e., the Philippine Department of Health and the local municipal/city health officer) any worker who is suspected as having COVID-19. We believe that this obligation includes reporting of confirmed cases of COVID-19.
- In addition to the above, employers should also report to the local municipal health officer or local city health officer, as the case may be, (1) asymptomatics with a history of travel to China, and (2) asymptomatic with a history of exposure to COVID-19.

**9. Can the employer require an employee to see a doctor?**

Yes.

**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

- For employees who are on a leave of absence during the community quarantine period (whether as a result of temporary closure or suspension of operations or implementation of flexible working arrangement) and who are not working from home, their absence should be charged against their existing leave credits, if they have leave credits, and paid. Once the leave credits are exhausted, the leave of absence may be unpaid. However, employers are encouraged to exercise compassion and flexibility in granting additional leave with pay.
- In connection with this, DOLE has issued Department Order No. 209, Series of 2020 (Guidelines on the Adjustment Measures Program for Affected Workers Due to the Coronavirus Disease 2019), which implements COVID-19 Adjustment Measure Program (CAMP). Generally, CAMP offers government financial support of PHP 5,000 (around USD 100) one-time, lump sum, non-conditional financial assistance to each affected worker in the private sector that has adopted a flexible working arrangement or closed their establishment during the COVID-19 pandemic. There is a detailed process and list of documentary requirements that employers must submit in order for their employees to be able to benefit from CAMP.

**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

See discussion in item no. 10.



This guidance is stated as at 19 March 2020

**1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

Yes.

- Employees may be a risk factor because they have symptoms of COVID-19 or have been in contact with a confirmed case, or because they have visited a high risk area.
- There is no express legislation or regulation requiring that employees disclose that they are a risk-factor to their employer in general. However, our view is that an employee is under an implied duty (and may be under an express duty) to tell their employer.
- Employees should tell their employer if they are unable to work whether because of sickness or have been advised to self-isolate, or because they are in quarantine, according to the employer's usual absence procedures.
- To ensure employees understand their reporting obligations, employers should develop a clearly communicated policy on what and when an employee is expected to inform their employer of risk factors. This is especially important if the employee is a work pass holder, is currently overseas in a restricted country (as identified by the government), and wishes to re-enter Singapore. Employers need to apply to the Ministry of Manpower (MOM) for prior approval before such work pass holders re-enter Singapore. A failure to comply with the re-entry requirements is likely to lead to the MOM taking enforcement action against both the employer and work pass holder.
- All employees returning from a restricted country will be served with a 14-day Stay Home Notice (SHN) and will not be permitted to leave their place of residence for the duration of the SHN.

**2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes.

- There is no strict legal obligation on employers to demand this information but employers have a common law duty to take reasonable care of their employees' safety and to provide and maintain a reasonably safe place of work for their employees. Therefore, employers can make a lawful request for an employee to disclose themselves as being a "risk-factor".
- In addition, employers should carry out a risk assessment if they become aware that an employee has been in close contact with a confirmed case or has visited a high risk area.

**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Generally, no. For data privacy reasons, we would not recommend this.

This instruction/policy may, however, be permissible in certain circumstances, for example, if another employee in the workplace is confirmed to have COVID-19 and is not complying/has not complied with the Stay-Home Notice requirements. Any such policy in those circumstances would require a clear reporting channel within the employer organisation with limited access to the reported data, and a clear, limited retention period.





#### 4. Can employees refuse to come to work?

Generally, no.

- However, as employers have an implied duty to preserve trust and confidence in the employment relationship, employers should speak to employees to understand the reason for their refusal and whether they have genuine concerns.
- An employee may have a justified reason for not attending work e.g. if the employee is subject to an SHN. In such a case, the employee is not permitted to attend work and the employer must ensure that the employee complies with the SHN requirements, otherwise the MOM is likely to take enforcement action if the non-compliance comes to its attention. Non-compliance with the SHN requirements is also an offence under the Infectious Diseases Act, so employers should be aware that if the employee comes to work while on a SHN, the employer could be penalised for aiding and abetting an offence under the Infectious Diseases Act. The penalties may include a fine of up to SGD 10,000 or imprisonment for up to six months or to both; and for subsequent offences, a fine of up to SGD 20,000 or to imprisonment for up to 12 months or to both.
- Some groups of employees such as pregnant women, those with compromised immune systems and those identified by WHO as having a higher risk of developing severe COVID-19 may have good reason for their refusal, and the MOM has issued an advisory encouraging employers to permit these employees to work from home where feasible.
- It is important to remember that employees have a duty to comply with the reasonable instructions of their employer. If an employee refuses to come to work, this may amount to breach of the employment contract. If an employer directs its employees to work in the office and takes appropriate measures to provide a safe place of work for its employees (in accordance with the Workplace Safety and Health Act), we consider that a direction by the employer to require the employee to work from the office would be considered a lawful and reasonable direction by the employer.
- Practically, the employee may have a job which can be done from home and a solution would be to instruct them to do so. If they are not able to do so, you may be able to agree that they take annual leave. Alternatively, the parties could agree on a period of unpaid leave.
- However, if it is not possible to reach a satisfactory solution with an employee who is not at high risk, the employer may choose to begin disciplinary proceedings against the employee. In the current climate, we think it is quite unlikely that employers would take this step given the PR / ER implications, and we would recommend that employers be as accommodating as possible during this period. However, as the situation develops, and if many employees are perceived as using COVID-19 as an 'excuse' not to attend work but to request payment, a more assertive approach to managing refusals to work may be required.



**5. Can employees refuse to attend meetings or to travel?**

Generally, no, if this is required as part of their duties.

- However, please note our general comments to question no. 4 above and the need to preserve the relationship of trust and confidence. Employers should discuss any refusal with the employee. In light of the global spread of COVID-19, an employee may be justified in refusing to travel or attend physical meetings. Employers are encouraged to seek out alternative ways to conduct the meeting such as conducting the meeting through teleconference or video conference.
- All employers should assess whether travel to affected areas is essential. As a practical matter, most employers are banning non-essential travel. The Singapore government has also strongly urged for all non-essential travel to any country to be deferred. Employers should avoid sending those at higher risk of serious illness to any area where the virus is spreading. Risk assessments should be carried out.

**6. Can the employer send employees on suspension from work?**

- Employers may have a contractual right to ask employees to work from home or not to attend work at any point during their employment. This will depend on the wording of their employment contract.
- Even if they do not, it may be a reasonable instruction based on a risk assessment in the current circumstances to either instruct their employees to work from home if they have a job that can be done remotely and if not, to ask them not to attend work.
- An employee who has been told not to work by their employer but is otherwise able and willing to do so should receive their usual pay and benefits (unless the employee has contractually agreed to go on unpaid leave).

For information on paying other categories of employees, please see question no. 10 below.

**7. When is the employer forced to shut down its operations?**

The employer would be required to shut down its operations if the authorities so require. The Minister of Health is empowered to declare that the whole of or a specific area in Singapore is a restricted zone and in such order prohibit the entry or persons in such place or the holding of, or the attendance of any persons at, any public meeting or other gathering within the restricted zone, if the Minister of Health is satisfied that there is an outbreak or imminent outbreak of an infectious disease (including COVID-19) that poses substantial risk of a significant number of human fatalities in Singapore.

**8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

No.

There is currently no requirement for employers to report a confirmed case, since whether or not someone has COVID-19 will be confirmed by the attending doctors. This information will be fed to the Ministry of Health (MOH) and the MOH tracing officers will reach out to the employer on the confirmed case's close contacts at work. The MOM's advisory states that employers should cooperate with MOH tracing officers.



**9. Can the employer require an employee to see a doctor?**

If the contract of employment contains a clause providing the employer with the direct authority to do so, the employer could direct the employee to see a doctor in accordance with that clause. However, even if the employer has a contractual right to ask the employee to see a doctor, an employer should not force the employee to do so.

That said, in line with the employer's obligations under the Workplace Health and Safety Act, the employer should take reasonable steps that are necessary to ensure the health and safety of all employees at work, which arguably includes directing employees with flu-like symptoms not to come to work.

**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

Whether the employee is entitled to be paid will depend on the reason why they are not working:

- Wherever possible, where risk factors are present, or an employee is awaiting the outcome of a test for COVID-19, but is otherwise able to work, employers may instruct employees to work from home and they should be paid usual pay.
- If an employee is displaying symptoms, they can be treated as being on paid sick leave and should be paid according to the employer's usual policy (which must not be less generous than an employee's sick leave entitlements under the Employment Act).
- If the employee has been asked not to attend work by the employer and they do not have a job that can be done remotely, they are entitled to be paid their usual pay.
- If a doctor advises an employee to self-isolate the employee should be able to use his/her paid sick leave entitlement (which must not be less generous than an employee's sick leave entitlements under the Employment Act).
- If an employee who refuses to come to work without good reason, this may be treated as an unauthorised absence.
- Employees who deliberately visit a high risk area with the intention that they will then be told to isolate or quarantined should be warned that if they do go and do not have a job that can be done remotely, they will not receive any pay (other than statutory sick pay if eligible) for the period that they are unable to work due to quarantine/self-isolation or inability to return to Singapore. They will receive annual leave pay for their booked period. The employer may require them to take annual leave for the additional period they are unable to work if they have sufficient untaken annual leave, or it will be unpaid (save for statutory sick leave entitlements). If an employer intends to take this approach it should issue a clear policy of its position on pay in these situations.
- If an employee is currently in a country that is subsequently listed as a restricted country while he/she is in that country, then upon their return to Singapore, the employer would need to treat the duration of the SHN as paid hospitalisation leave.

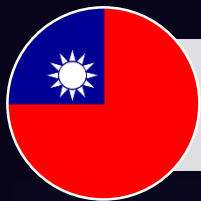


# Singapore



**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

- The employer may allow the employee to work from home if their job is one that can be done remotely.
- As a practical matter it would be possible to direct an employee to take his/her annual leave.
- If the employee is not able to work, we consider that there would not be an obligation to pay the employee. It would be prudent to document the time off as an agreed period of unpaid leave with the employee, if the employee refuses to use his/her annual leave entitlements.



This guidance is stated as at 18 March 2020

## 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?

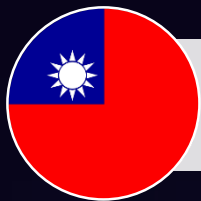
This depends on the reason why the employee is a risk factor and whether there is a clearly communicated policy in place.

- Employees may be a risk factor because they have symptoms of COVID-19, they have been in contact with a confirmed case, or because they have visited a high-risk area.
- It is currently legal and common practice in Taiwan for employers to adopt temperature screening at the front door of office premises and prohibit employees with fever from entering the premises. An employee is obliged to disclose to the employer if they have a fever. However, employees are not required by law to provide medical records to the employer unless they apply for sick leave.
- Employees will be placed into on quarantine if they have been in contact with a confirmed COVID-19 case. As the employee will be absent from work in such a case, the employee will be obliged to disclose this to the employer through the company's usual absence procedures.
- For high-risk areas, there are three levels of travel warnings in Taiwan. Starting from 19 March 2020, all foreigners are prohibited from entering Taiwan and all Taiwanese nationals will be subject to a 14 day quarantine.
  - Employees who have travelled to a level 3 jurisdiction who have returned to Taiwan before 19 March 2020 as well as employees travelling abroad who will return to Taiwan on or after 19 March 2020 will be obliged to disclose this fact to the employer through the company's usual absence procedures.
  - Employees traveling to level 1 and 2 jurisdictions who returned to Taiwan before 19 March 2020 are not obliged by law to disclose their travel records to the employer. However, according to the competent authority, employers may implement a policy asking employees to notify the employers of their travel destination before embarking on their travel.
- To ensure employees understand their reporting obligations, employers should develop a clearly communicated policy on what and when an employee is expected to inform their employer of risk factors.

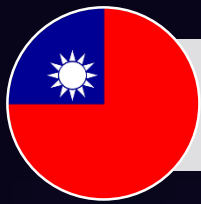
## 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?

This will depend on what is being requested by the employer and whether there is a clearly communicated policy in place:

- Requiring the employee to disclose if he/she is suffering from symptoms of COVID-19 or has been in contact with someone who is a confirmed COVID-19 case: Yes, if there is a clearly communicated policy in place.
- Asking an employee to provide details of travel history: Yes, if there is a clearly communicated policy in place.
- Conducting body temperature checking: Yes.
- Demanding the employee provide medical records: No, unless the employee applies for sick leave.



3. **Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**
- Yes, but this is a significant intrusion on privacy in a sensitive area. If an employer wishes to take this approach it should:
- Ask the employee to report but not oblige the employee to report.
  - Ensure reporting channels are limited to a narrowly defined group of recipients (e.g., in-house COVID-19 crisis team).
  - Ensure the reportable symptoms are limited to those that are publicly known and are an acknowledged list of symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness).
  - Refrain from recording the medical or health condition of the employee.
- 
4. **Can employees refuse to come to work?**
- No unless the employee is required by the competent government authority to undergo quarantine or go on leave.
- 
5. **Can employees refuse to attend meetings or to travel?**
- It is unlikely that an employee can refuse to attend a local meeting if adequate health and safety measures are in place but in the current situation, employers are advised to use video conferences.
  - In relation to travelling, according to announcements of the Ministry of Labor, an employee may refuse to travel to mainland China if the employer fails to provide disease prevention equipment such as masks. As a matter of practice, however, many employers are requiring employees to avoid non-essential travel. Employers should note the current travel restrictions and quarantine measures in the relevant countries should they ask their employees to travel.
- 
6. **Can the employer send employees on suspension from work?**
- Yes.
- Employers may have a contractual right to ask employees to work from home or not to attend work at any point during their employment. This will depend on the wording of their employment contract.
  - Even if they do not, it may be a reasonable instruction based on a risk assessment in the current circumstances to either instruct their employees to work from home if they have a job that can be done remotely and, if not, to ask them not to attend work.
  - An employee who has been told not to work by their employer but is otherwise able and willing to do so should receive their usual pay and benefits (unless the employee has contractually agreed to go on unpaid leave).
- 
7. **When is the employer forced to shut down its operations?**
- There are no legal standards for government-mandated shutdowns yet, and the competent authority has not yet issued an order to force a company to shut down.



8. **Does the employer have an obligation to report infections occurring in the business to the health authorities?**
- Yes.  
Employers should report any suspected COVID-19 cases among its employees to the competent authorities within 24 hours.
- 
9. **Can the employer require an employee to see a doctor?**
- No.  
Unless the employee applies for sick leave, there is no legal basis for the employer to make such a request.
- 
10. **If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**
- This depends on the facts of the individual case.
- If an employee is sent on leave or is suspended from work, the employer would be required to pay the employees full pay during such period.
  - If an employee refuses to come to work without good reason, the employer may not be under an obligation to pay the employee for such days, depending on the exact circumstances.
  - If the business operation is being shut down as a voluntary measure by the employer, the employer would still need to pay employees full pay during such period.
- 
11. **If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**
- Maybe, depending on the policy of the competent authorities.  
For example, Taiwan's Ministry of Education announced school closures for two weeks from 11 February 2020 to 24 February 2020. As such, parents who needed to take care of a child under the age of 12 years during the school closure period were entitled to a special care leave (wage entitlements were subject to the employer's discretion).  
If the parents did not intend to apply for the special care leave in the above situation, they could apply for annual leave, etc. (therefore receiving payment during that time).





# Thailand



This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

Yes.

  - Employees may be a risk factor because they have symptoms of COVID-19, have been in contact with a confirmed case, or because they have visited a high risk area.
  - In each case, our view is that an employee is under an implied duty (and may be under an express duty) to tell their employer. To further support this, an employer should consider clearly order all employees to disclose themselves.
  - Employees should tell their employer if they are unable to work whether because of sickness or advice to self-isolate, or because they are in quarantine, according to the employer's usual absence procedures.
  - To ensure employees understand their reporting obligations, employers should develop a clearly communicated policy on what and when an employee is expected to inform their employer of risk factors.
- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes.

  - There is no strict legal obligation on employers to demand this information but employers have a legal duty to arrange and keep their workplace and employees safe and to maintain hygienic working conditions. This duty includes promoting work operations which prevent employees being at risk of harm to their life, body, mentality and health. Therefore, employers can make a lawful and fair request to an employee to disclose himself/herself as being a "risk-factor".
  - In addition, employers should carry out a risk assessment if they become aware that an employee has been in close contact with a confirmed case or has visited a high risk area.
- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Yes, so long as the rationale of this instruction is genuinely to protect other employees' health and safety within a workplace. For example, if another employee in the workplace is confirmed as having COVID-19 and has not followed self-isolation advice. Any such policy in those circumstances would require a clear reporting channel within the employer organisation with limited access to the reported data, and a clear, limited retention period.



# Thailand



## 4. Can employees refuse to come to work?

- The employer must firstly ensure that the order is fair (e.g., there is no risk to those employees coming into the office and working for the employer). If the employer can guarantee their safety and issues the order with legitimate and justified reasons, the employees will be bound to comply with the order. Otherwise, the employer can take disciplinary action against them e.g., issuing a warning letter.
- However, given the widespread risk of contracting COVID 19, if the employee is genuinely concerned about having come to work, the employer should consider allowing them to work from home instead.
- Note that if an employee contracts COVID 19 in the performance of their work for the employer, the employer may be liable to the employee under tort law.

## 5. Can employees refuse to attend meetings or to travel?

- The employer must firstly ensure that the order is fair (e.g., there is no risk to those employees in doing so). If the employer can guarantee their safety and issues the order with legitimate and justified reasons, the employees will be bound to comply with the order. Otherwise, the employer can take disciplinary action against them e.g., issuing a warning letter.
- However, given a widespread risk of COVID 19, if the employee is genuinely concerned about attending meetings, the employer should consider alternative arrangements if possible e.g., virtual meetings. In relation to travel, in light of the global spread of COVID-19 and many organisations recommending against non-essential travel, an employee may be justified in refusing to travel. Employers should note the current travel restrictions and quarantine measures in the relevant countries should they ask their employees to travel.
- Note that if an employee contracts COVID 19 in the performance of their work for the employer, the employer may be liable to the employee under tort law.

## 6. Can the employer send employees on suspension from work?

- Yes.
- The employer must continue to pay full wages and benefits and recognize their length of service throughout the period.

## 7. When is the employer forced to shut down its operations?

The employer would be required to shut down its operations if the authorities so require. Currently, the Ministry of Public Health is empowered under the Communicable Diseases Act, B.E. 2558 (2015) to do so.



**8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

Yes.

- Pursuant to the Communicable Diseases Act, B.E. 2558 (2015), an employer or a person controlling a business facility (or any place of business) has a legal obligation to notify a communicable disease control officer within three hours after learning that an infected person was in the workplace. This duty also extends to instances where there are reasonable grounds to suspect that a person in the workplace is infected with COVID-19. Failure to do so will subject the owner/controlling person to a fine of up to THB 20,000.

**9. Can the employer require an employee to see a doctor?**

Yes, but the employer cannot force the employee to see a doctor.

**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

Whether the employee is entitled to be paid will depend on the reason why they are not working:

- Wherever possible, where risk factors are present, or an employee is awaiting the outcome of a test for COVID-19, but is otherwise able to work, employers may instruct employees to work from home and should be paid usual pay.
- If an employee is displaying symptoms, he/she can be treated as being on sick leave and will be entitled to sick pay according to the law (e.g., 30 days per year).
- If the employee has been asked not to attend work by the employer and does not have a job that can be done remotely, they are entitled to be paid their usual pay.
- If a doctor advises an employee to self-isolate the employee is entitled to a paid sick leave (e.g., 30 days per year).
- If an employee refuses to come to work without good reason, this may be treated as an unauthorised absence. No wages need to be paid in such circumstances.
- An employee who deliberately visits a high risk area with the intention that they will then be told to isolate or put in quarantine should be warned that if they do go and do not have a job that can be done remotely, they will not receive any pay (other than statutory sick pay if eligible) for the period that they are unable to work due to quarantine/self-isolation or inability to return to Thailand. They will have to use their annual vacation days for such quarantine period if they have sufficient untaken annual vacation days, or it will be unpaid (save for statutory paid sick leave). If an employer intends to take this approach it should issue a clear policy of its position on pay in these situations.
- If an operation is being shut down, if the shutdown is due to force majeure (e.g., the government orders the shutdown), the employees will not be paid. However, if the shutdown results from COVID-19 to the extent the employer is unable to operate its business as usual and it is necessary to temporarily cease its operation, the employer can pay 75% wages during the period. However, the employer must notify labour officials and employees 3 days before a shut down.



# Thailand



**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

- The employer may allow the employee to work from home if their job is one that can be done remotely.
- As a practical matter it would be possible to direct an employee to take his/her remaining annual vacation days throughout the period.
- If the employee is not able to work, we consider that there would not be an obligation to pay the employee. It would be prudent to document the time off as an agreed period of unpaid leave with the employee.



This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

Yes.

  - The law requires the employee to promptly report to a responsible individual any "risks of dangerous and hazardous incidents" at the workplace.
  - The Ministry of Health of Vietnam recently categorized COVID-19 as an infectious disease of Group A (i.e., especially dangerous infectious diseases capable of very fast transmission and widespread spreading). Thus, if an employee has been in contact with a confirmed case, or has symptoms of the disease, the employee can be considered to be a "risk-factor" and has the obligation to promptly inform a responsible individual at the work place.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes.

  - An employer has the right to require employees to comply with their obligations in relation to labor safety and hygiene at the workplace which include an obligation on employees to report any "risks of dangerous and hazardous incidents" at the workplace as mentioned in Q1.
  - In addition, an employer has an obligation to assess and control dangerous and harmful factors at the workplace and fully provide employees with information on the same. Thus, an employer can legally require that employees disclose themselves as being a "risk-factor" at the workplace.

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Generally, yes.

  - An employer can stipulate regulations on reporting obligations of employees, which would be included in the Internal Labor Regulations. However, as a practical matter, an employer, when amending or supplementing the Internal Labor Regulations, is required to consult with the trade union and re-register the Internal Labor Regulations with the labor authority, which is usually time-consuming.
  - From a data privacy law perspective, the health status of a person as provided for in a medical record is considered as to be confidential information. However, if the report to the employer from a co-worker is limited to the co-worker's suspicion based on an employee's actual health situation, this would not be considered illegal.

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- 4. Can employees refuse to come to work?**

The law allows an employee to refuse to work while still being paid in full if there is a clear risk to the employee's health and safety. For instance, if there is a confirmed or suspected case of COVID-19 in the workplace and the workplace has not been cleaned, the employee could legitimately refuse to work at the office while still receiving his/her benefits.

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- 5. Can employees refuse to attend meetings or to travel?**

The same rule as in the response to Q4 applies. Therefore, an employee can refuse to attend meetings or to travel if the meeting will take place or the travel destination is located in an infected region or if there is a high risk to his/her health and safety during the meeting or travel. Many employers are instructing employees to avoid non-essential travel. In addition, employers should note the current travel restrictions and quarantine measures in the relevant countries should they ask their employees to travel.



- 6. Can the employer send employees on suspension from work?**
- The employer may agree with the employee to suspend the implementation of the labor contract.
  - If an employee is placed under mandatory quarantine as per an order of a competent authority, this would be considered to be work suspension. The law provides that, in case of work suspension due to a dangerous epidemic (such as COVID-19), the applicable salary during the work suspension period is agreed between the parties but must not be lower than the regional minimum salary. Employees who are not subject to any quarantine measures, but who have symptoms of COVID-19 should be asked to work from home. Since the employer is obliged to ensure that the workplace is safe from hazardous and harmful factors, including infectious diseases, the employer can request such an employee to work from home but must pay the employee full salary.
- 
- 7. When is the employer forced to shut down its operations?**
- There are no specific requirements on compulsory shut down of operations. An employer would be forced to shut down operations if the authorities so require.
- 
- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**
- Yes.
- Employers must inform the nearest health agency within 24 hours of detecting or suspecting that an employee could be infected with COVID-19. The health agency is then required to report to the local People's Committee as well as the preventive medicine agency. Employers may notify the local health authorities either directly or via the hotline 1900 3228 or 1900 9095 as recommended by the Ministry of Health of Vietnam.
- 
- 9. Can the employer require an employee to see a doctor?**
- No.
- The employer can only recommend the employee to see a doctor. If the employer suspects an employee may be suffering from COVID-19, the employer must inform the health agency as mentioned in the response to Q8.
- 
- 10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**
- It depends.
- Where work is suspended due to a dangerous epidemic (such as COVID-19), salary during the work suspension period is as agreed between the parties but must not be lower the regional minimum salary.
  - If an employee refuses to work due to a clear risk to his/her health and safety at the workplace, the employee will still be entitled to full salary. However, if the employee is absent from work without a legitimate reason, the employee may be subject to disciplinary action.



**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

No.

- The employer would not be obliged to continue to pay salary to the employee if the employee stays home and cannot work, unless there is an agreement between the parties.
- However, if the job can be performed remotely, the employer may agree with the employee that the employee will work from home. Due to the unprecedented circumstances brought about by COVID-19, many employers are showing flexibility in work place arrangements where possible.





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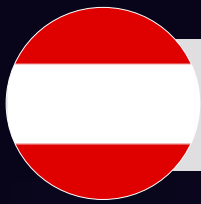


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# Austria



This guidance is stated as at 19 March 2020

1. **Are employees obliged to disclose themselves as a "risk-factor" to the employer?** Yes, due to the duty of loyalty, Employees with a confirmed infection or suspicious symptoms need to disclose this to the employer.

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2. **Can the employer demand employees to disclose themselves as being a "risk-factor"?** Yes. The employer is entitled to ask an employee whether he/she has spent his/her holiday in a risk area. Due to its duty of care, the employer may then have to take appropriate measures in order to protect the other employees from infection.

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3. **Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?** Yes, however this is a significant intrusion of privacy in a sensitive area. For reasons of proportionality, the symptoms triggering a reporting obligation need to be defined narrowly and such measure should only be taken if the operations are located in a crisis area or if an employee on site was diagnosed positively. Further, the works council has to give its consent when implementing such policy since it constitutes an infringement of human dignity. Otherwise, such policy may not be enforceable under Austrian law.

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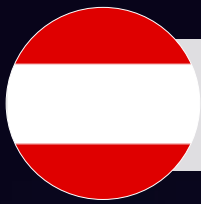
4. **Can employees refuse to come to work?** Employees can only refuse to come to work if:
  - i. there is a confirmed Coronavirus infection in the work place and
  - ii. the employee's place of work is in close proximity to where the infected employee was located (i.e., same open space office) and
  - iii. the employer cannot re-assign the employee to a no-risk environment at the work place.

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5. **Can employees refuse to attend meetings or to travel?**
  - An employee may only refuse a meeting if there is a high risk that the health of the employee will be endangered by such meeting. In any case, this will be assumed if a meeting is in an area for which the Foreign Ministry has issued a travel warning. Such a travel warning currently exists for the whole country Italy and for the Chinese province Hubei (see: <https://www.bmeia.gv.at/reise-aufenthalt/reisewarnungen/>).
  - Same rule applies for business travel

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6. **Can the employer send employees on suspension from work?** Yes, an employer can in any case unilaterally release an employee from his/her duties. The employee's entitlement to continued remuneration remains in force during such leave of absence. The employee is required to remain available for work.



**7. When is the employer forced to shut down its operations?**

The employer is obliged to impose business restrictions or to close down the business premises in case of a respective instruction by authorities. Such obligation also exists in case a continuation of the business would lead to a particularly high infection risk.

**8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

No, only e.g., medical and care staff, doctors, owners of restaurants, bars and cafés etc. who become aware of an infection are required to report to the competent Austrian authority ("*Bezirksverwaltungsbehörde*").

**9. Can the employer require an employee to see a doctor?**

- No, the employer can only recommend the employees to see a doctor. If the employee refuses, the employer can send the employee on paid garden leave under the preconditions stipulated in item 6.
- Depending on the employment contract and work activities, home office would also be an appropriate alternative. However, whether the employer can unilaterally assign an employee to home office, depends on the respective employment contract.

**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

- In case of a legitimate lock out, suspension from work or shut down, the employee is entitled to continued remuneration.
- Further, if an employee is suspected of being infected with the Coronavirus, he/she must not be employed any longer and will have to be quarantined. The employer must continue paying the remuneration if the employee is prevented from performing his duties due to a suspected case. However, the employer is entitled to reimbursement of costs from the Federal Government if the operation is officially shut down.
- If, on the other hand, an employee is actually diagnosed with the Coronavirus, the employer's entitlement to reimbursement of costs from the Federal Government is forfeited and the employee remains entitled to continued remuneration as in other sickness cases.

**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

- The closure of kindergartens and schools due to the Coronavirus entitles employees to stay at home to take care of the children, as this is to be considered "other important reason" for absence from work. During such care leave, employees are entitled to continued remuneration.
- Employees are entitled to care leave for one week. However, due to "special circumstances", such one-week period may be extended to a further week (therefore a total of 2 weeks applies). The closure of kindergartens and schools due to the Coronavirus is to be considered as such special circumstance. Employees may therefore be entitled to continued remuneration of 2 weeks during their care leave due to the closure of kindergartens and schools.
- Employers can agree on a special leave with employees for 3 weeks for taking care of children and such leave is state funded by 1/3.



# Belgium



This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

  - According to Belgian law, employees are obliged to refrain from causing any damage to the safety of the employer, other employees or third parties.
  - Therefore, on the basis of said statutory provision and the good faith performance of their employment contract, employees could reasonably be considered obliged to disclose themselves as a "risk-factor". However, the employer should clearly inform the employees when they are considered to be a "risk-factor".

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

The employer can, and is actually recommended to do so, in light of its statutory obligation to ensure a safe and healthy workplace. As indicated in the first answer, this requires that the employer also sufficiently clearly informs the employees about what is considered to be a "risk-factor".

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Although it is probably more effective / constructive to just 'encourage' employees to do so, there seems to be no strict employment law-based obstacle why the employer could not issue such instruction (e.g., as a policy), given that the employer is in charge of securing health and safety at the work place.

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- 4. Can employees refuse to come to work?**

  - In principle, not - because employees are contractually held to perform their work.
  - However, employees who are considered to fall in a risk category (i.e., 60+, health conditions) and who for that reason consider themselves to be unable to come to the work place should be encouraged to inform their employer. If homeworking would practically not be possible, the alternative is for the employee to have an appointment with the company physician (via telephone), following which the company physician will decide whether the employee is unable to work or not. If the physician decides the employee is not able to work, the employee will not be entitled to salary but should be entitled to unemployment allowances (for force majeure) under the current guidelines of the Unemployment Office.



## 5. Can employees refuse to attend meetings or to travel?

- As part of his general obligation to keep the work place safe and healthy, the employer is obliged to take all necessary prevention measures. This includes cancellation of travels, specifically to risk areas, and organizing meetings in a manner which limits health risk to the attendees (e.g., conference calls). Failure to take such precautionary measures exposes the employer to possible civil liability, and even criminal liability (although admittedly rather theoretical).
- As a result, and by way of exception to the employer's instruction right, the employee has the right to refuse to attend the meeting or to travel, if it could reasonably be considered to put his/her health at risk and/or would be in violation of mandatory governmental instructions. A detailed practical assessment might be required in this respect in certain situations.
- All official travel advice can be found on the following website:  
[https://diplomatie.belgium.be/nl/Diensten/Op\\_reis\\_in\\_het\\_buitenland/reisadviezen](https://diplomatie.belgium.be/nl/Diensten/Op_reis_in_het_buitenland/reisadviezen).

## 6. Can the employer send employees on suspension from work?

- In the current context, Belgian employment law provides two main grounds for (justified) suspension, i.e., (i) force majeure, and (ii) for economic reasons (i.e., so-called economic unemployment).
- Force majeure is the situation in which the employer is in the absolute impossibility to employ the employees. This is evidently the case if the company is subject to a government instructed lockdown (e.g., restaurants) or if the supply of resources has been stopped due to the crisis (e.g., parts coming from China). It could possibly also be the case if given the nature of the work, the employer is in the absolute impossibility to conduct the activities in a (health) safe manner (e.g., large stores). The force majeure topic covers two aspects: on the one hand, there is the question whether the employer (or employee) can validly suspend the performance of the employment contract (in which case no salary is due). On the other hand, same concept is also relevant to determine if the employee is entitled to state unemployment allowances. With regard to this latter aspect, it will largely be up to the interpretation of the concept of force majeure by the Unemployment Office. The Unemployment Office seems quite, and increasingly, flexible in the current specific crisis context (i.e., the government seems to have instructed the Unemployment Office to be flexible on their interpretation in order to guarantee as many impacted employees as possible to benefit from unemployment allowances).
- As a general rule, a reduction of the work volume does not entitle the employer to suspend employment contracts unilaterally. An exception to this is the suspension ground of 'absence of work for economic reasons' (so-called 'economic unemployment'), for which two separate regimes are in place respectively for blue-collar workers (permanent regime) and white-collar employees (i.e., a similar regime albeit subject to a prior recognition as 'company in difficulty' by the federal Ministry of Work). Employees will be entitled to unemployment allowances in these scenarios, subject to meeting certain conditions.

## 7. When is the employer forced to shut down its operations?

Reference is made to the answer to question no. 6, as a forced shut down (i.e., a 'lockdown' as it is called these days) is a key example of a force majeure. For the purpose of entitlement to unemployment allowances, the Unemployment Office has very recently even indicated this qualification applies in case of partial lockdown (e.g., shops required to close in weekends).



# Belgium



**8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

- No such obligation exists for employers in Belgium.
- However, as part of its health and safety obligations, the employer should inform the (internal and external) prevention advisor in order to be advised on all health / safety prevention measures that need to be (additionally) taken in light of the infection case.

**9. Can the employer require an employee to see a doctor?**

- No. However, in a broad interpretation of the health and safety regulations, if an employee shows clear flu symptoms, the employer could ask the company physician to examine that employee. If the company physician decides to do so, the employee has to undergo the medical exam. In case the employee refuses the medical exam, access to the work place can be denied.
- However, the recommended approach is to 'ask' and/or 'advise' the employee to visit a physician.

**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

- No. As a general rule under Belgian employment law, no salary is due if no work has been performed, except in case the law or the contract states otherwise (i.e., so-called guaranteed salary).
- Guaranteed salary will in the current context only be due during the initial 30 days of sick leave.
- As indicated in the answer to question no. 6, subject to certain conditions and formalities, the federal Unemployment Office will pay unemployment allowances in specific cases of *force majeure* and **economic unemployment**. As a result of a recent decision of the federal government, for the period until 30 June 2020, the amount of the unemployment allowances in both scenarios is increased from 65% to 70% of the (as the case may be, capped) salary.
- Most challenging situation when it comes to payment will be if the employer suspends the contract performance on the basis of force majeure, but in a situation not recognized as force majeure by the Unemployment Office. In such case, no salary and no unemployment allowances will be due. If so, employees risk to challenge the employer's qualification of force majeure and could claim damages equal to the salary they would have earned. Such claim will eventually depend on whether the employer was in the specific health situation concerned and is actually reasonably unable to employ the employees.
- If employees have to work from home, salary will be due.



# Belgium



**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

- No - As a general rule under Belgian employment law, no salary is due if no work has been performed, unless the law or the contract states otherwise (i.e., so-called guaranteed salary).
- The case of closed schools / kindergartens without other 'solution' for the children, could qualify as a 'compelling reason' for absence, i.e., a justified suspension ground set forth in the national CBA n° 45. This requires an "unforeseeable event, independent of the employment, which causes the urgent and necessary intervention by the employee and this to the extent that the performance of the employment contract makes this intervention impossible". Given that the schools remain open for childcare, the (admittedly theoretical) question arises whether leave of absence for compelling reason could be applicable in the current context.
- This justification ground can be used for up to 10 working days per calendar year, and is non-remunerated.





# Czech Republic



This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

  - Generally, all employees have the obligation to take care of the safety and health of individuals who are directly affected by their actions or omissions at work.
  - This could imply that employees are obliged to disclose themselves as a "risk-factor". However, to provide the employees with clarity as to when they are considered to be a "risk-factor", a clear definition should be communicated to employees first.
  - Furthermore, with effect as of 12:00 on 13 March 2020, all Czech citizens and foreigners with a permanent residence or a long-term residence (over 90 days) in the Czech Republic returning from any risk country (i.e., China, South Korea, Iran, Italy, Austria, Germany, Spain, Switzerland, Denmark, Belgium, Netherlands, Norway, Sweden, UK and France) are obliged to inform their medical provider by telephone without undue delay after their return. The medical provider is obliged to order those individuals into quarantine for 14 days. A fine of up to CZK 3,000,000 can be imposed in case of breach.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes, since the employer has a general responsibility to ensure a healthy and safe workplace.

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

No, this would not be recommended.

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- 4. Can employees refuse to come to work?**

Generally, an employee can refuse to perform work which the employee reasonably regards as imposing a direct and serious threat to his/her health or life or the health or life of other individuals. We are of the view that the employee's refusal to come to work would be unjustified, provided that the employer implements protective measures at the workplace (e.g., placing hand sanitizers at the workplace, ask employees to cover their nose and mouth with a mask or a piece of textile).

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- 5. Can employees refuse to attend meetings or to travel?**

An employee can refuse to perform work which the employee reasonably regards as imposing a direct and serious threat to his/her health or life or the health or life of other individuals. Such refusal must not be considered a breach of obligations. With respect to travels and meetings outside the Czech Republic, please note that as of 16 March 2020, the Czech borders are closed subject to certain exceptions. However, these exceptions do not apply to business travels/meetings.





# Czech Republic



- 6. Can the employer send employees on suspension from work?** Yes, the employer can send an employee on garden leave. In such case, the employee would be entitled to a salary reimbursement in the amount of the employee's average earnings. The Czech Government recommends that employers allow home office, vacation and paid leave to the most possible extent, and to cease activities that are not crucial for the employer's operations
- 7. When is the employer forced to shut down its operations?** The employer is obliged to impose business restrictions or to close down the business premises in case of a respective instruction by authorities. Please note that from 6:00 on 14 March 2020, until 6:00 on 24 March 2020, retail businesses and businesses providing services are closed with the exception of certain businesses (e.g., groceries, healthcare & pharmacies, drugstores, petrol stations, news agents, pets, public catering services and fast foods (take-away), post offices, banks, insurance agencies, e-shops and delivery services).
- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?** No, the employer is not obliged to report to the authorities.
- 9. Can the employer require an employee to see a doctor?**
- The employer cannot require the employee to undergo a special test for the Coronavirus.
  - If the employer has doubts whether the employee is fit to work, the employer can send the employee for an extraordinary medical check. However, in the current circumstances, the employer should verify the planned approach with the occupational health facility first.
- 10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**
- An employee on garden leave is entitled to a salary reimbursement in the amount of the employee's average earnings.
  - If an employee refuses to come to work without reason, such absence would be classified as unexcused absence and the employee will not be entitled to any remuneration.
  - Temporary closure of operations would be classified as another obstacle to work on the employer's side, i.e., a situation in which an employee is entitled to time off since he/she cannot perform work due to reasons on the employer's side. During this period employees would be entitled to a salary reimbursement in the amount of the employee's average earnings.
- 11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?** Although the employer will have the obligation to excuse the absence of such employees, the employer will not have to pay them. The employees will be paid by the Social Security.



# Egypt



This guidance is stated as at 16 March 2020

## 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?

- There is a general obligation to perform agreements in good faith. This could provide grounds for an employer to argue that failure by an employee to disclose themselves as a risk factor is a breach of this obligation, due to the potential creation of a health hazard (and negative affect on the employee's work).
- There is also a general duty on employees to observe the instructions and procedures set out by an employer whereby the latter is organizing its establishment. It is therefore recommended for employers to have a clear policy or guidelines on promptly disclosing this risk factor given the magnitude of the COVID-19.
- In the circumstances and in light of the measures being taken by the Egyptian government to prevent the spread of COVID-19, our view is that an employee is obliged to inform their employer if:
  - they have a confirmed infection
  - have visited a high risk area
  - have had contact with a confirmed case.

As stated above, we recommend that these disclosure requirements be clearly communicated to the employees.

- Individuals who have suspected COVID-19 may call hotline 105 to inquire about the procedures. However, while there is no express requirement to report to the health authorities, this is encouraged to prevent spreading the virus.

## 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?

- Yes. An employer may request/demand employees to disclose whether they have recently travelled to a high risk area, have been in contact with a confirmed case and/or if they have a confirmed infection.
- In the circumstances, it is reasonable for employers to request this information as a measure to help protect the workforce and prevent the spread of the disease throughout the country.

## 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?

We do not recommend that employers issue such an instruction in Egypt. Such an approach may be a source of abuse and risks giving rise to defamation claims.



# Egypt



4. **Can employees refuse to come to work?**
- Generally no, unless instructed not to attend work by the authorities. A vulnerable employee (e.g., due to low immunity or pregnancy) may have a compelling reason to refuse to come to work.
  - If the employee has a high risk of developing severe COVID-19 symptoms or there is a confirmed case in the work place, it will, in the current climate, be difficult for an employer to justify disciplining an employee for refusing to come to work.
- 
5. **Can employees refuse to attend meetings or to travel?**
- The Egyptian government has not imposed travel bans. Some flights to high risks areas have been suspended. On re-entering the country, individuals may face medical checks and possible quarantine. Accordingly, employees may have justifiable reasons for refusing to travel (particularly to high risk countries). In the current circumstances, our view is that it is highly possible that any attempts to impose any disciplinary measures against an employee for refusing to travel will be found inappropriate.
  - It is recommended that employers assess whether travel is essential. Employees who are at risk of developing serious symptoms should not be pressured to travel.
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6. **Can the employer send employees on suspension from work?**
- Yes, an employer can send employees home from work but it cannot suspend their employment or employment contract and must continue to pay their wages during such suspension. Please see our response to question no. 10 regarding pay cuts.
- 
7. **When is the employer forced to shut down its operations?**
- The employer is obliged to impose business restrictions or to close down the business premises if instructed to do so by the authorities, or if there is a confirmed case (to sanitize and check the workplace)
- 
8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?**
- There is no express duty on the employer to report. However, in the circumstances, we would recommend that an employer reports any suspected cases to the relevant health authorities – upon consultation with the employee in question.
- 
9. **Can the employer require an employee to see a doctor?**
- Yes. In our view, particularly in the current circumstances, if an employee is displaying symptoms then the employer could require the employee to see a doctor. However, if the employee refuses, the employer cannot impose such requirement but can prevent the employee from reporting back to work without a medical certificate confirming his/her medical conditions. It is also recommended that such rules be shared with the employees in an official policy.



# Egypt



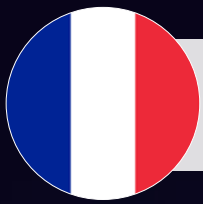
**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

Whether the employee remains entitled to be paid will depend on the reasons why they are not working:

- Employees who are ill, may be entitled to sick pay.
- If the employee has been sent home by their employer, our view is that they would remain entitled to full pay. The Labor Law allows reducing the pay of employees by 50% when a force majeure event occurs, i.e., where the employee was prepared to report to work but was prevented from working due to the occurrence of force majeure. We are not aware of any employers who have yet resorted to this option and how the authorities will look at any such action taken by the employer. If the employer is considering to make any pay cuts, this must be thoroughly considered on a case by case basis as the implications may be major from a legal and a business perspective.
- An employee who refuses to attend work without good reason would not be entitled to pay.

**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

There is no obligation on the part of the employer to pay if the employee does not report to work due to closures of schools and kindergartens. Employees may take annual leave or agree to unpaid leave or remote working arrangements with their employer.



# France



This guidance is stated as at 18 March 2020

**1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

- The French government had initially indicated that it was only "recommended" for employees to inform their employer if they have flu symptoms or if they visited the crisis area within the past 14 days. The authorities have now recently emphasized the fact that employees must inform their employer of any situation that could present a risk for other employees' health.
- Employers should nonetheless be aware of employees' right of privacy and only request strictly necessary information. It is recommended to ask employees to voluntarily disclose such information whilst insisting on the reasons for the request for such information (to protect the workforce). Indeed, since employees have an obligation to protect other employees' health, employees should be kindly asked to disclose any relevant information.

**2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

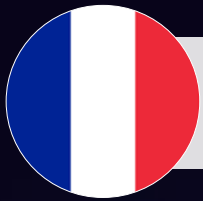
Due to data privacy requirements this should be carried out with caution. However, since the employer has an obligation to protect its employees (and employees also have a similar obligation), it seems possible for the employer to invite employees to disclose such information in order to protect other employees. Health information should not be requested and employees should be invited to contact the appropriate authorities.

**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

- No, for data privacy reasons this would not be recommended. However, again since both employees and employers have an obligation to protect other employees, employees could be more generally invited to raise any health and safety concerns they may have in the workplace.
- Employees should also be reminded that everyone should take all possible measures to protect their own health and others.

**4. Can employees refuse to come to work?**

- Employees can only refuse to come to work if there is a clear risk for their health and safety for example if there is a confirmed Coronavirus infection in the work place and the employee's place of work is in close proximity to where the infected employee was located (i.e., same open space office) and the workplace has not been cleaned.
- Employees have a right to retreat from a situation that they perceive to be dangerous ("*droit de retrait*") if the employer has not implemented all prevention and preventive measures. Therefore, it is essential to inform and train employees.
- The Ministry of Labor insisted that work from home is strongly recommended when the employee's position allows it.
- Moreover, the French President announced on 16 March 2020 that a **general confinement of the entire population for at least 15 days as of noon of 17 March 2020 with a requirement to avoid leaving home except when strictly necessary; however travel to work is authorized.** We are still waiting for confirmation on what this means exactly for all employers.



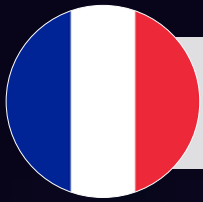
## 5. Can employees refuse to attend meetings or to travel?

Currently, it is recommended not to travel to certain regions (see: <https://www.gouvernement.fr/info-Coronavirus>). Note that the EU (and Schengen) borders are temporarily closed. The government has recently indicated that employees would have a right to use their right to retreat if the employer does not comply with the government recommendations. In addition, due to the general confinement, only essential business trips should be carried out and all meetings should be by video conference when possible.

## 6. Can the employer send employees on suspension from work?

- If an employee qualifies as a "risk factor" based on the criteria set out in the response to item no. 1, the employer is obliged to implement work at home (preferably) or ensure that the employee avoids meetings/ confined spaces / fragile persons. If this is not possible, it is possible to ask the employee to remain home.
- The employee would need to continue to work if possible (e.g., from the home office) unless sick.
- On 9 March 2020, the Ministry of Labour, while insisting that **work from home is the preferred solution when the employee's position allows it**, proposed **examples of exceptional circumstances where partial activity would be possible in the context of the Coronavirus epidemic**: administrative closure of an establishment, prohibition of public demonstrations following an administrative decision, massive absence of employees who are essential to the company's activity, temporary interruption of non-essential activities, suspension of public transport by administrative decision and decrease in activity linked to the epidemic.
- The French government has simplified the conditions for temporary activity or temporary unemployment ("*activité partielle*") in order to assist companies if they need to shut down or reduce their activities temporarily.
- Partial activity can take two different forms:
  - a reduction of the employees' working time below the legal weekly working time
  - a temporary closure of all or part of the establishment
- In case of implementation of temporary activity or temporary unemployment ("*activité partielle*"), employees who suffer a loss of remuneration should benefit from an allowance paid by the employer equal to at least 70% of their previous gross remuneration.
- To accompany the payment of the allowance, the employer can benefit from a lump-sum allowance co-financed by the State and UNEDIC unemployment authorities which currently amounts to EUR 7.74 per hour for companies employing between 1 and 250 employees and EUR 7.23 for companies employing more than 250 employees. The Minister of Labour, announced that the partial activity allowance reimbursed to employers in companies with less than 250 employees should be increased by Decree to EUR 8.04. The Minister of Economy and Finances more recently indicated that the government is prepared to significantly increase this allowance.
- A government decree is expected shortly.





# France



**7. When is the employer forced to shut down its operations?**

- Only if there is evidence that the place of work presents a significant risk for employees' health and safety or if operations cannot be continued due to the lack of personnel.
- This decision should preferably be made in consultation with local health authorities (e.g., *medecine du travail*), employee representatives and local State authorities.
- Employees have a right to retreat from a situation that they perceive to be dangerous ("*droit de retrait*") if the employer has not implemented all prevention and preventive measures.
- Since 15 March until 15 April 2020, most (non-food) stores and establishments open to the public are closed by government order. However, outside of these cases, there is no prohibition to work. However continuation of work in the premises is only possible when work from home is not an option (and when necessary "barrier measures" can be implemented to ensure employees' safety).

**8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

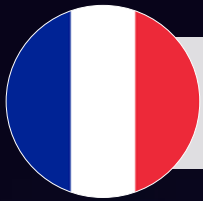
We are aware of no legal provision, therefore in theory, only medical staff and doctors who become aware of an infection are required to report to the health authorities. However in practice, it is recommended that the employer reports the situation to the local health authorities (e.g., *medecine du travail*) and local State authorities - A.R.S.) whilst complying with employees right to privacy.

**9. Can the employer require an employee to see a doctor?**

No, the employer can only recommend that the employee see a doctor. If the employee refuses, the employer can call the French emergency authorities.

**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

- Where possible, it is recommended to implement work from home.
- In case of a legitimate lock out, suspension from work or shut down, the employee would need to be paid. However there are certain government financial assistance schemes in case of temporary "unemployment" as previously mentioned above.



**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

- Please note that kindergartens and schools are now closed in France, indefinitely (in practice most likely until at least 15 April 2020).
- Assuming that the employee has no other child care solution and cannot work from home, either:
  - a) the employee could contact the Regional Health Agency (ARS) ([www.ars.sante.fr](http://www.ars.sante.fr)) so that a doctor authorized by the Regional Health Agency can provide the employee with a medical certificate ("*arrêt de travail*") or
  - b) the employer can request a medical certificate online: [www.ameli.fr](http://www.ameli.fr) / [www.declare.ameli.fr](http://www.declare.ameli.fr) corresponding to the child's recommended period of isolation. Only one parent of a child less than 16 years old (18 years for parents of children with disabilities) can request this and this parent must certify that it is the only employee requesting this. The medical certificate can be shared between the parents. It is possible to split it by completing an application for each leave period. The employee will be then considered as being on a form of "sick leave". The employee will be entitled to a daily allowance from social security authorities ("*indemnité journalière de sécurité sociale*") for a period of up to 20 days and an additional indemnity paid by the employer in order to maintain salary (the additional payment from the employer is generally applicable to employees with at least one year of seniority within the company).
- We would recommend to verify with payroll and benefits providers how to manage this. Recent government recommendations have insisted on the fact that employees should preferably work from home where possible.



# Germany



This guidance is stated as at 17 March 2020

**1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

- Employees with a confirmed infection need to disclose the same to their contractual employer.
- Employees with flu symptoms who:
  - i. visited or
  - ii. had contact with individuals from areas with presumed community transmission of COVID-19 (e.g., China, Italy, North or South Korea, Japan, Singapore, Hong Kong and Iran) within the past 3 weeks need to disclose this circumstance.
- Even without flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness), employees who:
  - i. have an individual with a confirmed infection in their household or
  - ii. visited an event, which later became known to be a venue from which the disease spread, need to disclose this circumstance to their employer.

**2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

The employer's right to ask certain questions has as counterpart the employees' obligation to disclose the corresponding information (i.e., the employer has the right to ask for the circumstances specified as per question no. 1 and the employee has to provide the corresponding and truthful answer).

**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Yes, but this is a significant intrusion on privacy in a sensitive area. For reasons of proportionality at least the following precautions should be taken:

1. Limit geographic scope: The reporting possibility should only be offered for employees of:
  - a) sites located in areas with presumed community transmission of COVID-19, or
  - b) sites in which an employee was diagnosed positively with a Coronavirus infection, or
  - c) sites in which an employee had allegedly come in contact with an individual with a confirmed infection.
2. Offer, don't oblige to report: The reporting possibility should be phrased as an invitation to report, rather than as an obligation to report (under German law it is very questionable whether a reporting obligation can be created unilaterally by means of an instruction);
3. Keep reports within the employer: The reporting channel should be limited to the employer (i.e., the contractual employer and not to anyone else in the group of companies and not to third parties) and within such employer to a narrowly defined group of recipients (e.g., the Coronavirus crisis team);



**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

4. Limit reportable content: It should be made clear that:
  - a) the reporting channel must only be used with regard to the fact that symptoms exist and not for reporting an individual's specific symptoms and
  - b) The reportable symptoms are limited to the publicly known and acknowledged list of symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness)
5. Separate reports from other employee data: The information reported through the reporting channel should be recorded separately, not be included in the employee's personnel file and should be deleted 6 weeks after recording.
6. Create transparency: A transparent notice, containing information according to [Art. 13 GDPR](#), needs to be issued to all employees (including contingency workers) before the reporting line is opened, especially as regards the points mentioned herein, but also as regards the steps envisaged by the employer upon having received a report).
7. Inform data subjects: The employee concerned by a report has to be notified as soon as possible.
8. Decide how to treat the reporters: There is an ongoing discussion in Germany whether the data subject (i.e., the reported subject) has the right to learn who reported him or her – we deem it possibly (even though not entirely risk free) to assure reporters to treat their reports in confidence when such reports were made in good faith.

Even though not a privacy compliance issue, please note that the works council has a co-determination right with regard to the technical system used to implement the reporting line and the reporting requirements.

**4. Can employees refuse to come to work?**

Employees can only refuse to come to work if:

- i. there is a confirmed Coronavirus infection in the work place and
- ii. the employee's place of work is in close proximity to where the infected employee was located (i.e., same open space office) and
- iii. the employer cannot reassign the employee to a no-risk environment at the workplace.

**5. Can employees refuse to attend meetings or to travel?**

- Only if the meeting takes place in a region officially recognized by authorities as being a crisis-region or if attendees visiting from crisis-regions would attend (for information see <https://www.auswaertiges-amt.de>)
- Same rule applies for business travel.

**6. Can the employer send employees on suspension from work?**

- If an employee qualifies as a "risk factor" based on the criteria set out in the response to question no. 1, the employer is obliged to lock out the employee.
- The employee would need to continue to work if possible (e.g., from the home office) unless sick.



# Germany



- 7. When is the employer forced to shut down its operations?**
- In case of a corresponding administrative order. Such administrative order can determine that certain industries have to shut down in certain regions. This has happened recently in some regions for places that provide leisure activities such as bars, restaurants, cinemas, etc.
  - Absent an administrative order, only if there is evidence that the place of work is an "out of control crisis venue". This decision should only be made in consultation with local health authorities (*Gesundheitsamt*).
- 
- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**
- No, only medical staff and doctors who become aware of an infection are required to report to the health authorities (<https://www.gesetze-im-internet.de/coronavmeldev/>).
- 
- 9. Can the employer require an employee to see a doctor?**
- No, the employer can only recommend the employees to see a doctor. If the employee refuses, the employer can send the employee on paid garden leave under the preconditions stipulated in item no. 6.
- 
- 10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**
- In case of suspensions caused by administrative orders, there are certain rules under which the employer can receive a reimbursement of salaries for up to 6 weeks. The employer needs to make a filing for reimbursement and initially is required to process the payments to the employee (i.e., it is a reimbursement regulation).
  - In case of a legitimate lock out, suspension from work or shut down (based on the requirements stipulated in these FAQ), the employee would need to be paid. But the employee would also be required to take all reasonable steps to work from home. Further, the employee would need to accept being temporarily reassigned physically within the workplace to a no-risk environment (i.e., other office) or to be assigned with different duties even if these are inferior to the standard duties (unless entirely unacceptable).
- 
- 11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**
- If kindergartens and schools are being closed and alternative care options (such as grandparents or other facilities) do not exist, the employee can refuse performing work for such time. Unless stipulated otherwise in the employment contract, the employer would need to continue paying the employee for the duration of a "temporary unavailability". While subject to the specifics of the case, case law suggests that a temporary unavailability in case of urgent childcare needs may last no longer than 5 work days.



# Hungary



This guidance is stated as at 18 March 2020

1. **Are employees obliged to disclose themselves as a "risk-factor" to the employer?** Yes, within the scope of their duty of cooperation, employees are obliged to report if they are infected or show signs of infection.

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2. **Can the employer demand employees to disclose themselves as being a "risk-factor"?** Yes, in order to maintain a safe work environment that does not endanger health, which is the employer's main responsibility. However employers must pay particular attention to the protection of their employee's privacy.

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3. **Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?** Yes, for the same reasons as in item no. 2. Procedures for reporting and processing personal data must be in writing and employees must be informed in advance. If there is an employee representative body at the employer, they must be consulted beforehand.

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4. **Can employees refuse to come to work?** Yes. According to the general provisions of Hungarian Labour Law, employees may refuse to come to work or to comply with an instruction if it would result in direct and grave risk to the life, physical integrity or health of the employee or others. Therefore, they can refuse to come to work if they have a justified reason, e.g., if the workplace is actually infected or if there is great and justified risk during commuting.

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5. **Can employees refuse to attend meetings or to travel?** Yes. The same rule applies as the in the previous case. employee can refuse to attend meetings or to travel if the meeting would take place or the destination of the travel is located in an infected region or if there is great and justified risk during travel.

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6. **Can the employer send employees on suspension from work?** Yes, the employer is entitled to choose from certain possible solutions:
  1. **Temporary assignment:**  
employer might oblige employees to work at locations different from a normal workplace, for a maximum of 44 days per year. Also, if the technical requirements are given, employees can be obliged to work from home.
  2. **Sending on paid leave**  
The employer is entitled to schedule and grant the vacation to the employees up to 7 days per year. The employee must be notified of being sent to vacation at least 15 days earlier (which might be shortened in case of an emergency).
  3. **Temporary release from service**  
employee is entitled to base wage for the stand period.



# Hungary



7. **When is the employer forced to shut down its operations?** On the basis of the decision of the competent authorities or if it may be justified, because otherwise the health and safety of employees cannot be guaranteed.
8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?** No, medical staff and doctors are obliged to report an infection at this stage.
9. **Can the employer require an employee to see a doctor?** Yes, if the employee is unable to perform his or her job or shows symptoms of the Coronavirus. In other cases, in our view, the employer should not oblige the employee to see a doctor.
10. **If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**
1. **If the employer decides to suspend work temporarily**  
If the employer decides to suspend work as it cannot guarantee the healthy working environment or cannot continue the operation due to the Coronavirus, but it is not based on a decision of the relevant authority, we are of the opinion that the employer has to pay the basic salary for the working time, unless this is due to an unavoidable external reason, which must be assessed individually.
  2. **Forced shutdown**  
A shutdown forced by the authorities shall be deemed as an unavoidable external reason. In such case, the employer may be exempted from the obligation of paying wages.
  3. **Refusal of the employee to come to the workplace**  
If the employee refuses to come to work for legitimate reasons, he/she might be entitled to remuneration. If the employee is away from work with the consent of the employer, this is considered a proven absence and, as a rule, is remunerated as agreed by the parties. If the employee is absent without the employer's consent or without a legitimate reason, he will not be remunerated.
11. **If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?** There is no statutory obligation to pay wages in this case. Such absence will qualify as a certified absence and based on the principles of good faith, fairness and fair consideration, it is likely to be remunerated as agreed by the parties.





This guidance is stated as at 18 March 2020

**1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

- Yes, employees who have cold or flu symptoms must inform their employer through the HR manager. In addition to this, anyone who has been to an area that has been declared as at risk for COVID-19 by the WHO or has been in contact with other individuals who have tested positive are also obliged to disclose this information to their employer as well as to public authorities.
- All individuals present in Italy are subject to very strict restrictions on mobility. Mobility is limited to cases justified by:
  - i. reasons of work
  - ii. necessity
  - iii. healthto reach one's domicile if they were outside the country before March 8, 2020
- Police and Public Officers will ask people moving around to justify the reason why they are doing so, also by means of a self-certification to be signed in front of the Officer.
- Anyone in Italy who has cold or flu symptoms are confined to their domicile until they are tested for COVID-19; they need to inform their employer and the local Sanitary Authorities.
- Anyone in Italy who has tested positive to COVID-19 is mandatorily confined to their domicile.
- Criminal sanctions apply in case of violation of the above provisions.

**2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

- Employees have an obligation to inform their employer if they have cold or flu symptoms. In addition to this, anyone who has been to an area that has been declared as at risk for COVID-19 by the WHO or has been in contact with other individuals who have tested positive are also obliged to disclose this information to their employer as well as to public authorities.
- Recent legislation entitles employers to take employees' temperature upon entering the workplace.
- Employers must inform employees, as well as anyone else who enters the workplace, that access shall be denied to those who, in the last 14 days, have had contact with individuals who have tested positive for COVID-19 or who have travelled to a risk area as per indications of the WHO.
- Processing of personal data caused by the above measures requires the employer to provide information on the treatment of personal data even verbally, by making reference to the prevention measures introduced to fight the spread of COVID-19. Further limitations on data processing apply in relation to the purpose of processing, data sharing and data retention.



**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

- Yes. Given the exceptional circumstances currently occurring in Italy, anyone who is aware of an individual who has flu symptoms and who has not received assistance, should immediately report the case to the appropriate Health and Regional Authorities. This extends also to employees and employers: employees who fear that a colleague is ill should inform their employer, who in turn should contact the company doctor and Health and Regional Authorities.
- Employees who become ill at work must be isolated from other workforce, while the employer informs local health authorities and receives instructions on what to do.

**4. Can employees refuse to come to work?**

- Business activity is subject to strict regulations in all parts of Italy, especially on mobility of employees mentioned in 1 above.
- Smart-working must be done everywhere in Italy and whenever possible.
- Meetings should take place via audio-video systems unless meeting in person is absolutely necessary and in this case a minimum distance of at least 1 meter between participants must be complied with.
- Employees can only refuse to come to work if the workplace is not safe, for example if there are confirmed cases of infection among workforce.

**5. Can employees refuse to attend meetings or to travel?**

- Business activity is subject to strict regulations in all parts of Italy, especially on mobility of employees mentioned in 1 above. Movement for work-related reasons is permitted but must be proven via a self-certification statement to be signed by the employee when asked by the police / public authority.
- Meetings should take place via audio-video systems unless meeting in person is absolutely necessary and in this case a minimum distance of at least 1 meter between participants must be complied with.
- On the entire territory of Italy, conferences and business events are suspended.

**6. Can the employer send employees on suspension from work?**

- If an employee is absent because he/she has been infected by Coronavirus, rules governing sick leave apply and the employee is mandatorily confined to his/her domicile.
- If an employee is not sick but in quarantine as a result of an order of the public authorities, this is considered sick leave and treated as such. The period of quarantine is not considered for the purpose of calculating the maximum term of sick leave an employee is entitled to in any given year.
- Smart-working must be done everywhere in Italy and whenever possible.
- If smart-working is not possible and the employee is unable to normally perform his/her working activity, the employee should encourage the employee to use vacations or agree on a period of paid or unpaid leave linked to the occurrence of uncommon events.
- Certain social shock absorbers will be made available to qualifying companies in case of partial or total suspension of working activity linked to the COVID-19 outbreak.



- 7. When is the employer forced to shut down its operations?**
- Business activity is subject to strict regulations in all parts of Italy, especially on mobility of employees mentioned in question no. 1 above.
  - A business may be shut down when there are COVID-19 cases among workforce, pending mandatory sanitization of the premises. This decision would have to be made after informing and in consultation with local Health and Regional Authorities. Social shock absorbers will be made available for these exceptional cases.
- 
- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**
- Yes. This information needs to be immediately disclosed to the company doctor as well as to local health and regional authorities.
- 
- 9. Can the employer require an employee to see a doctor?**
- If an employee has cold or flu symptoms, he / she must contact his / her doctor. The employer can check to ensure that the employee has complied with this obligation and ask him/her to leave the workplace. The employee has to also immediately report his state of illness to local health authorities via a phone number made available in each region.
- 
- 10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**
- In case a company is forced to close by order of a public authority and there are no other means (like smart-working) or measures that the employer may use to minimize consequences for workforce, this would be considered impossibility of performance or force majeure. Consequently, both the employee and the employer are freed from their respective obligations — the employee from performing working activity and the employer from the obligation to pay remuneration.
  - Note that smart-working should be done everywhere in Italy and whenever possible. If an employee continues to refuse to come to work, in the absence of a legitimate reason (for example, in the absence of confirmed cases of COVID-19 or other risk factors) and smart-working or use of holidays / leaves is not possible, this could be considered an unjustified absence, something that is relevant from a disciplinary point of view and can lead to disciplinary termination in certain cases.
- 
- 11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**
- All schools in Italy, from kindergarten to universities, are closed until 3 April 2020. Further extensions are highly probable.
  - The Government enacted a decree on March 16, 2020 that will go into force soon and that provides for the following:
    - parents with children younger than 12, who are not on smart-working or benefitting from other form of salary support measures, are entitled to 15 working days of parental leave (paid at 50% by INPS - national social security authority). The 15 days are for both parents (not 15 days each) and can be used in a fractionated manner.
    - parents with children aged 12 to 16 can take an unpaid leave for the whole period in which schools will remain closed.
  - Parents may also use holidays, paid time off, parental leave or other forms of leave that may be available under the applicable CBA or agreed with the employer.



# Luxembourg



This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

  - Under Luxembourg law, there is no legal obligation on the part of employees to disclose themselves as a "risk-factor" (possible exposure to the virus or suspicious symptoms) to their employer.
  - However, since the Labor Code requires employees to take care of their safety and health, as well as that of the other persons who are affected by their actions or omissions at work, and on the basis of the obligations of loyalty and good faith that must govern all employment relationships, employees could reasonably be considered obliged to disclose themselves as a "risk-factor".
  - The employer should be entitled to receive such relevant information in order to take all the necessary preventive measures.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

  - Employers have a general obligation to guarantee the health and safety of their employees at the workplace. Therefore, it is recommended that they invite employees to disclose any relevant information in order to take preventive measures to protect all employees' health. A clear definition of "risk-factor" should be communicated to the employees.

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

  - For privacy and data protection reasons, it would not be recommended.
  - However, given the circumstances and the general obligation to protect employees' health and safety, employees could be invited to raise, in a discreet manner, any health and safety concerns they may have in the workplace. Employers must only collect strictly necessary medical information and limit the access to the reported data.

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- 4. Can employees refuse to come to work?**

  - In principle, no. Employees can only refuse to come to work in case of serious, immediate and unavoidable danger. They have the right to leave their work station or a danger zone in the event of serious danger, without suffering any prejudice if the employer has not taken all the required preventive measures and given the appropriate instructions.

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- 5. Can employees refuse to attend meetings or to travel?**

  - Before asking employees to travel, it is recommended that all employers check with official sources (e.g. the website of the Ministry of Foreign Affairs or the health authorities of the countries concerned and Luxembourg, but also official sources such as the World Health Organisation) to see if there is an official recommendation not to travel to the specific country/region. Employers have to inform employees of the result of these checks.
  - The Luxembourg Ministry of Foreign and European Affairs advises against all non-essential travels to other countries.



# Luxembourg



5. **Can employees refuse to attend meetings or to travel?**
- If an employer maintains a business trip in a high-risk area, it may be deemed as a breach of the employer's obligation to protect the health and safety of employees and justify the refusal of employees to travel.
  - Regarding meetings, if the slightest risk exists, it is the employer's responsibility to find alternative solutions to avoid close contact (e.g., videoconferences, conference calls) and to consider postponing collective meetings and more particularly those bringing together international teams.
  - Employees may also refuse to attend meetings if the working conditions in the said place pose a serious and direct danger to employee's life and health.
- 
6. **Can the employer send employees on suspension from work?**
- If the employee has been exposed or presents symptoms, the employer can send the employee home. Otherwise, the employer may also decide to have employees working remotely if possible.
- 
7. **When is the employer forced to shut down its operations?**
- The employer is forced to shut down its operations if the undertaking performs an activity which is one for which the Luxembourg government has issued recommendations, e.g., bars, restaurants, sport centers, or any other commercial activity which implies the reception of the public.
  - If the employer does not perform one of the activities suspended by the Luxembourg government, it can only shut down if there is a significant risk for the employees' health and safety keeping working at the employer's premises.
  - Employees may also decide to leave the employer's premises if they are aware of a serious danger for their health and safety and the employer has not taken all the required measures to protect the employees.
- 
8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?**
- There is no express obligation as such. However, in case of suspected exposure within the work place or if the employer decides to send home an employee who has travelled to a country at risk and who presents symptoms, the employer must contact the Health Inspectorate in order to seek advice on how to deal with the situation.
- 
9. **Can the employer require an employee to see a doctor?**
- Yes, the employer may suggest an employee presenting symptoms or who has been exposed to see a doctor. If the employee refuses, the employer may send him home in order to continue to ensure the health and safety of the other employees.



# Luxembourg



**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

- If employees are requested by the employer to work from home, they should do so. For this reason, teleworking must be implemented as much as possible.
- Where an employee refuses to come to work while the employer has implemented preventive measures to protect employees' health and safety, he may not be paid.
- Where the employee cannot come because of a sickness or infection, he is paid by the employer or, in case he is infected, by the National Health Fund during the sick leave or quarantine.
- If, however, the employer is required by the government to suspend the activities temporarily (e.g., restaurants, bars, stores, etc.), there are certain measures foreseen by the government in order to circumvent any potential losses and to have employees remaining paid (e.g., *chômage partiel*, *chômage technique*, etc.).

**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

- The Luxembourg government has adopted specific measures, including those related to parents who have to look after their child(ren) under the age of 13 provided they are schooled and are concerned by the temporary closures of schools and kindergartens. A parent in this situation will be able to benefit from a specific leave for family reasons. The leave for family reasons may be taken by a parent of such a child if no other childcare options are available. The leave is, in principle, limited to a period of 2 weeks for a parent of child(ren) under the age of 13 and to a period of 5 days for child(ren) over 13 years but under 18 years provided they are hospitalised.
- If necessary, parents may alternate their leave for family reasons. The National Health Fund has also clarified that it is possible to take half days for one parent and the other half by the second parent. In this case, each parent must send in a separate request form to the National Health Fund.
- If parents are not able to take leave for family reasons, they may contact their employer with a view to working from home insofar possible.
- The Luxembourg government is also looking into measures for parents who have disabled child(ren).



# Netherlands



This guidance is stated as at 17 March 2020

1. **Are employees obliged to disclose themselves as a "risk-factor" to the employer?**
  - Employees with a confirmed infection need to disclose the same to their contractual employer.
  - Employees with flu symptoms who:
    - i. visited or
    - ii. had contact with individuals from areas with presumed community transmission of COVID-19 within the past 3 weeks need to disclose this circumstance.
  - Even without flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness), employees who:
    - i. have an individual with a confirmed infection in their household or
    - ii. visited an event, which later became known to be a venue from which the disease spread, need to disclose this circumstance to their employer.

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2. **Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Same as item no. 1 above, however if the employee is ill at home he/she does not have to reveal the nature of the illness.

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3. **Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Yes, but this is a significant intrusion on privacy in a sensitive area. Please refer to the guidance under item no. 3 in Germany's content in this regard.

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4. **Can employees refuse to come to work?**

Employees can only refuse to come to work if

  - i. there is a confirmed Coronavirus infection in the work place; and
  - ii. the employee's place of work is in close proximity to where the infected employee was located (i.e., same open space office) and the employer cannot re-assign the employee to a no-risk environment at the work place.

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5. **Can employees refuse to attend meetings or to travel?**
  - Only if the meeting takes place in a region officially recognized by authorities as being a crisis-region or if attendees visiting from crisis-regions would attend. The same rule applies for business travel.
  - However, an employee can refuse business travel for the reason that he/she is seriously anxious. It will be debatable if it is good employment practice to ask employees to do business travels if they have serious problems with it at the moment.

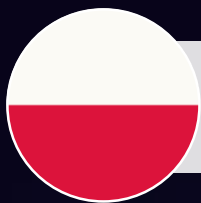




# Netherlands



6. **Can the employer send employees on suspension from work?** If an employee qualifies as a "risk factor" based on the criteria set out in the response to question no. 1, the employer is obliged to lock out the employee. The employee will need to continue working if possible (e.g., from the home office) unless sick.
7. **When is the employer forced to shut down its operations?** Only if there is evidence that the place of work is an "out of control crisis venue". This decision should only be made in consultation with local health authorities.
8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?** No, only medical staff and doctors who become aware of an infection are required to report to the health authorities.
9. **Can the employer require an employee to see a doctor?** No, the employer can only recommend the employees to see a doctor. If the employee refuses, the employer can send the employee on paid suspension from work under the preconditions stipulated in item no. 6.
10. **If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?** In case of a legitimate lock out, suspension from work or shut down (based on the requirements stipulated in these FAQ), the employee would need to be paid. But the employee would also be required to take all reasonable steps to work from home. Further, the employee would need to accept being temporarily reassigned physically within the work place to a no-risk environment (i.e., other office) or to be assigned with different duties even if these are inferior to the standard duties (unless entirely unacceptable).
11. **If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**
- This must be assessed on a case-by-case basis. Assuming there is no risk that the employee has been infected by Coronavirus and can come to the office, the employer may in principle require the employee to take measures in response, i.e., arrange for alternative care, stay home whilst taking up days' holiday, etc. This could however be different if there is a risk of the employee having the Coronavirus or any formal advice from the Dutch government (e.g., the Dutch government now advises employees living and working in the Netherlands to work from home if possible and not come to the office).
  - Under the circumstances, the employee could also invoke contingency leave (*calamiteiten verlof*). In that case, based on Dutch statute the employee is eligible for continued payment for a few hours up to a number of days, depending on the situation. If the child of an employee is ill, it could also be possible to invoke short term care leave. This applies for a maximum of twice the number of hours the employee works per week and during that period, the employee is eligible for 70% of the salary.



This guidance is stated as at 17 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

  - The employer cannot oblige the employees to proactively disclose that they may be a "risk-factor" (have symptoms or returned recently from the affected area).
  - However, the employees are free to (and should) disclose such information on their own.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

  - At this point, there are no official guidelines in this regard.
  - However, it seems that due to legitimate interest of the employer (obligation to ensure health and safety at the workplace), the employer can demand that the employees submit statements stating that they have not recently travelled to the affected area.
  - The Polish Parliament is currently working on the amendment of the special act on counteracting Coronavirus. If the changes come into force in the proposed wording, the employer will be allowed to demand that an employee disclose whether he / she returned recently from the affected area. Employer will also have a right to monitor the health condition of its employees, particularly by temperature checks, which means that other control measures may be allowed in practice.

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

  - There are no official guidelines in this regard.
  - Given the extraordinary circumstances and the employer's general obligation to ensure health and safety at the workplace, the employer may ask other employees to report if they observe flu symptoms that could mean that the relevant employee is a "risk-factor".
  - Given the fact that such practice is a significant intrusion on privacy, the employees should report their concerns in a discreet manner, without disclosing their co-worker's identity (if possible).

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- 4. Can employees refuse to come to work?**

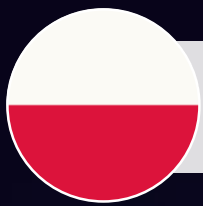
Employees can only refuse to come to work if it poses a risk to their life or health, in particular if:

  - (i) there is a confirmed infection in the workplace and
  - (ii) if the employee's place of work is in close proximity to where the infected employee was located (e.g., same open space office) and
  - (iii) the employee may not perform work from home and
  - (iv) if the employer cannot reassign the employee to a no-risk environment at the workplace.

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- 5. Can employees refuse to attend meetings or to travel?**

  - Yes, the employee may refuse to attend a meeting if the working conditions in the said place pose direct danger on the employee's life or health.
  - The same applies for business travels.



# Poland



- 6. Can the employer send employees on suspension from work?**

  - If the employer is aware of the fact that the employee is a "risk-factor" (has flu symptoms or just returned from affected area), the employee may ask such employee to work from home (provided that he/she is not actually sick).
  - If work from home is not possible, then the employee should be sent on suspension from work. Alternatively, the employee may decide to use his/her holiday leave (the employer must not unilaterally send the employee on a leave).

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- 7. When is the employer forced to shut down its operations?**

The operations should be shut down when there is evidence that the place of work is an "out of control crisis venue". The operations must be shut down upon a relevant decision of public authorities.

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- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

  - No, it is the obligation of the medical staff to confirm that the infection actually occurred.
  - Currently, based on the special statutory act on counteracting Coronavirus that was adopted recently, the Chief Sanitary Inspector will be able to order employers to implement certain preventive or control activities and request information in this regard. In addition, the Prime Minister, at the request of the voivode and after informing the minister of economy, will be able to impose additional obligations on employers.
  - However, under the general recommendations of the World Health Organization and the Polish Chief Sanitary Inspector, employers should report each suspected case of coronavirus infection to relevant authorities.

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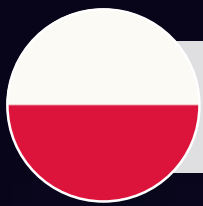
- 9. Can the employer require an employee to see a doctor?**

  - The National Labour Inspectorate in official guidelines stipulates that it is not possible.
  - However, based on case law, in case the employer has justified reason to believe that the health state of the employee has changed, then the employer is authorized to send the employee for additional medical check with occupational physician (e.g., due to visible symptoms such as a cough and fever).
  - The Polish Parliament is currently working on the amendment of the special act on counteracting coronavirus. If the changes come into force in the proposed wording, the employer will be allowed to demand that the employee be subject to additional medical check (only if the employer has justified reason to believe that such employee is sick or returned recently from an affected area).

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- 10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

  - In case of a justified lock out, refusal to come to work or shut down, the employee would need to be paid.
  - However, as mentioned in item no. 6 above, if possible, the employee would also be required to take all reasonable steps to work from home.



# Poland



**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

- The employee taking care of a child up to 8 years old in connection with the closure of a nursery, children's club, kindergarten or school due to Coronavirus will be entitled to an additional care allowance from the Social Security Authority for a maximum of 14 days.
- The Polish Parliament is currently working on the amendment of the special act on counteracting Coronavirus. If the changes come into force in the proposed wording, the additional care allowance will be granted for the whole period of closure. What is more, based on the planned changes, the employees taking care of a child of up to 15 years old will be entitled to the additional care allowance.



# Russia



This guidance is stated as at 10 March 2020

This advice is likely to change as the situation develops and the Russian authorities may adopt new legislation or recommendations.

**1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

- Under the Russian Labor Code employees must inform the employer without delay of the emergence of a situation presenting a hazard to the life and health of people. Thus, they should disclose themselves as a "risk-factor" to the employer.
- **For Moscow:** as of 5 March 2020 all employees who return from states who display possible "unfavorable" signs of COVID-19 (China, the Republic of Korea, Iran, Italy, France, Germany, Spain, Switzerland, the UK, Norway, the USA) must report to the Moscow city hotline (+7 495 870 45 09) and must self-isolate themselves at home for 14 days. Thus employees should disclose themselves as a "risk-factor" to the employer in order to self-isolate at home.
- Comments for Moscow are based on the Mayor of Moscow Decree dated 5 March 2020 #12 UM On Introduction of High Alert Regime.
  - In this Decree, only 7 "unfavourable for COVID-19" countries are referred to directly: China, the Republic of Korea, Iran, Italy, France, Spain and Germany, alongside the reference to a certain list of other countries to be approved by the Moscow Department of Rospotrebnadzor (a Government agency supervising the protection of consumer rights and human welfare, including epidemiological safety). As of now, we cannot find the original list of countries falling under the above Decree, but see different references to it on sites of mass media. The recent publications show that Norway, Spain, Switzerland, the UK, and the USA were excluded from this list, leaving only the countries directly named in the above Decree.

**2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

The employer's right to ask certain questions has as counterpart the employees' obligation to disclose the corresponding information (i.e., the employer has the right to ask for the circumstances specified as per question no. 1 and the employee has to provide the corresponding and truthful answer).

**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Yes, the employer can develop and issue a local policy setting out provisional rules of Internal Labor Regulations that would be effective during the period of COVID-19 threat. In this policy, the employer can impose rules that are not directly regulated by statutes, but may be recognized as reasonable and reflect the employer's general obligation to provide safe work conditions. These rules could include the obligation to report contacts with potential virus vectors and visitors to virus-hit regions, to abstain from reporting at workplace when feeling unwell, to switch to work from home and other rules.



# Russia



4. **Can employees refuse to come to work?**
- Employees may refuse to come to work if they have justified reasons for absence, e.g., they have applied for medical assistance from a medical institution and obtained a sick leave certificate.
  - **For Moscow:** Employees must not appear at work for 14 days if they returned from states which display possible "unfavorable" signs of COVID-19. If they need a sick leave certificate they may apply to a hotline of Moscow Department of Health and request for a sick leave certificate stating that they have recently returned from states which display possible "unfavorable" signs of COVID-19. In this case, a medical specialist will deliver them their sick-leave certificate at home.
5. **Can employees refuse to attend meetings or to travel?**
- The employer is obliged to ensure safe working conditions and labor protection for its employees. employees may refuse to attend meetings if the working conditions in said place impose direct danger on the employees' life or health.
  - Same rule applies for business travels.
  - **For Moscow:** Employees must stay at home for 14 days and refuse to attend business meetings or go on business travels if they returned from states which display possible "unfavorable" signs of COVID-19. Such employees can prove their work incapacity by sick-leave certificates that they can get at the airport or at home without going to medical institutions.
6. **Can employer send employees on garden leave?**
- If an employee qualifies as a "risk factor" based on the criteria set out in the response to question no. 1, the employer is obliged to lock out the employee.
  - **For Moscow:** Employers operating in Moscow must suspend employees from the workplace if they have elevated temperature. employers must ensure self-isolation of employees who returned from states which display possible "unfavorable" signs of COVID-19.
7. **When is the employer forced to shut down its operations?**
- There are no specific requirements regarding the employer's obligation to shut down its operations. However, the employer may suspend work due to economic, technological, technical or organizational causes.
8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?**
- For Moscow:** Upon receipt of a request from the Russian Federal Service for Consumer Rights and Human Welfare Protection ("Rospotrebnadzor") employers operating in Moscow must immediately provide information on all work contacts of employees suffering from COVID-19.



# Russia



**9. Can the employer require an employee to see a doctor?**

- The employer can request only certain categories of employees to undergo mandatory preliminary and periodic medical examinations. In other cases, the employer can only recommend that employees see a doctor but employees are not obliged to undergo such medical examination.
- For Moscow: Employees must seek medical help at home without going to any medical institutions if they have respiratory symptoms.

**10. If employees are sent on garden leave or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

In case of a legitimate lock out, suspension from working place or shut down, employees would need to be paid.

**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

In the absence of statutes providing otherwise, no. Under current rules and practices, such situations are considered valid grounds for employees to request additional unpaid leaves, or to urgently use their annual paid leave entitlement, rather than to claim compensation.





# Saudi Arabia



This guidance is stated as at 19 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

  - Yes. Employees with a confirmed infection or suspicious symptoms should disclose this to the employer, visit the nearest hospital or call 937 (The Ministry of Health's 937 Service Center).
  - Individuals who have entered the Kingdom since Friday, 13 March 2020 must self-quarantine and will be granted sick leave for the duration of his/her quarantine. The individual must apply for the sick leave through the Sehaty App. The employee would have to notify the employer that he/she will not be at work as he/she returned from travel and will be in self-quarantine.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

  - Yes. Private sector entities must ask employees to disclose symptoms associated with COVID-19 such as high fever, cough, or shortness of breath, or those who had contact with an individual who is, or might, be infected. Employers must immediately refer individuals exhibiting COVID-19 symptoms to medical care.
  - Employers must impose home quarantine on all employees returning from abroad and prohibit them from working until the expiry of the quarantine period (14 days from entering the Kingdom).

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Yes. On 18 March 2020, the Ministry of Human Resources and Social Development (MHRSD) announced that private sector entities must put in place a procedure for their employees to report to the relevant administration, individuals who exhibit COVID-19 symptoms, or those who returned to the Kingdom without following the precautionary quarantine measures set by the Ministry of Health. Private sector entities must safeguard the privacy and confidentiality of such report and shall report any cases to the Ministry of Health.

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- 4. Can employees refuse to come to work?**

**Closure of certain sectors and headquarters**

  - On 16 March 2020, the government announced, among other matters, the closure of open and closed markets and malls (except pharmacies and food supply) and food and beverage places are limited to take away.
  - On 18 March 2020, the MHRSD issued an announcement to suspend attendance at all private sector entities' headquarters for 15 days, activate working remotely and adhere to a number of directives. One of the directives is the reduction of staff in branches, offices and other facilities to the minimum necessary to conduct the work so that the number of employees present at the workplace does not exceed 40% of the total employees at the facility's headquarters taking into account a number of factors (please see item no. 7 below).



#### 4. Can employees refuse to come to work?

##### Working Remotely

- On 17 March 2020, the MHRSD issued guidelines to encourage the private sector to work remotely.
- The guidelines state that the private sector institution must have a technical system that follows the following standards:
  - i. It enables the institution to manage productivity of remote work and supervise assigned functions and
  - ii. The remote employee must have authorities to perform duties of work.
- The guidelines also clarify that institutions must determine the technique of their remote work, including working hours and the method of supervising the productivity. It also stated employees could come to the workplace and perform their duties on the institution's dedicated device or on personal devices that apply cybersecurity regulations.

##### Compulsory leave for certain category of employees

Employers are urged to grant 14 days' sick leave, which shall not be deducted from the employee's leave balance, for the following categories of employees:

- Pregnant women
- Individuals suffering from respiratory diseases
- Immuno-deficient individuals and individuals using immunosuppressive agents
- Individuals suffering from tumors
- Individuals with chronic diseases

##### Refusal to come to work

- If an employee is required to come to work he/she can refuse if:
  - i. He/She has a medical report to say he/she is ill (generally ill, not necessarily infected by COVID-19); or
  - ii. PERHAPS if there is a confirmed COVID-19 infection in the workplace, although it is likely in such an instance that the authorities would close the premises.
- If the employee has not returned from a high risk country and cannot produce a medical report to confirm his/her illness, the employer could consider the absence unauthorized, unless the employee requests to be on annual leave or unpaid leave, both instances require the employer's approval.

#### 5. Can employees refuse to attend meetings or to travel?

- All international flights to and from the Kingdom have been suspended for two weeks starting on 15 March 2020 (except in exceptional circumstances) and domestic flights are limited. Most land borders have been closed (except for commercial vehicles). Any employees who were unable to return before the lockdown shall be deemed to be on official exceptional leave for the two-week lockdown.
- Employer could recommend meetings be held by teleconference instead of in person.



- 6. Can the employer send employees on suspension from work?**
- As mentioned above, the MHRSD is mandating a lockdown of private sector entities' headquarters for 15 days and means of working remotely. Branches, offices and other facilities can operate at a reduced capacity of up to 40%. Entities operating in vital sectors such as electricity, water, telecommunication, food, medicine and treatment businesses, as well as supply chain and logistic services delivering said goods are exempted from the general lockdown and the 40% threshold.
  - This is not considered paid or unpaid leave or suspension from work and the employer must continue to pay employees during this time.
- 
- 7. When is the employer forced to shut down its operations?**
- See response to question no. 6 above.
  - Branches, offices and other facilities operating at reduced capacity are subject to certain criteria:
    - i. Where the number of employees exceeds 50, the entity must set up a checkpoint at the entrance of the workplace to measure the individuals' temperature and enquire about any COVID-19 associated symptoms and any contact with an individual who is, or might, be infected
    - ii. Leave sufficient room between each employee at the workplace according to the guidelines for the prevention of COVID-19 issued by the Ministry of Health
    - iii. Close gyms and nurseries located in their headquarters
    - iv. Require employees to disclose symptoms associated with COVID-19 or if they had contact with an individual who is, or might, be infected; and
    - v. Put in place a procedure for their employees to report to the relevant administration, individuals who exhibit COVID-19 symptoms, or those who returned to the Kingdom without following the precautionary 14 days quarantine period set by the Ministry of Health (as mentioned in the response to Question 3 above).
  - If any entity are unable to comply with the 40% threshold, it should submit its request to the respective supervising authority.
- 
- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**
- Yes, employers must immediately refer individuals exhibiting COVID-19 symptoms to medical care.
- 
- 9. Can the employer require an employee to see a doctor?**
- Yes, the employer can request the employee see a doctor / undergo medical examinations to ensure he is free from diseases. However, the employer should cover the cost of the tests.



# Saudi Arabia



**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

- As mentioned above, private sector entities' headquarters are on lockdown for 15 days and should work remotely. Their branches, offices and other facilities can operate at reduced capacity up to 40% (excluding certain industries). Employers must continue to pay employees during such time.
- If the employee is sent home from work or refuses to come to work because he is sick and can prove it with a medical report or if an operation is being shut down, then the employer must continue to pay the employee's wages.
- If, however, the employee refuses to come to work without a valid reason for more than 30 days in one contractual year or more than 15 consecutive days, the employer can terminate the employee without notice or an end of service award, provided that he gives the worker a chance to state his reasons for objecting to the termination and the termination was preceded by a written warning from the employer if the employee was absent for more than 20 days in the first case or more than 10 days in the second case.

**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long**

- Kindergartens and schools are closed in Saudi Arabia.
- If an employee is unable to work from home, he/she can request to take annual leave subject to the employer agreeing to such leave.
- Alternatively, an employee, subject to the employer's approval, may request to take leave without pay for a duration to be agreed upon by the two parties. The work contract shall be deemed suspended for the duration of the leave in excess of 20 days, unless both parties agree otherwise.
- If the leave is unauthorized, see response to question no. 10 above.



# Slovakia



This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

  - Generally, all employees have the obligation to cooperate with the employer to ensure health and safety at the workplace.
  - This could imply that employees are obliged to disclose themselves as a "risk-factor". However, to provide the employees with clarity as to when they are considered to be a "risk-factor", a clear definition should be communicated to employees first.
  - Furthermore, note that as of 7:00 on 13 March 2020, every individual with a permanent or temporary (over 90 days) residence in Slovakia returning to Slovakia is ordered to undergo a 14-day obligatory quarantine.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes, since the employer has a general responsibility to ensure a healthy and safe workplace.

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

No, this would not be recommended.

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- 4. Can employees refuse to come to work?**

Generally, an employee can refuse to perform work which the employee reasonably regards as posing a direct and serious threat to his/her health or life or the health or life of other individuals. However, we are of the view that in the current circumstances, the employee's refusal to come to work would be unjustified.

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- 5. Can employees refuse to attend meetings or to travel?**

An employee can refuse to perform work which the employee reasonably regards as posing a direct and serious threat to his/her health or life or the health or life of other individuals. Such refusal must not be considered a breach of obligations. With respect to travels and meetings outside the Slovak Republic, please note that as of 0:00 on 13 March 2020, the Slovak borders are closed subject to certain exceptions. However, these exceptions do not apply to business travels/meetings.

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- 6. Can the employer send employees on suspension from work?**

Yes, the employer can send an employee on garden leave. In such case, the employee would be entitled to a salary reimbursement in the amount of the employee's average earnings.





- 7. When is the employer forced to shut down its operations?**
- The employer is obliged to impose business restrictions or to close down the business premises in case of a respective instruction by authorities. Please note that from 6:00 on 16 March 2020, for a period of 14 days, retail businesses and businesses providing services are closed with the exception of certain businesses (e.g., groceries, healthcare & pharmacies, drugstores, public transport, petrol stations, news agents, pets, telecommunication operators, public catering services and fast foods (take-away), post offices, banks, insurance agencies, e-shops and delivery services).
- 
- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**
- No, the employer is not obliged to report to the authorities.
- 
- 9. Can the employer require an employee to see a doctor?**
- The employer cannot require the employee to undergo a special test for the Coronavirus.
  - If the employer has doubts whether the employee is fit to work, the employer can send the employee to undergo an extraordinary medical check. However, in the current circumstances, the employer should verify the planned approach with the occupational health facility first.
- 
- 10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**
- An employee on garden leave is entitled to a salary reimbursement in the amount of the employee's average earnings.
  - If an employee refuses to come to work without reason, such absence would be classified as unexcused absence and the employee will not be entitled to any remuneration.
  - Temporary closure of operations by the employer would be classified as another obstacle to work on the employer's side i.e., a situation in which an employee is entitled to time off since he/she cannot perform work due to reasons on the employer's side. During this period employees would be entitled to a salary reimbursement in the amount of the employee's average earnings.
- 
- 11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**
- Although the employer will have the obligation to excuse the absence of such employees, the employer will not have to pay them. The employees will be paid by the Social Security.



# South Africa



This guidance is stated as at 19 March 2020

**1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

- South African law does not place an obligation on employees to disclose their medical information or status. However, an employer has an obligation to provide a safe working environment. Given the circumstances around the Coronavirus if an employer instructs their employees to inform the employer if they are a "risk-factor", then the employee will be obliged to disclose this to their employer.
- If the employee fails to comply, it may be possible that the employee can be held liable for misconduct. However, this will depend on the circumstances of each case.

**2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes please see our responses in question no. 1.

**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Yes. As stated in question no. 1, an employer has an obligation to provide a safe working environment. Therefore, an employer can implement reasonable steps to ensure that they comply with their obligation. We are of the view that these are reasonable instructions given the outbreak of the Coronavirus.

Further, section 14(d) of the Occupational Health and Safety Act, 1993 (OHSA) provides that where an employee becomes aware of an unhealthy or unsafe situation at work, this must be reported to the employer as soon as is practicable. This may include instances where co-workers display flu-like symptoms.

**4. Can employees refuse to come to work?**

Generally no. However, employees can refuse to come to work if there is a reasonable risk on their life or health. Specifically with the Coronavirus, an employee can refuse to come to work if:

- i. there is a confirmed infection in the workplace
- ii. if the employee's place of work is in close proximity to where the infected employee was located (i.e., same open space office)
- iii. if the employer cannot reassign the employee to a no-risk environment at the workplace.

On 15 March 2020, the President of South Africa announced steps that the government would be implementing measures to mitigate the effect of the Coronavirus on the people of South Africa. This announcement included the payment for special leave by the Unemployment Insurance Fund (UIF) If an employee is required to be self-quarantined for 14 days, this leave will be recognized as special leave and will be fully paid by the UIF on condition that the reason for self-quarantine meets the requirements. We anticipate that the South African government will issue guidelines in order to provide further clarification on this new initiative.







# South Africa



5. **Can employees refuse to attend meetings or to travel?** Yes, an employee may refuse to attend a meeting or to travel if there is a high risk that such meeting or travel will endanger the health or life of the employee. This will be assumed if an employee is travelling or attending a meeting in a high risk area. The South African government has imposed a travel ban for foreign nationals that have traveled from high risk countries, and has advised against non-essential domestic travel. The South African government has further advised citizens to refrain from all forms of travel to or through high risk countries. The South African government has also prohibited gatherings of more than 100 people. (see: [Home Statement by President Cyril Ramaphosa on measures to combat COVID-19 epidemic](#))
- 
6. **Can the employer send employees on suspension from work?**
- The employer may have a contractual right to ask employees to work from home or not to attend work at any point during their employment. This will depend on the wording of the employment contracts.
  - If the employer does not have a contractual right, given the employer's obligation to provide a safe working environment, it may be reasonable to instruct employees to work from home if they can do their job remotely and if not, to ask them not to attend work.
  - However, as employees have a right to fair labour practices, an employer must consider whether the instruction to work from home may affect other rights or benefits and, if so, what reasonable accommodation the employer could make to limit the potential prejudice to staff.
- 
7. **When is the employer forced to shut down its operations?** The law does not set a threshold for when operations must be shut down. In the circumstances surrounding the Coronavirus, it is advisable to shut down operations if continued operations would pose a significant risk to the health and life of the workforce.
- 
8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?** No, only medical staff and doctors who become aware of an infection are required to report to the health authorities.
- 
9. **Can the employer require an employee to see a doctor?** Yes. Medical testing is prohibited, unless *inter alia* it is justifiable in the light of the medical facts. The Coronavirus endemic should meet this test. Employers may require staff to produce a medical certificate confirming that the employee does not have the Coronavirus and that the employee is fit to work.



**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

Yes.

- In case of a legitimate suspension or shut down (based on the requirements stipulated in these FAQ), the employee would need to be paid. An employer would also need to consider how this may affect other rights or benefits and, if so, what reasonable accommodation the employer could make to limit the potential prejudice to staff.
- The employees would also be required to take all reasonable steps to work from home (if it is possible to work from home).

**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long**

- If the employee needs to remain at home to look after a child, the employee would need to apply for leave such as annual leave or unpaid leave. An employee's annual leave entitlements are typically governed by the employment contract, but may not be less than 15 working days per annual leave cycle (an annual leave cycle is 12 months long).
- However, if the employee needs to stay home and cannot work because they need to take care of an ill child, the employee is entitled to paid family responsibility leave (3 days per annual leave cycle), provided they have been employed for longer than 4 months with the employer.



# Spain



This guidance is stated as at 18 March 2020

**1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

- Employees with a confirmed infection need to disclose the same to their contractual employer ("employer").
- Employees with flu symptoms need to disclose this circumstance.
- Even without flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness), employees who
  - i. had contact with a confirmed infection or
  - ii. visited an event, which later became known to be a venue from which the disease spread, need to disclose this circumstance to their employer.

**2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

The employer's right to ask certain questions has as counterpart the employees' obligation to disclose the corresponding information, i.e., the employer has the right to ask for the circumstances specified as per question no. 1 and the employee has to provide the corresponding and truthful answer.

**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employee?**

- Yes, the Spanish data protection authority has recently clarified that the legal basis for processing of personal data in cases of an epidemic could be multiple including the vital interest (Article 6.1 (d), GDPR). This legal basis would cover both the processing of the employee and the processing of personal data aimed at protecting those persons who may be infected by COVID-19. This would justify the processing of personal data in the measures adopted to protect persons who may be infected, even if they are not identified. In the context of employment relationships, the authority has also clarified that, in application of occupational risk prevention regulations, employers may process the data of all their employees necessary to guarantee their health, to ensure their right to health protection and to avoid contagion within the company and/or the workplace.
- In any case, it is important that the processing of personal data comply with all general data protection principles set forth in Article 5, GDPR (purpose limitation, proportionality, data minimization, storage limitation, integrity and confidentiality). For this purpose, the authority has clarified that the reports or questions are limited to inquiring about the existence of symptoms, or whether the employee has been diagnosed as infected, or subject to quarantine. It would be contrary to such principles of data minimization to circulate extensive and detailed health questionnaires, or to include questions that are not related to COVID-19. Additionally, it would be necessary to draft a privacy notice that at least includes all necessary information about the processing of personal data as set forth by Art. 13 GDPR.



# Spain



## 4. Can employees refuse to come to work?

- Employees can only refuse to come to work if their health conditions put them at risk and have communicated this to the company so that it can take appropriate preventive measures.
- Companies must ensure compliance with data privacy regulations since the company would be processing very sensitive personal data.

## 5. Can employees refuse to attend meetings or to travel?

- The Spanish Government has imposed strict limitations to the freedom of movement across all the Spanish territory and it has closed the terrestrial borders, with some exceptions (e.g., transportation of goods, returning home residence or force majeure). Considering also the general recommendations issued by all the authorities to avoid unnecessary travels, it is reasonable for employees to refuse to attend any meetings or travels that are not absolutely essential.
- The authorities have also recommended companies to implement home-based work and work on shifts when possible to avoid concentration of people and use video conferences. Therefore, it is advisable and common practice currently to avoid physical meetings and travels to the extent possible.
- From a health and safety perspective, if a business trip is essential, it will be necessary to take all measures to protect the employees' health and safety.

## 6. Can the employer send employees on leave / suspension from work?

- a. Employees with a confirmed infections or employees who had contact with an individual with a confirmed infection and the health services have ordered the employee to be quarantined until they confirm whether the/she is infected or not the employee will be on sickness absence, exempted from work and receiving a sick leave allowance from the Social Security. The company may be obliged to complement the sick leave allowance under the employment contract or the collective bargaining agreement.
- b. For other cases, in order to avoid a potential viral spread in the workplace, companies have been encouraged to implement work from home arrangements. Companies will be able to do this if they have objective knowledge, or a reasonably held belief, that an employee has either contracted or been exposed to the Coronavirus (for example, is exhibiting symptoms or recently travelled to an area cautioned by health authorities). In these circumstances, there may exist a bona fide occupational requirement to protect the health and safety of others in the workplace, thereby justifying the requirement to stay home.
- c. The National Government has implemented specific measures to contain the Coronavirus (including interruption of learning activity in kindergartners, schools and universities or any other educational institutions, restriction of people's freedom of movement and temporary closing of a wide range of commercial establishments at least from 14 to 28 March 2020. The measures included:
  - i. specific activities in item no. 7 below
  - ii. recommending companies to establish home-based work if possible



## 6. Can the employer send employees on leave / suspension from work?

- iii. update their contingencies plan for emergency situations
- iv. facilitate flexible working time arrangements to ensure work-life balance under these circumstances
- v. the use of video conferencing for meetings
- d. If working from home is not possible, the company may send employees on suspension from work (during which the employees will continue receiving salary and benefits). As a general rule, this requires the employee's consent but the legal risks associated with requiring employees to stay home /work from home is low in these circumstances so long as the leave / work from home duration is reasonable having regard to the safety and health of the employees.
- e. Alternatively, if there is a force majeure cause or objective grounds, as explained in item no. 7 below, the employer can initiate proceedings for suspension of contracts, in which case the employees would be entitled to unemployment benefit and the employer would not be obliged to pay the salary.

## 7. When is the employer forced to shut down its operations?

- If there is evidence that the place of work is an "out of control crisis venue" and working from home is not possible.
- If the specific activity has been suspended by the Government. In this regard, the following facilities and businesses must temporarily close to the public: cultural, leisure and entertainment establishments, sports centers and facilities, restaurants (except for home delivery), bars, nightclubs, gaming and gambling establishments, recreational facilities, public fairs and, in general, all retail stores **except for** those providing staple food, drinks or essential products, pharmaceutical, medical, orthopaedic or hygiene products; (iii) hairdresser's services; (iv) press and stationery products; (v) fuel; (vi) tobacconist products; (vii) technological and telecommunication equipment; (viii) pet food; (ix) online, telephone or postal commerce; (x) dry cleaning and laundry.
- A temporary shut down due to force majeure requires authorization from the labor authorities. According to a Royal Decree passed by the Government on 18 March 2020, the following situations, when duly evidenced, shall be considered to have been caused by force majeure:
  - i. Suspensions of contracts and reductions in working hours that are directly caused by the business that was lost due to the different governmental measures passed as a consequence of the COVID-19 (including the declaration of a State of Emergency in Spain) and which imply the suspension or cancellation of activities, temporary closure of premises of public affluence, restrictions on public transport and, in general, restrictions on the movement of persons and/or goods
  - ii. Lacks of supply that seriously hinder the company's ordinary course of business, or
  - iii. Urgent and extraordinary situations caused by the contagion of staff or which require employees to be put in preventive isolation by order of the health authorities.



# Spain



**7. When is the employer forced to shut down its operations?**

■ If there is no sufficient cause of force majeure but the business has been significantly disrupted, employers can implement suspension of contracts for objective reasons (e.g., decrease in demand of the company's products), which will require consultation with employee representatives. In this kind of suspension, the companies need to cover social contributions, as opposed to force majeure suspensions.

**8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

No, there is no specific obligation to report Coronavirus infections for the moment.

**9. Can the employer require an employee to see a doctor?**

The general rule is that companies can only recommend the employees to see a doctor. However, it may be possible to request to see a doctor to check whether the employee's health status could be a danger to him/herself or other employees / third parties.

**10. If employees are sent on leave / suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

There are different scenarios:

- a) Temporary shut down due to force majeure (e.g., huge number of employees infected): The company must request authorization from the labor authorities to do it. During the temporary shutdown, employees will receive the employment allowance from the unemployment office. The company must continue paying the social security contributions but not the salary.
- b) Temporary shut down due to objective reasons (e.g., productive reasons if the company is out of stock): The company must enter into a consultation with the employees' representatives. During the temporary shutdown, employees will receive the employment allowance from the unemployment office. The company must continue paying the social security contributions but not the salary.
- c) If employees refuse to work and their health conditions do not put them at risk, this could be considered a labor infringement and the company may suspend him/her from work and salary (according to the rules of the Collective bargaining agreement). However, this would depend on the specific circumstances.
- d) If the company decides to send employees on leave, employees are entitled to receive salary and benefits during the same. Companies can ask employees to take the paid annual leave but this requires the employee's consent.
- e) Employees with a confirmed infection or employees quarantined by Health Services because they are under investigation until they confirm whether the/she is infected or not the employee will be on sickness absence (according to the criteria of the Health Services), exempted from work and receiving a sick leave allowance from the Social Security. The company may be obliged to complement the sick leave allowance under the employment contract or the collective bargaining agreement.



# Spain



**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

- No, the employer is not required to pay them. However, if the employee is unable to work due to children care circumstances, they can request the company:
  - (i) to work from home or to adapt their working time (the company will then analyze if this is possible or not);
  - (ii) a reduction of working time / salary for children care if the children are less than 12 years old,
  - (iii) an unpaid leave of absence or
  - (iv) a paid leave of absence (but the employer must agree on this). The applicable Collective Bargaining Agreement needs to be checked since it may establish days off for personal issues (although this tends to be only 2-4 days maximum) or any additional leaves or flexibility arrangements.
- The Spanish Government announced on 14 March 2020 that learning activity ceases in all of Spain at kindergartens, schools and universities and any other educational institutions for at least 15 calendar days, though this will likely be extended. It also encourages companies to facilitate flexible working time arrangement to ensure work-life balance under these circumstances and the use of use of video conferencing for meetings.





# Sweden



This guidance is stated as at 17 March 2020

1. **Are employees obliged to disclose themselves as a "risk-factor" to the employer?** Employees who have a confirmed COVID-19 infection or have a reason to suspect that they have an infection are legally obliged to disclose the same to their employer.

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2. **Can the employer demand employees to disclose themselves as being a "risk-factor"?**

The employer can demand employees who have COVID-19 or have a reason to suspect that they have an infection to disclose themselves.

In the context of a major outbreak of COVID-19 in Sweden, it is likely to be considered proportionate for the employer to ask:

  - a) employees with symptoms associated with COVID-19 infection, who have visited or had contact with individuals who have visited areas with presumed community transmission of COVID-19 (e.g., China, Italy, South Korea, Japan, Singapore, Hong Kong and Iran) within the past 3 weeks; and
  - b) Employees without such flu symptoms but who have an individual with confirmed COVID-19 infection among their immediate family members or who have visited an event, which later became known to be a venue from which the disease spread, to disclose this circumstance to their employer.

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3. **Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employee?**

Generally, no.

  - This is a significant intrusion on privacy in a sensitive area. However, in the context of a major outbreak of COVID-19 in Sweden, the employer can encourage employees to report co-workers with COVID-19 symptoms to the employer, e.g., if another employee in the workplace is confirmed to have COVID-19 and has not disclosed this to the employer and does follow self-isolation advice. Any such policy in those circumstances would require a clear reporting channel with limited access to the reported data, and clear/limited retention periods.
  - Even though not a privacy compliance issue, please note that if the employer is bound by a CBA, the unions shall be consulted with regard to the technical system used to implement the reporting line and the reporting requirements.

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4. **Can employees refuse to come to work?**

Generally, no.

  - However, the employees can refuse to come to work if the company's health and safety officer (*Sw. skyddsombud*) has made a decision to close down the workplace due to there being an immediate and serious risk for the employees' life or health.
  - Please note that some groups of employees, such as pregnant women, those with compromised immune systems and those identified by WHO as having a higher risk of developing severe COVID-19 may have good reason for their refusal, and obligations under work environment legislation should be carefully observed in relation to those higher risk groups.
  - Practically, the employee may have a job which can be done from home and a solution would be to instruct them to do so. If they are not able to do so, the employer may be able to agree that they take holiday or agree a period of unpaid leave.





# Sweden



**5. Can employees refuse to attend meetings or to travel?**

Generally, no, if this is required as part of their duties.

- The employer should discuss refusal with the employee, but if there are no special concerns, the employee would be in breach of an instruction to travel.
- If the meeting takes place in a region where the Swedish Ministry for Foreign Affairs recommends against travelling (for information see <http://www.regeringen.se/uds-reseinformation>), employees can refuse to attend. Same rule applies for business travel.
- All employers should assess whether travel to affected areas is essential. Employers should avoid sending those at higher risk of serious illness to any area where the virus is spreading. Risk assessments should be carried out.

**6. Can the employer send employees on leave / suspension from work?**

- Yes, if an employee qualifies as a "risk factor", the employer may temporarily relieve the employee from the obligation to work and require them stay away from the workplace.
- The employer may also require the employees to work from the home office, unless they are sick, to the extent working from home is possible.

**7. When is the employer forced to shut down its operations?**

If the company's health and safety officer has made a decision to close down the workplace due to there being an immediate and serious risk for the employees' life or health, or if the employer deems that the place of work is an "out of control crisis venue".

**8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

No, only medical staff and doctors who become aware of an infection are required to report to the county medical officer for infectious diseases (*Sw. smittskyddsläkare*).

**9. Can the employer require an employee to see a doctor?**

Yes, if the employer has a reasonable suspicion that the employee has COVID-19 infection.

**10. If employees are sent on leave / suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

Whether the employee is entitled to be paid will depend on the reason why they are not working:

- If an employee is displaying symptoms or has been confirmed with COVID-19 infection, they are treated as being on sick leave and will be entitled to sick pay in accordance with the Swedish rules on sick pay.
- If an employee has been relieved from the obligation to work and asked not to attend the work place and they do not have a job that can be done remotely, or if an operation is being shut down, the employees are entitled to be paid as usual.
- An employee who refuses to come to work without good reason would not be entitled to pay.



# Sweden



**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

No, the employer would not be obliged to continue to pay salary if the employee stays home and cannot work. However, the employer may allow the employee to work from home if their job is one that can be done remotely.



This guidance is stated as at 17 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

Employees with a confirmed infection need to disclose the same to their contractual employer.
- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**
  - Yes, as long as the questions are necessary for the employer to assess the appropriate measures to protect its other employees and provided that the question is proportionate in light of the information that the employee needs to disclose.
  - In addition, employees who are themselves at risk can be asked to disclose to the employer that they belong to a risk category. The risk category includes persons over 65 years of age as well as persons who are considered to be particularly vulnerable, in particular those showing high blood pressure, diabetes, cardiovascular diseases, chronic respiratory diseases, diseases and therapies that weaken the immune system as well as cancer. They can do so by simple written statement but the employer can ask for a medical certificate ("At-Risk Employees").
- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Yes, but this is a significant intrusion on privacy in a sensitive area. For reasons of proportionality at least the following precautions should be taken:

  - i. Offer, don't oblige to report: The reporting possibility should be phrased as an invitation to report, rather than as an obligation to report (under Swiss law it is very questionable whether a reporting obligation can be created unilaterally by means of an instruction).
  - ii. Keep reports within the employer: The reporting channel should be limited to the employer (i.e., the contractual employer and not to anyone else in the group of companies and not to third parties) and within such employer to a narrowly defined group of recipients (e.g., the Coronavirus crisis team).
  - iii. Limit reportable content: It should be made clear that:
    - a) the reporting channel must only be used with regard to the fact that symptoms exist and not for reporting an individual's specific symptoms and
    - b) The reportable symptoms are limited to the publicly known and acknowledged list of symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness)
  - iv. Separate reports from other employee data: The information reported through the reporting channel should be recorded separately, not be included in the employee's personnel file and should be deleted 5 weeks after recording.
  - v. Create transparency: A transparent notice needs to be issued to all employees (including contingency workers) before the reporting line is opened, especially as regards the points mentioned herein, but also as regards the steps envisaged by the employer upon having received a report.
  - vi. Inform data subjects: The employee concerned by a report has to be notified as soon as possible.
  - vii. Decide how to treat the reporters: There is a considerable risk that the data subject (i.e., the reported subject) has the right to learn who reported them.



# Switzerland



4. **Can employees refuse to come to work?**
- Yes, At-Risk Employees can ask to work from home.
  - Other employees cannot refuse to come to work unless the employees would violate the law by doing so (in particular a measure imposed by the authorities). Depending on the circumstances, employees might also be able to refuse work if the employer failed to take the appropriate protective measures (e.g., if the employee is supposed to work next to an employee who is infected).
5. **Can employees refuse to attend meetings or to travel?**
- Yes, if the employee is an At-Risk Employee.
  - Whether other employees can refuse to do so requires a case by case analysis.
  - Same rule applies for business travel.
6. **Can the employer send employees on leave / suspension from work?**
- Yes but full salary will be due.
  - If the job allows, the employer would generally also be able to order the employee to work from home.
7. **When is the employer forced to shut down its operations?**
- The employer is only forced to shut down its operations if the authorities so require. This is currently the case for several operations such as restaurants or non-food shops.
8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?**
- No.
9. **Can the employer require an employee to see a doctor?**
- Yes but at the employer's costs. However, the employer cannot request that the doctor tests whether the employee is infected. Furthermore, the doctor may only inform the employer whether the employee is able to work.
10. **If employees are sent on leave / suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**
- At-Risk Employees are entitled to the full salary if they cannot work from home.
  - If other employees refuse to come to work or are sent home because they travelled to an area in violation of a governmental order or if, due to a governmental order, they are unable to come to work, they are not entitled to any salary pay.
  - If, however, the employer suspended them for other reasons, salary is generally due. The State Secretariat for Economic Affairs (SECO) takes the (non-binding) view that COVID-19 represents a business risk and that salary must be paid even if the employees cannot work due to a business closure based on the orders issued by public authorities.
  - The employer will also have to analyze whether the conditions for short term work are fulfilled. If the application for short term work is approved, the unemployment insurance will pay short work benefits in relation to the reduced hours worked and thus significantly reduce the employer's salary costs.



# Switzerland



**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

- Employees continue to receive their full salary as if they had been sick themselves. This entitlement accrues anew in every year of service and varies primarily based on the employee's year of service. An agreement that an insurance solution replaces the statutory sick pay would not apply though. However, these employees are obliged to work from home as far as possible and have to look for alternative care. The costs for alternative care have to be borne by the employee.
- To be entitled to full pay even after three working days, the employee must provide proof that they have unsuccessfully looked for alternative care. If this proof cannot be provided, the employee can still stay at home, but is not entitled to a salary.



This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

Yes, employees have a duty of loyalty towards their employer. Furthermore, employees are obliged to refrain from causing any harm to the safety of other employees and to cooperate with the employer in order to ensure occupational health and safety in the workplace. Therefore, Employees with a confirmed infection or suspicious symptoms must disclose these to the employer.

  - However, employers should clearly define when employees are a "risk-factor" and communicate this definition to their employees.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

  - Since the employer has an obligation to ensure a safe and healthy workplace and protect its employees, it is recommended that it ask employees to disclose such information.
  - However, employers should clearly define when employees are a "risk-factor" and communicate this definition to their employees.

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employee?**

  - No, for data privacy reasons, this would not be recommended.
  - However, given the extraordinary circumstances, the employer's general obligation to ensure health and safety in the workplace, and the employees' obligation to refrain from causing any damage to the safety of other employees, we believe that employees could be invited to raise any health and safety concerns they may have in the workplace.
  - Given the fact that such practice might also constitute an intrusion of privacy, employees should report their concerns in a discreet manner. employees should also be reminded that everyone should take all possible measures to protect their own health and that of others.

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- 4. Can employees refuse to come to work?**

  - In principle, employees are required to perform their work as agreed upon with the employer. Only in very exceptional situations, it is possible to derogate from the agreed upon work.
  - Indeed, if a grave and imminent danger arises in the workplace (e.g., there is a confirmed Coronavirus (COVID-19) infection in the workplace), employees can request that the employer discern and remedy the danger. employees can cease working until the danger is eradicated; employers must continue to pay salaries even if work is halted.

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- 5. Can employees refuse to attend meetings or to travel?**

If meetings or travels are located in one of the regions that are considered unsafe or if there is a grave and imminent danger in the respective region/destination, employees may refuse to attend meetings or to travel.





6. **Can the employer send employees on leave/ suspension from work?** Yes, an employer can in any case unilaterally release an employee from their duties. The employee's entitlement to continued remuneration remains in force during such leave of absence. While on leave, the employee is required to remain available for work.
7. **When is the employer forced to shut down its operations?** Workplace activities must be halted when a life-threatening workplace condition has been detected and until this life-threatening workplace condition is remedied. Depending on the specifics of the case, i.e., the degree of hazard to employees and life-threatening risks, workplace activities must be halted partially or fully.
8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?** No, only medical staff and doctors who become aware of an infection are required to report the infection to the health authorities. However, it is an employer's general obligation to monitor, evaluate and take action if there is any suspicion of contamination in the workplace. Therefore, if an employer believes that there is a risk of contamination, we recommend that the employer contact the health authorities or the workplace doctor immediately.
9. **Can the employer require an employee to see a doctor?**
- No, employers cannot force an employee to undergo a medical examination. employers can only recommend their employees to see a doctor. If the employee refuses, the employer can send the employee on paid leave.
  - Depending on the employee's employment contract and work activities, working remotely could be a suitable alternative.
10. **If employees are sent on leave / suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?** Yes, employees still need to be paid if they are suspended from work, refuse to come to work or if an operation is being shut down.
11. **If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?** There is no clear guidance on this topic. We believe that in such a case, provided that the employees' workplace is not shut down due to such measure, employees can request to use their annual paid leave days in order to stay home and not work.



# Ukraine



This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

  - The employer cannot oblige the employees to proactively disclose that they may be a "risk-factor" (have symptoms or returned recently from the affected area). However, employees are free to (and should) disclose such information on their own.
  - The above is also in line with the recommendations of the Center for Disease Control and Prevention (CDC) recently published on the website of the Ministry of Health of Ukraine ("CDC Recommendations"). According to the CDC Recommendations, "risk-factor" employees should (i) notify their supervisor of having the symptoms of acute respiratory illness and (ii) stay home if they are sick.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

  - Although there is no such express right of the employer, it might be possible for the employer to demand that employees disclose themselves as being a "risk-factor" due to the legitimate interest of the employer (statutory obligation to ensure health and safety at the workplace).
  - According to the CDC Recommendations, the employees who appear to have acute respiratory illness symptoms (i.e., cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and be sent home immediately. For such purpose, the employer can demand employees to disclose themselves as being a "risk-factor".

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- 3. Can the Employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the Employer?**

  - Given the extraordinary circumstances and the employer's general obligation to ensure health and safety at the workplace, the employer, in general, may ask other employees to report if they observe flu symptoms that could mean that the relevant employee is a "risk-factor". At the same time, information about health condition is classified as confidential information (information with limited access). Therefore, due regard should be given to personal data protection if the employer is considering to implement such policy, otherwise the latter might be viewed as an intrusion on privacy.
  - Practically, it is reasonable to adopt a general company policy on how to behave in the face of virus epidemic, so that employees having any illness symptoms duly report to the employer.
  - CDC also encourages to place posters that encourage staying home when sick, cough and sneeze etiquette, and hand hygiene at the entrance to the workplace and in other workplace areas where they are likely to be seen.

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- 4. Can Employees refuse to come to work?**

  - Generally, no. No official guidelines have been provided in this regard.
  - Employees can refuse to come to work due to illness of the employee or his/her family member confirmed by the sick leave paper, extract from the medical card and other evidence.
  - The employer may adopt a flexible policy allowing employees not to come to work and work from home if feeling unwell or if the employee's place of work is in close proximity to where the infected employee was located (i.e., same open space office). Moreover, the Ministry of Health of Ukraine generally recommends that the employers to provide remote working arrangements to the employees.



## 5. Can Employees refuse to attend meetings or to travel?

- Generally, no. However, any travel or meetings are prohibited due to government restrictions.
- The Ukrainian state authorities has announced restrictions on public events of 10 and more people, starting from 17 March to 3 April 2020. We recommend the employers to refrain from holding public or even internal meetings within the above threshold and, alternatively, hold meetings by means of video-conferences, if possible.
- In addition, based on recent regulations of the Cabinet of Ministers of Ukraine, Ukrainian international borders will be closed from 17 March to 3 April 2020. Moreover, some restrictions have been introduced on travelling within Ukraine from 18 March to 3 April 2020. We recommend the employers to take this into consideration when planning business travels.

## 6. Can the employer send employees on garden leave suspension from work?

- The employer cannot require the employee to go on garden leave (i.e., release the employee from showing up to work with continued pay). The employer must obtain the employee's consent and a written application for such leave, because such leave should be in the form of a paid vacation.
- On 17 March 2020, the Ukrainian parliament adopted the law allowing the employee to take unpaid vacation for the duration of a quarantine period. Such leave is granted upon the employee's application.
- If the employer is aware that the employee is a "risk-factor" (i.e., has flu symptoms or just returned from affected area), the employee may ask such employee to work remotely (provided that he/she is not actually sick). As mentioned in item no. 4, the Ministry of Health of Ukraine encourages the employers to provide remote working arrangement to the employees.
- The employer may suspend the employee from work under certain circumstances, in particular:
  - i. the disease should qualify as "especially dangerous" or "dangerous" (the current list of such diseases **does expressly** provide for COVID-19); alternatively, the employee should be engaged in providing public service (under the condition that his/her further work might spread such disease, and he/she may not be temporary transferred to another position); and
  - ii. the employee's infection is to be confirmed.

Arguably, the majority of office employees with flu symptoms might not be suspended from work, because the above criteria are not satisfied. At the same time, the state sanitary and epidemiological authorities are entitled to initiate suspension from work of certain categories of employees. If such decision is taken, the employer must comply with it and suspend the relevant employees from work.

- As of 11 March 2020, the Kyiv authorities have imposed some restrictions to prevent the spread of COVID-19, in particular, the employer must initiate suspension from work of the employee having symptoms of the disease. Also, the Ministry of Health of Ukraine has published general recommendations, according to which the employer must not admit to work the employee with symptoms of the virus infection.



- 7. When is the Employer forced to shut down its operations?**

  - If the authorities announce a quarantine regime within certain territory, certain restrictions may be established with respect to companies (e.g., a quarantine regime may provide for the change of the working arrangements, the terms of the production activities etc.). The list of such restrictions is not expressly provided by law. Therefore, an argument can be made that the employer might be forced to temporary shut down its operations.

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- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

  - Such obligation is not expressly provided by law.
  - The employer, however, has a general obligation to notify the state sanitary and epidemiological authorities about "extraordinary events and situations" that threaten health of population. Arguably, COVID-19 might fall into such extraordinary event. In addition, if the sanitary and epidemiological authorities investigate incident of an infectious disease, the employer will be obliged to provide the relevant information about epidemiological situation to such authorities.

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- 9. Can the employer require an employee to see a doctor?**

  - Generally, only employees providing public service and whose activities can lead to the spread of infectious diseases may be subject to additional medical check (on top of compulsory ones) if the epidemic situation aggravates.
  - Persons who have been in contact with patients with particularly dangerous and dangerous infectious diseases or bacterial carriers of agents of these diseases are also subject to mandatory preventive medical examinations and further medical supervision.
  - However, according to recent recommendations of the Ministry for Development of Economy, Trade and Agriculture of Ukraine and the State Labor Service of Ukraine, the employee with symptoms of the disease must be immediately referred to medical examination.

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- 10. If employees are sent on [garden leave] / suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

  - If the employee is sent on garden leave (in the form of a paid vacation), the employee is entitled to receive his/her average salary for the entire period of such paid vacation (garden leave)]. However, if the employee is sent on unpaid vacation, the employee is not entitled to receive any remuneration for the entire period of such leave.
  - If the employee is suspended from work due to confirmed infectious disease, such employee will be entitled to a sick pay.
  - As mentioned in item nos. 4 & 5, in general, the employee might not refuse to come to work.
  - If the operation is being temporary shutdown, the employees may be sent on labor idle, as long as the employer will not have the required organizational or technical conditions to perform any work. In such case, the employee is entitled to receive at least two thirds of his/her monthly salary.

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- 11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

  - No, the employer is not obliged to pay under these circumstances.
  - If kindergartens and schools are being closed (i.e., a quarantine was announced by the authorities at the educational institution where the relevant child is enrolled), certain categories of employees with children of up to 14 years old are entitled to unpaid vacation granted for the period of the quarantine. The employer must provide such vacation to the employee by law if the relevant employee so expressly requests.



# United Arab Emirates



This guidance is stated as at 17 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

  - The UAE Civil Code sets a general principle that all contracts (including the labour contract) must be concluded and performed in a manner consistent with the requirements of good faith. This could provide grounds for an employer to argue that failure by an employee to disclose themselves as a risk factor is a breach of this obligation, due to the potential creation of a health hazard (and negative affect on the employee's work).
  - In the circumstances and in light of the measures being taken by the UAE government to prevent the spread of COVID-19 our view is that an employee is obliged to tell their employer if:
    - they have a confirmed infection;
    - have visited a high risk area
    - have had contact with a confirmed case.
  - Employees must comply with their employer's absence procedures if they are unable to report to work due to sickness, quarantine or self-isolation.
  - Individuals who have suspected COVID-19 must notify the health authorities (DHA call centre on 800 342, the Department of Health Estijaba service on 8001717 or the Ministry of Health and Prevention on 80011111) prior to visiting the nearest health centre.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

  - Yes. An employer may request/demand employees to disclose whether they have recently travelled to a high risk area, have been in contact with a confirmed case and/or if they have a confirmed infection.
  - In the circumstances, it is reasonable for employers to request this information as a measure to help protect the workforce and prevent the spread of the disease throughout the country.

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

We do not recommend that employers issue such an instruction in the UAE. This is not in line with the notices issued by the health authorities. Further, such an approach risks giving rise to defamation claims.



# United Arab Emirates



4. **Can employees refuse to come to work?**
- Generally no, unless instructed not to attend work by the authorities.
  - If the employee has a high risk of developing severe COVID 19 symptoms or there is a confirmed case in the work place, it will, in the current climate, be difficult for an employer to justify disciplining an employee for refusing to come to work.
- 
5. **Can employees refuse to attend meetings or to travel?**
- The Ministry of Health and Prevention has advised UAE residents and citizens not to travel abroad. On re-entering the country individuals may face medical checks and possible quarantine. Accordingly, employees may have justifiable reasons for refusing to travel (particularly to high risk countries). In the current circumstances, our view, is that it is highly possible that an employee may find favour with the Ministry of Human Resources and Emiratization and/or a labour court in the event they were subject to disciplinary measures a result of refusing to travel.
  - All employers should assess whether travel is essential. employees who at risk of developing serious symptoms should not be pressured to travel.
- 
6. **Can the employer send employees on suspension from work?**
- Yes, an employer can send employees home from work but it cannot suspend their employment or employment contract and must continue to pay their wages during such suspension.
- 
7. **When is the employer forced to shut down its operations?**
- The employer is obliged to impose business restrictions or to close down the business premises if instructed to do so by authorities.
- 
8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?**
- There is no express duty on the employer to report. However, in the circumstances, we would recommend that an employer reports any suspected cases to the relevant UAE health authorities – upon consultation with employee in question.
- 
9. **Can the employer require an employee to see a doctor?**
- Yes. In our view, particularly in the current circumstances, if an employee was displaying symptoms then the employer could require the employee to see a doctor.



# United Arab Emirates



**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

Whether the employee remains entitled to be paid will depend on the reasons why they are not working:

- Employees who are ill, may be entitled to sick pay.
- If the employee has been sent home by their employer, our view is that they would remain entitled to full pay.
- An employee who refuses to attend work without good reason would not be entitled to pay .

**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

There is no obligation on the part of the employer to pay. employee may take annual leave or agree on unpaid leave or remote working arrangements with their employer.





This guidance is stated as at 18 March 2020

**1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

Yes.

- Following UK government guidance, employees may be considered a "risk factor" if they have developed COVID-19 symptoms or live with someone who has. Current government guidance is that these employees should self-isolate.
- Employees should tell their employer if they are unable to work, whether because of sickness or advice to self-isolate, or because they are in quarantine, according to the employer's usual absence procedures.
- Employees may also be a risk factor because they have been in contact with a confirmed case.
- Our view is an employee is under an express and implied duty to tell their employer of this fact.
- Practically, to ensure employees understand their reporting obligations, employers should develop a clearly communicated policy on what and when an employee is expected to inform their employer of risk factors.

**2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes.

- There is no strict legal obligation on employers to demand this information but an employer has a duty of care to their workforce under the Health and Safety at Work Act 1974 and must take reasonable precautions to protect the health and safety of employees. Therefore asking this information is prudent.
- It would be a reasonable instruction to ask an employee to disclose any relevant information and employers should carry out a risk assessment if they become aware that an employee has been in close contact with a confirmed case or has visited a high risk area.

**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employee?**

Generally, this is not recommended.

- However, asking employees to report may be a justified intrusion on privacy in light of the worsening situation in the UK. For example, if another employee in the workplace appears not to be following current self-isolation advice. The UK regulator (the ICO) has said generally they will take into account the compelling public interest in safety when assessing any intrusion on privacy. Nevertheless, any such reporting policy would require a clear reporting channel with limited access to the reported data, and clear/limited retention periods.



**4. Can employees refuse to come to work?**

Generally, no.

- However, there are now numerous categories of people who the UK government advises should self-isolate at home: (i) people who develop potential COVID-19 symptoms (self-isolate for 7 days), (ii) anyone in a household where someone develops potential COVID-19 symptoms (isolate for 14 days). In addition, home-working is advised.
- UK government guidance also identifies some groups of employees as particularly at risk of serious COVID-19 infection and strongly advises social distancing, which includes home-working. This includes people aged 70 or older; people aged under 70 with an underlying health condition; pregnant women.
- The general obligation employers have to preserve trust and confidence in the employment relationship means that employers should speak to employees to understand the reason for their refusal and whether they have genuine concerns, e.g., for example because they are in a high risk category.
- Practically, if the employee is not unwell, they may have a job which can be done from home and a solution would be to instruct them to do so. If they are not able to do so, you may be able to agree that they take holiday. In certain circumstances, an employer can require an employee to take holiday. Alternatively, the parties could agree on a period of unpaid leave.
- However, if it is not possible to reach a satisfactory solution with an employee who is not at high risk or within government self-isolation guidance, the employer may choose to begin disciplinary proceedings against the employee. In the current climate, we think it quite unlikely that employers would take this step given the PR / ER implications. However, as the situation develops, and if many employees are perceived as using COVID-19 as an 'excuse' not to attend work but to request payment, a more assertive approach to managing refusals to work may be required.

**5. Can employees refuse to attend meetings or to travel?**

For most travel, probably yes, in the light of current restrictions.

- Please note our general comments to question no. 4 above concerning self-isolation guidance, high-risk categories and the need to preserve the relationship of trust and confidence.
- Domestic travel: The UK government now advises social distancing. This does not expressly deal with business meetings or travel but it does encourage home working and advises against non-essential use of public transport.
- International travel: The UK government now also advises against all but essential international travel anywhere in the world, in large part due to the risk of travel bans preventing the employee from returning home. This advice is likely to affect travel insurance coverage. Many countries have already banned UK visitors.
- All employers should assess whether any travel (domestic or international) is essential. We consider that in all but truly exceptional cases it would be unreasonable to insist on international travel.



**6. Can the employer send employees on leave / suspension from work?**

- Employers may have a contractual right to ask employees to work from home or not to attend work at any point during their employment. This will depend on the wording of their contract.
- Even if they do not, it may be a reasonable instruction based on a risk assessment in the current circumstances to either instruct their employees to work from home if they have a job that can be done remotely and if not, to ask them not to attend work.
- It would usually be expected that an employee who has been told not to work by their employer but are otherwise able and willing to do so would receive their usual pay and benefits. For information on paying other categories of employees, please see question no. 10 below.

**7. When is the employer forced to shut down its operations?**

- The UK government does not advise automatic closure even if a case has been confirmed in the workplace.
- In this situation, Public Health England's local health protection team will contact management to advise on next steps.
- Nevertheless, the UK government does advise people to work from home where possible.
- Employees do not generally have a right to strike - and therefore could not force closure of a site/operations. A recognized trade union could call a ballot over health and safety concerns which could, if members were in favour, result in a strike on notice. However, this would take some time in order to complete the necessary balloting formalities (unless it was a "wildcat" action).

**8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

No.

**9. Can the employer require an employee to see a doctor?**

- No (in COVID-19-related cases).
- The UK government instructs people to not contact the NHS for asymptomatic cases, or for mild to moderate COVID-19 symptoms. Only people with severe symptoms, or symptoms that last longer than 7 days (other than a cough) should contact the NHS.
  - The employer may have a contractual right to ask the employee to see the company's medical adviser but cannot force the employee to do so. Such a request would also run contrary to current guidance on stopping the spread of COVID-19.



**10. If employees are sent on leave / suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

Whether the employee is entitled to be paid will depend on the reason why they are not working:

- Absent due to being unwell: The employee is entitled to statutory sick pay (SSP). SSP is due to become payable from day one of absence in these circumstances, rather than from day four (the usual rule). The employee might also be entitled to company sick pay, if applicable.
- Self-isolating pursuant to government guidance, and unable to work as a result: employee is entitled to SSP (due to be payable from day one). They might also be entitled to company sick pay, if applicable.
- Self-isolating pursuant to government guidance but is still able to work remotely: employee is entitled to their usual salary.
- Working from home due to employer instruction: employee is entitled to be paid their usual salary.
- Not working due to employer instruction but does not have a job that can be done remotely. employee is entitled to be paid the usual salary.
- Employee refuses to come to work without good reason: not entitled to pay.

**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

- The employer may allow the employee to work from home if their job is one that can be done remotely.
- Employees have the right to take a reasonable amount of unpaid dependent's leave if necessary to care for children or make arrangements for their care. They may also be able to take unpaid parental leave for up to four weeks per year per child, or ask to take annual leave. employer are not obliged to grant additional paid time off in these circumstances, but if an employer chooses to do so this must be done fairly and in a non-discriminatory way.



For more information, please do not hesitate to contact our team members below:



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Argentina



Brazil



Chile



Colombia



Peru



Venezuela



# Argentina



This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

No. Employees are not required to disclose themselves as a risk factor to their employer. They are, however, required to disclose that they are a risk factor to the authorities. In addition, if an employee fails to disclose they are a risk factor to their employer and the employee's lack of disclosure to the employer causes damages to other employees, the employer may discipline the employee or terminate for cause, depending on the damages caused.
- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

No. Employers can request that employees disclose they are a risk factor as a good practice, but cannot demand such disclosure.
- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Yes, but if an employee fails to follow the instruction or policy, the employer cannot discipline the employee.
- 4. Can employees refuse to come to work?**

No, unless they are: (i) individuals coming to Argentina or who have entered Argentina in the last 14 days, from critical areas, which to date are China, United States, Japan, South Korea, Iran, United Kingdom of Great Britain and Northern Ireland, all of the European Union and of the Schengen space countries, and Brazil and Chile; (ii) individuals who have been diagnosed with COVID-19, have shown its symptoms, or have been in contact with potential or confirmed COVID-19 cases; (iii) individuals older than 60, unless they are considered as essential personnel for the appropriate operations of the company; (iv) pregnant women; (v) individuals with pre-existing heart, breathing, and kidney illnesses and failures, immunodeficiency and diabetes; or (vi) due to school closures until March 30, 2020, any parent or adult whose presence at home is key for a child's care.
- 5. Can employees refuse to attend meetings or to travel?**

Yes, employees can refuse to travel internationally, given that it is forbidden as per the Argentine Government's regulations. However, employees cannot refuse domestic travel or meetings unless attendants are within (i) or (ii) set forth in the Answer to Question No. 4, above.



# Argentina



6. **Can the employer send employees on suspension from work?** Yes, employers can place employees on suspension from work if the employees are within (i) through (vi) set forth in the Answer to Question No. 4, above. In cases in which the employees themselves are sick, they will be placed on paid sick leave.
7. **When is the employer forced to shut down its operations?** In the absence of a regulation instructing an employer to shut down, only when the employer deems it appropriate.
8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?** Yes, employers must report to the authorities employees who are within (i) or (ii) in the Answer to Question No. 4, above.
9. **Can the employer require an employee to see a doctor?** Yes, the employer can request, but not demand, that an employee see a doctor.
10. **If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?** Employee leave must be paid leave if an employee is on sick leave or suspension from work for the reasons set forth in (i) through (vi) the Answer to Question No. 4, above, or if the employer unilaterally decides to suspend employees. Employee leave is not required to be paid leave if employees refuse to come to work and are not within (i) through (vi), above. If the employer is shutting down operations, employee leave must be paid.
11. **If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?** Due to school closures in effect until March 30, 2020, any parent or adult whose presence at home is key for a child's care will be entitled to leave with full pay until March 30 (unless extended by the authorities).





# Brazil



This guidance is stated as at 16 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?** Yes. Law 13.979/2020 states that everyone (both individuals and legal entities) has the obligation to disclose information received in relation to COVID-19 suspected or confirmed cases.
- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?** Yes. Please see above.
- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?** Although possible, this measure could create several issues in Brazil, from privacy related violations to discrimination and moral damages. Rather than asking co-workers report on colleagues, the employer's HR and legal departments should issue policies related to COVID-19 generally addressing safety and hygiene, including remote work, meetings, travel, symptoms and PTO.
- 4. Can employees refuse to come to work?** Yes, if there is reasonable risk for their health.
- 5. Can employees refuse to attend meetings or to travel?** Yes, if there is reasonable risk for their health.
- 6. Can the employer send employees on suspension from work?** Yes, especially if it is for employees' (and their co-workers') own protection.



# Brazil



7. **When is the employer forced to shut down its operations?** The employer is forced to shut down its operations when there is an instruction to do so by governmental authorities.
- 
8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?** Yes. As mentioned above, Law 13.979/2020 states that everyone (both individuals and legal entities) has the obligation to disclose information received in relation to COVID-19 suspected or confirmed cases.
- 
9. **Can the employer require an employee to see a doctor?** Yes, especially if there are any reasonable concerns for the employee's own safety and the safety of others.
- 
10. **If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**
- If employees are working remotely, they should be paid.
  - Additionally, as per Law N° 13.979, issued in Feb 2020, absence from work due to quarantine and/or isolation-related measures are justified absences from work. Thus, employees should be paid.
  - There are no guidelines at this time about employees' rights if an operation is being shut down. However, this will likely be addressed in additional local regulations.
- 
11. **If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?** There are no guidelines at this time regarding paid leave for employees who cannot work as a result of staying home to care for children. However, this will likely be addressed in additional local regulations.



# Chile



This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

No, not unless the employer requests such information. There is no statutory obligation in the Labor Code requiring employees to disclose themselves as a risk factor. However, employers are under a general statutory obligation to take all measures necessary to protect the lives and health of their employees, to inform employees of possible risks, to provide adequate hygiene and safety conditions at work, and to provide the equipment necessary to prevent occupational injuries and illnesses. Based on this obligation, employers can request employees disclose themselves as risk factors. The request should be general in nature and not be arbitrary. In addition, employers are responsible for keeping sensitive employee information confidential, and must be careful in handling any such information provided by employees.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

No, employers cannot demand employees disclose themselves as a risk factor. However, employers can request employees disclose themselves as a risk factor as part of the employer's general statutory obligation to protect the lives and health of their employees.

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

No. This measure would likely be viewed as triggering or promoting an invasion into other employees' sensitive information, and could lead to harassment of the sick employee by other employees, as well as discrimination claims. Such a policy would contravene the responsibility of the employer to ensure respect within the working environment.

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- 4. Can employees refuse to come to work?**

Generally, no. Employees cannot refuse to come to work unless their refusal is justified. However, justification will depend on the circumstances, and if leave is based on health factors, employees can justify absence with the respective medical leave document. Specifically with regard to COVID-19, the government and private sector in general are taking measures to prevent the spread of COVID-19, including options such as working from home to make it easier for employees to provide services without coming into the workplace, or offering paid or unpaid leave.

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- 5. Can employees refuse to attend meetings or to travel?**

Generally, no. Employees cannot refuse unless their refusal is justified. Whether a refusal is justified will depend on the circumstances. The fact that Chile has closed its borders increases the likelihood that a refusal to travel or to attend meetings could be deemed justified.



# Chile



- 6. **Can the employer send employees on suspension from work?** There are no pertinent provisions allowing employers to send employees on leave. However, any suspension of the employment agreement requires consent of the employee in writing.

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- 7. **When is the employer forced to shut down its operations?** The general rule is that the employer must stop operations in case of a fatal or serious occupational injury in the workplace. However, there are no specific rules regarding the spread of COVID-19 or other viruses. Following this guidance, whether and when an employer shuts down will be up to each employer, depending on the circumstances.

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- 8. **Does the employer have the obligation to report infections occurring in the business to the health authorities?** No, there is no specific obligation to report infections occurring in the business to the health authorities.

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- 9. **Can the employer require an employee to see a doctor?** The employer cannot require the employee go to the doctor, but the employer can encourage the employee to be tested, without discounting the time the employee takes to be tested as time off.

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- 10. **If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**
  - There are no specific rules for employee leave in the law, so the employer and employee will need to agree on whether employee leave is paid or unpaid.
  - If an employee refuses to come to work, the employer is generally not required to pay salary. If there is a medical license complying in time and form, the employee's insurance will pay.
  - In addition, there is no specific rule regarding employee pay in the event an employer temporarily shuts down operations. However, the employer could still be required to pay salary because employees are theoretically available to work, but unable to do so because the employer has decided to shut down operations.

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- 11. **If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?** Generally, no. If the employee does not render services, the employer is not obligated to pay salary.



# Colombia



This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

Yes. Pursuant to the national health emergency declared on March 12, 2020, employees have to notify employers if they have COVID- 19 symptoms. Employees should also inform employers if they have been in contact with an individual who has been confirmed as having COVID-19.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes. Circular 18 from the Ministry of Work established such a disclosure is an obligation of employees.

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Yes. However, employers should justify the instruction as being related to the sanitary emergency and clarify that the instruction is for the well-being of the community.

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- 4. Can employees refuse to come to work?**

No. Employees can only stop rendering services if there is an order from a doctor (a sick leave certificate) or from local authorities (a quarantine order).

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- 5. Can employees refuse to attend meetings or to travel?**

No. There is no legal right established for employees to refuse an employer's instructions. However, such meetings cannot have more attendees than the number of persons authorized to be present per meeting in each city or department. Also, travel that is not essential for the business is not advisable.



# Colombia



- 6. Can the employer send employees on suspension from work?** Employers can request that employees not work and grant them paid leave. If employers want employees to take unpaid leave, employees must agree to the unpaid leave. In addition, under certain circumstances, an employer may be able to allege a force majeure event, pursuant to which employees would not receive paid leave.
- 7. When is the employer forced to shut down its operations?** There is nothing at this time requiring businesses to shut down their operations. In general, however, if business operations have stopped and there is a true inability or limitation of the employer to continue operating, force majeure can be alleged by the employer. Employment agreements can be suspended in this situation, and once suspended, the employer will not be required to pay employees salary. However, the employer will have to continue to make contributions to the social security system on behalf of employees. The ability to allege force majeure is reviewed on a case by case basis.
- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?** Yes.
- 9. Can the employer require an employee to see a doctor?** Yes. In general, employers are responsible for employees' health and safety during their working hours and in these specific circumstances, employers are responsible of preventing employees' contagion of COVID-19. Therefore, employers can request that employees see a doctor.
- 10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?** It depends on how the employer handles the situation and the impact of COVID-19 on the employer's business.

  - If the leave is granted by the decision of the employer, the employee leave must be paid.
  - If the leave is upon consent or the request of the employee, the employee leave will not be paid, unless otherwise agreed.
  - If the employment agreement is suspended because of a force majeure event (and the employer can prove the same), the employee leave is not required to be paid.
- 11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?** Having to take care of children is not, without more, a valid reason to stay at home without remotely working. If, however, the situation can be qualified as personal calamity, an employee can stay at home, not work, and still receive pay. For employees who are not suffering a personal calamity and cannot render services remotely from home, an employer has several options, including granting the employee vacation, agreeing to paid or unpaid leave, or unilaterally suspending the employment agreement.



# Peru



This guidance is stated as at 18 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

According to Health and Safety regulations, the employees are obliged to inform the employer of any event or situation that could jeopardize his/her health and safety and the health and safety of others in the workplace. In consequence, employees are obliged to disclose themselves as a risk factor if they present any COVID-19 symptom, if they have been in contact with an individual infected with COVID-19, or if they have been abroad recently.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes. Since employers are obliged to prevent their employees from any risk in the workplace, they are allowed to demand that employees disclose themselves as a risk factor.

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Yes. Since employers are obliged to prevent their employees from any risk that could cause damage to their health and safety, they can implement internal regulations to require employees to report co-workers with flu symptoms.

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- 4. Can employees refuse to come to work?**

The Government has ordered a mandatory social isolation measure for 15 days, from March 16 to March 30, 2020. During this period, in general, the transit of people is prohibited. As an exception, people who provide or require services from any of the following activities may transit:

  - Acquisition, production and supply of food, which includes its storage and distribution for sale to the public.
  - Private security.
  - Acquisition, production and supply of pharmaceutical and basic necessity products.
  - Assistance to health centers, services and establishments, as well as diagnostic centers, in cases of emergencies and urgencies.
  - Assistance and care for older adults, girls, boys, adolescents, dependents, people with disabilities or people in vulnerable situations.
  - Financial institutions, insurance and pensions, as well as complementary and related services that guarantee their proper functioning.





#### 4. Can employees refuse to come to work?

- Production, storage, transportation, distribution and sale of fuel.
- Water, sanitation, electricity, gas.
- Cleaning and solid waste collection services.
- Funeral services.
- Urban transport services.
- Private security services provided by private security companies regulated by SUCAMEC.
- Hotels and accommodation centers, only for complying with the established quarantine.
- Media and call centers.
- Employees in the public sector who provide necessary services to attend the actions related to the health emergency produced by COVID-19.
- Any other activity of an analogous nature to those listed in the preceding paragraphs or that must be carried out by fortuitous event or force majeure.
- Mining and other related activities, which includes: exploitation; mine closure benefit; construction of mining projects declared of national interest; transportation of minerals by non-electronic means; as well as transportation and storage of concentrates and processed mineral products.
- All those complementary and related services that are necessary for the adequate provision of and access to the services detailed in this list.

During this period, employees can refuse to work, if they are not within the exceptions listed above. Employees in the risk group (people over 60 years old, high blood pressure, diabetes, cardiovascular disease, chronic lung disease, cancer and other immunosuppressed states) who are within the exceptions must work remotely.

Employees who are within the exceptions and are not classified as part of the risk group cannot refuse to attend work. Their absence could be sanctioned by the employer.

When the period of compulsory social isolation ends, no employee may refuse to attend without justification. They must follow provisions regarding permits or licenses established by the employer.

#### 5. Can employees refuse to attend meetings or to travel?

The Government has ordered a mandatory social isolation measure for 15 days, from March 16 to March 30, 2020. During this period, in general, the transit of people is prohibited. As an exception, people who provide or require services from any of the following activities may transit:

- Acquisition, production and supply of food, which includes its storage and distribution for sale to the public.



## 5. Can employees refuse to attend meetings or to travel?

- Private security.
- Acquisition, production and supply of pharmaceutical and basic necessity products.
- Assistance to health centers, services and establishments, as well as diagnostic centers, in cases of emergencies and urgencies.
- Assistance and care for older adults, girls, boys, adolescents, dependents, people with disabilities or people in vulnerable situations.
- Financial institutions, insurance and pensions, as well as complementary and related services that guarantee its proper functioning.
- Production, storage, transportation, distribution and sale of fuel.
- Water, sanitation, electricity, gas,
- Cleaning and solid waste collection services
- Funeral services
- Urban transport services
- Private security services provided by private security companies regulated by SUCAMEC
- Hotels and accommodation centers, only for complying with the established quarantine.
- Media and call centers.
- Employees in the public sector who exceptionally provide necessary services to attend the actions related to the health emergency produced by COVID-19
- Any other activity of an analogous nature to those listed in the preceding paragraphs or that must be carried out by fortuitous event or force majeure.
- Mining and other related activities, which includes: exploitation; mine closure benefit; construction of mining projects declared of national interest; transportation of minerals by non-electronic means; as well as transportation and storage of concentrates and processed mineral products.
- All those complementary and related services that are necessary for the adequate provision and access to the services detailed in this list.

During this period, employees cannot attend meetings if they are not within the exceptions listed above. Employees in the risk group (people over 60 years old, high blood pressure, diabetes, cardiovascular disease, chronic lung disease, cancer and other immunosuppressed states) who are within the exceptions must work remotely.



- 5. Can employees refuse to attend meetings or to travel?** Employees who are within the exceptions and are not classified as risk employees should attend the scheduled meetings, if necessary. Their absence could be sanctioned. However, no travel for such meetings is currently prohibited, since the Government has prohibited national and international travel for 15 days. When the period of compulsory social isolation ends, no employee may refuse to attend meetings or travel without justification, as long as such meetings and travel does not jeopardize health and safety.
- 6. Can the employer send employees on suspension from work?** The Labor Authority has established that employees belonging to the risk group (people over 60 years old, high blood pressure, diabetes, cardiovascular diseases, chronic lung disease, cancer and other states of immunosuppression) must work remotely, and when this is not possible, they will have the right to receive paid leave that will be compensated during the quarantine period. Other employees who cannot perform remote work will also have the right to compensable paid leave. When this period ends, employers may grant any of the following alternatives: implementing remote work, agreeing with employees to advance annual paid leave, forcing accrued annual paid leave, and granting compensable enjoyment or only enjoyment.
- 7. When is the employer forced to shut down its operations?** Any employer that is not included in the list of exceptions (see Answers to Question Nos. 4 and 5) will not be able to continue its operations in the workplace during the period of mandatory social isolation. After that, it will be possible to suspend operations if a force majeure or fortuitous event is declared.
- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?** Yes. According to the Guide for the Prevention of Coronavirus Spread in the Workplace, issued by the Labor Authority, employers are obligated to report any risk or spread of COVID-19 immediately to the Health Authority.
- 9. Can the employer require an employee to see a doctor?** Yes. According to the Guide to Preventing the Spread of Coronavirus in the Workplace, issued by the Labor Authority, employers must require employees with any symptoms to be evaluated by a health care professional.
- 10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?** The Labor Authority has established that employees belonging to the risk group (people over 60 years old, high blood pressure, diabetes, cardiovascular diseases, chronic lung disease, cancer and other states of immunosuppression) must work remotely, and when this is not possible, they will have the right to receive paid leave that can be compensated during the quarantine period. Other employees who cannot perform remote work will also have the right to compensable paid leave. When this period ends, employers may grant any of the following alternatives: implementing remote work, agreeing with employees advance annual paid leave, forcing accrued annual paid leave, grant licenses with compensable enjoyment or only with enjoyment.



## Peru



- 11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

During the period of compulsory social isolation, all activity has been suspended. When the period ends, employers may grant any of the following alternatives: remote work, agree to enjoy early vacations, force the enjoyment of earned vacations, grant licenses with compensable enjoyment or only with enjoyment.



# Venezuela



This guidance is stated as at 19 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

Practically speaking, yes. Although not explicitly stated in the law, an employee's obligation can be inferred from certain general legal provisions in Venezuelan law. Importantly, the March 13, 2020 Decree N° 4,160 ("the Decree," issued by the National Executive and published in the Official Gazette) declaring the State of Alarm for 30 days in light of the COVID-19 pandemic implies an obligation to report because it requires employees who know that they have or could have COVID-19 to undergo a two-week quarantine.
- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Though there is no legal provision explicitly granting this right to employers, an employee's obligation to disclose can be inferred from certain general legal provisions in Venezuelan law, as well as the implied obligation under the Decree for employees to report themselves as risk factor to employers based on the requirement that employees who know that they have or could have COVID-19 undergo a two-week quarantine.
- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Though there is no definite guidance, under the current State of Alarm, it is likely such a policy will be enforceable as it pertains to COVID-19 symptoms, given that employees' lives and well-being are at risk.
- 4. Can employees refuse to come to work?**

Yes, unless they are essential, because the Decree requires them to work from home. Based on the Decree, the National Executive ordered a social quarantine, pursuant to which all labor activities that cannot be performed from home have been generally suspended, with the exception of work in activities that must continue during the State of Alarm (e.g.: pharmacies, electricity distribution, food distribution). Employees involved in these essential activities must continue providing services in their respective workplaces (though always in compliance with all the applicable safety and health measures and regulations), and cannot refuse to come to work unless they have a reasonable belief that their lives or health will be in imminent danger if they show up to work.
- 5. Can employees refuse to attend meetings or to travel?**

Employees involved in activities that must continue during the State of Alarm cannot refuse to attend meetings or travel unless they have a reasonable belief that their lives or health will be in imminent danger, or unless such travel has been prohibited by the Decree. Employees not involved in essential activities must work from home (or, if they cannot, their work activities have been suspended).



# Venezuela



- 6. Can the employer send employees on suspension from work?** As a practical matter, the Decree has already suspended all workers who are not involved in the activities that must continue during the State of Alarm. Workers who are required to continue reporting to work during the State of Alarm under the Decree must continue to work, unless they have a reasonable belief that their lives or health will be in imminent danger if they show up to work.
- 7. When is the employer forced to shut down its operations?** There are no explicit provisions in the Decree forcing employers to shut down their operations.
- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?** There are no explicit provisions requiring employers to report infections occurring in the business to health authorities. However, employers, through the Occupational Health and Safety Service, are required to notify and report occupational accidents and illnesses to the National Institute of Occupational Prevention, Health and Safety (INPSASEL). In addition, the Occupational Health and Safety Service must diagnose occupational illnesses in coordination with INPSASEL and the Ministry of Health. COVID-19 has not definitively been deemed to qualify as an occupational illness, nor has it been ruled out as an occupational illness. We advise employers report in order to ensure that employers comply with any possible reporting requirements.
- 9. Can the employer require an employee to see a doctor?** Under the Venezuelan Constitution, no one may be forced to take medical exams except when his/her life is at risk or for other circumstances set forth in the law. If an employee is experiencing symptoms of COVID-19, it is likely that an employer's request that an employee see a doctor would be considered reasonable given the risk of serious illness or death resulting from contracting or spreading the virus.
- 10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?** Generally, no. The general rule is that when the employment relationship is suspended, the employee is not required to work and the employer is not required to pay the employee's salary. However, there are various legal provisions that could potentially apply, requiring a case-by-case analysis in line with this overall guidance. In addition, under the Decree, employees who can work from home are impliedly encouraged to do so, and will still need to be paid to the extent they are providing services to the employer.
- 11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?** Generally, no. The general rule is that when the employment relationship is suspended, the employee is not required to work and the employer is not required to pay the employee's salary.



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This guidance is stated as at 19 March 2020

**1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

- Yes. Employees have a duty to report workplace hazards, including the possibility of an infectious disease, to their employer.
- Employees should immediately report:
  - Symptoms (fever, cough, difficulty breathing, and other flu-like symptoms)
  - Travel history (as of March 16, 2020, the Canadian government has advised that travelers returning from any area outside of Canada should self-isolate for 14 days following their return)
  - Contact with, or shared space with anyone confirmed to have COVID-19, including conferences or events where one or more of the attendees was found to have COVID-19 within 14 days of attendance.
  - Any other information recommended by relevant health authorities

**2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

- Yes. Given the rising risks of an outbreak, employers may enforce additional preventative measures and require employees to disclose their symptoms or exposure to the coronavirus. This does not require an employee to communicate whether they have been diagnosed, but rather whether they are at risk of having contracted Coronavirus or COVID-19 and therefore an occupational health and safety risk to others in the workplace.
- Employers are still bound by privacy and human rights laws, and must be careful with how this information is used and stored. Such information must be kept confidential to the extent that this is possible, subject to potential reporting requirements to local authorities (see Item 8). Nevertheless, employers should notify specific employees who have been subjected to a substantial risk of contracting Coronavirus without disclosing the identities of the individual who may have caused the transmission risk. Individuals at risk should be notified of the date(s) and duration(s) of their potential exposure to the virus.
- Employers should stay updated on public health advisories with regards to symptoms and who should be self-isolating.
- Currently, employers may require employees to disclose the information outlined in item 1.

**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

- Yes, but such policies must adequately balance health and safety with individual privacy. Employers considering implementing such a policy should take the following precautions:
- **Limit geographic and temporal scope:** the policy should only be offered if the site is located in a high risk area for COVID-19 transmission, or in which an employee was diagnosed with COVID-19. The policy should terminate when the risk subsides.
  - **Invite but do not oblige reporting:** consider phrasing the policy as an invitation to report on a co-worker, rather than an obligation.
  - **Keep reports within the employer organization:** the policy should have clear channels of communication, solely to the employer's COVID-19 response coordinator(s)



**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

- **Be aware privacy and human rights laws:** the policy should include information on how such information will be handled, used, and stored. The employee that is the subject of the report must be notified, and the reporter's identity should be kept in confidence unless otherwise required by law.

**4. Can employees refuse to come to work?**

- An employee can refuse to come to work if the employee has reason to believe that their working conditions are dangerous, hazardous or unsafe.
- In the COVID-19 context, dangerous situations may arise based on risks to exposure to the virus, including:
  - A confirmed case of COVID-19 among the workforce; and
  - Confirmed exposure risks in the workplace as reported by employees or by public health officials.
- Employers should understand risk factors for the virus's spread, and seek further guidance about their obligations to immediately investigate workplace health and safety concerns and to ensure a safe workplace. These obligations vary between Canadian jurisdictions.

**5. Can employees refuse to attend meetings or to travel?**

- An employees can refuse to perform work if the employee has reason to believe that their working conditions are dangerous, hazardous or unsafe. See Item 4 for more information.
- As for travel, employers should be mindful of the most recent government advisories and orders. As of March 16, 2020, Canadian authorities have restricted almost all international travel to Canada, and have discouraged all non-essential international travel outside of Canada. While domestic travel has yet to be similarly restricted, the situation in Canada is evolving rapidly.

**6. Can the employer send employees on suspension from work?**

- Employees may be placed on administrative leave if workplace health and safety is at risk because of factors including the employee's potential exposure to the virus outside of the workplace, or risks for exposure within the workplace.
- Administrative leave means that work is discontinued, but the employment relationship continues.
- However, forcing an employee to take and extended administrative leave risks being found to be constructive dismissal, especially when administrative leave is without pay. This may entail liability for damages.



- 6. Can the employer send employees on suspension from work?**

  - Therefore, employers should only require an employee to remain on leave as long as is necessary to eliminate the risk of infecting others, and make every effort to adapt to the changing reality, for example by expanding work from home capabilities.
  - Our government is currently considering adopting legislation that may impact this response in the near future.

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- 7. When is the employer forced to shut down its operations?**

  - Employers may be forced to shut down operations if ordered to do so by national or provincial governments.
  - Employers are encouraged to follow public health advisories and prepare for alternative working arrangements and business models to slow disease progression while ensuring business continuity.

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- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

  - Employers are generally not required to report confirmed cases of Coronavirus or COVID-19 to public health authorities, but should consider contacting the authorities for advice and to assist in preventing transmission during an outbreak.
  - Employers who operate in specified professions are required to report confirmed and suspected cases of COVID-19 to public health authorities, usually within 24 hours.
    - These professions primarily include those in the medical and health sector, and are defined in provincial public health legislation•

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- 9. Can the employer require an employee to see a doctor?**

  - While in normal circumstances, employers may ask an employee to see a doctor for the purposes of managing the employment relationship, the capacity of the health care system will be strained by the coronavirus outbreak. Resources may be in short supply as the number of COVID-19 cases rises. Requesting a doctor's visit may place an unnecessary burden on Canada's healthcare system, and may further expose employees to COVID-19 while in close quarters with other patients.
  - Recourse to medical attention should be limited per recommendations by public health authorities, or in emergencies.
  - If an employee presents symptoms while at the workplace, employers may ask the employee to work from home during a period of self-quarantine/self-isolation as prescribed by government. Employers should also direct employees with symptoms to phone their local public health unit or doctor to receive further instructions on testing.

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- 10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

  - Broadly speaking, employees who are unable to work are not entitled to remuneration. However, placing an employee on an extended administrative leave without pay risks constructive dismissal, which would engage liability for damages. See Item 6 for more details. Furthermore, after refusing work, employees are generally entitled to be paid until the employer completes an investigation in accordance with Occupational Health and Safety legislation.
  - If an operation is being permanently shut down, employers may be liable to employees for statutory and common law termination entitlements, which vary by jurisdiction. However, most jurisdictions provide for temporary layoff periods during which employers may be able to avoid termination entitlements.



## Canada



**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

- Employers have a duty to accommodate employees who are caregivers to their family under human rights legislation in each jurisdiction.
- Employers must also consider the different statutory leaves available to employees to care for family members. These vary by jurisdiction.
- Employers should try to extend work from home capabilities to allow employees to care for their families while continuing to work, especially if other care options are no longer available.
- Where alternative work arrangements are impossible, employers may choose not to pay employees during a period of administrative leave.
- Where necessary, employers may consider temporary dismissals or "lay-offs", which are subject to different requirements depending on the circumstances. To rely on temporary dismissals, the employer must have a legitimate intention to recall the employee back to work.
- In all cases, employers should direct employees to income replacement options such as employment insurance, worker's compensation, or other measures that the government may put in place.



# Mexico



This guidance is stated as at 19 March 2020

- 1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

No, unless an employer has a policy requiring employees disclose the information. There is no legal provision mandating employees to disclose themselves as a risk factor to the employer, but employers may issue a policy establishing the obligation to disclose, and the employee will need to disclose the particular information required by the employer's policy. "Risk factor" should be clearly defined in the instruction or policy. In addition, the Employer/Employee Committee for Health and Safety of the company should issue the particular instruction or policy.

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- 2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

Yes. See Response to Question 1, above.

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- 3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Yes. The employer, together with the Employer/Employee Committee for Health and Safety of the company, can issue an instruction or a policy for employees to inform the Committee if an employee has any flu symptoms.

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- 4. Can employees refuse to come to work?**

Yes, but only if:

  - (a) the Employer/Employee Committee for Health and Safety or an inspector of the Labor Ministry determines that there is a risk factor, or
  - (b) the Mexican Government has declared a health emergency.

Employers should ensure that they follow the procedures established by the Federal Labor Law, Federal Health and Safety Regulations at the Workplace and Mexican Official Standards.

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- 5. Can employees refuse to attend meetings or to travel?**

In principle, no. Employees should not refuse instructions given by the employer, since it would be considered insubordination, which is grounds for dismissal. However, employees can validly refuse to travel to affected countries to prevent the transmission of COVID-19.



- 6. Can the employer send employees on suspension from work?** In principle, no, as long as there is no declaration of a health emergency by the Mexican Government. However, if there is a risk factor that justifies the suspension of work, the company can suspend work with no salary payment if the company obtains the authorization of the Labor Authorities. An employer can also suspend work with total or partial payment of salaries if its employees agree to the same.
- 
- 7. When is the employer forced to shut down its operations?** The employer is forced to shut down operations if the Mexican Government declares a health emergency and by virtue of this emergency employment relationships are suspended (employees are not required to provide services and employers are not required to pay salaries). Employees would only be entitled to the payment of one minimum wage for each day of suspension, which is capped at one month.
- 
- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**
- In practice, sick employees will be attended to by the Mexican Social Security Institute (IMSS). If upon testing the employee is found sick, he/she will be given the corresponding certificate to present to the employer in order to apply for a leave of absence. The employee will be entitled to receive a subsidy of 60% of his/her registered salary, to be paid by the IMSS. The IMSS is responsible for notifying the health authorities on the particular case.
  - In the event the employee does not go to the IMSS, testing for COVID-19 may be done by public institutions and/or private hospitals (or other sanitary institutions) authorized by the government. These particular institutions are the ones obliged to inform the health secretariat.
  - From a health regulation perspective, the governing law is the General Health Law ("GHL"), which contains three key provisions summarized as follows:
    1. Article 136 - Mandatory reporting to the Ministry of Health or the nearest health authority is required for the following:
      - a. Immediately, for individuals with diseases subject to the International Health Regulations, e.g., yellow fever, plague and cholera
      - b. Immediately, for individuals with a disease that appears in the form of an outbreak or epidemic
      - c. Within 24 hours for individuals with diseases subject to international surveillance: polio, meningococcal meningitis, epidemic typhus, recurrent fever transmitted by lice, viral influenza, malaria, measles, whooping cough, as well as those of diphtheria and Venezuelan equine encephalitis in humans
      - d. Within 24 hours, of the first individual cases of other communicable diseases that occur in an uninfected area
      - e. Immediately, in cases where the presence of the human immunodeficiency virus (HIV) or antibodies to said virus is detected in some personnel
    2. Article 13 - People who practice medicine or carry out related activities are obliged to notify the health authorities of cases of communicable diseases after its diagnosis or diagnostic suspicion.



**8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

3. Article 138 - The following are required to report the instances stated in Article 136 of the GHL (see above):
  - a. Heads or managers of laboratories
  - b. Directors of medical units, schools, factories, workshops, asylums
  - c. Heads of offices, commercial establishments or any other type
  - d. In general, any person who by ordinary or accidental circumstances has knowledge of any of the cases of diseases referred to in the GHL.
- Thus from a GHL standpoint, if there is no applicable legislation from a labor perspective, a company is required to notify the health authorities about suspected and confirmed cases of COVID-19, specifically under Articles 138 and 136 of the GHL.
- The above legal provisions were reflected and further developed in the recently issued 2019 Standardized Guidelines for Epidemiological and Laboratory Surveillance of COVID-19, which emphasizes the role of the Sanitary Responsible of the medical unit and the Physician of First Contact, in the formal notification to the Epidemiological and Health Intelligence Unit (UIES).
- From a labor law perspective, it is also advisable to inform the other employees. Article 132 of the Federal Labor Law (FLL) obliges employers to comply with the dispositions and guidelines issued by the health authority in the event of a health emergency, and to grant to the employees the necessary means to prevent diseases at the work sites as mandated by the health authority.
- Moreover, please note that employers are the responsible party for the safety and hygiene at the work site. Accordingly, Article 509 of the FLL requires that a Safety and Hygiene Commission, made up of an equal number of workers and employer representatives, be organized in each working center, as necessary, to investigate the causes of accidents and illnesses, propose measures for preventing them and oversee that the same are enforced.
- Based on the foregoing, the Safety and Hygiene Commission can legally share the information that a positive COVID-19 test has occurred (without revealing the name of the affected employee), as a measure to prevent the spread of the virus among other workers. It could also requires workers of the company to submit themselves to the corresponding medical tests.

**9. Can the employer require an employee to see a doctor?**

Yes. An employer can require its employees to submit to medical examinations that the employer deems appropriate at any time in order to guarantee a healthy workplace and prevent the spread of contagious diseases.





# Mexico



**10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

- If employees are sent on leave they will be entitled to the payment of full salary and benefits, unless: (a) the Mexican Government declares a health emergency and by virtue of this emergency employment relationships are suspended (employees are not required to provide services and employers are not required to pay salaries), or (b) the Company reaches an agreement with employees to suspend work with total or partial payment of salaries. If the Mexican Government declares a health emergency pursuant to which employment relationships are suspended, employees would only be entitled to the payment of one minimum wage for each day of suspension, which is capped at one month.
- If there is a declaration of health emergency issued by the Mexican government that does not imply a general suspension of activities, expecting mothers and minors are not required to work, but employers are required to pay full salary. However, the general rule above (one minimum wage for each day of suspension, capped at one month).

**11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

There is no specific applicable provision. Employees may ask for vacation or a non-paid leave of absence, subject to the authorization of the employer.



This guidance is stated as at 19 March 2020

**1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?**

- Employees are not required to disclose disabilities to their employer. A "risk factor" that makes employees susceptible to COVID-19 or that may make the disease more severe if contracted normally does not have to be disclosed. However, in times of severe pandemic, employers may require employees to respond to disability-related questions if the information is job-related and consistent with business necessity.
- Employees who have a positive COVID-19 diagnosis and who may be infectious to others in the workplace should report their infectious status to their employer, and should also stay out of the workplace. In most US states, employees owe their employer a "duty of loyalty," under which they must refrain from behaving in a manner that would be contrary to the employer's interests. An employee who knowingly concealed an infectious disease while working arguably would violate the duty of loyalty. The employee may not have to reveal the underlying diagnosis or prognosis, but should inform the employer about the potential for infectious disease transmission if the employee comes to work.
- Several other laws impose obligations on the employer to report workplace related illness to government agencies, and some of these statutes require employers to take steps to ensure that employees report workplace illness and injuries. For example, the Occupational Safety and Health Administration (OSHA) imposes reporting and recordkeeping requirements on employers. COVID-19 is an illness that must be recorded (and sometimes reported to OSHA) when an employee is infected on the job. OSHA requires employers to establish a reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately, and to inform employees of the procedures for reporting. . Additionally, workplace infections may be occupational injuries covered by workers' compensation regimes. Most states require employees to report workplace injuries to their employers, and require employers to promptly respond to such reports.
- If employees provide the employer with medical information, including that they have been diagnosed with COVID-19 or that they are experiencing symptoms of COVID-19, employers must maintain this information in a confidential medical file separate from the employee's personnel file, with limited accessibility.

**2. Can the employer demand employees to disclose themselves as being a "risk-factor"?**

- An employer may require employees who become ill at work with symptoms to notify a supervisor so that appropriate measures can be taken (i.e., separating symptomatic employees from other employees or sending the sick employee home). Employers may also require employees to disclose: whether they have recently returned from a region with high rates of community spread of COVID-19 (generally Health Travel Alert Level 2 or 3 countries listed by the CDC), whether they are experiencing any of the symptoms of COVID-19, and whether they or a person with whom they have had close contact has been diagnosed with or is awaiting confirmation of COVID-19 infection.
- Employers must maintain all employee medical information in a confidential medical file separate from the employee's personnel file, with limited accessibility.



**3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?**

Employers are required by OSHA and other workplace safety laws to maintain a safe workplace. As part of this general duty, OSHA requires employers to inform employees of the procedures for reporting concerns about workplace safety (or work-related illness and injuries). While employers generally should not instruct employees to report co-workers with symptoms of COVID-19, employers must inform employees how they can report such concerns.

**4. Can employees refuse to come to work?**

- Employees can always refuse to come into work. In most circumstances, an employer can then impose discipline for violation of the employer's attendance policy if the employee does not have a valid reason for refusing to report. Below are some of the exceptions to that general rule.
- Employees can refuse to come to work if they reasonably believe they are in "imminent danger" as defined by Section 13 of the Occupational Safety and Health Act (OSH Act). They must have a reasonable belief that there is a threat of death or serious physical harm likely to occur immediately or within a short period of time. Practically speaking, an employee can refuse to come to work if:
  - i. there is more than a generalized fear of contracting a COVID-19 infection in the workplace,
  - ii. the employee has a specific fear based on articulable facts, and
  - iii. the employer cannot address the employee's specific fears in a manner designed to ensure a safe work environment.
- Section 7 of the National Labor Relations Act (NLRA) also grants employees the right to join together to engage in "protected concerted activity for mutual aid or protection" with regard to terms and conditions of employment, which can include the activity of one individual asserted on behalf of co-workers. Employees asserting such rights, including participating in concerted refusal to work in unsafe conditions, are generally protected from discipline, including discharge, for engaging in such activity. In addition, Section 11(c) of the OSH Act protects employees from retaliation for raising concerns about health and safety conditions in the workplace.

**5. Can employees refuse to attend meetings or to travel?**

See Answer to question No. 4. The same standard applies to the employer's worksite and travel for work. Given the current severity of the COVID-19 pandemic, employers should not require employees to travel to Level 2 or 3 countries.

**6. Can the employer send employees on suspension from work?**

Employers may send sick employees home. Employers may also require employees to present "fitness for duty" certifications before returning to work.



- 7. When is the employer forced to shut down its operations?**

Governmental authorities may order worksites to be closed or limited. Authorities may also order employees to "shelter in place" or self-quarantine. Otherwise, decisions regarding closure are left to the employer.

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- 8. Does the employer have the obligation to report infections occurring in the business to the health authorities?**

No. Employers who are not healthcare providers do not have an affirmative duty to report the presence at the worksite of a person who has tested positive for COVID-19, except as noted in Answer to question No. 1.

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- 9. Can the employer require an employee to see a doctor?**

In most circumstances, employers may recommend, but should not insist that employees seek medical attention. In limited circumstances, employers may require employees to consult with health care providers to confirm the employee's need for leave or accommodation, or to obtain a fitness for duty certification.

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- 10. If employees are sent on suspension from work, or refuse to come to work or if an operation is being shut down, do the employees still need to be paid?**

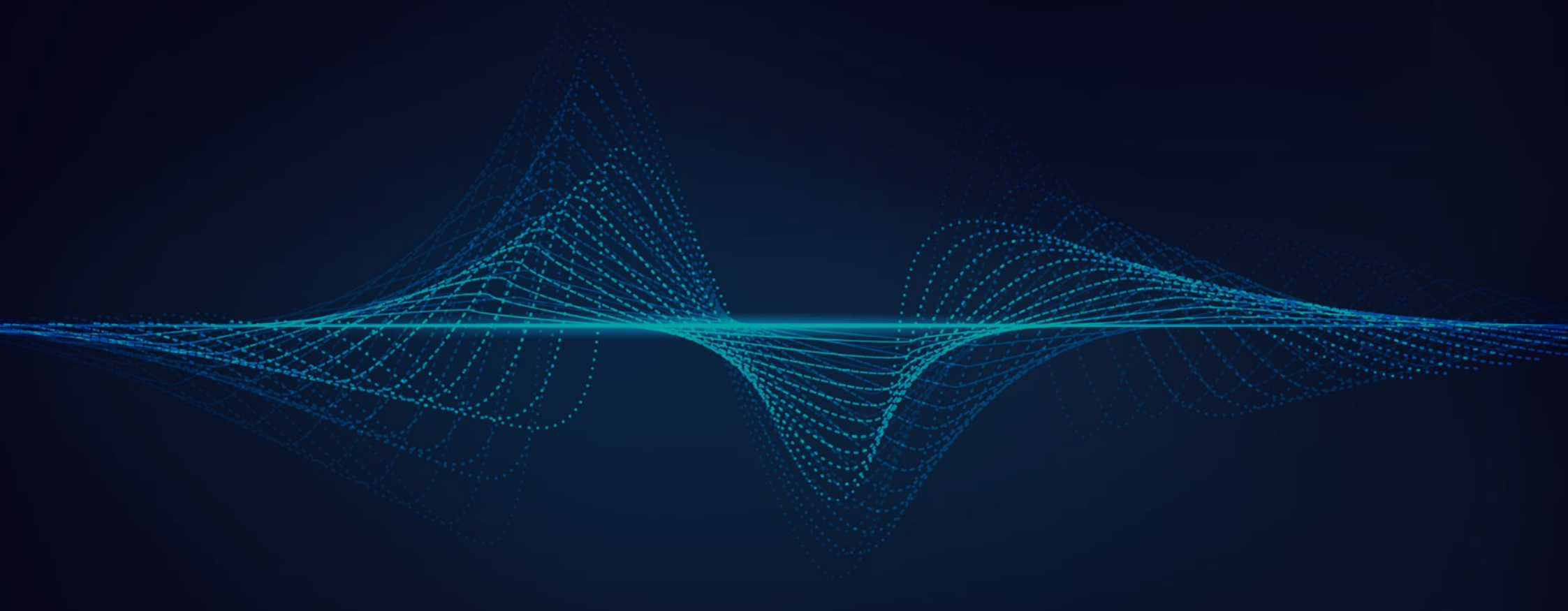
  - It depends. In general, the normal wage and hour rules for exempt and non-exempt employees will apply. Non-exempt employees (i.e., hourly employees) do not have to be paid for time not worked (time in which they perform no work) due to a shutdown, suspension or refusal to work.
  - Exempt employees (i.e., salaried employees) are entitled to be paid the full week's salary for any week in which the employee performs any work. However, if an employer "suspends" or furloughs exempt employees for an entire workweek or longer, no salary is owed. If non-exempt or exempt employees work from home or while "suspended," they must be paid.
  - Employees who are impacted by COVID-19 may be eligible for paid sick leave, state or private disability insurance, paid family leave, unemployment insurance, state work sharing, or, in limited circumstances, workers' compensation benefits. Employees who are still employed but off work also may be eligible to use paid PTO, vacation, personal, or family leave. A new federal law, the Families First Coronavirus Response Act (FFCRA) will require many employers to provide paid Family and Medical Leave and paid sick leave to employees impacted by the COVID-19.
  - In some circumstances, employers may be required to provide 60 or 90 days' notice of a shutdown or mass layoff.

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- 11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them and - if so - for how long?**

  - Certain states and cities, such as California, Chicago, Michigan, New Jersey, New York, and San Diego, require employers to provide paid or unpaid leave in the event of emergency school closures. For example, California Labor Code section 230.8 requires employers with 25 or more employees working at the same location to provide up to 40 hours each year to address child care provider or school emergency closures. Paid sick leave and "kin care" laws also may require employers to provide time off for parents dealing with school closures.
  - The FFCRA (see Answer to question No. 10) will authorize up to 10 weeks of partially-paid FMLA leave and up to 80 hours of paid sick leave when needed because of school closures or loss of childcare.

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