



WHITE PAPER

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Coronavirus: The Impact on Employers Throughout Europe

The novel coronavirus (COVID-19) outbreak, first identified in Wuhan, China, has spread beyond China's borders to dozens of countries, infecting tens of thousands of people and causing a mounting number of fatalities. Preliminary estimates indicate that the latest coronavirus outbreak may not peak until late April 2020.

Businesses throughout Europe should be prepared for legal concerns in the workplace resulting from the coronavirus. Also, there may be country-specific requirements and opportunities—for example, for France, the Netherlands, and Belgium—which are discussed in this *White Paper*.

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Businesses throughout Europe should be prepared for legal concerns in the workplace resulting from the coronavirus. Also, there may be country-specific requirements, such as in France, the Netherlands, and Belgium, which are discussed below.

Relatedly, for a broad overview of the complex legal issues the coronavirus crisis presents for companies in the United States, including employment law, tort, contract, insurance, disclosure, and other considerations, please review our [White Paper](#).

GENERAL LEGAL CONCERNS IN THE WORKPLACE

Travel from and to China. At a minimum, employers whose business involves travel to China should implement guidelines around travel to and from China. Some European countries have issued negative travel advice for China, the province of Hubei, and other regions. Employers should postpone nonessential business travel to China and consider the need for other international travel until the virus is controlled. Banning nonwork travel to China could potentially run afoul of discrimination laws if it targets only certain employees or is applied inconsistently.

Prevention. Employers should inform any employees located in high-risk areas of the virus's risks of steps to protect themselves from infection. Subsequently, an employer should take measures to protect these employees from contamination.

If employees have travelled to China in the last couple of weeks (for business or pleasure), companies should consider requesting employees work from home for a period of at least 14 days from the day they left China or sending employees home if they disclose that they have symptoms of the virus.

Additionally, an employer could raise awareness of coronavirus symptoms—i.e., fever, cough, breathing difficulties (pneumonia), muscle pain, and tiredness—among the workforce.

Communication and Action Plan. An employer should inform its employees that it is monitoring the coronavirus outbreak and values employee safety as its top priority. All European employees must be notified in the event an employee contracts the coronavirus in accordance with an action plan. Employees should be informed about a contact person or hotline where they can get up-to-date advice on the situation.

EUROPEAN COUNTRY-SPECIFIC REQUIREMENTS AND CONSIDERATIONS

Belgium. In Belgium, employers can file a request to the Ministry of Labor and Employment in order to allow them to put their salaried workers in a system of “temporary unemployment” based upon economic or technical reasons. In such cases, the employment contracts are suspended and the workers receive an indemnity paid by Belgian state (instead of being paid by the employer) for these days of unemployment. As this state indemnity does not cover the full salary of the workers, employers sometimes pay an additional indemnity on top of the state indemnity.

The request for such temporary unemployment needs to be thoroughly substantiated in order to be accepted by the Ministry. The Ministry has recognized that Belgian companies impacted by Chinese production limitations because of the coronavirus may apply for temporary unemployment for their workers. In this respect, the coronavirus has been defined by the Ministry as a case of *force majeure*.

France. At the time of the H5N1 (avian flu) outbreak in 2007 and the H1N1 outbreak in 2009, the French Labor administration issued regulations (DGT Circular 2007/18, December 18, 2007, and DGT Circular, 2009/16 dated July 3, 2009—the “Circulars”) specifying mandatory prevention measures for French state administrations that are also highly recommended for French regional and local authorities as well as for employers in the private sector.

The Circulars specify that when the risk is exclusively or essentially environmental, such as in the case of a pandemic, French employers are at minimum subject to a means obligation (*obligations de moyens*) toward their employees. French

employers are thus compelled to anticipate and prevent any pandemic in order to do their best to protect their employees' health. Failure by French employers to implement such measures could impair employees' health and trigger the employers' civil and, if applicable, criminal liability.

In the coronavirus context, it is advisable that French employers implement the prevention measures provided in the Circulars, such as:

1. Adapting and amending the existing "master document for the assessment of occupational risks" (*document unique d'évaluation des risques professionnels*) that all French employers must implement and the "annual program for the prevention of occupational risks and improvement of working conditions" (*programme annuel de prévention des risques professionnels et d'amélioration des conditions de travail*) for French employers with 50 employees or more, in order to take into account the impact on the employees' health, safety, and working conditions of the occurrence of a pandemic flu. Internal regulations (*règlement intérieur*) could also be adapted in this regard;
2. Implementing a business continuity plan (*plan de continuité de l'entreprise*) by involving the employees' representatives and setting up various measures, such as:
 - a. adapted temporary and proportionate work organization among the workforce through the implementation of more flexible working time (increased use of overtime, etc.), identification of multiskilling in order to replace the absentees, use of work from home arrangements (*télétravail*) (such use in case of pandemic was legalized in March 2012);
 - b. prevention measures such as: purchase of hygiene and individual protection equipment, information and training of employees on health and safety measures to follow, as well as on wearing of protection equipment, etc.

French law provides for the possibility that an employee (or group of employees) can withdraw from work and refuse to work in case he/she has reasonable ground to believe that the work situation presents a serious and imminent threat to his or

her life or safety (Article L. 4131-3 of the Labor Code). However, if the employer has implemented all adequate prevention and individual protection measures, employees who are required to come to work cannot withdraw. The Circulars confirm that such right cannot be used based upon the existence of a pandemic. Nonetheless, an employee working in a risk area—such as the Wuhan region or, more generally, China—may lawfully use such withdrawal right should his or her employer refuse to repatriate him or her.

Germany. Government guidance discourages unnecessary travel to China and warns against travel to the Hubei province. National airline carriers have suspended flights to mainland China. Travelers to China should register in the "Crisis Preparation List" (*Krisenvorsorgeliste*) of the German Ministry of Foreign Affairs and should consider leaving the country "temporarily or prematurely."

It is recommended to get vaccinated against influenza if travel to China is necessary. The government issued a coronavirus advisory to residents travelling to Wuhan, which includes avoiding contact with animals or using animal products, as well as avoiding being in livestock trading markets and crowded places. Travelers should not eat raw and undercooked meats or eggs.

It could be argued that if an employee travels to China during his vacation despite negative travel advice and returns with an infection, the employee has lost his claim for sick pay because the illness was self-inflicted.

Italy. According to the Italian Health Ministry, all flights from China are banned for 90 days, and Italian Civil Aviation Authority suspended all flights between Italy and China until further notice. The restriction applies to Hong Kong, Macao, and Taiwan. Taiwanese authorities have reportedly requested the removal of their jurisdiction from the restriction. Considering this and the formal recommendation of the public authorities not to travel to China unless necessary, the possibility for an employer to send a local employee on a business trip to China seems remote. Thus, the employee's refusal to travel for business reason to China, if so directed, might be deemed legitimate and any related disciplinary measure would be improper. Furthermore, the employer's liability, if the employee becomes infected on a business trip to China, cannot be ruled out.

Based upon a decree of the Prime Minister dated February 23, 2020, employers located in areas under risk of contagion can request that their employees work from home even in the absence of an individual agreement with the employee. Such an individual agreement otherwise would be a mandatory requirement under applicable law.

Netherlands. Due to the coronavirus outbreak, some employers are facing a (temporary) decrease in work, yet Dutch law prevents employers from unilaterally shortening weekly working hours and reducing employee pay accordingly. Although dismissal for commercial reasons may be precarious, another potential solution for Dutch employers is to obtain permission from the Dutch Ministry of Social Affairs and Employment (“SZW”) to introduce a temporary working time reduction for salaried employees (*werktijdverkorting*). Such permit is only granted if at least 20% of the work capacity is decreased as a direct result of “extraordinary circumstances” that are not part of the normal business risk of an employer. Past examples of “extraordinary circumstances” include the transport ban on poultry due to the bird flu outbreaks in 2014 and 2019 and the SARS outbreak. The Dutch Employee Insurance Agency (“UWV”) stated that multiple requests have been submitted by employers in the Netherlands, though it remains to be seen whether permissions will be granted.

If the SZW grants permission, an employer could unilaterally shorten the weekly working hours of employees for an initial maximum period of six weeks, without the consent of the employees. This period can be extended up to three times. While the permit is in effect, employees are still entitled to their regular pay despite the reduced working time (i.e., continued payment for hours not worked). However, after lapse of the permit, the employer is reimbursed by the UWV for hours not worked, subject to the maximum daily wage (*maximumdagloon*), € 219.28 gross per day (January 2020), resulting in savings to wage costs. The conditions required for reimbursement are that the employee who is entitled to unemployment benefits (i) lost five hours or more hours or half of the working time per week and (ii) worked at least 26 out of 36 weeks.

If the decrease in work is expected to last longer than 24 weeks, permission will not be granted. In that event, an employer should obtain permission at the UWV for dismissal of the employee for commercial reasons.

Further, the Dutch Ministry of Foreign Affairs issued a negative travel advisory for the province of Hubei. For the rest of China, the current advice is to avoid all but essential travel. Consequently, the Dutch national airline carrier has suspended all its flights from Amsterdam to Beijing and Shanghai until March 15, 2020.

Spain. In Spain, The Ministry of Foreign Affairs recommends avoiding all nonessential travel to China, but no official ban is in place. Additionally, some health recommendations and preventive measures for travellers have been published, which correspond to the general recommendations and concerns listed above. If requested by employees located in China, the employer could be obligated to arrange and pay for a flight home to Spain. If there are suspicions, or any possibility, that the virus is present at the workplace, the employer would have to take preventive measures to avoid that its employees are exposed to it.

United Kingdom. Government guidance is that no one should travel to China. National airline carriers have suspended flights to mainland China. The chief medical officer’s guidance is that anyone returning from China should self-quarantine in any event and that anyone returning from East Asia generally should self-quarantine if they have or develop any symptoms.

Employers may be justified in (a) excluding from the workplace those who have travelled to China, or even Asia, for a quarantine period and (b) requiring a health check before their return. While this might amount to indirect discrimination, it is likely to be objectively justified in circumstances where there is a significant risk to public health (as per government guidance, the risk is “serious and imminent”). It is worth seeking advice should this become a serious consideration.

CONCLUSION

As the coronavirus continues to spread, it is important for European employers to evaluate the many ways that the virus could affect their business and ensure compliance with best practices in managing employee relations, including abiding by all country-specific requirements.

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