



McDermott
Will & Emery

COVID-19 GLOBAL GUIDE FOR BUSINESS

Volume 1: Responding to the Pandemic



Dear valued clients, friends, and colleagues all over the world:

We hope you and your loved ones are healthy and safe. In response to the current pandemic, the McDermott Will & Emery Global Law Firm Network has assembled the attached COVID-19 Global Guide for Business. As of the time of this posting, there have been more than 25 million people worldwide infected by the novel coronavirus that causes COVID-19, resulting in more than 850,000 deaths. Hundreds of millions of people are living under various “shutdown” orders, the details of which are constantly shifting in response to new information. Millions of jobs have been lost and the world economy has been severely shaken. At the same time, millions of people have been able to continue to work or carry on with their studies through the use of technology.

Although all nations are fighting a common enemy in COVID-19, governmental responses to the outbreak have differed significantly based on various factors, including local laws, culture and politics, and the degree of severity of the outbreak in each country. Our Global Guide is designed for multinational businesses, C-level executives, human resources professionals, in-house counsel and anyone who is interested in learning about the world’s response to the COVID-19 pandemic and reopening plans.

The Global Guide includes succinct answers, provided by legal professionals located in more than 50 countries, to important business and employment questions related to government responses to the pandemic and efforts to return to work. The legal professionals who created this guide are members of the McDermott Global Network; without their contributions and continued commitment, this guide would not be possible.

The COVID-19 pandemic and the world’s response are constantly evolving. As a result, we have created two volumes of the Global Guide: 1. Responding to the Pandemic and 2. Returning to Work. Download both volumes of this complimentary guide for questions and answers from across Latin America, Europe, the Middle East, Africa, Asia and North America.

We hope that you find the information contained in this guide to be interesting and helpful. Please let us know if you have any comments or suggestions on how it can be improved. And please let us know if we can help you, your family or friends during these difficult times.

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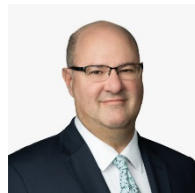
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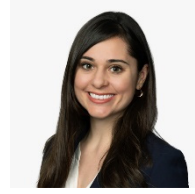
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SECTION NAVIGATION



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Peru
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NORTH AMERICA

Canada
Mexico
United States



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

In order to stabilize employment and support the resumption of production and operations, Chinese governments at all levels have issued various circulars, rules and policies. Below are several main policies enacted by the central government:

- The Ministry of Human Resources and Social Security (MOHRSS) issued the Notice of Properly Handling Employment Relationship Issues during the Prevention and Control Period of COVID-19 on January 24, 2020.

Official link: http://www.mohrss.gov.cn/gkml/zcfg/gfxwj/202002/t20200227_360811.html

- MOHRSS, the All-China Federation of Trade Unions, All-China Federation of Industry and Commerce, China Enterprise Confederation, China Enterprise Directors Association jointly issued the *Opinions on Stabilizing Employment Relationship during the Prevention and Control Period of COVID-19 to Support Enterprises in Resuming Production and Operation* on February 7, 2020.

Official link: http://www.mohrss.gov.cn/gkml/zcfg/gfxwj/202002/t20200207_358328.html

- The COVID-19 Joint Prevention and Control Mechanism of the State Council issued the Guidelines for Enterprises and Public Institutions to Take Measures on COVID-19 Prevention and Control during Production and Operation Resumption on February 22, 2020. The guidelines suggest what pandemic prevention measures be carried out in the workplace, such as, among other things, suspending fingerprint scanning for clocking in and out of the workplace, taking employee temperatures before entering the workplace and requiring that employees wear masks, wash hands frequently and restrain themselves from going out too much.

Official link: http://www.gov.cn/zhengce/content/2020-02/22/content_5482025.htm

English brief:

http://english.www.gov.cn/policies/latestreleases/202002/22/content_WS5e50f888c6d0595e03c213c0.html

- The State Council issued the *Implement Opinions on Measures to Strengthen and Stabilize Employment in Response to COVID-19 Impact* on March 20, 2020. Among other things, the State Council's opinions outlined measures to ensure unemployment insurance to those whose jobs were affected by the pandemic (especially in the hardest-hit areas like Hubei province), help migrant workers return to work and expand job opportunities for college graduates.



Official link: http://www.gov.cn/zhengce/content/2020-03/20/content_5493574.htm

English brief:

http://english.www.gov.cn/policies/latestreleases/202003/20/content_WS5e74af1fc6d0c201c2cbf0ec.html

Please note that many provincial and municipal governments have also enacted local policies and opportunities for beneficial treatment in response to the impact of COVID-19 for employees and employers. Therefore, it is recommended that enterprises also look to such policies.

Can employers furlough employees during this COVID-19 health crisis?

Under Chinese labor laws, employers cannot furlough employees without any salary. If an employer's production or business operations are suspended due to COVID-19, within the first payroll cycle, employers must pay the employees' full salary. For the second payroll cycle and any subsequent payroll cycles, employers must pay living expenses to their employees regardless of whether they provide any labor. Living expenses are normally 70% to 100% of the local minimum salary, depending on local policies. Enterprises are encouraged to check the local policies regarding the living expenses standards before initiating the suspension of production or operations.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

On February 18, 2020, in order to ease the financial stress faced by enterprises, the State Council of China made a decision to reduce or exempt portion of enterprises' social insurance contributions and to defer contributions of the housing fund for a certain period.

- To reduce or exempt social insurance contributions:

Micro, small and medium-sized enterprises may be exempt from contributing to the pension insurance, unemployment insurance and work-related insurance from February to June 2020. Large enterprises outside of the Hubei province may need to pay only half of their normal contributions from February to April 2020. All enterprises in the Hubei province may be exempt from making these contributions from February to June 2020.

MOHRSS also issued policies that permit employers to delay their contribution of social insurance within a reasonable period, and the corresponding implementing rules have been published in many cities and provinces.

- To defer contributions of housing funds:



Companies can apply for deferred contributions of housing provident funds before the end of June 2020. If the housing fund loan of an employee is not paid on time due to the epidemic situation, it will not be regarded as an overdue payment.

In addition, Chinese governments at all levels have enacted numerous measures and policies to ease the negative economic impact of COVID-19 on businesses, including ensuring credit support, lowering financing costs, providing cash subsidies, delaying tax payments, waiving lease payments, returning unemployment insurance contributions, and reducing or exempting rental fees. Please refer to our answers in Section 2(e), (g), and (i) below for additional information.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

In order to minimize the spread of COVID-19, China extended the Spring Festival at the national level and various cities and provinces issued rules requiring employees not to return to their physical workplace on or before certain dates (*i.e.*, requiring employees to work from home). These government orders are considered emergency measures under the *PRC Law on the Prevention and Treatment of Infectious Diseases*. Employers should protect their employees' legitimate rights and interests, including referring to local policies regarding the specific salary payments required during such period.

If employers force employees to return to their physical workplace before the resumption dates set by the government, employers may be ordered by the local authorities to suspend operations. In severe cases where there is malicious disregard of employees' health and safety resulting in several employees contracting COVID-19, employers may face criminal liability and the legal representative and responsible persons of the company may be subject to administrative detention.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. For the purpose of workplace safety, employers can deny an employee access to the workplace if symptoms of COVID-19 are detected. If employees are permitted to return to their physical workplace, then employers should request that employees wear a mask, report any cases to the local community service center and the community prevention and control unit, and follow further instructions.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes. According to government guidelines, employers should strengthen monitoring of employees' health, which means employers have the right to maintain a screening program for COVID-19 symptoms such as taking employees' temperatures. Currently, however, Chinese employers cannot conduct COVID-19 nucleic acid test on employees directly. Some cities, such as Shanghai, have introduced policies to carry out COVID-19 nucleic acid tests, which can be applied voluntarily by companies, public institutions, and individuals based on the need



of resumption of production and operations and at one's own expense. Such nucleic acid test is not mandatory and should be done by a qualified medical and testing institution designated by the local health committee.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes. The epidemic prevention and control measures taken by governments at all levels include submitting personal health information, travel history and contact history. False reporting or concealing any information that either results in others contracting the virus or increases the risk of spreading can result in that employee being convicted of a crime for obstructing the prevention and treatment of infectious diseases in accordance with the *PRC Criminal Law*.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes. Employers have a legal obligation to prevent and control communicable diseases in the workplace, including having a reporting policy to identify employees with symptoms of respiratory infections such as fever or cough each day.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Pursuant to the *PRC Regulations on Paid Annual Leave of Employees*, an employer is entitled to arrange for their employees to take annual leave after taking into account the personal preference of its employees. It is advisable to negotiate with employees and consider their feedback before forcing employees to take vacation time during the COVID-19 health crisis.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

So far, with respect to a reduction in employees, no official documents have been issued to relieve employers from severance liabilities due to the COVID-19 health crisis. In accordance with the *PRC Employment Contract Law*, employees should be compensated with statutory severance, which is equal to an employee's service years (continuous work of less than six months will be counted as 0.5 years of service; continuous work of more than six months but less than one year will be counted as one year of service) multiplied by the employee's average monthly salary twelve months prior to the termination of the employment contract.

Where an employee's average monthly salary exceeds three times the local average monthly salary of employees for the preceding year as published by the local government, the standard for calculating the statutory severance pay is equivalent to three times the amount of average monthly salary instead of such employee's average monthly salary.

In the event that a temporary operational shutdown is ordered by the competent authority, can

No. Under the scenario of temporary operational shutdown, employees still maintain their employment relationship with their employers and their service years are accumulated normally. Employers should continue



employers interrupt the accrual of seniority and other employment benefits during that period?

contributing social security (which covers the fund for seniority) and housing fund for employees. As for salary during a temporary shutdown, please refer to the answer in Section 2(b).

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Enacting a temporary shutdown is considered an individual business decision, so employers have the right to decide without negotiating with employees. Please refer to the answer to Question 2(b) regarding salary during a temporary workplace shutdown.

As for a reduction in hours along with a temporary reduction in salary and benefits, this is one of the measures that the government recommends in order to reduce or avoid layoffs by employers. Employers are encouraged to negotiate with employees, trade unions or employee representatives. In accordance with the *PRC Employment Contract Law*, working hours and salary are essential clauses of an employment contract and any revisions to such essential clauses would require mutual agreement of the parties. In practice, if only a small portion of employees reject such an arrangement, then the actual labor risk is limited. In such circumstances, the government and judicial authorities will balance the interests between employees and employers through mediation.

If employees refuse to come to work, can their employment be terminated for job abandonment?

It depends on the reasons for refusing to come to work. If employees refuse to return to their posts for suitable reasons (for example, the employee is sick, the workplace is located in the epidemic area or employees are required to travel for business to the epidemic area) and are terminated, employers could be subject to a wrongful termination claim. If employees refuse to come to work without citing a suitable reason, employers may terminate his or her employment. Under the current epidemic situation, it is advisable for employers to proactively communicate and check with employees before initiating any unilateral termination.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Yes. Under the *PRC Law on the Prevention and Treatment of Infectious Diseases*, when any unit or individual finds a confirmed or suspected carrier, they must promptly report to the local disease prevention and control institution or medical institution.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

According to the *General Rules of the Civil Law and Contract Law of the PRC*, *force majeure* means an unforeseeable, unavoidable and insurmountable objective situation. In the event of *force majeure*, a party may: (i) fully or partially absolve itself from liability and (ii) terminate the agreement when the purpose of the agreement cannot be achieved. The affected party must immediately notify the other party and provide evidence of the *force majeure* within a reasonable time.

For more detailed information on *force majeure* and contract considerations, please refer to the China section of McDermott's COVID-19 Global Guide to Contract Considerations.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

The outbreak of COVID-19 can be deemed as a *force majeure* event according to the comments from the PRC Standing Committee of the National People's Congress. However, to decide whether a party to a specific contract can successfully claim *force majeure*, the court will likely consider the cause and effect on a case-by-case basis. Meanwhile, the affected party must notify the other party in a timely manner and provide supporting evidence within a reasonable period. The China Council for the Promotion of International Trade (under the PRC Ministry of Commerce) is responsible for issuing *force majeure* certificates for those parties claiming *force majeure*.

For more detailed information on *force majeure* and contract considerations, please refer to the China section of McDermott's COVID-19 Global Guide to Contract Considerations.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

This would depend on the language of the contract. If a state of emergency declaration constitutes a *force majeure* event in a specific contract, then the affected party may: (a) fully or partially absolve itself from liability and (b) terminate the agreement when the purpose of the agreement cannot be achieved. As of the date of this posting, China has not declared a state of emergency for COVID-19 at the national level.

For more detailed information on *force majeure* and contract considerations, please refer to the China section of McDermott's COVID-19 Global Guide to Contract Considerations.



What remedies are available to businesses in the event they default with contractual obligations?

During the COVID-19 outbreak, a party may resort to a *force majeure* or change of circumstances claim in the event of a default, assuming the default is directly caused by difficulties related to the outbreak. In the event of *force majeure*, a party may: (a) fully or partially absolve itself from liability and (b) terminate the agreement when the purpose of the agreement cannot be achieved. In the event of a change of circumstance, a party may request the court to modify or terminate the agreement. The court will review such requests on a case-by-case basis and determine whether such claims can be established and obligations modified or terminated.

For more detailed information on *force majeure* and contract considerations, please refer to the China section of McDermott's COVID-19 Global Guide to Contract Considerations.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

According to the *Guidelines for Supporting Small and Medium Businesses to Cope with the COVID-19 Epidemic* issued by the Ministry of Industry and Information Technology, a series of policies to support small and medium-sized businesses have been introduced by the central to local governments. These measures include fiscal and tax measures, improving financing availability, strengthening the circulation of market factors and other measures to help these companies. Specific examples of these policies issued from the central government include (i) reducing the value-added tax percentage for small-scale taxpayers; (ii) providing discounted loans to companies impacted by COVID-19; (iii) encouraging lessors to reduce or exempt rent payments for small and medium-sized businesses; (iv) periodically reducing electricity prices; (v) allowing businesses to postpone the payment of utilities; (vi) helping businesses recall employees to work; and (vii) periodically exempting businesses from paying basic pension insurance, unemployment insurance and work injury insurance. Local governments have also introduced different policies to further support business recovery.

Since a local subsidiary of a foreign entity is considered a Chinese entity, such subsidiary will likely have access to these same benefits. The PRC Ministry of Commerce has also published several specific notices to protect the interests of foreign-owned enterprises.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

The judiciary is partially affected but in the process of recovery. The courts and arbitration institutions provide postal filing or online filing services instead of the traditional in-person filings. Online hearings have been used in some areas to replace the traditional on-site



hearings. However, some cases were suspended due to the current COVID-19 health crisis and the timelines for certain ongoing cases have been extended.

Has your country issued any tax amnesty or relief programs because of COVID-19?

The State Administration of Taxation (SAT) has rolled out a series of tax relief and exemption policies to cushion the impacts on taxpayers and withholding agents during the pandemic, including the following:

- Corporate Income Tax (CIT):
 - For losses incurred in 2020 by enterprises in troubled industries during the pandemic (*i.e.*, transportation, catering, hospitality and tourism industry), the carry-forward period may be extended from five years to eight years if the company's main operating revenue exceed 50% of its total revenue
 - For crucial suppliers and manufacturers listed by provincial-level development and reform commissions, the equipment costs incurred to expand production capacity may be subject to full pre-tax deduction in a year, instead of amortization on a yearly basis
 - For pandemic control purposes, donations of cash or supplies by companies through domestic charity organizations or governments (county level or above), or of supplies given directly to domestic hospitals undertaking pandemic control tasks, may be subject to full pre-tax deduction of CIT taxable income.
- Value-added Tax (VAT):
 - For items normally subject to a 3% VAT rate, small-scale taxpayers in the Hubei province may be exempt from the 3% VAT, while small-scale taxpayers outside the Hubei Province may enjoy a reduced VAT of 1% instead of 3% VAT
 - Income obtained from the transportation of crucial supplies for pandemic control, public transportation services, living services and express delivery services for residents' daily necessities may be exempt from VAT
 - For pandemic control purposes, goods (regardless of being self-manufactured, contractually processed or externally purchased) donated by companies



through domestic charity organizations or governments (county level or above) or given directly to domestic hospitals undertaking pandemic control tasks, may be exempted from VAT and surcharges.

- Individual Income Tax (IIT):
 - Medicine, medical supplies and protective supplies (excluding cash) that employers provide to employees during the pandemic are not treated as employees' salary and may be exempt from IIT
 - Temporary subsidies and awards granted to doctors, nurses and other epidemic prevention workers participating in pandemic control activities may be exempt from IIT
 - For pandemic control purposes, donations in cash or supplies made by individuals through charity organizations or governments (county level or above) or directly to domestic hospitals undertaking pandemic control tasks, may be subject to full deduction of IIT taxable income.

Has the tax filing deadline been extended?

According to the SAT's decision, the monthly/quarterly tax filing deadline in April 2020 has been extended from April 20 to April 24. However, the SAT has not decided to extend the deadline of annual tax filings, such as 2019 annual CIT filing (*i.e.*, May 31, 2020), 2019 annual comprehensive income IIT filing (*i.e.*, June 30, 2020) and 2019 annual operation income IIT filing (*i.e.*, March 31, 2020).

The Hubei provincial tax authority may further extend the tax filing deadline for taxpayers and withholding agents in the Hubei Province (where Wuhan is located). As of the date of this posting, the deadline of the 2019 annual operation income IIT filing in Hubei Province has been extended from March 31, 2020, to May 31, 2020.

Are tax refunds and other claims being timely processed?

Tax refunds and other claims are being timely processed during the pandemic, since taxpayers and withholding agents are encouraged to use the online tax filing system to submit the tax applications. The SAT has issued an online tax filing/reporting list during the pandemic to make sure that the listed tax matters such as overseas payment tax registration, CIT liquidation filing, export VAT refund and tax refund in CIT/IIT annual filing can be taken care of online.



In Shanghai, it may take around five working days to obtain a tax refund approval in CIT annual filing via online system, which is more efficient than ever before.

The SAT also simplified and accelerated the entire export VAT refund process in China, with the key measures listed below:

- Taxpayers may submit export VAT refund applications and relevant documents through the electronic tax system.
- Tax authorities may approve export VAT refund based on the electronic data provided by taxpayers.
- If export VAT refunds need to be further verified, then tax authorities should avoid on-site investigation or face-to-face interviews and may contact the taxpayer via email, express delivery or phone call.
- Original copies should be submitted to tax authorities by taxpayers for further review after the pandemic.



INDIA

Contributed by: Trilegal, India (Atul Gupta)

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

India is currently under a nationwide lockdown until May 31, 2020. Only industries and companies providing essential services and/or that have received permission from the government are functioning; all other industries have been asked to shut down. Various measures have been taken by governments at the central and state levels regarding employees, including:

- Central government and various state governments passed orders asking employers to continue paying wages to employees during the lockdown
- Some states have ordered employers to extend 28 days of paid leave to employees who contract COVID-19
- All landlords have been ordered to not evict or charge rent to any labor/student for a period of one month.

The repository of notifications can be accessed at <https://prsindia.org/covid-19/notifications> or <https://www.trilegal.com/index.php/publications/bulletins>.

Can employers furlough employees during this COVID-19 health crisis?

Indian employment law does not recognize the concept of a furlough (i.e., an unpaid absence from work). Imposing forced unpaid leave without following due procedure could be questioned. Employees may be requested to take their annual leave or leave without pay during the lockdown period, but it cannot be forced upon them without their consent. Moreover, as mentioned above, various orders and advisories have been passed directing private organizations to continue paying their employees full wages during the lockdown.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

On March 24, 2020, the finance minister announced various relief from regulatory and compliance requirements across sectors. A copy of the reliefs announced can be accessed at <https://www.trilegal.com/index.php/publications/update/covid-19-measures-announced-by-finance-minister-to-address-disruption-cause>.

The government also announced that it would contribute Provident Fund (India's social security payment) for both the employer's and employees' share for three months in establishments with fewer than 100 employees of which at least 90% earn less than INR15,000 per month. This, therefore, potentially only covers very small establishments.



INDIA

Contributed by: Trilegal, India (Atul Gupta)

Employees have also been permitted to withdraw up to three months' pay or 75% of their Provident Fund balance from their EPFO accounts, whichever is less. The government is also providing food and associated benefits to certain segments of marginalized/migrant workers.

In some states (such as Rajasthan), governments are also providing certain relief to employers from their electricity bills. The Reserve Bank of India and other government ministries have also announced some concessions. Please refer to the corporate section below or access the list of such notifications on the Trilegal website at <https://www.trilegal.com/index.php/publications/bulletins>.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Since India is under a nationwide lockdown with only essential and permitted sectors functioning, employers are expected to abide by the same guidelines. Employees can be asked to work from home if the nature of their job permits it. However, the government expects that employees who cannot work remotely will continue to be paid regular wages as though they are on duty.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

If a company is permitted to function during the lockdown, it is under an obligation to ensure a safe and healthy work environment. As a result, if an employee is suspected to have COVID-19 or has flu-like symptoms, they may be denied access to the workplace and expected to undergo medical examination.

Additionally, if a company has been permitted to continue functioning during the lockdown, it is advisable for the company to obtain a written declaration from employees with details of their recent travel history, health condition, etc., before asking them to come to the workplace.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes. Many organizations are implementing mandatory thermal screening for individuals before they enter the workplace. Further, there are other social distancing norms that would need to be followed by employers if they are permitted to operate.



INDIA

Contributed by: Trilegal, India (Atul Gupta)

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Although there is no law that requires employees to disclose to their employers if they have tested positive for COVID-19, employers can require their employees to disclose this information as a necessary health and safety measure.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes. With respect to co-workers however, a policy should necessarily be put in place to ensure that the employees report only to a particular person/department and not discuss with other employees to avoid spreading false news/rumors.

Can employers force employees to take vacation time during the COVID-19 health crisis?

No. Legally, this can be done only with the consent of the employee. For senior employees who are not protected by local labor statutes such as the Industrial Disputes Act or the Shops and Establishments Act, whether or not such a measure can be imposed unilaterally would depend on the terms and conditions of service as well as policies implemented by the organization.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

There is no such exemption in India. On the contrary, various orders/advisories have been issued prohibiting a reduction in salary or the termination of employees during this lockdown period. Hence, any unilateral measures for reduction in force could be questioned by authorities, if a complaint is raised.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

As mentioned earlier, India is under a nationwide lockdown and various orders/advisories have been passed viz. payment of wages to employees during the lockdown. The intent of these orders/advisories is to treat all employees who are unproductive on account of the lockdown as on duty. Therefore, this period will be considered, for the purpose of extending employment benefits, mandated under the law. For voluntary benefits/discretionary bonus schemes, an employer could consider this period as off duty, subject to the terms/conditions of these benefits and the terms of employment of the employee. Further, unless agreed contractually/under company policies, an employee has no right to a promotion and therefore an employer could set-off this period for the purpose of seniority/promotions, provided this is not done arbitrarily.



INDIA

Contributed by: Trilegal, India (Atul Gupta)

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Potentially yes, if the employees are voluntarily willing to accept such reductions.

If employees refuse to come to work, can their employment be terminated for job abandonment?

If a company is entitled to operate during the lockdown in accordance with government guidelines (or the lockdown is lifted) and has made all necessary and reasonable safety arrangements to ensure employee well-being (such as disinfecting their premises regularly, taking social distancing measures stipulated by authorities, etc.), and the employee still refuses to attend work, strictly, the company can take disciplinary measures against him/her after following due process. However, considering the current situation, including the continued lockdown, it may be advisable not to take disciplinary action against employees for such reasons. As an alternative, the company could ask them to take leave without pay and/or utilize their annual leave. This response assumes that the employee's refusal to work is not because of some other health issue and the employee is not required to self-isolate/quarantine as per Government Guidelines.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

COVID-19 testing has been allowed in few government-approved labs and all such labs/hospitals are under an obligation to report to the government about every individual who tests positive. Therefore, practically, if an individual tests positive, it will be reported to government authorities (before the employer knows about the result) and the individual will be quarantined in government facilities.

Even otherwise, mandatory reporting requirements are present for employers in a few states and the same should be followed by the companies, as a matter of practice.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

In common law jurisdictions such as India, *force majeure* events are agreed under and governed by contractual clauses. Generally, the occurrence of a *force majeure* event absolves parties from performing the contract without incurring any liability. The intention of a *force majeure* clause is to cover events that affect a party's ability to perform a contract, either in its entirety or in a timely manner and where such event is beyond the reasonable control of the non-performing party.

Unlike countries governed by civil law, *force majeure* is not codified under a statute. However, courts have relied on Section 32 of Indian Contract Act, 1872, when invoking this principle, which deals with contingent contracts. Courts have generally interpreted the principle narrowly. Whether a contractual obligation can be avoided on the grounds of *force majeure* is a factual determination based on the language of the *force majeure* clause in the contract and whether the event is covered under this clause. The courts would examine whether, in each case, the party is in fact prevented from performing its contractual obligation.

In the absence of a contractual *force majeure* clause, to justify non-performance of a contract, the non-performing party will have to show that the contract has been frustrated. Frustration of contract is covered under Section 56 of the Indian Contract Act, 1872. In order to claim that the contract is frustrated, it must be shown that the performance of the contract is entirely impossible and that it has become fundamentally different from the arrangement contemplated at the time of executing the contract. However, mere difficulty in the performance of any obligation under a contract is not sufficient reason to invoke frustration of contract. Moreover, this is also a factual analysis that will have to be undertaken on a case-by-case basis.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

As mentioned in our response to (a) above, the determination of whether the COVID-19 outbreak will qualify as a *force majeure* event under a particular contract is a factual analysis that will have to be undertaken on a case-by-case basis, as determined by the terms of the contract. In the event the *force majeure* clause includes acts of nature such as spread of epidemics or natural calamities, it would be possible to argue that the outbreak of COVID-19 is contemplated as a *force majeure* event in the contract. Alternatively, the outbreak of COVID-19 may also be covered within a catch-all *force majeure* clause that includes any extraordinary events, or circumstances that are beyond the control of the



parties, as long as it can be shown that the circumstances or damages caused by COVID-19 are beyond the control of the affected party.

Further, for contracts entered into with the government, it may be possible to argue that the COVID-19 outbreak should qualify as *force majeure* based on notifications issued by the government specifically in light of the outbreak of COVID-19.

In this context, the Ministry of New and Renewable Energy (MNRE) has issued an Office Memorandum dated March 20, 2020, stating that all renewable energy implementing agencies of the MNRE are required to treat delay on account of disruption of the supply chain due to spread of coronavirus in China or any other country as a *force majeure* event. Additionally, the renewable energy implementing agencies may grant suitable extension of time for projects, on account of coronavirus, based on evidences/documents produced by developers and submitted as a formal application.

The State Renewable Energy Departments (including agencies under Power/ Energy Departments of States, but dealing in renewable energy) have also been requested to treat delay on account of disruption of the supply chains due to spread of coronavirus in China or any other country as a *force majeure* event and issue their own instructions on the subject.

Further, the Department of Expenditure, Procurement Policy Division, Ministry of Finance, issued an Office Memorandum on February 19, 2020, in relation to the government's Manual for Procurement of Goods, 2017, effectively stating that the COVID-19 outbreak could be covered by a *force majeure* clause on the basis that it is a natural calamity, caveat that due procedure should be followed by any government department seeking to invoke it.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

There is no specific provision under Indian law that provides automatic relief to commercial agents in case a state of emergency is declared by a competent authority. Parties may be able to avoid their contractual obligations only in case a state of emergency qualifies as a *force majeure* event under a particular contract. This is a factual analysis that will have to be undertaken on a case-by-case basis, according to the terms of the contract.

If a state of emergency does not fall within the *force majeure* clause, in order to justify non-performance of a contract due to the outbreak of COVID-19, the non-performing party has



the option to show that the contract has been frustrated, under Section 56 of the Indian Contract Act, 1872, as discussed in our response to question 2(a).

What remedies are available to businesses in the event they default with contractual obligations?

In the absence of a *force majeure* clause or in case the situation is not covered within the *force majeure* clause, the non-performing party may justify a default on its contractual obligations by showing that the contract has been frustrated, under Section 56 of the Indian Contract Act, 1872, as discussed in our response to question 2(a).

Additionally, a non-performing party may be able to rely on other clauses within their contracts relating to material adverse change and price adjustment. For example, some contracts may include service level agreements, which specify timelines and quality standards for services provided and require service credits to be paid in case of default or delay. They can also rely on limitation or exclusion of liability clauses to contractually avoid any liability for default. However, the ability of a party to invoke such clauses will depend on the specific language used and how the courts interpret these clauses.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

The Small Industries Development Bank of India (SIDBI) has introduced the SIDBI Assistance to Facilitate Emergency Response against COVID-19 to provide loans up to INR5 million to micro and small enterprises that are manufacturing medical supplies for fighting COVID 19, including hand sanitizers, masks, gloves, head gear, body suits, shoe-covers, ventilators, goggles and testing kits. The scheme will offer loans at a fixed interest rate of 5% and with a maximum loan repayment tenure of five years.

Further, public sector banks such as the Indian Bank and State Bank of India (SBI) have introduced emergency credit lines for small businesses. Indian Bank has introduced the IND-MSE COVID Emergency Loan for micro and small enterprises, aimed at providing additional funding of 10% of fund based working capital limits, up to a maximum limit of INR5 million. Meanwhile, SBI has also introduced an emergency loan facility for micro, small and medium enterprises (MSMEs) for additional funding of 10% of fund based working capital limits, up to a maximum limit of INR200 Crores (*i.e.*, INR2 billion).

In addition to this, the Reserve Bank of India (RBI) has announced several overarching measures that will benefit small businesses. The RBI has allowed a moratorium on term loans, eased working capital financing and deferred interest payment on working capital facilities without an asset classification downgrade. The government has also introduced



INDIA

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measures permitting delayed GST payments until June 2020, without levy of interest, late fees or penalties.

All locally incorporated subsidiaries of foreign entities that fall within these categories would be eligible to access the above benefits.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

The Supreme Court of India has announced that it will continue to function and will only hear matters involving extreme urgency and has advised parties to refrain from travelling to the court. The Supreme Court has also released a notification extending the limitation period for proceedings in all courts, tribunals and authorities until further notice.

They have framed guidelines for all courts, including district and high courts, to function via video conferencing during the COVID-19 lockdown. Similar restrictions have been announced by various courts, including the Bombay High Court, Delhi High Court, Karnataka High Court, National Company Law Tribunal, district courts in various states and other tribunals. Most courts have suspended or postponed all matters, with the exception of urgent matters to be conducted via video conferencing, for which parties are required to show urgency.

Typically, urgent matters being taken up include those regarding anticipatory bail, quashing of or appeals against arrest, and public interest litigation and writ petitions in relation to the COVID-19 outbreak seeking court intervention for medical equipment, safety measures, etc.

Has your country issued any tax amnesty or relief programs because of COVID-19?

The tax-related relief measures announced by the Government of India are as follows:

- The date for making investments, payments, etc., for claiming any benefit with respect to capital gains income under specified sections of the (Indian) Income Tax Act, 1961 (IT Act) (including Sections 54EC - exemption on capital gains on sale of long term capital asset being land/building, if investment is made in specified bonds) has been extended to June 30, 2020. Therefore, the investment/construction/purchase made up to June 30, 2020, pursuant to the aforesaid sections shall be eligible for claiming benefit with respect to capital gains income arising during financial year (FY) 2019–20.
- The date for making various tax-saving investments/payments for claiming deduction under Chapter-VIA of IT Act [which includes Section 80G (Donations),



INDIA

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Section 80GGA (Certain donations for scientific research or rural development) and Section 80GGB (Donations by companies to political parties)] has been extended to June 30, 2020. Hence, the investment/payment can be made up to June 30, 2020, for claiming the deduction under these sections for FY 2019–20.

- Donations made to the PM CARES Fund, which has been set up for providing COVID-19-related relief, has been made eligible for 100% deduction under Section 80G of the IT Act.
- The date for commencement of operations for special economic zone (SEZ) units for claiming deduction under Section 10AA of the IT Act has been extended to June 30, 2020, for the units that have received necessary approval by March 31, 2020.
- The following relief has been provided in relation to lower/NIL withholding tax (TDS) certificates issued under Sections 195 and 197 of the IT Act and lower/NIL tax collection (TCS) certificates under Section 206C of the IT Act:
 - For taxpayers whose application for lower or NIL TDS/TCS certificate for FY 2020–21 is pending for disposal but were issued such certificates for FY 2019–20, the validity for such certificates would be extended to June 30, 2020, or disposal of their application, whichever is earlier.
 - For taxpayers who were unable to apply for lower or NIL TDS/TCS certificate for FY 2020–21 but were issued such certificates for FY 2019–20, the validity of such certificates would be extended to June 30, 2020. However, they would need to apply for the issuance of the certificates as soon as normalcy is restored or by June 30, 2020, whichever is earlier.
- The due date for tax payments has not been extended; however, it has been provided that the rate of interest payable under the IT Act and certain other statutes, with respect to, would not exceed $\frac{3}{4}$ percent for every month or part thereof, if such payments are paid by June 30, 2020, (or such other date as extended by the government). Further, no penalty/prosecution shall be initiated in respect of such payments for the period of delay.
- The time limits specified under the IT Act and certain other statutes with respect to completion of any proceedings, falling between March 20, 2020, to June 29, 2020



(or such later date as notified by the government), have been extended to June 30, 2020 (or such other date as extended by the government).

- Last date of furnishing of the Central Excise returns due in March, April and May 2020 has been extended to June 30, 2020. While Central Excise was subsumed by Goods and Services Tax in 2017, however, it continues to apply to specific goods like tobacco and petrochemical products.
- Wherever the last date for filing of appeal, refund applications, etc., under the Central Excise Act, 1944, Customs Act, 1962, and Service Tax (Finance Act, 1994) and rules made thereunder is from March 20, 2020, to June 29, 2020, the same has been extended to June 30, 2020.
- The statutory due dates for filing GSTR-3B returns under GST for the months of March, April and May 2020 has not been changed. However, the persons having aggregate annual turnover of less than INR5 Crores (INR50 million), have been allowed to file these returns up to the last week of June 2020 without incurring any interest, late fee or penal liability. Persons with aggregate turnover above INR5 Crores can file returns due in March, April and May 2020 by the last week of June 2020 but the same would attract a reduced rate of interest @9% per annum from 15 days after due date (current interest rate is 18% per annum). No late fee and penalty to be charged, if complied with by June 30, 2020.
- The date for opting for composition scheme under GST has been extended until June 30, 2020. Further, the last date of filing of return for 2019–20 by the composition dealers is extended until June 30, 2020.
- The date for filing GST annual returns of FY 18–19, which is due on March 31, 2020 is extended until June 30, 2020.
- The due date for issuance of notice, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents, time limit for any compliance under the GST laws where the time limit is expiring between March 20, 2020, to June 29, 2020, is extended to June 30, 2020.

Has the tax filing deadline been extended?

- Time limits specified under the IT Act and certain other statutes with respect to the filing of any return, statement, etc., falling between March 20, 2020, and June 29,



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2020 (or such later date as notified by the government), have been extended to June 30, 2020 (or such other date as extended by the government).

- The deadline for filing a declaration under the Vivad se Vishwas Scheme has been extended up to June 30, 2020. The Vivad se Vishwas Scheme is a dispute resolution-cum-amnesty scheme introduced by the government for settling pending direct tax litigation. A taxpayer availing the scheme is required to pay only the amount of the disputed tax and will get complete waiver of interest and penalty if the disputed tax is paid by June 30, 2020. Those who avail this scheme after June 30, 2020, will have to pay an additional 10%.
- The deadline for making payment to avail of the benefit under Sabka Vishwas Legal Dispute Resolution Scheme 2019 (SVLDRS) has been extended to June 30, 2020. SVLDRS is an amnesty scheme introduced by the government for settlement of on-going indirect tax disputes. The scheme provided a one-time opportunity to taxpayers to obtain relief from protracted litigation.

Are tax refunds and other claims being timely processed?

As per a government press release dated April 8, 2020, as an immediate relief measure, all pending income tax refunds up to INR500,000 would be issued by the tax department to the taxpayers on an immediate basis.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID 19? If so, please provide the names of those new measures so our readers can easily access them.

Various government authorities have enacted new measures related to labor and employment, including, but not limited to:

Ministry of Manpower Circular Letter No. M/3/HK.04/III/2020 (MOM COVID-19 Circular Letter), which urges employers to create alertness plans to respond to COVID-19 and establish provisions for the protection of employee wages, which includes requiring the employer to pay the wages of employees who are quarantined and not coming into work due to COVID-19 and, in the case of businesses limiting their business activities, making adjustments to the amount or method of payment for employee salaries in accordance with the agreement between the employer and the employee

Finance Services Authority Regulation No. 11/POJK.03/2020, which provides that banks can institute policies to support economic growth for parties affected by COVID-19

Governor of DKI Jakarta Directive No. 6 of 2020, ordering the suspension of all business activities and the closure of all operational facilities, and encouraging remote work.

Other government COVID-19-related measures include, but are not limited to:

- Ministry of Finance Regulation No. 19/PNK.07/2020 of 2020 on the Distribution and Use of Profit Sharing Funds, General Allocation Funds and Incentive Funds of the 2020 Budget in the Framework of Corona Virus Disease 2019 (COVID-19), dated March 16, 2020, which provides that Regional Governments are required to budget for mandatory health sector spending for the prevention and/or response to COVID-19 and which governs the distribution and use of General Allocation Funds, Profit Sharing Funds as well as Regional Incentive Funds.
- Ministry of Health Circular Letter No. HK.02.01/MENKES/202/2020 on Self-Isolation Protocols in the Handling of Coronavirus Disease (COVID-19), dated March 16, 2020, which sets out the protocol for self-isolation as well as for self-observation and preventive actions that can be taken.
- Supreme Court Circular Letter No. 1 of 2020 on Guidelines for Performing Duties During the Prevention Period for the Spread of the Corona Virus Disease 2019 (COVID-19), dated March 23, 2020, which provides that criminal trials should be deferred for so long as the government considers the population to be at risk of



INDONESIA

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COVID-19, provided that the trial must proceed if the custody of an accused person cannot be legally extended. Judges are also given certain discretion to extend time periods in criminal proceedings. Civil proceedings are not suspended but the Circular Letter encourages parties to utilize available technologies for the remote conduct of civil proceedings.

- Government Regulation No. 21 of 2020 regarding Large-Scale Social Distancing in the Framework of Accelerating Corona Virus Disease 2019 (COVID-19) Response, dated March 31, 2020, which allows Regional Governments to enact large-scale social distancing by limiting certain activities and putting workplaces as well as schools on leave.
- Presidential Decree No. 11 of 2020 regarding Determination of a Corona Virus Disease 2019 (COVID-19) Public Health Emergency of March 31, 2020, which concludes that COVID-19 has caused a public health emergency that must be responded to.
- Government Regulation in lieu of Law No. 1 of 2020 regarding State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in the Framework of Facing Threats that Endanger the National Economy and/or Financial System Stability, dated March 31, 2020, which sets out government financial policy in response to the COVID-19 pandemic as well as other threats to the national economy. It reduces the income tax for businesses for the next two years, imposes taxes for trade through electronic systems, and gives the Minister of Finance the authority to waive import customs in emergency situations. To support state financial policy, the government will be investing through state-owned enterprises. This Regulation applies in lieu of other provisions regarding state finance in responding to COVID-19 and/or other threats to the national economy.

Ministry of Industry Circular Letter No. 7 Year 2020 regarding Guidelines For Submission Of Applications For Licensing Of Industrial Activities the period of the Corona Virus Disease 2019 (COVID-19) Public Health Emergency, dated April 9, 2020, which provides guidelines for industry companies to carry out activities during the COVID-19 public health emergency.



Can employers furlough employees during this COVID 19 health crisis?

The MOM COVID-19 Circular Letter expressly recognizes that employees may be placed on leave due to pandemic-related advisory measures (*i.e.*, paid leave due to self-quarantine, sick leave due to confirmed cases) and that reductions of work or working days may be necessary as a matter of business continuity. But the Circular Letter expressly provides that any changes related to salary and benefits must be agreed upon between the employer and employees.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

In addition to those measures covered in the MOM COVID 19 Circular Letter described in 1(a) above, the government has suspended withholding income tax on salaries for certain manufacturing-sector employees as discussed further in the answer to 2(g) below. The government has also enacted a 30% income tax reduction scheme across 19 sectors for Ease of Importing for Export Purposes (KITE) taxpayers and Small to Medium KITE Enterprise taxpayers, as well as a six-month suspension of the 10% sales tax levied on hotels and restaurants.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Employers in general are obligated to maintain a safe working environment for their employees. They are required to abide by any orders to that effect issued by any competent authority.

The MOM Circular Letter instructs employers to take preventive measures and to create preparedness plans in order to minimize the risk of spreading the virus in the workplace, and to maintain business continuity as well as to implement wage protection measures (*i.e.*, paying the wages of employees who are categorized as "monitored persons" and who are absent from work for up to 14 days, and paying the wages of employees quarantined because they contracted COVID-19).

In Jakarta, businesses are urged to close operational facilities and temporarily suspend office activities and, in the event that they are unable to totally suspend office activities, they are requested to reduce those activities to the bare minimum.

Can employers deny an employee access to the workplace if symptoms of COVID 19 are detected?

Yes. Government Regulation No. 88 of 2019 on Work Health (GR 88) sets out health standards for workplaces that include an obligation on the employer to take due care to prevent the transmission of disease.



INDONESIA

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Can employers implement a mandatory screening program for COVID 19 symptoms?

Yes. Implementing a mandatory screening program for COVID-19 is within the powers of an employer to maintain a healthy workplace as required under GR 88. The MOM COVID-19 Circular Letter requirements for employers would also include mandatory screening.

Are employees obligated to disclose to their employer if they have tested positive for COVID 19?

While an employer can require its employees to disclose such information as part of the employer's initiatives to maintain a healthy workplace under GR88, the relevant legislation does not itself create that duty. An employer's imposition of such duty upon employees is supported by Article 12 of Law No. 1 of 1970 on Work Safety, which provides that employees are required to give a true response when asked by a supervisor and/or work safety officer of the company as to any matters concerning health and safety in the workplace.

We note that such policy is consistent with the general duty under the Health Law for all persons to report infectious disease to health authorities of the government of Indonesia.

Can employers have a policy requiring employees to report if they or their co-workers have COVID 19 symptoms?

Yes. As explained above in 1(g), an employer can impose such an obligation on its employees.

Can employers force employees to take vacation time during the COVID 19 health crisis?

Relevant law (Manpower Law 13) does not recognize the right of the employer to force employees to take their accrued annual leave entitlements at a given time. However, employers can force employees to take other paid leave, or employers and employees may agree to taking accrued annual leave entitlements or unpaid leave as contemplated by the MOM COVID-19 Circular Letter.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID 19 health crisis?

No. It is possible to terminate employees on the basis of redundancy, but they would still be entitled to statutory double severance pay, or basic service pay plus compensation. If the reduction in force is caused by a *force majeure* event, then severance is reduced to basic pay rather than double pay.



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In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

Such a policy is not expressly prohibited. If challenged in the Labor Court, however, it may not be upheld since it is not expressly permitted by the relevant legislation.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Employers can unilaterally institute a temporary workplace shutdown or reduction in hours but, per the MOM COVID 19 Circular Letter, any related reduction or suspension of salary and benefits must be agreed upon with employees.

If employees refuse to come to work, can their employment be terminated for job abandonment?

No. An employee may be deemed to have resigned if the employee has been absent for five consecutive days without leave and without justification and where the employee received two written summons to return to work. Absence from work due to COVID-19 concerns would be considered a lawful justification.

Do employers have an obligation to report instances of their employees testing positive for COVID 19 to the health authorities or to other employees?

The Indonesian Health Law and MOM COVID 19 Circular Letter provide that everyone (including employers) is required to report to the relevant authorities if there are suspected cases of COVID 19 in the workplace.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

The doctrine of *force majeure* is recognized by the Indonesian Civil Code and applies in commercial transactions. It is also recognized as a basis to terminate employees with reduced termination benefits in a plant closing and, arguably, in a downsizing, under Article 164 of the Manpower Law.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

The COVID-19 pandemic might qualify as a *force majeure* event in the context of commercial contracts between companies, and to justify reduced termination benefits to employees in a plant closing or downsizing.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

State of emergency declarations by the government of a certain natural disaster or a *force majeure* event could be used to support a contracting party's claim for *force majeure*.

What remedies are available to businesses in the event they default on their contractual obligations?

If a contracting party defaults on their contractual obligations, they are required under the Indonesian Civil Code to compensate the other party for the direct damages caused by their default unless they are able to prove that the default was caused by *force majeure* (*i.e.*, an unforeseen event for which they are not responsible and not acting in bad faith).

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

Law 20 of 2008 on Micro, Small, and Medium Enterprises requires the government and the regional governments to develop business through funding, facilities and infrastructure, business information, partnerships, business licensing, business opportunities, trade promotions and institutional support. Law 20 differentiates between micro, small, and medium enterprises. Any such enterprise wholly or partly owned by a foreign shareholder is not eligible for such benefits.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves

As of the date of this posting, the judiciary is still operating in Indonesia. The Supreme Court issued Circular Letter No. 1 of 2020 on Guidelines for Performing Duties During the Prevention Period for the Spread of the Corona Virus Disease 2019 (COVID-19). This circular letter effectively provides that criminal trials should be deferred for so long as the



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of the judiciary in the event it is necessary during the current COVID-19 health crisis?

government considers the population to be at risk of COVID-19, provided that the trial must proceed if the custody of an accused person cannot be legally extended. Judges are also given certain discretion to extend time periods in criminal proceedings. Civil proceedings are not suspended, but the circular letter encourages parties to utilize available technology for conducting civil proceedings remotely.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Indonesia is suspending the withholding of income tax from April 2020 to September 2020 for employees in the manufacturing sector who are paid up to IDR16 million per month or IDR200 million per year.

Has the tax filing deadline been extended?

The Directorate General of Taxes has extended the deadline for filing individual income tax returns for the 2019 tax year until April 30, 2020.

Are tax refunds and other claims being timely processed?

VAT refunds for export-oriented companies are being expedited across 19 industries, including small and medium enterprises. There is no limit for VAT refunds for exporters, but there is an upper limit of IDR5 billion for non-exporters.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

The following are the relevant regulations issued by various government agencies in relation to the COVID-19 pandemic:

- Labor Advisory No. 4, series of 2020, or the *Guidelines on 2019 Coronavirus (2019-nCoV) Prevention and Control at the Workplace* issued by the Department of Labor and Employment (DOLE)
- Labor Advisory No. 09, series of 2020, or the *Guidelines on the Implementation of Flexible Work Arrangements as Remedial Measure due to the Ongoing Outbreak of Coronavirus Disease 2019 (COVID-19)* issued by the DOLE
- Labor Advisory No. 11, series of 2020, or the *Supplemental Guidelines Relative to the Remedial Measures in view of the Ongoing Outbreak of Coronavirus Disease 2019 (COVID-19)* issued by the DOLE
- Department Order No. 209, series of 2020, or the *Guidelines on the Adjustment Measures Program for Affected Workers due to the Coronavirus Disease 2019* issued by the DOLE
- Labor Advisory No. 12, series of 2020, or the *Clarificatory Guidelines on the COVID-19 Adjustment Measures Program (CAMP)* issued by the DOLE
- Labor Advisory No. 12-A, series of 2020, or the *Classificatory Advisory on CAMP Documentary Requirements* dated April 6, 2020 issued by the DOLE
- Labor Advisory No. 13-A, series of 2020, on *Deferment of Payment of Holiday Pay for the April 2020 Holidays* issued by the DOLE
- Labor Advisory No. 14, series of 2020, on *Clarification on the Non-Inclusion of One-Month Enhanced Community Quarantine Period on the Six-Month Probationary Period* issued by the DOLE
- Department Order No. 2020 – 00056, or the *Interim Guidelines for 2019 Novel Coronavirus Acute Respiratory Disease (2019-nCoV ARD) in the Workplace* issued by the Department of Health (DOH)



- Memorandum dated March 16, 2020, on the *Community Quarantine over the Entire Luzon and Further Guidelines for the Management of then Coronavirus Disease (COVID-19) Situation* issued by the Executive Secretary
- Memorandum dated March 18, 2020, on *Additional Guidelines for the Community Quarantine over the Entire Luzon and Management of the Coronavirus Disease 2019 (COVID-19) Situation* issued by the Executive Secretary
- Memorandum dated April 7, 2020, on the *Extension of the Enhanced Community Quarantine over the Entire Luzon until April 30, 2020*, issued by the Executive Secretary
- Memorandum No. 20-08, series of 2020, on *Ensuring Unhampered Movement of Cargo and transit of Personnel of Business Establishment allowed to Operate during the enhanced community quarantine of Luzon, amending for this purpose Memorandum Circular No. 20-06*, issued by the Department of Trade and Industry
- Memorandum No. 20-12 on *Guidelines on the Concession on Residential Rents; Commercial Rents of MSMEs* issued by the DTI
- Memorandum No. 20-14 on *Ensuring Enhanced Operations for BPO Companies and Export Enterprises, and their Service Providers throughout the Extended Enhanced Community Quarantine Period* issued by the DTI
- Joint Memorandum Circular No. 2020-02 on *Guidelines on the Operations and Incentives of Covered Enterprises engaged in the Manufacture, Importation, and Distribution of Certain Products, and for Other Purposes, Pursuant to Republic Act No. 11469*, otherwise known as Bayanihan to Heal as One Act dated March 28, 2020, issued by the DTI and Department of Finance (DOF)
- Memorandum Circular No. 2020-11, or the *PEZA Assistance to Ecozone IT Enterprises in Responding to COVID-2019* issued by the Philippine Economic Zone Authority (PEZA)
- Memorandum Circular No. 2020-0015, or the *DOLE COVID-19 Adjustment Measures Program (CAMP) Guidelines to Avail of Financial Support and Employment Facilitation* issued by the PEZA



- Memorandum Circular No 2020-0016, or the *Immediate Implementation of COVID-19 Prevention Measures* issued by PEZA
- Memorandum Circular No. 2020-0018, or the *Guide to Disinfect the Workplace Premises using Products known to be effective against the Human Coronavirus* issued by the PEZA
- Memorandum Circular No. 2020-0020, or the *Quarantine and Health Safety Compliance Guidelines* issued by the PEZA.

Can employers furlough employees during this COVID-19 health crisis?

There is no express prohibition on companies terminating employment during the enhanced quarantine period. However, pursuant to DOLE Labor Advisory Nos. 9 and 11, the adoption of flexible work arrangements (e.g., reduction of workhours or workdays, rotation of workers and forced leave) is a better alternative than the outright dismissal of employees or the total closure of business during the COVID-19 outbreak.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes. The Philippine government has implemented the following economic relief measures for employees:

- Financial assistance of Php5,000 and employment facilitation to qualified workers under the *COVID-19 Adjustment Measures Program CAMP DOLE* Department Order No. 209, series of 2020
- Temporary emergency employment for displaced marginalized workers, underemployed or self-employed workers for a period of 10 days pursuant to DOLE Department Order No. 210, series of 2020, or the *Guidelines for the Implementation of the Tulong Panghanapbuhay sa Ating Displaced/Disadvantaged Workers Program (TUPAD) #Barangay Ko, Bahay Ko (TUPAD #BKBK) Disinfecting/Sanitation Project*
- Emergency subsidy of Php5,000 up to Php8,000 per month for two months for low-income households, pursuant to Republic Act No. 11469, otherwise known as the *Bayanihan to Heal as One Act (Bayanihan Act)*
- A 30-day-minimum grace period for the payment of all loans, including but not limited to salary, personal housing and motor vehicle loans, as well as credit card



payments, falling due within the period of the enhanced community quarantine pursuant to the Bayanihan Act

The following measures for employers have also been implemented:

- Employers are allowed to defer holiday pay for April 9–11, 2020, until the national emergency arising from COVID-19 has abated and the normal operations of the business are in place pursuant to DOLE Labor Advisory No. 13-A.
- Under the Bayanihan Act and DTI Memorandum No. 20-12, a 30-day-minimum grace period has been granted for commercial rent payments owed by Micro, Small, and Medium Enterprises (MSMEs) that have temporarily ceased operations within the period of the enhanced community quarantine, without incurring interests, penalties, fees and other charges. The total amount of rent that comes due within the enhanced community quarantine shall be equally amortized in the six (6) months following the end of the enhanced community quarantine, without interest, penalties, fees and charges.
- Regardless of country of origin, importation by covered enterprises of raw materials, packaging and its raw materials, and any articles needed for healthcare equipment and supplies are exempt from import duties, taxes and fees (*i.e.*, import processing fees and other fees imposed by the Bureau of Customs, Food and Drug Administration, and other relevant agencies). To avail of this benefit, the importations should be ordered, loaded or in transit during the Bayanihan Act's effective period.
- A 30-day-minimum grace period for corporate borrowers to pay all loans due within the period of the enhanced community quarantine pursuant to the implementing rules and regulations issued by the DOF to implement section 4(aa) of the Bayanihan Act. Under Revenue Memorandum Circular (RMC) No. 36-2020 issued by the Bureau of Internal Revenue (BIR), there shall be no additional documentary stamp tax to be imposed on credit extensions and credit restructuring, micro-lending and extensions thereof during the enhanced community quarantine period.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

As of the date of this posting, the Philippine president has placed all of Luzon, including Metro Manila, under enhanced community quarantine until April 30, 2020. During this time, only private establishments providing basic necessities and such activities related to food and medicine production (*e.g.*, public markets, groceries, convenience stores,



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supermarkets, hospitals, medical clinics and pharmacies), water-refilling stations, banks, and power, energy and telecommunications supplies and facilities shall be open. In addition, business process outsourcing (BPO) establishments and export-oriented industries have been allowed to remain operational if:

- Strict social distancing measures are observed.
- Their respective personnel are provided appropriate temporary accommodation arrangements.
- A skeletal workforce is used.
- Based on DTI Memorandum No. 20-14, BPO companies and their support service providers may perform the following activities throughout the extended enhanced community quarantine period:
- Delivery, installation or transfer of necessary equipment to set-up work-from-home arrangements, including provisions for troubleshooting support
- Delivery or installation of telecommunication services by telecommunication companies
- Delivery of logistical support, such as food or essential goods of personnel in the temporary housing or those working from home
- Other support services necessarily required in the operation of the BPO companies.
- As mentioned above, other private establishments are encouraged to implement flexible work arrangements, such as forced leave, rather than the outright dismissal of employees. Private establishments may also implement work-from-home arrangements pursuant to Republic Act No. 11165 (the Telecommuting Act). In this case, employers shall notify the DOLE of the adoption of a flexible working arrangement.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Pursuant to DOLE Labor Advisory No. 04, if symptoms of COVID-19 are detected, the employer should refer the employee to the company's healthcare provider or to the nearest



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local health center or hospital for testing. The employer shall also report the worker to the DOH by calling the following numbers: 8-711-1001 and 8-711-1002.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Considering the insufficiency of testing kits for COVID-19 in the Philippines, a mandatory screening program may not be feasible for now. Based on existing regulations, employers must refer workers exhibiting COVID-19 symptoms to the company's healthcare provider or to the nearest local health center or hospital for laboratory confirmation.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

There is no specific law or regulation that requires the employees to disclose to their employers if they tested positive for COVID-19. According to the Philippine National Privacy Commission (NPC), employers may ask employees to submit declaration forms that provide personal data, such as information on whether they have traveled to or been in close contact with persons who have gone to regions affected by COVID-19 and whether they are experiencing symptoms of the virus. However, the NPC further reminds employers to collect what is only necessary, observing the general data privacy principle of proportionality. Once collected, reasonable and appropriate safeguards should ensure the security of the forms and personal data contained therein. The specific data elements to be collected should be coordinated with the DOH, as these would depend on what the latter needs to facilitate contact tracing.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes. Employers may require the employees to report colleagues who show COVID-19 symptoms to the company's occupational safety and health officer. The company shall also encourage their employees to voluntarily disclose and consult the company's occupational safety and health officer if they themselves are experiencing COVID-19 symptoms.

If a person under investigation is proven to have COVID-19, employers may prepare the necessary internal notices without disclosing the identity of the person who is COVID-19 positive. According to the NPC, an employer should only disclose such personal information as may be necessary to enable other employees to assess their health and potential exposure. The NPC further states that revealing the identity of the COVID-19 patient offers no benefit to the patient nor any advantage to other members of the company in assessing their exposure.



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Can employers force employees to take vacation time during the COVID-19 health crisis?

During the enhanced community quarantine, employers may place employees on forced leave. The leave may be charged to the employees' available vacation or sick leave benefits. Once the employees' leave credits are exhausted, employees may be placed on leave without pay.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. A reduction in force due to the COVID-19 pandemic does not exempt employers from complying with procedural due process requirements of law and payment of separation pay.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

The accrual of seniority is not interrupted by the enhanced community quarantine imposed by the authorities. Otherwise, during a temporary operational shutdown ordered by competent authorities, employees are on a "no work, no pay" arrangement.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Unless specifically prohibited by regulations, private establishments that are allowed to operate during the enhanced community quarantine may implement a temporary workplace shutdown or reduction in workhours/workdays. For those establishments that are not allowed to operate in their offices, they may adopt other flexible work arrangements, such as forced leave or a work-from-home arrangement.

If employees refuse to come to work, can their employment be terminated for job abandonment?

No. An employee who refuses to report to work during the enhanced community quarantine may not be subject to disciplinary action, including termination of his or her employment.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Under Republic Act No. 11332 (the Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act), private establishments have the duty to inform the DOH immediately of any confirmed case of COVID-19. An entity that fails to do so is subject to a penalty of PhP20,000 to PhP50,000, or imprisonment of one to six months, or both fine and imprisonment, at the discretion of the proper court.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Under the Philippine Civil Code, a party to a contract is not responsible for events which could not be foreseen or which, though foreseen, were inevitable (except in cases specified by law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk). When a party to a contract is unable to fulfill its obligation because of a fortuitous event or *force majeure*, it cannot generally be held liable for damages for non-performance. A fortuitous event under Article 1174 of the Philippine Civil Code may either be an “act of God” or natural occurrence such as a flood or typhoon, or an “act of man” such as a riot, strike or war.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

A party may claim that COVID-19 is a *force majeure* event that was unforeseeable or which, though foreseen, was inevitable. However, in order to exempt a person from liability, it is not sufficient to merely establish the existence of *force majeure*. It is also necessary that (a) the cause of the breach of the obligation is independent of the will of the party seeking relief, (b) the event renders it impossible for the party seeking relief to fulfill his obligation in a normal manner and (c) the party seeking relief is free from any participation in, or aggravation of, the injury to the other party.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

With the exception of the relief measures described above, the declaration of a state of emergency by a competent authority does not provide commercial agents with relief from their compliance with contractual obligations with other private entities, unless so declared in the law.

What remedies are available to businesses in the event they default on their contractual obligations?

Under the Philippine Civil Code, contractual obligations should be complied with in good faith. As such, the defaulting party should first identify any available remedies under the contract it entered into.

- Depending on the circumstances of the case, the defaulting party may raise the following defenses, among others, in the event of litigation:
- Non-compliance was due to *force majeure*



- Performance of obligations under the contract has become legally or physically impossible, without any fault of the defaulting party
- Service has become so difficult as to be manifestly beyond the contemplation of the parties.

The first two items do not apply to obligations “to give,” such as the payment of rentals or delivery of certain objects. These defenses apply when the debtor has obligations “to do” (*i.e.*, performance of services that have become legally or physically impossible to perform or have become so difficult to perform as to be manifestly beyond the contemplation of the parties).

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

As of the date of this posting, the Philippine government has not provided specific benefits to small businesses due to the COVID-19 pandemic. The DOLE will, nevertheless, prioritize applications filed by small and medium-scale enterprises for financial assistance for their qualified employees under Department Order No. 209.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Pursuant to Administrative Circular No. 32, series of 2020, issued by the Philippine Supreme Court, as of March 23, 2020, all courts nationwide are physically closed and may only be reached through their respective hotlines, email addresses and Facebook accounts. The litigants, lawyers, prosecutors and the general public are advised to first call or send an email or Facebook message to the proper court, if available, to determine the urgency of the matter. If urgent, only then will the justice or judge on duty, together with the skeleton staff, go to court to receive and act on the matter.

Has your country issued any tax amnesty or relief programs because of COVID-19?

The Philippine government has not offered tax amnesty due to the COVID-19 pandemic. Nevertheless, the Bureau of Internal Revenue (BIR) has extended the cutoff date to obtain the benefit of the ongoing amnesty on tax delinquencies.

Further, under the Bayanihan Act, the Philippine president was granted the power to increase incentives for manufacturing or importing critical or needed equipment and supplies to address the COVID-19 pandemic. Such equipment and supplies shall be exempt from import duties, taxes and other fees.



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Further, pursuant to RR No. 9-2020 issued by the BIR, donations made to the national government and accredited non-stock, non-profit educational and/or charitable, religious, cultural or social welfare corporations, institutions, foundations and non-government organizations for the sole and exclusive purpose of combating COVID-19 during the period of the state of national emergency under the Bayanihan Act will be considered fully deductible against the gross income of the donor-corporation or donor-individual.

Has the tax filing deadline been extended?

Yes. Pursuant to Revenue Memorandum Circular (RMC) No. 28-2020, the BIR extended the deadline for filing annual income tax returns for 2019 and paying income taxes to May 15, 2020. The deadline for paying other taxes that fall within the enhanced community quarantine has also been extended by the BIR.

Due to the extension of the enhanced community quarantine until April 30, 2020, the BIR subsequently issued RMC No. 39-2020 which, with some exceptions, further extends the “extended due dates” under Section 2 of RR 7-2020 for a period of 15 calendar days. Moreover, the deadline for filing quarterly percentage tax returns is extended until May 25, 2020.

Are tax refunds and other claims being timely processed?

Pursuant to RMC No. 27-2020 and 39-2020, value-added tax refund applications covering the quarter ending March 31, 2018, will be accepted until May 15, 2020, given the extension of the enhanced community quarantine until April 30, 2020. But the 90-day period for processing value-added tax refund claims (pertaining to those claims that are currently being evaluated, and those that may be received from March 16, 2020, to April 14, 2020) is suspended and will resume once the enhanced community quarantine is lifted.



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LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. See below.

[Social security during the economic crisis](#)

An official economic crisis was declared from March 1, 2020, through February 28, 2022. This declaration allows the Social Security Office to pay compensation to employees with employment contracts that ended during this period for the following reasons:

- Termination by the employer. This entitles employees to receive compensation at the rate of 70% of their daily wage contributions to the Social Security Office. This entitlement is limited to 200 days for each termination. The maximum wage used as the basis for calculation is THB 15,000 per month.
- Resignation or expiration of definite employment. This entitles employees to receive compensation at the rate of 45% of their daily wage contributions to the Social Security Office, limited to 90 days for each period of unemployment. The maximum wage used as the basis for calculation is THB 15,000 per month.
- Deduction of social security contributions during the COVID-19 outbreak.

Social security fund contributions have been temporarily reduced to 1% for employees and 4% for employers.

Can employers furlough employees during this COVID-19 health crisis?

Under Thai law, an employer cannot unilaterally change an employee's conditions of employment, unless the change makes the terms and conditions of employment more favorable to the employees, or the employee expressly agrees and consents to the change. The terms of employment include, *inter alia*, conditions of employment, working conditions, working days, working hours, salary or wages, employment benefits and welfare, termination of employment and other benefits of the employee concerning the employment or work.

If the employer wishes to put the employees on unpaid leave during this period, the employer can only do so if the employees affected by the leave agree and consent to it.



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Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Please refer to our response to question 1(a) above. In addition, the government has announced [extensive financial stimulus packages](#) in the form of low-interest loans and the introduction of preferential terms for existing commercial loans and other lines of credit.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Employers would be obligated to comply with the order. If an employer needs its employees to continue working from home, the employer must pay wages to their employees. However, if the employees cannot continue working from home, they are not entitled to receive wages, in accordance with the principle of a reciprocal contract (*i.e.*, no work, no pay).

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. The employer may implement this policy.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes. The employer may implement this policy.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

There is no mandatory requirement by law, *per se*, that requires that an employee report to the employer that the employee tested positive for COVID-19. However, the Department of Welfare and Labor Protection has issued guidelines asking for cooperation from employees to report to their employer if they are at risk of contracting COVID-19, or they have tested positive.

In addition, the employer may make an announcement to the employees asking for cooperation from employees to disclose if they test positive for COVID-19. The employees' failure to disclose the infection to the employer may be regarded as the employees' violation of the employer's orders/instructions, which may subject the employees to disciplinary actions under the employer's internal policies or work rules.

Nonetheless, to assist employees, the Labor Department has asked for cooperation from employers who can financially afford to continue paying wages, or a certain portion of wages, to their employees who have financial difficulties during the temporary shutdown of the business operations.



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The employment relationship still exists during a temporary shutdown. Accordingly, employees' years of service with the employer will continue to accrue.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

The employer may implement a policy asking for cooperation from employees to duly disclose to the employer if they or their co-workers are at risk of being infected or if they have symptoms of COVID-19.

The employees' failure to disclose this to the employer may be regarded as the employees' violation of the employer's orders or instructions, which may subject the employees to disciplinary actions under the employer's internal policies or work rules.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Yes. Pursuant to Section 30 of the Labor Protection Act, annual leave can be fixed in advance by the employer or fixed as agreed by the employer and the employees. As such, the employer may fix specific dates for its employees to take their annual leave.

Before doing so, it is recommended that employers review their work rules, policies and past practices to ensure that there are no provisions that prohibit the employer from fixing annual leave days for its employees.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. If the employer terminates employees due to the COVID-19 health crisis, this can still constitute termination without cause. When terminating employees without cause, the employer is obligated to provide statutory severance pay, among other things, to the affected employees.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

The Thai government and many provincial governors have already ordered a shutdown of certain business operations due to the spread of dangerous communicable diseases (a defined term in Thai law). Under these circumstances, employees are not entitled to receive wages in accordance with the principle of a reciprocal contract (*i.e.*, no work, no pay).

Nonetheless, to assist employees, the Labor Department has asked for cooperation from employers who can financially afford to continue paying wages, or a certain portion of



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wages, to their employees who have financial difficulties during the temporary shutdown of the business operations.

The employment relationship still exists during a temporary shutdown. Accordingly, employees' years of service with the employer will continue to accrue.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes, within certain fixed parameters. Under Section 75 of the Labor Protection Act, employers are entitled to temporarily cease operations, during which time they must pay employees at least 75% of their regular working-day wages, subject to the following conditions:

- There is a necessary and significant cause underlying the employer's actions; for example, the employer's business is unable to operate as usual.
- The necessity is not considered to be a force majeure under Thai law. If an event is deemed to have arisen due to a force majeure event, the employer is entitled to refrain from paying wages to employees.
- The employer must elect whether to seek temporary cessation of operations on a whole or partial basis.
- The employer must inform a labor inspection officer and the employees three business days in advance of the intended cessation of operations.
- The notice must contain the following information:
 - The reason(s) and the period of time for the temporary cessation
 - Details of the payments to be made to the employees during the temporary cessation period.
- The employer must pay employees throughout the entire period of cessation. Such payment shall be made at the place of work of the employees. If the payment is to be made elsewhere, or by other means, the employees must consent.
- If the employer wishes to reduce the working hours of the employees outside the scope of Section 75, ultimately amounting to a reduction in the employees' salaries,



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wages or benefits, the employer can only do so with the consent of the employees. See response to question 1(b) above.

If employees refuse to come to work, can their employment be terminated for job abandonment?

The employer may terminate employees who refuse to come to work. However, this will only be considered a termination with statutory cause if an employee abandons his or her work duties for three consecutive working days without a justifiable reason and only then would an employer not be obligated to provide statutory severance pay or give advance notice of termination.

Many employers have now chosen to practice social distancing by implementing work-from-home policies to the extent possible. Generally, employees who are able to work from home shall be entitled to wages at their normal wage rate during such work from home period.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Yes. If an employee is confirmed to be infected with COVID-19, or is reasonably suspected of being infected, the employer has a legal obligation to notify the authorities immediately. Failure to do so will subject the employer to a fine not exceeding THB 20,000.



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BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Thailand has codified the concept of *force majeure*, without providing a list of specific instances, under Section 8 of the Civil and Commercial Code (CCC), the main law governing the contractual relationships between private parties. Under Section 8, *force majeure* means any event in which the occurrence or damaging results could not have been prevented, even if the person to whom it happened or to whom it was threatened to have happened to were to take such appropriate care as might be expected of them in the situation.

The CCC further provides that if a contractual obligation becomes impossible to perform due to a future circumstance for which the party is not responsible, that party may be excused from performance. Under Section 219, “the debtor shall be relieved from their obligation to perform if the performance becomes impossible because of a circumstance, for which he is not responsible, occurring after the creation of the obligation. If the debtor, after the creation of the obligation, becomes unable to perform, it is equivalent to a circumstance rendering the performance impossible.”

However, Thai courts have interpreted the use of *force majeure* conservatively and narrowly. For example, claims related to seasonal wildfire and a general economic downturn (*i.e.*, the 1997 Asian Financial Crisis) were rejected as *force majeure* on the grounds that more caution could have been exercised to prevent the impact. Therefore, the exact circumstances of each case will be relevant to identifying a *force majeure*.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Generally, the debtors would not be able to use a disease outbreak as an excuse for a debt repayment because a disease outbreak is temporary and the debtors would be able to resume their performance of their obligations after the situation returns to normal.

However, during the COVID-19 pandemic, if a government order or illness from the disease prevents a debtor from performing the obligation as scheduled, it is possible that the debtor will not be considered in default because COVID-19 is considered a temporary circumstance for which the debtor is not at fault, but which prevents performance of the obligation under Section 205 of the CCC. Therefore, the debtor may not be liable to the creditor for damages incurred as a result of late performance of the obligation.



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Moreover, if a party's contractual obligation is the performance of an action, and COVID-19-related events prevent that party from doing so, then that party may be able to claim *force majeure*.

In any event, the analysis should be conducted on a case-by-case basis.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

No. Although the government has announced [a series of relief measures](#) for business operators and non-business operators that are affected by the COVID-19 pandemic, there are no specific measures relating to commercial agents' obligations to comply with contractual terms for delivery or payments.

What remedies are available to businesses in the event they default with contractual obligations?

The CCC does not provide any general remedies available to businesses in the event they default on their contractual obligations. However, see response to question 2(b) above.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

Yes. There are several [relief measures applicable to small businesses](#). If the local subsidiary of a foreign entity qualifies, it would be eligible to claim such relief.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Thailand's chief judicial authorities ordered the postponement of most court hearings until the end of May 2020. In a resolution issued by the Judicial Administrative Commission (JAC) and an announcement by the president of the Supreme Court, all courts of first instance (*i.e.*, trial-level courts) must set new dates for hearings that are currently scheduled between March 24 and May 31, 2020, with some exceptions.

For practical purposes, litigants should check with the court to confirm that their hearing has been rescheduled.

It should also be noted that the announcement only covers hearings. Accordingly, all statutes of limitation are still in effect. The complaint department is still operating, so parties must still file their complaints and other court submissions by the required deadlines. However, as the situation continues to evolve, this may change.



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Has your country issued any tax amnesty or relief programs because of COVID-19?

Yes. Thailand's Revenue Department has issued [several tax relief programs](#) to mitigate the economic impact of COVID-19, such as the reduction of withholding tax rates and the additional deduction of expenses. However, some of these measures have not yet taken effect as a law.

Has the tax filing deadline been extended?

Yes. Thailand's Revenue Department has granted extensions to file the following tax returns:

Corporate income tax

Companies that carry out business in Thailand are required to file corporate income tax returns twice per accounting period (i.e. annual corporate income tax returns and mid-year corporate income tax returns). Annual corporate income tax returns are due within 150 days from the end of accounting period, while mid-year corporate income tax returns are due within two months after the end of the first six months of an accounting period.

The extension is only granted to non-listed companies (i.e., private limited companies, or companies not listed on the Stock Exchange of Thailand or the Market for Alternative Investments), foundations and associations.

- For the 2019 fiscal period, annual corporate income tax returns (forms PND.50 and PND.55 only) are now due on August 31, 2020, for companies whose filings were due between April 1 and August 30, 2020
- For the 2020 fiscal period, mid-year corporate income tax returns (form PND 51) are now due on September 30, 2020, for companies whose filings were due between July 1 and September 29, 2020.

Companies that were due to file their transfer pricing disclosure form between April 1 and August 30, 2020, are also entitled to an extension to August 31, 2020.

Personal income tax

The filing deadline for annual personal income tax returns (PND.90/91) for the year 2019 has been extended from March 31 to August 31, 2020.

Value added tax (VAT)



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The deadline for monthly VAT returns (form PP.30) for March and April 2020 has been extended to May 23, 2020.

The deadline for the self-assessed VAT returns (form PP.36) for March and April 2020 has been extended to May 15, 2020.

Specific business tax (SBT)

The deadline for SBT returns (form PorTor.40) for March and April 2020 has been extended to May 23, 2020. The extension does not apply to SBT payable on transfers of immovable property that require registration.

Withholding tax (WHT)

The deadline for WHT returns for March and April 2020 has been extended to May 15, 2020.

Are tax refunds and other claims being timely processed?

There is no legal timeframe for the tax authorities to process tax refunds, except for VAT refunds requested by “good exporters.” Business operators who are registered as good exporters will receive VAT refunds within 30 days for e-filing and 60 days for paper filing. The timeframe for processing other tax refunds would depend on the workload of the officer in charge at the time.



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LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. On April 9, 2020, the government passed Resolution No. 42/NQ-CP to Assist People Facing Difficulties Due to the COVID-19 Epidemic. This resolution provides financial support to those who have lost work and income due to the COVID-19 epidemic. This resolution also provides some relief to employers in the form of interest-free loans to assist with salary payments.

Can employers furlough employees during this COVID-19 health crisis?

No, an employer cannot furlough employees (indefinite or definite-term leave without payment of salary). The employee's consent is required.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

See question 2(a).

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Employers are expected to strictly comply with government orders, such as Directive 16 on nationwide social distancing. Under the directive, non-essential businesses are required to close. Allowing and enabling employees to work from home is encouraged for jobs and companies for which such work is possible.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

The Labor Code requires all employers to comply with regulations on occupational safety and hygiene. This includes checking and evaluating risk factors at the workplace to propose measures for reducing risk and safeguarding employee health. If the employer has legitimate reason to believe that the employee could be infected with COVID-19, the employer would be allowed to deny an employee access to the workplace.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Similar to 2(e) above, employers are not only allowed to, but are *expected* to take actions to safeguard employee health. While the COVID-19 social distancing measures are in place, employers are allowed to conduct temperature checks and health screening; this is even required.



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Are employees obligated to disclose to their employer if they have tested positive for COVID-19? Yes.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms? Yes.

Can employers force employees to take vacation time during the COVID-19 health crisis? No. By law, an employer has the right to determine a schedule for annual leave, but they must first consult with the employees, and employees must be notified of the schedule in advance. Thus, the employer may request employees take annual leave, but may not unilaterally impose it.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis? No.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period? Interruption of the accrual of seniority is not provided for in Vietnamese labor law. We take the view that if the employer's policy or internal labor regulations or the labor contract so provide, the employer can interrupt the accrual of seniority.
Regarding benefits, an employer cannot reduce employee benefits unilaterally unless the benefits are not stated in the labor contract and/or collective labor agreement but provided in separate policies of the employer, which, *inter alia*, specifically provide that the employer may withdraw/reduce the benefits at its sole discretion. Otherwise, the employee's consent is required.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits? A temporary workplace shutdown is at the sole discretion of the employer. Regarding reduction of hours along with a temporary reduction in salary and benefits, employees' consent would be required. Please see also our responses in 2(k) above.



VIETNAM

Contributed by: Tilleke & Gibbins (Joel Akins, Zac Robinson, Andrew Stoutley)

If employees refuse to come to work, can their employment be terminated for job abandonment?

By law, an employee may be dismissed if he/she has been absent from work for five accumulated days in one month or 20 accumulated days in one year without a proper reason.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Yes, under various instructions and guidelines of the central and local authorities, employers have an obligation to report instances of their employees testing positive for COVID-19 to the health/local authorities.



VIETNAM

Contributed by: Tilleke & Gibbins (Joel Akins, Zac Robinson, Andrew Stoutley)

BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Under Vietnamese law, a *force majeure* event is defined as “an event which occurs in an objective manner which is not able to be foreseen and which is not able to be remedied by all possible necessary and capable measures being taken.”

The Civil Code sets forth the consequences of a *force majeure* event (unless otherwise agreed upon by the parties): “Where an obligor is not able to perform an obligation due to an event of *force majeure*, it shall not have civil liability, unless otherwise agreed or otherwise provided by law.”

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

First, the parties need to look at their relevant contracts to see how the *force majeure* clause is provided. If there is no such clause or it is not clearly provided, then even at the outbreak of COVID-19, a party’s failure in contract performance must meet the above-listed statutory conditions (*i.e.*, (i) due to an objective cause; (ii) the affected party has applied all necessary measures; and (iii) regardless of (ii), the performance is still impossible), in order to claim that it is affected by a *force majeure* event).

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

No.

What remedies are available to businesses in the event they default with contractual obligations?

If the non-performance is due to a *force majeure* event, then the affected party’s contractual obligations are discharged (as are those of the other party).

Alternatively, if an affected party can prove the performance of the contract may cause hardship for that party (with statutory conditions very similar to a *force majeure* event; the primary difference being that the contractual performance in a hardship event is possible, but if performed, will cause economically grave consequences to the affected party), then it may request the other party to renegotiate the contract or ask the court to consider new contractual clauses or terminate the contract.



VIETNAM

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However, if neither a *force majeure* or hardship event is applicable, then the non-performing party may be subject to the remedies set forth in the relevant contract or the law (if the contract is silent) such as specific performance, termination and/or damages, etc.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

There are certain incentives (e.g., lower corporate income tax rate, technical support) available for small businesses in Vietnam. In order to enjoy the incentives, the local subsidiary must satisfy criteria to be considered a small business such as number of employees, total capital and total revenue. Thus far, no measures have been taken in practice to support small businesses affected by COVID-19.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

The judiciary (including the courts) is technically still operating and receiving application/filings online and via post. New cases are generally not being heard.

Has your country issued any tax amnesty or relief programs because of COVID-19?

On April 8, 2020, the government issued Decree No. 41/2020/ND-CP, which took effect on the same day, on extension of deadlines for payment of taxes and land rent (Decree 41).

Has the tax filing deadline been extended?

Yes, but not to the whole tax system.

Industrial Tax deadlines concerning declarative obligations' final liquidation over Groups B and A, were extended, respectively, to May 29 and June 30, 2020.

Are tax refunds and other claims being timely processed?

Currently, tax departments of major cities (such as Hanoi and Ho Chi Minh City) only accept tax filings submitted online and via post. Delay to all administrative procedures is also expected due to the government's social distancing measures from April 1–15, 2020, which may be extended upon the government's assessment of the situation.



ANGOLA

Contributed by: Duarte Marques da Cruz and Marco Correia Gadanha

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. The most important COVID-19 regulations concerning labor law are in Executive Decree 122/20, Executive Decree 130/20, Presidential Decree 98/20 and Presidential Decree 128/20.

Can employers furlough employees during this COVID-19 health crisis?

Employers are generally forbidden to suspend employment agreements.

Employees who are 60 years old or older, employees that are pregnant or have children 12 years old or younger, and employees with certain diseases are not required to perform on-site work activities.

Benefits for parents with children less than 12 years old are applicable for one person per household.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

For employees, the amount that an employer would generally contribute to social security (3% of employees' salaries) on behalf of an employee shall be transferred by the employer to employees for April, May and June 2020.

The Angolan government has deferred employers' social security contribution (8% of payroll), applicable to the second trimester of 2020. Now, employers may pay the requisite amount in six monthly installments, from July to December 2020, without interest.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

If the employer is not considered an essential business (which can continue operating), the employer must close its offices/locations, but continue paying employees' salaries. As of the time of this posting, the Angolan government has not passed specific measures to assist closed employers that are required to remain closed.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Employers have a duty to assure the employees' safety and implement hygiene and safety standards, and under this duty, employers may deny access to the workplace to an employee if symptoms are detected.



Employers may also deny access to a closed space to employees or visitors who are not wearing a face mask.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Since employers have a duty to assure other employees' safety (as mentioned in (e) above), they may implement measures to prevent the spread of COVID-19 in the workplace, provided that such measures are proportional and adequate to prevent the spread of the virus.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Employees have a duty to inform their employer if they have tested positive for COVID-19 to prevent the risk of spread of the disease and protect other employees' health at the workplace. For the same reason, employees also have a duty to not come to work if they have tested positive for COVID-19.

In addition, employees who are absent from work because they have COVID-19 are required to inform the employer to justify their absence.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, since employers have a duty to ensure other employees' safety, they may implement all adequate and proportional measures to prevent the spread of COVID-19 at the workplace.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Notwithstanding the obligation to display the employer's vacation plan until January 31, the total or partial stop of an employer's business for reasons related to the employer may be a justifiable reason to re-schedule employees' vacations, provided that the company has imperative economic reasons that justify such rescheduling.

Further, vacations of employees who are not subject to a rotation regime shall be set through a collective work agreement.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. Laws concerning dismissal procedures are still in force, so employers must continue to pay employees any compensation they are entitled to under relevant law. The only modification is regarding dismissal with fair cause due to employee absence, which is no longer permitted during the current state of emergency. However, employees that are,



ANGOLA

Contributed by: Duarte Marques da Cruz and Marco Correia Gadanha

nevertheless, required to come to work may be subject to disciplinary action if they do not come to work.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No, all rights and obligations arising from the employment relationship remain in force. There are some exceptions, such as benefits for a food allowance.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Employers may negotiate a temporary shutdown/reduction in hours/reduction in salary but cannot reduce salaries without employees' consent.

If employees refuse to come to work, can their employment be terminated for job abandonment?

There is a general prohibition against dismissing employees on the grounds of work absences. Those employees who are required to work during the state of emergency and refuse to do so, however, may be subject to disciplinary measures.

Additionally, an employee's abstract fear of infection is not sufficient grounds to justify an absence from work.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Yes, employers shall notify the authorities so that adequate measures are taken to assure that COVID-19 does not spread in the workplace/community. Angolan law does not address the specific matter of disclosing this sort of information to other employees, although employers have a general duty of care towards their employees.

Employers are also required to create and implement a contingency plan to prevent the spread of the disease in their facilities.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Under Angolan law, a *force majeure* event is any unpredictable, unavoidable and out-of-control event, which makes it impossible for a party to comply with its obligations. If a party to a contract invokes *force majeure*, such party may prove that its lack of compliance with the contract was not reprehensible under the circumstances, thus avoiding an indemnity obligation towards the creditor. In such case, the debtor is considered exonerated and its contractual obligation is extinguished. The debtor, however, cannot have contributed to its lack of compliance with the contract and must show that it could not have reasonably foreseen the situation.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Considering the unpredictability, seriousness and exceptionality of this event, this may qualify as a *force majeure* event; however, this must be analyzed on a case-by-case basis.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

As of the time of this posting, the Angolan legal framework only provides for the relief described above.

Apart from that, in relation to banking institutions, all default interest and legal procedures caused by delays in complying with contractual obligations as a result of measures implemented regarding COVID-19, do not produce effects until the end of the state of emergency.

What remedies are available to businesses in the event they default with contractual obligations?

Force majeure or “change of circumstances” may be invoked to avoid legal consequences arising from lack of compliance with legal obligations.

Additionally, credit lines were created to fund companies in certain sectors (mainly agriculture, cattle and fishing) and companies may also request a moratorium to creditors (that are financial institutions) without any costs or charges.



ANGOLA

Contributed by: Duarte Marques da Cruz and Marco Correia Gadanha

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

The Angolan government has not yet established any policies specifically regarding small businesses.

Notwithstanding, please note that under Angolan law, a local subsidiary of a foreign entity is not considered a small business.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

The judiciary system is currently not operating, except for urgent or simple procedures.

Companies may resort to arbitral procedures or urgent procedures (for example, protective orders or injunctions) for relief.

Has your country issued any tax amnesty or relief programs because of COVID-19?

The Angolan government has not yet established any amnesty; however, some relief measures directed to companies were introduced.

The Angolan government has approved a 12-month tax credit over VAT for capital goods and raw material imports, provided that such credit is used to produce basic food supplies and priority goods.

Imported goods for a humanitarian purpose or donation are exempt from VAT and customs fees.

Goods and services or monetary funds made available for humanitarian/donation purposes may be considered a deductible cost for the purposes of the Industrial Tax.

Payment of taxes on imports of food, medicines and other essential goods is subject to an *a posteriori* regularization regime.

Has the tax filing deadline been extended?

Yes, but not to the whole tax system.

Industrial Tax deadlines concerning declarative obligations' final liquidation over Groups B and A, were extended, respectively, to May 29 and June 30, 2020.

Are tax refunds and other claims being timely processed?

As of the time of this posting, we are not aware of any delays in processing tax refunds.



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Contributed by: Loyens & Loeff (Filip Saelens, Marc Dhaene, Stéphanie De Smedt, Mieke D'hanis, Vincent Marcelle)

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. From March 13 to June 30, 2020, any case of unemployment resulting from the COVID-19 pandemic will be deemed temporary unemployment due to *force majeure* and all employer applications to implement temporary unemployment will be automatically accepted. Employers no longer have to initially provide support for the veracity of their application and need only submit one form. However, employers should be prepared to demonstrate that, due to COVID-19, they could not continue to employ all of their employees, and other consequences to the company, or its clients and suppliers, because the applications may be verified later on.

Specifically, employers may furlough employees due to *force majeure* as a result of COVID-19 if:

- Supplies are no longer assured
- An employee is stranded abroad due to travel cancellations or quarantine measures
- An employee is placed in quarantine following his or her return from a risk area
- A mandated closure of the company occurs
- Parents are unable to go to work because they have to look after their children
- Workers have to stay at home as a precautionary measure (*i.e.*, quarantine).

Employees under temporary unemployment due to *force majeure* will receive temporary unemployment benefits amounting to 70% of their limited gross wages, capped at €2,754.76 per month (the increased percentage is applicable until June 30, 2020), subject to a 26.75% withholding tax. The National Employment Office will also pay each employee an additional €5.63 per day of unemployment.

Employers in certain sectors may also request a deferral and payment plan for social security contributions.



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Can employers furlough employees during this COVID-19 health crisis?

Yes, under temporary unemployment due to *force majeure* procedures.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes, relief measures have been instituted for employers and employees.

For employers:

In Flanders, for example, businesses that must remain closed (e.g., restaurants, bars, non-food stores) are eligible to receive €4,000 and are entitled to an additional €160 per day if the business is required to shut operations for more than 21 days. Businesses that are allowed to continue operating may still be entitled to a one-time payment of €3,000 if they have suffered a reduction in inventory turnover (from an accounting perspective) of at least 60% compared with the same period last year (March 14 to April 30) as a result of the crisis to partially offset their losses. The reduction in turnover may be due to reduced sales of products and services to other businesses, or reduced performance that prevents the company from operating at full capacity as a result of, for example, social distancing requirements.

The Flemish regional government has also set aside €100 million by partially guaranteeing credit lines from financial institutions to companies and self-employed individuals. The goal is to promote loan offerings with more beneficial conditions.

The Walloon government plans to pay €5,000 to businesses in certain industries that are closed under a governmental order and €2,500 to businesses forced to reduce normal operations. Similar assistance is provided in the Brussels region.

These compensation payments are not taxed.

For Employees:

In Flanders, employees who are temporarily unemployed because of the COVID-19 pandemic can receive a one-time payment of €202.68 to cover water and energy bills for one month.



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Contributed by: Loyens & Loeff (Filip Saelens, Marc Dhaene, Stéphanie De Smedt, Mieke D'hanis, Vincent Marcelle)

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Companies — regardless of size — must allow for remote work for all employees, where possible. If remote work is not possible, social distancing guidelines must be followed at all times, both in the workplace and during employer-organized transit to and from work. If an employer cannot satisfy these obligations, it must close its doors. Any company found violating these requirements will be heavily fined for a first offense and shut down for a second.

Although these requirements do not apply to key sectors and essential services (such as energy and oil, pharmaceuticals, healthcare, safety services and food suppliers), those businesses must still enforce social distancing rules to the extent possible.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. If an employee exhibits visible symptoms of the virus, the employer can require the employee to leave the workplace in order to preserve the health and safety of its other employees (Article 20 Law on Employment contracts).

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes, with caveats.

Laws governing the protection of personal data do not prohibit screening programs as long as the results are not registered or recorded in a database. However, without authorization from the relevant authorities, employers cannot unilaterally impose testing of employees' temperature, saliva or blood. Because employers have a legal obligation to protect the health and safety of their employees under Article 20, we believe that this serves as a legitimate requirement to ask employees to undergo voluntary screening.

An employee may refuse an examination if he or she believes it is an invasion of privacy and/or physical integrity. Employers cannot send employees home if they refuse an examination, unless the employee shows external and visible signs of illness.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

No.



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Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

An employer cannot require employees to report symptoms and cannot discipline employees who do not report symptoms.

Can employers force employees to take vacation time during the COVID-19 health crisis?

No, annual leave requires a mutual agreement between the employer and the employee, even during the COVID-19 health crisis. However, any paid vacation time planned before the temporary unemployment can be taken, unless both parties agree to withdraw such time.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

It depends on the benefit. Accrual of seniority, annual leave and retirement benefits continue during temporary unemployment because of *force majeure*. Some fringe benefits like meal vouchers are suspended while the employee is not actually at work.

Accrual of sectoral and contractual benefits such as end-of-year-premium, hospitalization insurance, group insurance, *etc.*, is based on the terms of the applicable employment contract or joint committee decision.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes. However, temporary unemployment resulting from *force majeure* only provides benefits for a full workday. Thus, employers can reduce the number of days employees are scheduled to work, but not the number of hours within any given day, meaning employers are able to partially shut down for entire days throughout the normal workweek, but cannot reduce an employee's hours within a given workday.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Yes, an employer may terminate an employee who refuses to come to work without medical documentation certifying he or she is unable to work. However, best practice is to first recommend the employee take leave or compensatory rest. Caution is advised because courts exercise high levels of scrutiny when examining claims of abandonment.



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Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

No. Employers may inform other employees of an infection in order to prevent further spread, but the identity of the infected employees may not be made public by the employer to anyone other than the company doctor, unless absolutely necessary to protect the health and safety of other employees.



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BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Articles 1147-1148 of the Belgian Civil Code provide that a party to a contract cannot be held liable for non-performance or delayed performance of its contractual obligations in the event of *force majeure*, which is defined as “an invincible and unforeseeable obstacle beyond the will of the contractor to continue and perform the contract.”

In addition to an exemption from contractual liability, *force majeure* can trigger certain contractual rights, such as the right to (temporarily) suspend contractual obligations, or to terminate the contract as a whole without notice or compensation being due. In the event of a temporary *force majeure* situation, a contracting party may suspend its obligations for the duration of the event without compensation being due. In the event a permanent *force majeure* renders performance impossible, the party invoking *force majeure* will generally be released from its remaining obligations and will not be contractually liable for damages.

Note that Belgian legislation concerning *force majeure* is supplemental in nature and parties are free to extend, limit, exclude or further define *force majeure* in the terms of their contract. It is, therefore, possible to expressly include a pandemic or binding government orders as an event of *force majeure*.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Yes. A party's ability to discontinue or suspend performance of its contractual obligations due to the COVID-19 pandemic will initially be governed by the contract's specific provisions regarding *force majeure* and/or hardship, if any.

If the contract does not contain a *force majeure* clause, a party can still try to invoke *force majeure* on the basis of articles 1147 and 1148 of the Belgian Civil Code. However, (i) *force majeure* cannot be invoked if the contractual obligation can still be performed through alternative means (e.g., by teleworking), and (ii) the Belgian Supreme Court has already held on one occasion that financial difficulties or insolvency resulting from external circumstances do not qualify as an event of *force majeure*. Therefore, the mere existence of a pandemic or related government measures alone are likely insufficient to invoke *force majeure*.

Finally, please also note that while a royal decree irrefutably qualifying the COVID-19 pandemic as a *force majeure* is being discussed within the Belgian government; it remains uncertain when, and if, such decree will be adopted.



BELGIUM

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Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

As mentioned above, absent a royal decree declaring the COVID-19 pandemic a *force majeure*, the terms of individual contracts and the Belgian Civil Code's provisions on *force majeure* govern any possible relief.

Force majeure cannot be invoked if the contractual obligation can still be performed through alternative means (e.g., by teleworking).

Belgian courts generally do not relieve parties from contractual payment obligations following external events or *force majeure*, although a temporary suspension of payment obligations could be found based on the general obligation for all parties (including creditors) to execute and enforce contracts "in good faith" and not to abuse their contractual rights.

Unless the Vienna Convention on the International Sale of Goods applies, hardship (*i.e.*, when it has not become impossible, but considerably more difficult/burdensome for a party to comply with its contractual obligations) defenses are not recognized by Belgium Supreme Court, although they are sometimes accepted by lower courts.

What remedies are available to businesses in the event they default with contractual obligations?

Parties are encouraged to engage in amicable discussions to try to resolve any issues in good faith, taking into account the current exceptional circumstances.

In the coming days/weeks, we also expect a royal decree to be adopted "granting a temporary standstill of enforcement and other measures against businesses during the period of COVID-19 crisis." We expect the Belgian government to use the decree as grounds for introducing a moratorium on forced bankruptcy and winding-up from the date of publication of until May 3, 2020, at the earliest. During this period, no conservatory or executory attachment can be initiated or completed on the assets of debtors (with limited exceptions) and no contract entered into before the entry into force of the royal decree may be terminated for cause due to the default of the debtor under its monetary obligations, except for employment contracts.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

No. However, the benefits discussed in the response to question (c) above are available to every company registered with the Belgian Crossroads Bank of Enterprises.



BELGIUM

Contributed by: Loyens & Loeff (Filip Saelens, Marc Dhaene, Stéphanie De Smedt, Mieke D'hanis, Vincent Marcelle)

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Royal Decree no. 2, issued on April 9, 2020, adopted several measures that impact civil court proceedings. These measures mainly concern scheduled hearings for pleadings on the merits, deadlines for filing written submissions, appeal deadlines and prescription periods. For matters that are not regulated by Royal Decree no. 2, the College of Courts and Tribunals (*College van hoven en rechtbanken/Collège des cours et tribunaux*) has issued compulsory guidelines. However, these guidelines are general, and each court has adopted more detailed measures to deal with the COVID-19 outbreak.

At present, no new legal proceedings can be initiated in the Belgian courts and no introductory hearings will be held. However, summary proceedings can still be initiated to obtain provisional measures in urgent cases. All other cases are referred to the docket (*i.e.*, will not be dealt with and postponed without a date) and will be scheduled by the court at a later introductory hearing as soon as regular operations resume. Through June 3, 2020, hearings for pleadings (on the merits) will not be held and the case will be dealt with in writing, although parties can object to this method of resolution.

Filing and appeal deadlines between April 9 and May 3, 2020, will automatically be extended through June 3, 2020. If, however, a party argues that the continuation of proceedings is urgent and that delay is prejudicial, it may request the court grant an exception.

The court registries themselves are still open. However, everything can and should be filed electronically.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Yes. Belgium has issued automatic tax relief measures as well as measures upon request. These measures cover federal taxes (income tax, VAT and wage withholding tax) as well as certain regional taxes.

Corporate income tax – automatic measures

- Compensation payments granted by the Belgian government for mandatory closure of business or decreased turnover due to COVID-19 are tax-exempt.
- The payment date for all taxes assessed as of March 12, 2020, are extended by two months (in addition to the normal payment term and without late payment interest becoming due).



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- Expenses incurred related to donations of medical equipment to hospitals and healthcare facilities are considered tax deductible (same conditions as for VAT apply, cf. below).
- The current pandemic constitutes a special event that justifies the recording of a tax-exempt bad debt reserve if a debtor does not pay its invoice as a result of the measures taken by the government. Although flexibility is applied in the assessment of the difficult recovery of debts (e.g., from debtors with significantly decreased turnover), each debtor should still be individually identified.
- Although tax prepayments are not mandatory in Belgium, a tax increase is applied in case a company makes insufficient prepayments. Each quarter, a prepayment can be made and each prepayment leads to a tax credit, which reduces the tax increase suffered if no prepayments would have been made. In principle, a prepayment made in the first quarter results in a higher tax credit than a prepayment made in a later quarter. Companies can reassess their corporate income tax prepayment schedule in view of the expected profit of the year. In addition, the tax credit for prepayments of corporate income taxes is increased for Q3 (from 6% to 6.75%) and Q4 (from 4.5% to 5.25%). This measure does not apply to companies that repurchase their own shares, make a capital reduction or attribute/pay dividends between March 12 and December 31, 2020.

Corporate income tax – measures upon request

- The Ruling Commission is willing to provide a ruling on the granting of a tax-free allowance of up to €126.94 per month, per employee, in relation to home office expenses (regardless of job category)
- If the aforementioned automatic measures prove insufficient to alleviate the financial hardship, additional measures can be requested, such as: (i) further deferral of corporate income tax payments due, (ii) waiver of late payment interest (if applicable) and (iii) waiver of late payment fines (if applicable). The request is subject to the following conditions:
 - The company should be able to show that it faces financial difficulties as a direct result of the COVID-19 pandemic (regardless of their activity or sector). Companies that are in structural financial distress (i.e., companies already



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facing financial difficulties prior to the coronavirus outbreak in Belgium) generally cannot benefit from these measures.

- A request (based on a specific form) should be filed for each individual debt.
- The request should be filed with the local tax collection center upon receipt of the assessment notice or a request for payment. For taxes that are not assessed but should be spontaneously paid to the state (e.g., (wage) withholding tax), we recommend filing a request before the usual payment date has passed.
- Application of these measures should be requested on June 30, 2020, at the latest in all cases.
- All formalities should be duly and timely filed (taking into account the automatic extension of the respective deadlines, unless additional extension of the deadline has been granted by the local tax administration).
- The support measures are reversed if: (i) the company does not abide by the installment scheme; or (ii) an insolvency procedure is opened.

VAT/Wage withholding tax – automatic measures

- VAT payments and wage withholding taxes are automatically extended for 2 months
- No VAT is payable on medical equipment gifted to hospitals and healthcare facilities by taxable persons until June 30, 2020, subject to the following conditions:

1) The measure applies to the following goods:

- Medical devices as referred to in Royal Decree dated March 18, 1999 (instruments intended for diagnostic and therapeutic purposes, devices intended for clinical research, etc.)
- Protective equipment for healthcare workers and patients (face masks, protective clothing, disinfectants, etc.)



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- Donations of pharmaceutical drugs are excluded.

2) The medical supplies must be donated to one the following institutions:

- Healthcare institutions (hospitals whose medical care services normally fall within the scope of the exemption envisaged by Article 44, § 2, 1°, a) of the VAT Code)
- Associations of hospitals
- Hospital groups
- Mergers of hospitals
- Local regional clinical hospital networks.

Donors must be able to prove the donation through a document (drawn up in twofold and signed) in which the hospital confirms that the donated medical supplies were used to provide care or were donated to another healthcare institution.

VAT/Wage withholding tax – measures upon request

- If the aforementioned automatic measures prove insufficient to alleviate the financial hardship, the additional measures referred to above with respect to corporate income tax can also be requested for VAT and wage withholding tax (same conditions apply).
- Other taxes
 - Customs and excise duties: 1–4 week extension for (a) excise duties and packaging levy on alcohol and alcoholic and non-alcoholic beverages; and (b) import VAT until June 30, 2020, and only to the abovementioned taxes in PLDA
 - Flanders – Road tax: tax collection automatically postponed with four months for legal entities
 - Flanders – Immovable property tax: tax collection automatically postponed until September 2020 for legal entities (two-month deferral for individuals)



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- Walloon Region – Automatic suspension of all regional taxes
- Brussels Region – Immovable property tax: deferral of payment term with 2 months.

Has the tax filing deadline been extended?

Yes. Corporate income tax filing deadlines have been extended until April 30, 2020, for returns due between March 16 and April 30, 2020.

VAT returns have been extended as follows:

Type of taxpayer	Extended filing deadline
Monthly return 02/20	April 6, 2020
Monthly return 03/20	May 7, 2020
Quarterly return Q1/20	May 7, 2020
Monthly return 04/20	June 5, 2020

- Intra-community reports: deadline extended to same dates
- Annual filing of VAT client listing: deadline extended until April 30, 2020.

Are tax refunds and other claims being timely processed?

Yes, although non-urgent tax audits have been postponed.

In addition, an automatic accelerated VAT refund can be applied if the following conditions are fulfilled:

- VAT refund is requested by a VAT taxable person submitting monthly VAT returns
- VAT return relating to February 2020 must be submitted by April 3, 2020, at the latest



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-
- VAT return must be submitted through Intervat and the box 'Request for refund' (*Aanvraag terugbetaling*) must be ticked (VAT taxable persons can submit a corrective VAT return until April 3, 2020, in order to tick this box)
 - The minimum refund is €245
 - All VAT returns for the current calendar year must be submitted correctly
 - VAT authorities dispose of a bank account number of the VAT taxable person on which the refunds can be paid
 - There are no objections to the refund (*e.g.*, as a result of transfer of receivables).
-



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

On April 6, 2020, the Government of the Federation of Bosnia and Herzegovina endorsed a Draft Law on Mitigating the Negative Economic Consequences, which marks the beginning of an economy rescue plan in the Federation of Bosnia and Herzegovina (FBH). The draft law is to be adopted by the FBH Parliament under urgent procedure. If adopted, it will provide the following relief:

- Contributions to the minimum salary will be paid from the budget of FBH;
- Additional funding will be provided for the cantons and municipalities;
- Businesses will be released from the obligation to pay income tax advances; and
- Interest rates on public revenue and debts will be abolished.

Further, on April 6, 2020, the government of the Republic of Srpska (RS) adopted a decision by which the Solidarity Fund of RS will bear the costs of income taxes and contributions for March 2020 for those business which are under state prohibition to perform activities, such as trade, transport and storage, catering and other services. Employers and the self-employed are eligible for this relief so long as (1) they pay the net amount of salary owed to their employees; and (2) their business activity is considered prohibited by an order issued by Crisis Staff in RS.

Can employers furlough employees during this COVID-19 health crisis?

Currently, the employment legislation provides the following options: remote work (based on government recommendations and/or by signing a new employment contract), taking of vacation (in principle, employees should be consulted to determine vacation period), paid leave and unpaid leave (but only upon request of the employee).

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

See 1(a) above.



BOSNIA AND HERZEGOVINA

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What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

In case such a situation occurs, employers should act in accordance with the order and shut down their businesses if it falls under the scope of the order. Regarding any obligations with respect to employment relationships, consistent with the answer to question 1(b), employers may permit employees to work from home, require employees to take vacation, provide paid leave or provide unpaid leave (upon the request of the employee).

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. It has been strongly recommended that all employees who suspect they have, or have already developed symptoms, of COVID-19 stay in isolation and contact a competent epidemiological service.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Generally, employers can implement a mandatory screening program, but due to the specific circumstances regarding screening programs for COVID-19 symptoms, it is up to competent health institutions to decide on specific measures.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes. Employees are required to disclose such information to the employer as soon as possible.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes. Such reporting policy is recommended by the competent institutions.

Can employers force employees to take vacation time during the COVID-19 health crisis?

In general, employers determine the vacation plan for employees upon prior consultation with the employees/employee's council and taking into account the relevant business requirements and the interests of employees.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

If an employee has been employed for an indefinite period of time and has worked continuously with the employer for at least two years, he or she is entitled to severance pay if he/she is dismissed due to the occurrence of the COVID-19 pandemic; employers cannot be released from severance liabilities in this instance.



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In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

In case a temporary operational shutdown is ordered, the accrual of seniority or employment benefits should not be affected. However, travel compensation shall not be paid to employees during a shutdown. Furthermore, labor law RS stipulates that in the event of work suspension due to *force majeure*, an employee is entitled to compensation of at least 50% of their salary. In the FBH employees are entitled to compensation under the terms and conditions prescribed for in circumstances of *force majeure*, either by the employment rulebook or employment agreement. Otherwise, if compensation under these circumstances is not prescribed as indicated above, employers likely need to pay full compensation.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Salaries and working hours are essential elements of an employment agreement and cannot be decreased by unilateral act of the employer and can only be changed with the consent of an employee. The only option prescribed by the law in order to decrease employee salaries or change working hours would be to initiate a termination of an existing employment agreement with an offer of a new employment agreement with amended salary/working hours provisions.

If employees refuse to come to work, can their employment be terminated for job abandonment?

The general employment legislation does not provide employees with a possibility to refuse to work unless his/her life or health is endangered. In general, the consequences of the refusal to work should be assessed in accordance with the relevant provisions of the employment legislation, employment rulebook and employment agreement since all violations of work obligations and discipline have been prescribed by the latter.

Sick leave due to infection of an employee, isolation as determined by a decision of the competent authority or an order by the competent authority to suspend work cannot be justified reasons for dismissal.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Yes. According to applicable orders issued by the competent authorities, all individuals who were in contact with those who test positive for COVID-19 shall report that information to the authorities.



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BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

The *force majeure* principle is not explicitly stated in the Bosnia and Herzegovina legislation, but it is applied through the following doctrines: changed circumstances, impossibility of fulfillment and exemption from liability for damage. The *force majeure* principle shall be applied in such a way that a party who has not fulfilled its contractual obligation due to *force majeure* has the right to terminate the contract and not be held liable for damage resulting from non-performance. If the contract is terminated for this reason, each contracting party shall return what it has received from the other under that contract.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

A party may invoke COVID-19 as a *force majeure* if the pandemic occurred before the deadline for fulfillment of the contractual obligation and, consequently, the fulfillment of the obligation is difficult or the purpose of the contract cannot be achieved. That party may then request termination of the contract or modification of the contractual terms. However, whether the contract itself contains certain clauses, which the parties waive to invoke *force majeure*, must be taken into account. Such a waiver must not run counter to the principles of conscientiousness and honesty.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

A state of emergency declaration provides for relief if the pandemic occurred before the deadline for fulfillment of the contractual obligation in question and, consequently, either the fulfillment of the obligation has become difficult or the purpose of the contract is no longer achievable.

What remedies are available to businesses in the event they default with contractual obligations?

A business may claim termination of a contract and the right not to be held liable for a damage claim.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

All tax filing deadlines have been postponed in both FBH and RS and the flat tax rate has been reduced by 50% in FBH. Furthermore, the banking agencies in FBH and RS introduced measures under which banks may institute a delay in repayment of loans, with a grace period of up to 6 months for annuity loans; provide additional exposure amounts



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for the purpose of overcoming current liquidity difficulties; and any other measure that may be deemed as necessary.

The banks will not approve specific measures for clients whose solvency has been unaffected.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

As of the time of this posting, all hearings were suspended due to COVID-19, except for a very small number of cases deemed urgent.

According to an April 6, 2020 decree, deadlines in RS court proceedings are suspended during the state of emergency, with an exemption related to urgent court proceedings such as proceedings for the protection against discrimination, family law, registration of business entities before the Court registry, interim measures, and custody proceedings.

Additionally, the government of the FBH endorsed a draft law which, if adopted, will suspend court proceedings during the declared state of natural and other disasters, with an exemption related to urgent proceedings.

On a state level, a Draft Law on Temporarily Measures related to the Work of Judicial Authorities in BH is expected to be adopted in the following session of the BH Parliamentary Assembly. In case a draft law is adopted, it will suspend procedural deadlines during declared state of natural or other disasters, with an exception related to urgent cases, throughout BH.

Has your country issued any tax amnesty or relief programs because of COVID-19?

In FBH, the flat rate tax has been reduced to 50%. The Solidarity Fund of the RS will bear the costs of income taxes and contributions for March 2020, as described in 1(a) above.

Has the tax filing deadline been extended?

Yes. Both FBH and RS announced that the tax filing deadline has been extended to April 30, 2020.

Are tax refunds and other claims being timely processed?

According to publicly available information, tax refunds and other claims are being timely processed. .



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LABOR AND EMPLOYMENT

Due to the dynamically complicating epidemic situation in the spread of the COVID-19 virus, on March 13, 2020, a state of emergency was declared in the Republic of Bulgaria until at least May 13, 2020 (the Emergency Period). A number of restrictive and anti-epidemic measures have been introduced by the minister of health that caused the suspension of operations for the majority of commercial sites and restrictions on the free movement of goods and people. Subsequently, the *Law on Measures and Actions during the State of Emergency declared by a decision of the National Assembly of 13 March, 2020* (the Emergency Law) was adopted, as promulgated in State Gazette No. 28/2020 and as amended and supplemented in State Gazette No. 34/2020. For the most part, the Emergency Law came into force as of March 13, 2020, except for certain provisions, most notably concerning suspension of public sales under foreclosure proceedings and extension of deadlines under some tax laws, which took effect as of March 24, 2020.

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

The Emergency Law, in addition to a number of other measures aimed at mitigating and overcoming the effects of COVID-19, provides for temporary measures regarding employment relations.

The Emergency Law's employment measures dealing with COVID-19 provide for:

- Implementation of work at home or telework, where this is possible
- Suspension of work of the entire enterprise, part of the enterprise, or of individual employees by an order of the employer, and for the entire or part of the Emergency Period
- Part-time work for employees previously working full-time in the enterprise or in a particular department or sub-department of the enterprise (e.g., sales department, accounting department) for the whole duration, or part, of the Emergency Period
- Grant of half of the paid annual leave to an employee, where the work of the enterprise, part of the enterprise, or individual employee is suspended due to the declared state of emergency.

Certain other measures have been introduced with the aim of preventing termination of employment relationships:

- State financial support by the National Social Security Institute
- Amendments to the Social Security Code to extend deadlines of certain filings
- No interest if there is a delay for payment of obligations to private entities.



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Can employers furlough employees during this COVID-19 health crisis?

No. Employers cannot legally furlough employees during the COVID-19 health crisis.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

During the Emergency Period, the National Social Security Institute (NSSI) will transfer 60% of the amount of social insurance income for January 2020, along with a corresponding percentage of social security contributions due on the employer's account, for persons insured as employees (regardless of the nature of the work, the method of payment, and the source of funding) to their insurers (employers). The funds will be transferred from NSSI to the respective employer if he/she meets the eligibility criteria set out in an act of the Council of Ministers.

According to the Emergency Law, the funds will be transferred from NSSI to the eligible insurer (employer) by bank transfer within five working days on the basis of a written information provided by the Employment Agency and will be paid from the Unemployment Fund of the state social security system.

In case the employer does not pay the full amount of the salary to the employees for whom the funds from NSSI are received, the employer must reimburse NSSI. Reimbursement will also be required if the eligibility criteria are breached.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

The work of the enterprise, or part of the enterprise, may be suspended by an order from a public authority. In this case, the employer cannot provide employees access to their workplace for the emergency period. Employees are entitled to their gross remuneration for the duration of the Emergency Period. Note that the employer could undertake the employment measures listed in the response to question 1(a) above.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Employers have the right to temporarily deny an employee access to the workplace if the employee appears to be in a condition that prevents him/her from performing his/her work duties, consumes alcohol, or consumes another highly intoxicating substance. Since, as of the time of this posting, Bulgarian legislation does not include legal grounds to suspend an employee for COVID-19 symptoms without pay, a suspension from work if symptoms of COVID-19 are detected would be considered an "unlawful suspension from work" within the meaning of the Labor Code, triggering the respective legal consequences (*i.e.*, payment of gross salary for the period of suspension).



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However, according to the anti-epidemic measures in the territory of the districts with a registered confirmed case of COVID-19, prescribed by the minister of health in Order RD-01-122 / 11.03.2020, employers should not allow employees with symptoms of acute infectious diseases onto their work premises. In these areas, the employer must suspend employees with acute infectious diseases from work. As long as they are not allowed in the office without a medical certificate (which must be issued by medical authorities), compensation for unlawful suspension from work should be payable (covering the gross salary for the period of suspension).

Can employers implement a mandatory screening program for COVID-19 symptoms?

There are no legal grounds in the Bulgarian labor legislation for employers to implement a mandatory screening program for COVID-19 symptoms. Employers may recommend that employees take specific measures and examine themselves if they experience COVID-19 symptoms.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Employees are not required to disclose to the employer if they have tested positive for COVID-19. However, employees may disclose such information on their own initiative.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

No, the employer may not require employees to report if they or their co-workers have COVID-19 symptoms.

Can employers force employees to take vacation time during the COVID-19 health crisis?

The employer has the right to grant half of the paid annual leave to an employee without the employee's consent (even if the employee has not acquired eight months of service, which was required for the use of the paid leave before the Emergency Law came into force) where, due to a declared state of emergency by the employer or by a public authority, the work of the enterprise, part of the enterprise, or individual employee is suspended.

The stated limitation on the duration of paid annual leave that the employer may grant without the employee's consent shall only apply to leave accruing for the current calendar year; the restriction shall not affect accumulated paid annual leave for previous years that has not lapsed by limitation.



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The amendments made by the Emergency Law do not envisage an option for the employer to provide unpaid annual leave without the employee's consent.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. However, during the Emergency Period, the consequences for late payment of the obligations of private entities, including interest and late payment penalties, will not apply. Thus, during the Emergency Period, no interest will be charged on due, but delayed, payments by the employer to employee (e.g., payment of compensation for termination of employment contract, other payments due by the employer to the employee on a legal or contractual basis).

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Within the Emergency Period, employers may suspend work for the entire enterprise, part of the enterprise, or individual employees by an order—for the whole Emergency Period or part of it. However, employees are entitled to their gross remuneration for the duration of the workplace shutdown.

Employers may introduce part-time work for employees previously working full-time during the Emergency Period. In this case, the duration of the working time may not be less than half of the statutory duration for the period of calculation of the working time (the statutory working time for a five-day workweek includes a normal working time of up to 40 hours per week and up to eight hours per day).

In general, the amount of remuneration owed to employees is determined by the duration of the work. To the extent that the change to part-time work results in reduced working hours, the amount of remuneration would need to be adjusted accordingly.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Provided that there are no reasonable grounds for employee's refusal to come to work (e.g., sick leave), and the employee does not appear at work for two consecutive days, the



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employer may terminate the employment on disciplinary grounds, pursuant to the strict procedural requirements in the Labor Code.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

There is no legal obligation for employers to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees.



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BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

A party to a commercial transaction regulated by Bulgarian law can invoke a *force majeure* event to release itself from the consequences of a contractual breach even where the contract does not provide for a specific *force majeure* clause. To benefit from the effect of *force majeure* and not be liable for damages, the breaching party must notify the other party in a timely manner of the relevant event and its consequences under the contract.

Where *force majeure* is properly invoked, the performance under the contract will be temporarily suspended for the duration of the extraordinary event. However, if during this period either party loses interest in continuing the contractual relationship, that party is entitled to terminate the contract.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

The state of emergency and the related restriction measures introduced can be qualified as a case of *force majeure* insofar as they constitute an extraordinary event, which is unforeseen (*i.e.*, it could not have been foreseen when undertaking the obligation) and unavoidable (neither the event nor its consequences could have been overcome by the debtor when acting with the required due diligence). In practice, Bulgarian courts have already confirmed that epidemics do represent extraordinary and insurmountable events.

For a breach to be excusable, the extraordinary event, in this case COVID-19, must have occurred after the commitment was undertaken, but before its maturity. The extraordinary event also must be the sole, or at least the predominant, cause of the breach.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

It is a general rule under Bulgarian contract law that the lack of funds, even if caused by *force majeure*, does not relieve debtors of their contractual obligations. Initially, the Emergency Law provided for a general exemption for all private agents, including commercial agents, from the monetary and nonmonetary consequences stemming from any default of payment. The original provision, however, has been substantially limited and currently applies only to credit or other financing-related contracts granted by banks or other financial institutions, and financial or operating lease contracts, for which, in case of delayed payment, no default interest or liquidated damages will accrue, no assets will be confiscated, no payments will be accelerated, and no rescission rights will be exercised for the duration of the Emergency Period. Respectively, any other payment obligations are not exempted from any default-related consequences.



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No special relief has been introduced for non-monetary contractual obligations, like delivery of goods/services, thus leaving the concerned parties, including commercial agents, to rely on *force majeure* where such an event precludes them from fulfilling their liabilities. However, the *force majeure* exemption may not apply to certain delivery obligations with a generic or non-personal nature in view of the principle *genus nunquam perit* (the class never perishes).

What remedies are available to businesses in the event they default with contractual obligations?

Businesses defaulting on credit or other financing or financial/operating lease transactions, though not exempt from their principal payment obligations, can rely on the special protections provided for such liabilities under the Emergency Law as described 2(c) above.

In cases of default on other types of obligations, parties may invoke *force majeure*, where applicable, in order to postpone the performance of their obligations during the Emergency Period. However, if such performance has become objectively impossible due to the emergency situation, the relevant contract is to be deemed rescinded (*i.e.*, terminated retrospectively) by mere operation of law.

Where no direct impediment to performance exists, but due to the long duration of the emergency situation, the continuance of a contract's performance would be contrary to fairness and good faith, the affected party may request that the court amend or terminate it claiming contract frustration.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

Apart from the specific measures introduced to support both business and individuals in the employment and tax sectors, as discussed elsewhere in this section, on March 25, 2020, the Bulgarian government resolved to increase its share in the capital of the Bulgarian Development Bank (BDB) with BGN 700 million, of which BGN 200 million should be used for granting interest-free loans to individuals. The remaining BGN 500 million is expected to be used for guarantees, enabling commercial banks to provide credits for up to BGN 2 million each, or BGN 2 billion in total, under more favorable conditions to businesses facing difficulties due to the COVID-19 crisis. Information on the particulars should be disclosed upon fulfilling the necessary formalities for the program's launch.

Further, the BDB has announced that it will undertake additional programs in support of businesses most affected by the COVID-19 crisis, particularly those businesses in the arts, private pre-school education, retail, transportation, tourism, seminar/exhibition, and sports



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industries. The first measure announced will be guaranteed by the European Investment Fund and operated by a BDB subsidiary. The measure will provide working capital loans and credit lines to micro-enterprises, up to BGN 48,800 with a two-year gratis period per qualifying enterprise. There will be a 36-month repayment term for working capital loans and a 60-month repayment term for credit lines.

Also, the Bulgarian National Bank adopted Rules on the deferral and settlement of due payment obligations against banks and other financial institutions, which are intended to provide borrowers with the right to defer payments under credits for up to 6 months.

Additionally, the Emergency Law provides that legal deadlines for private entities are suspended during the Emergency Period, while any other deadlines provided by law on pending matters, which should otherwise expire within the Emergency Period, are to be extended by one month as of the emergency termination. An exception is made for certain administrative procedures in the fields of public procurement, concessions, operation of European investment funds, public property, special development, protection of competition, agriculture and veterinary medicine.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

The Emergency Law provides that all procedural terms under the court, arbitration, and enforcement proceedings are suspended during the Emergency Period, except for those under certain specifically listed proceedings of an immediate nature (i.e., in the field of commercial litigation an exception is provided for procedures for granting interim relief measures of protection, and securing evidence; an exception is also provided for a significant number of administrative court cases). The Supreme Judicial Council has adopted a decision pursuant to which the consideration of the cases currently suspended should continue after the end of the Emergency Period.

Physical access to court buildings is significantly limited, documents must be submitted by post or electronically and information is provided by phone or email. Parties participate electronically in any open court hearings.

Currently no option for businesses to avail themselves of the suspended litigation procedures exists. New cases may be organized subject to the above restrictions for physical access and inquiries with the court.

With respect to forcible execution cases, the Emergency Law suspends all scheduled public sales and related actions and prohibits the imposition of foreclosure measures only over certain assets owned by individuals and hospitals. Foreclosure measures over



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business assets other than public sales are still possible during the Emergency Period, except that deadlines, including for appeals thereof, are suspended.

Has your country issued any tax amnesty or relief programs because of COVID-19?

The measures introduced in the Emergency Law include: (i) measures extending the deadlines for filing tax returns and payment of taxes in connection to corporate taxation and taxation of individuals, (ii) changes in advance installments in connection with corporate income taxation and (iii) suspension of enforcement proceedings under the Bulgarian Tax and Social Security Procedure Code. As addressed above, the provisions of the Emergency Law regarding the extension of deadlines under some tax laws take effect as of March 24, 2020, rather than from March 13, 2020 (the start date of the emergency state).

Has the tax filing deadline been extended?

In large part, yes.

Some of the deadlines under the tax laws, however, remain unchanged. Deadlines for declaring and payment of value-added tax will not be changed. In addition, deadlines for payment of the mandatory social security contributions by insurers and self-insured persons will not be changed. Finally, the deadline for filing the annual tax return and payment of the tax for individuals who are not sole proprietors remains unchanged.

The following deadline was extended to March 31, 2020:

- Deadline for availing of the 5% discount from the tax remaining to be paid under the annual tax return for individuals who are not sole proprietors.

The following deadline is extended to May 31, 2020:

- The 5% discount on the amount of the tax remaining to be paid under the annual tax return could be availed of, if the declaration is filed and the tax is paid no later than May 31, 2020 (as opposed to the general rule of March 31, 2020).

The following deadlines are extended to June 30, 2020:

- The deadline for filing annual tax returns for taxation with corporate tax (Art. 92 of Corporate Income Tax Act (CITA))



BULGARIA

Contributed by: Djingov, Gouginski, Kyutchukov & Velichkov (Youliana Naoumova, Rusalena P. Angelova, Vlada C. Tsenova, Martin P. Dimitrov)

- The deadline for payment of the corporate tax under the annual tax return (Art. 93 of CITA)
- The deadline for payment of the tax on expenses (Art. 217 of CITA)
- The deadline for filing of the annual activity report
- The deadline for filing the annual tax return for taxation of income of individuals performing commercial activity as traders (within the meaning of the Commerce Act), including sole proprietors, farmers who have chosen to be taxed as sole proprietors, as well as for payment of the tax due by these persons
- The deadline for filing of the annual activity report of individuals.

Finally, the 5% discount from the annual real estate tax and from the annual vehicle tax will be available to persons who paid the tax until June 30, 2020 (as opposed to the general rule of April 30, 2020).

Are tax refunds and other claims being timely processed?

We have not observed any delays so far.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

This will necessarily depend on several factors, including the nature and content of the contract and its governing law.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Determining whether the coronavirus outbreak constitutes a *force majeure* event is a matter of construction and will depend on the specific wording and the scope of the clause in the relevant contract. Alternatively, the parties may claim “frustration” whereby the compliance of a contractual obligation becomes impossible due to factors beyond the control of the parties.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

This will be matter of construction of the contract terms and will be evaluated on a case-by-case basis considering the circumstances and conditions under which the obligation to comply may have been frustrated.

What remedies are available to businesses in the event they default with contractual obligations?

Normal rules of contract apply.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

Foreign entities that have established a local subsidiary or branch may be eligible for business protection and benefits, provided they meet the criteria.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Yes, for urgent matters only. Non-urgent matters have been suspended.



CYPRUS

Contributed by: Y. Habari & Co. LLC (Yaniv Habari)

Has your country issued any tax amnesty or relief programs because of COVID-19?

VAT payments have been deferred.

Has the tax filing deadline been extended?

Yes, it has been extended to May 31, 2020.

Are tax refunds and other claims being timely processed?

As of the time of this posting, there is no data available.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. The Czech government and/or other competent authorities are issuing many measures that have a direct impact on the labor market. For example, many businesses and schools have been closed on government orders, the free movement of people is restricted and the Czech borders are closed. Further, the Czech government is preparing programs that would provide relief to individuals and businesses affected by the COVID-19 health crisis. The government's main program, called Antivirus, compensates employers whose businesses have been affected by the current crisis. As of the time of this posting, there have been no changes to the Czech Labor Code to address COVID-19-related issues.

Further, the government will provide CZK 25,000 to freelancers adversely impacted by COVID-19.

Can employers furlough employees during this COVID-19 health crisis?

Czech labor law provides several instruments that can be used by employers and employees affected by the COVID-19 health crisis. For example, employers can order employees to take vacation, which is fully paid. Employers must provide 14 days' notice, unless the employee agrees to accept shorter notice. Where employers order a large group of employees to take vacation, only two weeks of vacation can be ordered. In the case of temporary layoffs, the employer does not assign work to its employees in full and can pay them a limited amount of wage compensation (minimum of 60%), provided that the applicable trade union on site has agreed to this scheme, or, if there is no active trade union on site, that such scheme is stated in the employer's internal policy. In the case of "idle time" (in Czech: *prostoj*), during which an employee cannot perform work due to operational causes outside of the employee's control, the employee is entitled to compensatory wages amounting to a minimum of 80% of their average earnings. No internal regulation or agreement with trade unions is needed.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes, the Antivirus program is being prepared by the Czech Ministry of Labor and Social Affairs to compensate for employers' labor costs during this health crisis. Other programs are being prepared as well.



What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

If an employee is ordered by the health authority to stay in place (quarantine), they must stay at home and the employer must excuse the employee's absence at work. The employer must further pay the employee compensatory wages for the first 14 days of quarantine. As part of the Antivirus program, the government will reimburse the employer for these costs. A similar principle applies also where the area in which the employer operates is in quarantine and its employees are forbidden to come to work.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. Under the Czech labor law, the employer is obligated to ensure the safety and health of the workplace and adopt appropriate measures to ensure such conditions.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Despite the general principle that the employer is obligated to ensure the safety and health of the workplace and adopt appropriate measures to ensure them, we believe that this does not include implementing mandatory screening programs for COVID-19 symptoms, except for certain critical industries, such as healthcare.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

This is a sensitive issue. Under Czech law, an employee is obligated *inter alia* to take care of their health and their surroundings. This includes, in our view, a general obligation not to come to work if tested positive for COVID-19. However, except for specific cases, we believe employees are not obligated to disclose to their employer if they have tested positive for COVID-19. This could, however, lead to employee liability for damages. Furthermore, the intentional spread of this virus is a crime under Czech criminal law.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

See response to question (g) above.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Yes. An employer can unilaterally order employees to take their vacation, which is fully paid, with 14 days' notice. Where the employer orders a large group of employees to take vacation, only two weeks of vacation can be ordered.



CZECH REPUBLIC

Contributed by: Legalit  (Mat j  i  nek, Marie Jan ov )

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. The general rules for terminating employment relationships (including severance liabilities) apply also during the COVID-19 health crisis.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

Generally, no. Internal employer policies can set specific terms and conditions for benefits.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes, but some measures, including a reduction of work hours and corresponding reduction in salary, may be taken only upon agreement with trade unions or based on an individual agreement with an employee.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Yes, but only in a case where an employee's absence cannot be excused. An employee absence will always be excused if absence is necessary to care for a child under 13 years of age because of closed schools, illness, quarantine, *etc.*

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Employees can only be tested by certified laboratories based on a recommendation by a specialist (*i.e.*, a doctor). Therefore, the state authorities are first to find out about an employee testing positive. Consequently, there is no obligation of the employer to report a COVID-19-positive employee to health authorities or other employees.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Generally speaking, *force majeure*, according to the Czech law, excludes liability for damages. Moreover, the affected party has a right to claim a renegotiation of the contract (if there is a substantial change in circumstances that creates a gross disproportion in the rights and duties of the parties and the affected party could neither have expected nor affected the change).

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Force majeure is defined as an extraordinary, unforeseeable and insurmountable obstacle that is independent of the party's will. It is therefore important to assess when the contract was concluded and whether (when concluding the contract) the parties could have foreseen that a pandemic would break out. For this reason, claims of *force majeure* must be analyzed on a case-by-case basis. However, *force majeure* does not release the party from the obligation to perform properly and on time, unless the parties have agreed otherwise.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

No. The parties may only attempt to renegotiate the contract. If they fail to reach an agreement within a reasonable time limit, a court may decide to change the contractual obligation by restoring the balance of rights and duties of the parties.

What remedies are available to businesses in the event they default with contractual obligations?

This depends on what the parties have agreed upon in the contract. Generally speaking, in the event of a substantial breach of the contract, the other party may withdraw from the contract. The defaulting party can request a renegotiation of the contract to restore the balance of rights and duties of the parties (see above), but it is not relieved from its contractual obligation.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

There are several programs offered by the Czech-Moravian Guarantee and Development Bank such as interest-free loans for businesses affected by the Coronavirus (the receipt of applications was suspended on March 20, 2020) and interest-free loans from commercial banks with a guarantee provided by the Czech-Moravian Guarantee and Development Bank. There are also other benefits such as subsidies to produce medical equipment, targeted support for the development of new solutions for COVID-19, tax relief (mentioned



CZECH REPUBLIC

Contributed by: Legalité (Matěj Řičánek, Marie Janšová)

below), relief under the Antivirus program (mentioned above), among other support measures. Additionally, the government has approved financial support in the amount of CZK 25,000 (roughly \$1,000) for all freelancers who are negatively impacted by the current circumstances.

Local subsidiaries of a foreign entity might be able to access these benefits based on the conditions of the individual program.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Yes, as of the time of this posting, the judiciary was operating in the Czech Republic, although most in-person hearings have been adjourned. The court may hear urgent matters without an in-person hearing (*i.e.*, motions for preliminary injunction).

Has your country issued any tax amnesty or relief programs because of COVID-19?

Yes, programs are being prepared and include, for example, a flat waiver of fines for filing tax returns late and waiver of default interest, a flat waiver of advance payments of taxes, the introduction of a “loss carryback,” which would allow individuals and businesses to retroactively apply losses incurred in 2020 to their 2019 and/or 2018 tax returns, and the suspension of the obligation to electronically record sales.

Has the tax filing deadline been extended?

Yes. Tax returns can be filed without any penalty by July 1, 2020.

Are tax refunds and other claims being timely processed?

Yes, as of the date of this posting.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Beginning in early March 2020, the Egyptian government has gradually adopted procedures to deal with the COVID-19 outbreak. On March 25, 2020, the government enhanced the protection measures by issuing instructions for a partial stay-at-home curfew from 7 p.m. to 6 a.m, which had been projected to extend through April 15, 2020. This partial stay-at-home order has been extended, and curfew has been extended to 8 p.m., rather than 7 p.m.

Malls, commercial centers, shops, retail outlets, coffee shops, restaurants and similar businesses are ordered to close at 5:00 p.m. on Sunday through Thursday and to remain completely closed on Fridays and Saturdays. This does not extend to grocery stores, bakeries, supermarkets (outside malls and shopping centers) and pharmacies, which are allowed to remain open during the curfew time, including on Fridays and Saturdays.

Moreover, the private sector and much of the public sector have implemented the governmental instructions for employees and citizens to stay at home. As such, most of the workforce is operating remotely and dependent on technology. However, employees deemed as part of the essential workforce—those working in the sectors of agriculture, food, telecommunications, law enforcement, public health and transportation—are still required to carry out normal operations.

On April 24, 2020, the Egyptian Cabinet announced new preventive measures against COVID-19 during the Islamic holy month of Ramadan, which began on April 23, 2020 and runs through May 23, 2020. These measures include: (1) shortening the night curfew to start at 9 p.m. (this decision was issued after consulting political and medical experts to ensure this step would not cause an increase in cases); (2) gradually opening some administrative services; (3) canceling the full closure of shopping centers on Thursdays and Fridays; and (4) allowing for takeaway service at restaurants from 6 a.m. – 9 p.m., in accordance with curfew hours, and allowing delivery service throughout the day. Clubs, cinemas, theaters, and cafes will remain closed.

These measures were made based on the understanding that epidemiological situation in Egypt is still under control. The Egyptian Cabinet has, nevertheless, announced that if the number of infected will sizably increase, stricter preventive measures will be assessed based on citizen behavior. These measures are to be reassessed on a weekly basis.



EGYPT

Contributed by: Potentia Law Firm (Soha AbdelAziz; Islam Maklad)

Can employers furlough employees during this COVID-19 health crisis?

Generally, Egyptian Labor Law #12 of 2003 (Labor Law) distinguishes between indefinite term employment contracts and definite term employment contracts. Employers have the right to terminate definite employment contracts upon the expiration of the terms of the contract, without notice or warning. However, unless otherwise agreed upon by the parties involved, employers cannot lawfully terminate indefinite employment contracts—except for the reasons mentioned in the Labor Law, which include partial or complete business shutdown for economic reasons.

The Labor Law sets out certain procedures to be followed for companies that seek to claim partial or complete shutdown of its businesses and employment redundancy. If this is not established, termination of employment will be considered unjustified.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

The government has announced stimulus policies in an EGP 100 billion (approximately US\$6.4 billion) package to mitigate the economic impact of COVID-19. Pensions have been increased by 14%. Energy costs have been lowered for the entire industrial sector. Real estate tax relief has been provided for industrial and tourism sectors and subsidy pay-out for exporters has been stepped up. As part of the EGP 100 billion stimulus, EGP 50 billion has been earmarked for the tourism sector, which contributes close to 12% of Egypt's GDP, 10% of employment and almost 4% of GDP in terms of receipts, as of 2019. Additionally, the moratorium on the tax law on agricultural land has been extended for two years. The stamp duty on transactions and tax on dividends has been reduced and the capital gains tax has been postponed until further notice.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Depending on the nature of the business activities, employers have instituted work rotations for their employees to work from business premises, to help ensure that safe distances are kept. As mentioned in the response to question 1(a) above, the majority of employees are currently working remotely.

Employers are required to continue payment of salaries and wages to its employees during the stay-at-home period, although some companies are considering plans for salary reductions if this crisis will prolong.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Businesses around the country have unilaterally put in place procedures for what to do when/if an employee, customer or client tests positive, including notification to staff and other clients, deep cleaning of facilities, etc.



The majority of employers advised all employees with any flu-like symptoms to stay in self-quarantine and report to their performance managers to direct them to a medical facility, if required.

The business community has generally stepped up to the plate and shown responsibility during this critical period by enacting policies to curb the spread of the virus and reporting these policies to the wider public via emails and on their websites.

Can employers implement a mandatory screening program for COVID-19 symptoms?

As of the time of this posting, the testing and screening program is controlled exclusively by the Ministry of Health through its quarantine hospitals and laboratories.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

The majority of employers have instructed all employees who might have any flu-like symptoms to stay in self-quarantine and report to their performance managers to direct them to a medical facility, if required.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Please refer to 1(a) above.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

So that terminations will be lawful, labor law requires employers that are terminating employees for economic reasons to make severance payments to the employees as follows: (i) one month gross salary per each year of the first five years of employment and (ii) one and one-half month gross salary per each year following the first five year service.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

In cases where employers are lawfully entitled to terminate employees for economic reasons, they may instead exercise the right to temporarily amend the terms of the relevant employment contracts and assign different work responsibilities or reduce salaries (to no less than minimum wage).



EGYPT

Contributed by: Potentia Law Firm (Soha AbdelAziz; Islam Maklad)

If the employees refuse such amendments, the employer can then seek the termination of the contract without observing the notice period. Under these circumstances, the termination will be considered lawful and the employees will then be entitled to receive the severance payment referred to in the response to question (j) above.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Please refer to answer 1(k) above.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Under normal circumstances, an employer can terminate an employee for job abandonment based on Article 69 of Labour Law #12 of 2003.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Yes.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

There is no specific definition for *force majeure* under Egyptian law. There is a reference to *force majeure* in article 165 of the Egyptian Civil Code (ECC) that provides that “In the absence of a provision of the law or an agreement to the contrary, a person is not liable to make reparation, if he proves that the damage resulted from a cause beyond his control, such as unforeseen circumstances, *force majeure*, the fault of the victim or of a third party.”

Further, article 373 of the ECC states that “an obligation is extinguished if the debtor establishes that its performance has become impossible by reason of causes beyond his control.”

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

The Court of Cassation has established the principle to the effect that: “if due to the occurrence of a certain event, it has become excessively onerous to perform an obligation but yet still possible, then the obligation shall not be extinguished.” (Cassation court judgment on 03.01.1963, appeal no. 3 year 14 J.)

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

The Egyptian Cassation Court defines the impossibility of performance as “the absolute impossibility resulting from *force majeure* or an accident that the debtor was not able to avoid or foresee.” (Cassation Court judgments on (i) 02.12.1982, appeal no. 980 year 48 J, and (ii) 21.06.1990, appeal no. 574 year 57 J.)

Conversely, if the event leads only to temporary impossibility of performance and not absolute impossibility then the Cassation Court considered that the obligation shall not be extinguished, but will only be suspended until the resolution of the cause at issue. (Cassation Court judgment on 30.01.1991, appeal no. 865 of year 53 J.)

What remedies are available to businesses in the event they default with contractual obligations?

The party seeking to void the contract has an obligation to prove that it is impossible to perform a certain obligation due to a *force majeure*. Otherwise, failing to fulfill obligations under the contract will be considered a breach of contractual obligations. The determination of whether such impossibility is considered a *force majeure* at the sole discretion of the court. (Cassation Court judgment on 27.12.1965.)



EGYPT

Contributed by: Potentia Law Firm (Soha AbdelAziz; Islam Maklad)

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

The Central Bank of Egypt (CBE) has reduced the preferential interest rate on loans to SMEs, industry, tourism and housing for low-income and middle-class families from 10 percent to 8 percent. The CBE moved further to extend the tenor of all bank loans to businesses for a period of six months. The extension applies whether the facility is held by an SME, a large corporation or an individual borrower.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

The judiciary was one of the first government services to suspend its operations in early March 2020.

As of the date of this posting, only administrative procedures are operating in necessary and emergency actions. Normally, issuance of a temporary or precautionary order takes 24 hours from the date of its submission. Under the current circumstances, such applications will take longer.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Various measures were adopted by the government to support the local economy. These include: (a) tax-related measures such as the postponement of property tax payments and reductions in stamp duty and dividend withholding tax and (b) non-tax related measures such as the reduction of energy prices.

Has the tax filing deadline been extended?

For individuals, the tax filing deadline was first extended from March 31, 2020, to April 9, 2020. As of the date of this posting, the deadline had been extended again through April 16, 2020. The statutory requirement for tax payment online is now suspended and the Tax Authority will also accept payment in cash or checks. Individuals filing taxes online will not be charged the subscription fee for the use of the online filing portal.

Are tax refunds and other claims being timely processed?

Partially.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes, the temporary salary subsidy program applies to both private and public entities, regardless of the entity's size. Under the program, the Unemployment Insurance Fund will pay an employee compensation of about 70% of the employee's average wages, with a maximum gross amount of €1,000 per calendar month. The measure is available to any qualifying employer for a period of two months from March to May 2020. The employer must meet at least two of the following three conditions to qualify for the measure:

- (1) The employer suffered at least a 30% decline in turnover or revenue for the month they wish to be subsidized for, as compared to the same month last year.
- (2) The employer is not able to provide at least 30% of their employees with work and the employer qualifies under Sections 35 or 37 of the Employment Contracts Act (ECA).
- (3) The employer has cut the wages of at least 30% of employees by at least 30% or down to the minimum wage pursuant to Section 37 of the ECA.

Under Section 35 of the ECA, the employer shall pay average wages to an employee who is capable of working and ready to do work even if the employee does not work because the employer has not provided him or her with work, has not performed an act required for doing work or has otherwise delayed acceptance of work, unless the employee is at fault in failing to be provided with work.

Under Section 37 of the ECA, if an employer, due to unforeseen economic circumstances beyond its control, fails to provide an employee with work to the agreed extent, the employer may, for up to three months over a period of 12 months, reduce the employee's wages to a reasonable extent, but not below the minimum wage established by law, if payment of the agreed wages would be unreasonably burdensome for the employer. A reduction in wages under Section 37 of the ECA requires the employer to provide 14-days' advanced notice and a consultation with the employee before the reduction can take effect.

Can employers furlough employees during this COVID-19 health crisis?

No, local regulations do not allow employers to suspend the work of their employees (i.e., sending employees home without pay) during the COVID-19 health crisis. If the employer is forced to shut down its operations and therefore does not provide work to an employee (idle time), the employer must pay average wages to the employee or, upon additional



conditions and following a certain procedure, may unilaterally reduce their wages to a reasonable extent. In the latter case, wages may not be reduced below the minimum wage, and may not be reduced for longer than three months over a 12-month period.

See response to 1(a) above.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

As of the time of this posting, local regulations do not provide any specific obligations for employers if a stay-in-place or similar order is issued. As of March 25, 2020, individuals must keep a distance of at least two meters indoors and in public places, such as outdoor playgrounds, sports grounds, beaches, promenades, health and hiking trails, *etc.* This requirement does not apply to citizens' homes.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes, if there is cause to suspect that an employee may have COVID-19, employers are allowed to order the employee to undergo a health examination. Employers do not have the right to send an employee home without pay unless the need for such idle time is due to the fault of the employee. If there is cause to suspect that the employee may have COVID-19 and/or threatens another employee's health or safety, the employer can request the employee work remotely (if possible) or apply for sick leave.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes, employers are obligated to, among other things, ensure fair and safe working conditions that are not harmful to employees' health. Therefore, employers may take steps to guard against the risk of infectious diseases by, for example, implementing a mandatory screening program.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes, since employees are obligated to refrain from actions that endanger the life, health or property of other employees or other persons, they are obligated to disclose to their employer if they have tested positive for COVID-19.



Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, such an internal policy would be allowed in order to ensure safe working conditions that are not harmful to other employees' health. However, pursuant to data privacy principles, caution must be exercised when collecting and processing employee health data. Such data should only be collected and used to the extent necessary.

Can employers force employees to take vacation time during the COVID-19 health crisis?

No, employers are not allowed to force employees to take paid or unpaid leave during the COVID-19 health crisis. Parties may only mutually agree on the use of an employee's vacation during this crisis.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No, the employer is not relieved from severance liabilities, even if the COVID-19 health crisis forces the employer to reduce the number of employees. General reduction in force requirements would still apply and, thus, the employer must provide (i) 15–90 calendar days advance notice or payment in lieu of notice, (ii) a severance payment in the amount of one month's wages, (iii) compensation for unused vacation days and (iv) salary earned up until termination.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No. According to local regulations, if the employer is forced to shut down its operations and therefore does not provide work to an employee (idle time), the employer must pay average wages to the employee. Upon additional conditions and following a certain procedure, the employer may unilaterally reduce employees' wages. Regulations do not provide any exemptions if such temporary operational shutdown is caused by the competent authority. Interruptions of the accrual of seniority and other employment benefits during that period are not allowed.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes, employers can negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits. A state of emergency declaration and other measures taken to prevent the spread of COVID-19 may allow the employer to reduce the salary of the employee for up to three months unilaterally if there is not enough work for employees and paying the agreed-upon salary is an unreasonably heavy burden for the employer.



ESTONIA

Contributed by: TGS Baltic (Anu Kirss, Mari Anne Valberg)

If employees refuse to come to work, can their employment be terminated for job abandonment?

Employees may not refuse to come to work if there is no justifiable reason. Employees have the right to refuse work, the performance of which endangers their health or that of other persons or prevents compliance with environmental safety requirements, by immediately informing the employer or his/her representative and the work environment representative. The employee will be able to exercise this right if the employer does not take the measures required by law and the measures taken endanger the life and health of the employee. If there are no such justifiable reasons, the employer can unilaterally terminate employment relations according to the general procedures and requirements.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

No.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Force majeure is caused by extraordinary circumstances that are unforeseen and beyond the control of the parties, that the parties are unable to prevent, and due to which any party is unable to perform its contractual obligations. If a party can successfully show *force majeure*, losses incurred by the other party are not subject to compensation. In cases of *force majeure*, either performance of contractual obligations is suspended for the period affected by *force majeure*, or the contract is terminated if performance is no longer possible.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

In general, parties are allowed to claim *force majeure*. Cases claiming *force majeure* for COVID-19-related events shall be evaluated on a case-by-case basis and depend on the terms of the contract and the wording of the *force majeure* clause (*i.e.*, whether the clause refers to a "pandemic," "epidemic," "disease," "government action," "government orders," *etc.*).

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

As of the time of this posting, no such relief has been provided for commercial agents. Some support mechanisms for businesses have been enacted and may apply. See response to 2(e) below.

What remedies are available to businesses in the event they default with contractual obligations?

As of the date of this posting, the government has not yet applied special measures. On April 20, 2020, the Estonian Parliament adopted amendments, not yet in force, to the Bankruptcy Act, suspending the term for filing an obligatory bankruptcy petition from the beginning of the State of Emergency until two months after the end of the State of Emergency.

Companies may also be able to reorganize. Reorganization involves the application of a set of measures in order for a business to overcome economic difficulties, to restore its liquidity, improve its profitability and ensure its sustainable management. In a reorganization proceeding, the company will have the opportunity to restructure its creditors' claims and avoid bankruptcy. For a short period of time (currently up to 60 days), the company will obtain court protection against the claims of its creditors, and the company's management, together with the reorganization adviser, must prepare a



reorganization plan and obtain the approval of the majority of its creditors. The court will decide commencement of the reorganization proceedings by a ruling within seven days after receipt of the reorganization application.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

Some support mechanisms will be available. In the first package of measures, KredEx (a state-owned financial institution) will begin offering the following new services to help support affected businesses: (1) special loan guarantees, (2) special loans and (3) an additional guarantee fund for the provision of loan guarantees. All Estonian undertakings are the target group for services, except for activities and areas previously excluded by KredEx. The following measures may be available to agricultural enterprises, food industry and enterprises in rural areas by way of the Rural Development Foundation: (1) surety for loans from the bank; (2) working capital and investment loans; and (3) sale and lease-back transactions of arable land (i.e., a finance lease). The Ministries of Economic Affairs and Communications and Enterprise are currently preparing the following measures: (1) business restructuring support; and (2) aid to compensate for the damage to the tourism sector.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Yes, as of the date of this posting, the judiciary is operating. However, court sessions may be canceled with good reason (i.e., illness of a party) by application to the court or by court order. The courts are encouraged to use more digital solutions or, if possible, transfer to written procedure.

Has your country issued any tax amnesty or relief programs because of COVID-19?

The Estonian Tax and Customs Board (ETCB) has suspended the calculation of interests on tax arrears for the period of emergency with retroactive effect as from March 1 to May 1, 2020. However, all tax returns must be submitted on time and taxes must be paid whenever possible. Starting from May 1, 2020, the ETCB will lower the interest rate from the current 0.06% to 0.03%. The ETCB will allow tax arrears to be rescheduled at lower interest rates than are currently in force. The ETCB may reduce the interest rate up to 100% in the event of a tax rescheduling. Currently, the maximum possible interest reduction is 50%. The company should apply for rescheduling of tax arrears if there is a need for continued interest relief after May 1, 2020, or difficulties with paying the tax after May 1, 2020.

Further, for a limited period of time, due to this emergency, the employer is released from its minimum monthly obligations for social taxes (i.e., unpaid leave and part-time work).



ESTONIA

Contributed by: TGS Baltic (Anu Kirss, Mari Anne Valberg)

The employer is exempt from the minimum social tax liability for salaries paid in March, April, and May 2020.

Additionally, from March 12, 2020 to July 1, 2020, a gift or donation made by a legal person to an agency or welfare institution of an Estonian state or local government or a hospital operator located in Estonia for charitable purposes is not subject to income tax.

The state will pay advance social tax to sole proprietors (füüsilisest isikust ettevõtja/FIE) in the first quarter of 2020 to help them cope with the economic difficulties of the crisis.

Has the tax filing deadline been extended?

No, the tax filing deadline has not been extended. For more information, see (g) above.

Are tax refunds and other claims being timely processed?

In general, tax refunds and other claims are being timely processed and there are no temporary changes with respect to prolonging such process times. The ETCB has confirmed that temporary delays occur only when additional communication with the taxpayer is needed.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. The French government has implemented the following measures:

- Partial activity, which allows employers to temporarily close all or part of a company or reduce working time, pay only 70% of the usual salary for unworked hours and receive full compensation from the state for all unworked hours (capped for employees whose remuneration is higher than 4.5 times the French minimum wage)
- Sick leave for some employees who cannot work remotely because of children at home or who have a preexisting medical condition that would likely result in a severe form of COVID-19
- Use of RTT days, rest days, paid vacation days and days saved up in the Time Savings Account (*Compte Epargne Temps*)
- Remote work
- Deferred social security payments
- Deferred profit-sharing payments

The French authorities have also issued a few general governmental guidelines specific to coronavirus workplace contamination under the form of a Q&A document available [here](#).

Can employers furlough employees during this COVID-19 health crisis?

Employers cannot place employees on temporary unpaid leave (furlough) without the employee's consent. Permanent layoffs are not prohibited as long as the employer is able to demonstrate the reality of the economic grounds. In cases of collective redundancies where the Labor Administration is involved, the Labor Administration will be very cautious in assessing whether or not the company acted with haste, without any hindsight on the actual financial impact of the COVID-19 crisis. Additionally, as of the date of this posting, COVID-19 does not currently qualify as a *force majeure*, on which employment dismissals could be based.



Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes, including:

- Deferred payment of social security and/or tax contributions. For social security contributions, this is carried out through the *Déclaration Sociale Nominative* (DSN declaration) or via the urssaf.fr mailbox.
- In the most difficult situations, direct tax remissions may be granted on a case-by-case basis.
- Support from the state and the Banque de France (credit mediation) to help companies negotiate their bank loan repayment schedules.
- Involvement of Bpifrance to guarantee bank credit lines that companies may need because of the outbreak.
- Partial activity, as described in (a) above.
- Mediation support for any conflicts with customers or suppliers.

Some additional measures exist for very small companies.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

In France, the government has issued a stay-at-home order, but there are exceptions to the order, mainly for employees whose jobs are not compatible with remote work.

As of the date of this posting, these employees can go to work if they have a written statement from their employer with them at all times authorizing them to do so.

The form is currently available here:

<https://www.gouvernement.fr/sites/default/files/contenu/piece-jointe/2020/03/justificatif-deplacement-professionnel-fr.pdf> (this form changes from time to time).

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. If symptoms of COVID-19 are detected, the employee should visit www.gouvernement.fr/info-coronavirus. Employers should send the employee home and advise the employee to call his/her referring physician. In case of serious symptoms, the employer should contact emergency services by dialing 15.



Asking an employee to stay at home because he/she is suspected of being COVID-19 positive could be seen as discriminatory.

Can employers implement a mandatory screening program for COVID-19 symptoms?

No. Employers may not take measures that could infringe on the privacy of their employees, in particular by collecting health data that would go beyond the management of suspected exposure to COVID-19.

Employers must refrain from collecting, in a systematic and generalized manner, or through individual inquiries and requests, information relating to the search for possible symptoms presented by an employee, agent, visitor and/or their relatives.

However, employers can set up a pre-entry temperature measurement system without collecting data, according to recent government announcements. In order to implement this measure, the procedure for memoranda added to the internal regulations will have to be followed (*i.e.*, simultaneous communication of the measures to the Secretary of the Works Council (CSE) and to the labor authority). The rules laid down must be proportionate to the objective pursued and offer all the required guarantees in terms of prior information of employees, data retention and the consequences of a fever, prohibiting access to the site.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes. Under Article L.4122-1 of the French Labor Code, employees are required to protect the health and safety of others by any means necessary—at least by not endangering third parties as well as themselves.

An employee who is tested positive for COVID-19 is therefore under the obligation to inform his/her employer so as not to endanger other employees.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

No. An employee who has tested positive for COVID-19 must inform his/her employer so as not to endanger his/her co-workers.

Employers are not allowed to take measures that could infringe on the privacy of their employees, in particular by collecting health data that would go beyond the management of suspected exposure to COVID-19.

Employees must remain vigilant with regard to possible symptoms so as not to contaminate other employees.



Can employers force employees to take vacation time during the COVID-19 health crisis?

Yes, the employer can force employees to take the following vacation/rest days without their consent:

- RTT days, rest days and any days saved in the Time Savings Account (*Compte Épargne Temps*); one-day notice is required, subject to a maximum of 10 days total
- Paid vacation days subject to a collective bargaining agreement at the industry or company level (unlikely); one-day notice is required, subject to a maximum six days.

The employer can also change the date of paid vacation days that had already been approved (e.g., changing vacation approved for May 2020 and forcing the employee to take those days now).

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

If the company is shut down, the employer will have to: (i) use partial activity and/or (ii) use any remaining RTT/rest days, or (iii) use remaining paid vacation days (as explained in the answers to the previous questions). Unpaid furlough is not possible. Some employees may also go on sick leave.

In all of these cases, accrual of seniority cannot be interrupted. Paid vacation also continues to accrue. In the case of partial activity, the company only pays 70% of the employee's gross hourly remuneration for all unworked hours (higher compensation can be provided by a collective bargaining agreement). In the case of sick leave, the French social security pays part of the employee's salary. Whether or not bonuses are due will depend on their nature and how they are calculated. The company can interrupt payment of expense reimbursements (e.g., travel expenses if the employee is no longer traveling), unless otherwise provided by the employment contract/applicable collective bargaining agreement.



Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes. To institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits, the company must apply for partial activity as set forth in 1(a) above.

The employer:

- (1) Informs and consults the Works Council (CSE) and sends the CSE's opinion to the administration up to two months after the partial activity application:
 - If there is no CSE—or a CSE in a company with fewer than 50 employees—the company must inform employees directly.
 - However, even in companies with fewer than 50 employees, we recommend informing the CSE.
 - In both cases, information includes: (i) the contemplated use of partial activity, (ii) the contemplated estimated length of partial activity and (iii) the number of impacted employees.
- (4) Submits its request for the administration's authorization on <https://activitepartielle.emploi.gouv.fr/>:
 - Prior to implementing partial employment or within a reasonable period of 30 days.
 - Exceptionally, such applications for authorization may be submitted by companies until April 30, 2020, without the 30-day period being invoked against them because of the volume of applications.
 - The request is processed within approximately 48 hours and deemed accepted in the absence of a response within this time limit.
 - The request can be made for all establishments at once.
- (5) Displays the new work schedule in the workplace.
- (6) Pays an allowance to each employee for each unworked hour equal to at least 70% of the employee's previous gross remuneration:



- When the partial activity allowance is paid, a document indicating the number of compensated hours, applied rates and sums paid for the period in question will be given to each employee.
 - The employer may choose to indicate the aforementioned information on the pay slip.
- (7) Submits a reimbursement claim to the *Agence de services et de paiement* each month on <https://activitepartielle.emploi.gouv.fr/> (once partial activity has been approved):
- Companies can also choose not to make a reimbursement claim. They will inform DIRECCTE of this commitment that they will not receive compensation from the state.
- (8) Benefits from full state compensation for each unworked hour (capped for employees whose remuneration is higher than 4.5 times the French minimum wage (higher than €45,675)).

Examples of possible partial activity requests based on exceptional circumstances such as the COVID-19 outbreak are: administrative shutdown of an establishment, administrative ban of public demonstrations, 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 related to the outbreak.

Note: Employees under an annual fixed-rate agreement in days worked or hours worked can benefit from partial activity even if the establishment is not shut down. In the former case (fixed-rate agreement in days), the time not worked must be converted into hours (half a day = 3.5 hours; one day = 7 hours; one week = 35 hours). Only the reduction of working hours below the legal working time (35 hours) can be compensated unless the overtime is provided for by a conventional or contractual agreement (lump sum hours) concluded before April 24, 2020; specific commitments to maintain employment may be required if the company already applied for partial activity in the previous 36 months; and this scheme can be implemented for a period of up to 12 months and a quota of 1607 hours per employee.



If employees refuse to come to work, can their employment be terminated for job abandonment?

If the employee goes on sick leave, the employment contract cannot be terminated for job abandonment.

Employees have a right to withdraw from a situation in case of a serious and imminent danger to their health (e.g., the employer asks the employee to travel to a high-risk country). In such cases, employment cannot be terminated for job abandonment.

However, this right to withdraw is limited in times of epidemics if the employer has taken the necessary preventive and protective measures. If such measures have been taken and the employee misuses this right, the employer can deduct this absence from the employee's pay and/or terminate employment.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

If an employee working at a worksite is tested positive for COVID-19, the employer must: send the employee home with a facemask and ask the employee to call his/her referring physician, inform other employees of a possible case of COVID-19 so that they monitor any symptoms and stay at home if this is the case, and thoroughly clean the workplace.

No additional measures are required, but the employer can choose to inform the occupational doctor



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

An event of *force majeure* may allow a party to suspend performance, partially perform or terminate a contract. Three criteria must be met for the principle of *force majeure* to apply: (i) the event must be outside the control of the parties, (ii) the event must be unpredictable and (iii) the event must make it impossible to perform the contract (partially or completely, temporarily or indefinitely).

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

While a party could make such claim, there is no certainty that it would be upheld by a court. However, certain decisions tend to support such a claim. First, the French minister of economy announced that COVID-19 would be considered a *force majeure* event in the context of contracts entered into with the French state. Secondly, a court ruled very recently in the context of administrative retention cases that COVID-19 constituted an event of *force majeure*.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

There is no relief applicable across the board. However, small and medium-size businesses can obtain the suspension of their rent and utilities payments under certain circumstances.

What remedies are available to businesses in the event they default with contractual obligations?

Aside from claiming an event of *force majeure*, businesses in default with their suppliers or customers can obtain the assistance a mediator free of charge.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

Provided they satisfy the relevant requirements, local subsidiaries of foreign entities could enjoy various protections and benefits available to small businesses, including: delays in paying direct taxes and social charges, the partial activity regime described above, bank loans guaranteed by the French state and support from the state and the Banque de France (credit mediation) to negotiate bank loan repayment schedules.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves

French courts are generally not operating except for summary proceedings and urgent requests before civil, commercial and employment courts, certain hearings in relation to



of the judiciary in the event it is necessary during the current COVID-19 health crisis?

bankruptcy cases and certain criminal hearings. Some of these hearings can be held by videoconference.

Has your country issued any tax amnesty or relief programs because of COVID-19?

The French government has allowed a three-month deferral of all direct tax payments (corporate tax, wages tax, business tax) and social security contributions due in March and April 2020. Other taxes (such as value-added tax) remain due. Companies that are undergoing difficulties can request further tax payment deferrals and, for those in a critical situation, a definitive tax relief, which will be granted on a case-by-case basis.

Companies can donate medical supplies to healthcare and social institutions, health professionals, state and local government agencies, without regularizing the input VAT on such supplies (which would consist in repaying such input VAT to the French Treasury) during the state of emergency.

Has the tax filing deadline been extended?

The filing of 2019 corporate tax returns is postponed to May 31, 2020. Other tax filing deadline extensions are being discussed. Additionally, limitation periods and any deadlines for tax audits are suspended as of March 12, 2020, until one month after the end of the state of emergency. All deadlines applicable to legal proceedings in courts ending between March 12, 2020, and one month after the end of the state of emergency will be renewed as of the end of that period, without exceeding two months.

Are tax refunds and other claims being timely processed?

Yes. The French government has even committed to an acceleration of the refunds of tax credits and other claims against the French Treasury.



GERMANY

Contributed by: McDermott Will & Emery (Thomas Gennert and Dr. Gudrun Germakowski)

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes, the Federal Cabinet enacted the *Arbeit-von-Morgen-Gesetz*, easing requirements to implement short-time work (comparable to US states that provide partial unemployment). The law applies retroactively to March 1, 2020, and facilitates employee access to short-time benefits covering 60% to 67% of their net income. In addition, the Federal Employment Agency will cover all social security contributions usually borne by the employer.

Can employers furlough employees during this COVID-19 health crisis?

Yes, by implementing short-time work as described above. It is important to note that employers still need a legal basis for implementing short-time work, such as a provision in an employment contract, employee consent, a works council agreement or collective bargaining rules.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes. While the short-time work benefits mentioned above are the primary devices to help employees and their employers through the crisis, there are additional aid programs (guarantees, one-time payments, loans, tax deferrals) offered at both the state and federal levels, depending on the size of the business.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

As of the date of this posting, businesses except restaurants and the majority of the retail sector are generally open. In order to avoid issues with recent orders regulating public gatherings and social distancing, we recommend employers issue certifications explaining the need for their employees' commute to work.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Maybe. Employees are required to consult a physician if they develop COVID-19 symptoms, and their healthcare provider will most likely place them on sick leave due to their symptoms (they are also likely to be subsequently quarantined by the relevant authority). If the employee fails to consult a physician after developing symptoms, the employer may deny access to the workplace under certain conditions.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Generally, no. .



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Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

No. However, the employee is obligated to inform their employer if he or she has been placed on sick leave by their doctor or ordered to quarantine by a relevant authority as a result of testing positive for the virus and is, therefore, unable to work.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

No, this would violate data privacy rules. However, employers may ask that employees report if they are experiencing any of the symptoms.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Generally, no. However, some collective bargaining and work council agreements may provide for the possibility of an annual closing (*Betriebsferien*) under certain conditions. Additionally, those agreements may allow for the reduction of accrued overtime or accrual of negative working hours.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

Generally, no. However, it is worth noting that there is no general entitlement to severance payments when a notice is issued.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No. Risks associated with a temporary shutdown are borne by the employer under German employment rules. Employers can mitigate their labor cost liabilities by applying for short-time work benefits.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Generally, yes. As described above, employers may introduce short-time work, resulting in a temporary reduction in salary and benefits. Stand-alone salary reductions require employee consent.

If employees refuse to come to work, can their employment be terminated for job abandonment?

In this case, the standard rules governing terminations apply. Depending on the individual case, the employer generally has to issue a written warning to the employee prior to terminating the employment relationship.



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Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

While employers are not obligated to report an employee's positive COVID-19 test to health authorities (the employee's physician will do so), it is advisable to inform the authorities of any known cases. Moreover, employers may be required to inform other employees who may have been exposed to the employee that tested positive.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Force majeure is not defined by German codified law but has developed through case law as an external event that, caused by elementary natural forces or third parties, was unforeseeable and could not be prevented by the parties involved.

The legal consequences of a *force majeure* event will be analyzed on a case-by-case basis and depend on the contractual obligations and respective consequences of *force majeure* as defined by the parties.

In the absence of a contractual provision discussing a *force majeure* event and its effect on a particular contract, the consequences of *force majeure* are considered in different sections of German codified law. Generally speaking, based on the principle that a party cannot be forced to perform a contractual obligation that is or became impossible, the parties can be released from their contractual obligations in case of a reasoned plea of *force majeure*.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Force majeure could be applicable to contractual disruptions in connection with COVID-19. For instance, an event of *force majeure* could be supported by governmental directives and warnings. As of the time of this posting, there are a large number of governmental measures (e.g., official travel warnings by the federal government, classification of COVID-19 as a health emergency with international implications, administrative closures of certain facilities). In addition, *force majeure* was, in certain instances, affirmed in connection with the SARS epidemic in 2003. However, it is not possible to classify COVID-19 as a *force majeure* event generally.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

As of the date of this posting, there is no general state of emergency declaration that provides commercial agents with any type of relief from their contractual obligations. In particular, payment obligations remain generally unaffected as long as the other party performs its respective obligation.

What remedies are available to businesses in the event they default with contractual obligations?

In general, the principle of *pacta sunt servanda* still remains, which means contracts shall be honored (i.e., there is no general right to default due to the COVID-19 crisis). However, contractual provisions may provide for different rules.



Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

Various governmental aid measures have been adopted in order to support businesses.

For larger companies with more than 249 employees and an annual turnover of more than €50 million, the newly created Workers Strength Fund (WSF), which enables guarantees and direct state participation, can be used. In addition, the state-owned KfW Bank grants extensive loans to help distressed companies.

If a company runs into financial trouble as a result of the COVID-19 crisis, it can apply for a deferral of social security contributions. The decision on deferral is made by the responsible health insurance. For both commercial and residential tenancies, the right of landlords to terminate leases is restricted. Landlords are not allowed to terminate a lease due to rent debts from the period between April 1, 2020, and June 30, 2020, if the rent debts are caused by the COVID-19 pandemic. However, tenants are still obligated to pay rent in due time. The regulations initially apply until June 30, 2020, and may be extended under certain conditions.

In addition, the obligation to file for insolvency proceedings is suspended until September 30, 2020, if the insolvency is caused by COVID-19.

To support micro enterprises, freelancers and one-person businesses who are suffering from the COVID-19 pandemic, the German government has established an emergency assistance program of €50 billion. Businesses with up to five employees can apply for a one-off payment of up to €9,000, and businesses with up to ten employees can apply for a one-off payment of up to €15,000. Self-employed persons, members of the liberal professions such as physicians, and small enterprises, including farmers with up to 10 employees who are economically active on the market are eligible to apply. They must carry out their activities from a domestic permanent establishment or a domestic management headquarter and must be registered with a German tax authority.

In addition, numerous federal states support small and medium-sized enterprises with loans. For example, the state of Lower Saxony provides loans of up to €50,000 per case to support liquidity of small and medium-sized enterprises.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

As of the date of this posting, the judiciary is fully operating. However, the measures taken in order to prevent the spread of COVID-19 may cause delays within the court administration. Additionally, the federal states have recommended that court operations be



GERMANY

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limited to what is necessary. In many courts, oral hearings have been postponed for a few weeks.

Has your country issued any tax amnesty or relief programs because of COVID-19?

As of the date of this posting, no tax amnesty or relief program has been announced due to COVID-19. So far, the German federal government has focused on liquidity issues, (*i.e.*, interest-free deferral of tax payments, reduction of pre-payments (with respect to VAT and potentially other taxes), repayment of pre-payments and suspension of enforcement measures).

Has the tax filing deadline been extended?

As of the date of this posting, there has not been an extension of tax filing deadlines.

Are tax refunds and other claims being timely processed?

As of the date of this posting, we are not aware of any delays in processing tax refunds and other claims..



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

No. Ghana has not enacted any special labor or employment law measures to deal with COVID-19.

Can employers furlough employees during this COVID-19 health crisis?

No. Ghanaian law does not provide for furlough. Employers may, however, request that employees take their annual leave (which is a minimum of 15 days under Ghanaian law) with pay. If the COVID-19 health crisis continues after the expiration of the annual leave, employers may then place employees on extended leave either with reduced pay or no pay. Ideally, this should be done by seeking the consent of employees, as placing employees on extended leave could constitute a unilateral change in their employment contracts. It is recommended that employees be fully engaged so as to promote the understanding of the effects of COVID-19 on the employer's business and the need for everyone to work towards ensuring business continuity after COVID-19. If that approach is taken, we do not foresee employees declining consent.

Although the concept of furlough is not expressly provided for under Ghanaian law, employers may be able to negotiate with employees (or the union) for employees to be put on extended leave because the business is in a financial crisis as a result of COVID-19, and continuing to pay the employees at existing rates will prove an undue hardship on the employer. We are of the opinion that this will be easier to implement if the duration for such action is fixed.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes. The Ghanaian Parliament has approved GHS1.2 billion (approximately US\$205 million) for a Coronavirus Alleviation Program. The funds will be used for, among other things, tax waivers, allowances and transportation costs for health personnel. The Parliament has also approved a GHS600 million (approximately US\$102 million) soft loan scheme with a two-year repayment plan for micro, small and medium-sized businesses. The government has also significantly subsidized the cost of electricity and waived all water bills from April through June 2020.



What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Ghana has issued a stay-in-place order under the Imposition of Restrictions (Coronavirus Disease (COVID-19) Pandemic) Instrument, 2020 (E.I.64) and Imposition of Restrictions Coronavirus Disease (COVID-19) Pandemic (No. 2) Instrument, 2020 (E.I.65), commonly known as a lockdown order.

Under this lockdown order, employers who provide services that are not essential are required to close down their businesses or work premises during the lockdown. Employers providing non-essential services may:

- i. Direct employees to work from home where the nature of work permits
- ii. Discuss with employees the possibility of taking their annual leave, especially where the work cannot be done remotely
- iii. Request that employees take extended leave with reduced or no pay to allow for business continuity if the lockdown continues for a relatively long period of time
- iv. Terminate employees' contracts of employment if the lockdown persists for a prolonged or unspecified period.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. Ghanaian law requires employers to provide a safe place of work and to take reasonable care of the health and safety of their employees. Employers can therefore deny an employee access to the workplace if symptoms of COVID-19 are detected to protect other employees and people who come to the business premises.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes. An employer must take appropriate measures to safeguard the health and safety of employees. As part of the employer's duties to provide a safe place of work, employers may implement mandatory screening programmes for COVID-19 symptoms for employees and all visitors to the business premises to ensure that the work environment is safe.

Information on a person's medical condition or state of health is generally considered confidential and may not be disclosed without the express permission of the person. Thus, information collected during a screening programme must be held with utmost confidentiality to avoid breach of the Data Protection Act, 2012 (Act 843) on confidentiality of personal data.



Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes. Employees have a duty under Ghanaian law to take all reasonable precautions for the safety and health of fellow employees and to protect the interests of the employer. This duty requires the employee to disclose any health condition that not only puts fellow employees at risk, but hurts the employer's interests. Thus, an employee who has tested positive for COVID-19 must notify the employer as soon as possible for the necessary action to be taken to minimize the risk to other employees and the business.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes. Employers can issue a policy requiring employees to report if they or their co-workers have COVID-19 symptoms. This falls under the employer's duty to provide a safe place of work and take reasonable care of the health and safety of employees.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Under Ghanaian law, leave may only be taken at a time to which the employer has agreed, depending on the convenience to the business, the nature of the business and the prevailing circumstances. Thus, an employer may request that employees take leave at a time when the employer has shut down offices following orders by the government and employees are unable to work productively from home.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. Should the COVID-19 health crisis compel an employer to close down or undertake an arrangement or amalgamation, the employer would be required to pay severance packages to employees.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

If a temporary operational shutdown is ordered by the competent authority, employers may interrupt the accrual of seniority and other employment benefits. It is, however, advisable for employers to engage the affected employees to discuss the effects of the COVID-19 health crisis on the business and, if possible, provide employees with proof of the effects and discuss how such measures are necessary for the survival of the business in that event. Employers may also provide an estimate of the duration of the interruption and assure employees that the employment benefits will be restored when business returns to normalcy.



GHANA

Contributed by: ENS Africa (Amina Kaguah; Nana Yaa Ahmed)

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes. Employers may engage employees (or the union) on taking extended leave with reduced or no pay. Employers may also engage employees on a temporary reduction in hours along with a temporary reduction in salary and other employment benefits.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Currently, employers who provide services that are non-essential are required to close down their businesses. Where the business is exempt from the lockdown order, an employer may terminate the employment of an employee who refuses to attend work in accordance with the terms of the employment contract, so long as the employer has provided the employee with the appropriate safety precautions required for employees to work under the current circumstances.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Yes. Employers have a duty to their employees and the general public to report instances of employees who test positive for COVID-19 to enable contact tracing and treatment to be done.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Under Ghanaian law, a party to a contract can only excuse itself from performing its obligations on the basis of *force majeure* if the contract has a *force majeure* clause. This clause should expressly provide for the specific circumstance which has arisen or have general terms under which the occurrence is covered.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

If the contract contains a *force majeure* clause with terms covering the pandemic, a party may claim *force majeure* for a COVID-19-related situation.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

When a state of emergency is declared and causes a commercial agent to be unable to comply with contractual terms, the contract could be considered frustrated (*i.e.*, incapable of being performed). The commercial agent would therefore be relieved from delivering or paying under the contract. It would not be sufficient for the commercial agent to claim that the state of emergency has made it more difficult or more expensive to perform their contractual obligations. The commercial agent must prove that they are incapable of performing their obligations or paying due to the state of emergency.

What remedies are available to businesses in the event they default on their contractual obligations?

A business that defaults on its contractual obligations as a result of a *force majeure* event may have a defense for the non-performance of its obligations under a contract. However, where there is no *force majeure* clause, or the *force majeure* clause does not cover the particular situation, the non-defaulting party will be entitled to bring an action for breach of contract.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

As discussed under question 1(c), the Coronavirus Alleviation Program includes a soft loan scheme for micro, small and medium-sized businesses. A local subsidiary of a foreign entity would not qualify as a micro, small or medium-sized business, hence, would not be able to benefit from the scheme. This is because a local subsidiary of a foreign entity must have a minimum capital of \$500,000. Therefore, it is unlikely that such a company would be considered a small business under the Coronavirus Alleviation Program.



GHANA

Contributed by: ENS Africa (Amina Kaguah; Nana Yaa Ahmed)

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Yes. The judiciary is an essential service exempted from the partial lockdown under the Imposition of Restrictions Coronavirus Disease (COVID-19) Pandemic (No. 2) Instrument, 2020 (E.I.65). The chief justice of Ghana issued a directive for all pending non-emergency cases to be adjourned to May and June 2020. Therefore, only emergency cases are being heard. Emergency cases are generally applications seeking some kind of injunctive relief. Also, the court registries are open for the filing and service of court appeals.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Yes. The government has waived the income tax for healthcare workers from April to June 2020. Tax obligations of all other persons remain the same.

Has the tax filing deadline been extended?

No.

Are tax refunds and other claims being timely processed?

No. This is because GRA offices are not operating at optimal levels during the lockdown.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

The Irish government has introduced three employment initiatives as a result of the COVID-19 crisis, namely (i) the Temporary COVID-19 Wage Subsidy Scheme, (ii) the COVID-19 Illness Benefit and (iii) the COVID-19 Pandemic Unemployment Benefit.

COVID-19 Emergency Wage Subsidiary Scheme

The COVID-19 Emergency Wage Subsidiary Scheme (the Scheme) falls under the Emergency Measures in the Public Interest (COVID-19) Act 2020. The Irish Revenue is regularly publishing updates on how the Scheme operates. The Scheme commenced on March 26, 2020 and is scheduled to last for twelve weeks.

Eligibility for the Scheme is based on an employer's ability to self-declare to the Irish Revenue Commissioners (Revenue) that it has experienced significant negative economic disruption due to COVID-19, with a minimum of 25% decline in turnover or reduction in customer orders.

Phase 1: Employers will be refunded up to a maximum of €410 per week for each qualifying employee from March 26, 2020. This subsidy applies regardless of the amount which employees are entitled to under the Scheme. Where the €410 weekly subsidy received exceeds the subsidy that the employee is entitled to under Phase 2 (as set out below), employers should retain the excess of the subsidy received from the Irish Revenue, as recoupment of any amounts overpaid to employers will occur during Phase 2

Phase 2: Beginning May 4, 2020, the following subsidy amounts will be refunded to eligible employers:

- Employees who earn less than €412 per week net (which equates to an annual salary of approximately €24,400) will be eligible for a subsidy of 85% of their previous average net weekly pay.
- For those employees who earn between €412 and €500 per week net (which equates to annual salaries of between approximately €24,400 and €31,000), the subsidy available will be up to €350 per week.



- Employees who earn between €500 and €568 per week net (equivalent to annual salaries of approximately €31,000–€38,000) will receive a subsidy of up to 70% of their previous net income, up to a maximum of €410 per week.
- For employees who earned in excess of €586 per week net (which equates to annual salary of €38,000), a tiered approach will apply but the maximum subsidy in respect of these employees will remain at €350 per week. The tiered approach takes account of both the amount of pay by the employer and the level of reduction in pay borne by that employee.

Since April 16, 2020, the Irish government has provided that the subsidy will also be available to employees who earn in excess of over €76,000 per year and where their salary has now fallen below €76,000 per year because of the pandemic. Tiered arrangements will also apply to these employees as will tapering (as detailed below) to ensure the actual net pay received does not exceed €960 per week.

The Revenue guidance also provides that tapering of the subsidy shall apply to all cases where gross pay paid by the employer plus the subsidy amount exceeds the previous average net weekly pay. This is calculated by subtracting the gross pay paid by the employer from the previous average net weekly pay and ensures that no employee would be better off under the Scheme. The single exception to tapering is where an employer wishes to pay an employer contribution which, when added to the wage subsidy for the employee, does not exceed €350 per week. In such cases, tapering of the temporary wage subsidy shall not be applied.

The Scheme applies to employers who top up employees' wages and those who are not in a position to do so. The Irish government has called on employers to maintain, as close as possible, employees' wages at their current level of earnings for the subsidized period.

COVID-19 Illness Benefit

The COVID-19 Illness Benefit allows an employee, who has tested positive for COVID19 or where he/she is medically required to self-isolate, to apply for an enhanced illness benefit payment of €350 per week for a maximum of 12 weeks of medically required self-isolation, or for the full duration of his/her absence from work due to a confirmed COVID-19 diagnosis. Eligibility for this payment is restricted to persons confined to their home or a medical facility. In practice, however, this will be very difficult to enforce.



COVID-19 Pandemic Unemployment Benefit

Last, the COVID-19 Pandemic Unemployment Benefit provides for a €350 per week payment for employees who lose their jobs as a result of the COVID-19 health crisis. Persons can apply for the COVID-19 Pandemic Unemployment Payment if they are an employee or if they are self-employed; aged between 18 and 66 years old; live in the Republic of Ireland; have lost their job or who have been placed on a period of lay-off due to the COVID-19 pandemic; or have ceased trading due to the pandemic where that person is self-employed. The payment applies to non-EU/EEA employees and students who have lost employment due to the pandemic and to part-time employees. The COVID-19 Pandemic Unemployment Payment will be in place for the duration of the crisis.

Can employers furlough employees during this COVID-19 health crisis?

“Furlough leave” is not provided for under Irish employment law. However, if expressly permitted in the employment contract, employers can place an employee on a period of lay-off where (i) the employer is unable to provide the work for which the employee is paid to do, and (ii) the employer reasonably believes that the cessation of employment will not be permanent, and (iii) the employer gives notice to the employee prior to the cessation. The concept of lay-off is discussed further below.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

All relief or support has already been described.

What are the employers’ obligations if the competent authority in your country issues a “stay-in-place” or similar order?

The Irish government announced a “stay-at-home” policy, which commenced at midnight on Friday, April 3, 2020, and is scheduled to last until Tuesday, May 5, 2020.

The Irish Government has published Regulations entitled the Health Act of 1947 (Section 31A – Temporary Restrictions) (COVID-19) Regulations 2020 (the “Regulations”) in draft form (although it is expected that the finalized version of the Regulations will not depart substantially from the draft provided). These regulations provide a list of essential services and essential retail outlets.



Where an organization is not engaged in the provision of essential services or is not an essential retail outlet, then its employees are not permitted to travel to and from work for the duration of the lockdown period. Certain non-essential retail providers are permitted to provide emergency call-out or delivery services. Even where essential services are being provided, the Irish Government has requested that these be provided from home, where possible. The obligations on employers are as follows:

- Employers are required to determine, with reference to the Regulations, whether or not its organization is providing an essential service. It is not necessary to seek official authorization in this regard, nor is there any available mechanism for businesses to seek such authorization from the Irish Government.
- Where an employer determines that it is providing an essential service, the employees who are essential to the provision of that service should be identified and notified accordingly. This may or may not include all employees of the organization and a review of all employee categories and their roles should be undertaken to identify which employees provide an essential service. The Irish government has extended this to contractors who also provide essential services.
- Employees who are identified as being essential are required, at all times when traveling to and from work, to carry either a work identification or a letter from the organization outlining that he/she is an essential employee, as well as one other form of identification. It is important that employers notify employees of this requirement and provide them with a confirmation letter where there is no such work identification.
- Employers who are deemed essential service providers must ensure that they facilitate physical distancing measures to ensure the health and safety of their employees.
- The Irish government has provided that all organizations that provide essential service should have business continuity and resilience plans in place and that these provide for the possibility that key workers or key facilities may be impacted by COVID-19. Further, the latest public health guidance must be adhered to at all times. These Regulations will be enforced by An Garda Síochána (the Irish police force). Any person, including a company, who does not comply with the Regulations will be guilty of a criminal offense, subject to fine and/or imprisonment. Any individual director, manager, secretary or other officer who is involved in non-



compliance by a company may also be guilty of a criminal offence and also subject to a fine and/or imprisonment.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Employers have a duty to protect the health and safety of their employees. Therefore, there is a legitimate basis to deny an employee access to the workplace if they have symptoms of COVID-19. However, the Irish government and the Irish Health Services Executive have issued robust instructions that persons who are experiencing COVID-19 symptoms are required to seek advice from their general practitioner and self-isolate. Further, the COVID-19 Illness Benefit (as detailed above) is available to employees in such circumstances.

Can employers implement a mandatory screening program for COVID-19 symptoms?

An employer can implement non-invasive screening programs for COVID-19 symptoms, such as questionnaires and self-declaration forms. However, where an employer seeks to impose more invasive screening, such as temperature testing, the employer must receive clear medical advice from an independent, reputable and suitably qualified occupational health practitioner that the screening program is recommended, on the basis that it can help to identify those suffering from the virus and can minimize the risk to other employees, for example, and that it is reasonable, necessary and proportionate in the circumstances. Where such medical advice is provided, it will likely be lawful to carry out a more invasive screening program, such as temperature testing, from an Irish employment law perspective. In order to be lawful:

- The screening program must be carried out proportionately and applied equally to all employees.
- The screening program must be carried out in an appropriate and controlled environment under the supervision of a medically qualified individual where steps are taken to ensure that the privacy of all individuals is protected as far as possible.
- Employees must be properly and fully informed in advance that a screening program will be carried out, of the reasons for the screening, the elements and of the consequences of having COVID-19 symptoms, or of failing to comply with the mandatory screening program.



- Any action taken on the basis of the screening program results or, where possible, of an employee failing to undergo such a screening program, should only be taken on the basis of medical advice.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

There is no legal obligation on an employee to disclose to their employer if they have tested positive for COVID-19. The Department of Public Health in Ireland will follow up with secondary contacts of the employee (*i.e.*, colleagues, clients, customers, etc.) who the employee had been in contact with to try and trace and contain potential secondary transmission.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Employers can implement a policy requiring employees to report if they have COVID-19 symptoms because employers are under a statutory obligation to ensure, in so far as is reasonably practicable, the health, safety and welfare of its employees. However, any such policy would need to be implemented in compliance with GDPR and Irish Data Protection legislation. It is also important to note that any such information must be treated by the company in a manner that complies with the GDPR and Irish Data Protection legislation. As a result, it is not common for employers to have a policy requiring employees to report their co-workers' symptoms.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Under Irish law, although the timing of annual leave can be determined by the employer, the employer must take into account (i) the need for the employee to reconcile work and any family responsibilities, and (ii) the opportunities for rest and recreation available to the employee. The employer must also have consulted with the employee (or the trade union of which they are a member) not later than one month before the day on which the annual leave is due to commence. Given the timing of the government's responses here, employers will likely not be in a position to provide this requisite notice.

The government initially included the option of allowing employees to take annual leave as one of the options available to employers to support their workforce. An open and reasonable discussion around this option would be crucial and employees would need to be specifically advised that, if they are considering taking this option, their entitlement will diminish commensurate to the days taken, as annual leave entitlements are exhaustive. Where employees are forced to take annual leave, the risk of claims being brought against the employer for breaches of the working time legislation are higher. The key to mitigating



exposure to such claims for breaches of the working time legislation lies in effectively communicating with employees.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No, employers are not relieved from any severance liabilities if a reduction in workforce is caused by COVID-19.

However, Irish law specifically provides that if an employee has been laid off or put on short-time for four or more consecutive weeks, or six or more weeks within a 13-week period (of which not more than three are consecutive), the employee may notify their employer in writing of his/her intention to claim a statutory redundancy payment. This can be countered by the employer in certain circumstances. However, the Emergency Measures in the Public Interest (COVID-19) Act 2020 amends this legislation to suspend, until May 31, 2020, the entitlement of an employee to make this notification to his/her employer. This is limited to circumstances where the employee has been placed on a period of lay-off or short-time due to the impact of the measures taken by his/her employer in compliance with or as a consequence of the government's response to prevent, limit, minimize or slow the spread of COVID-19.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

Where there is a temporary operational shutdown as a result of a government mandated order, the only options open to an employer are to continue to pay the employees or to put them on an unpaid lay-off. If the lay-off is valid, the employer may suspend all relevant benefits. However, the accrual of seniority or benefit depends on the legislation governing the particular benefit (e.g., redundancy, annual leave).

It is worth noting that the Irish government has called on all employers during the COVID-19 pandemic to support their workforces. Any decision taken by an employer during these exceptional circumstances will likely be viewed by the Irish courts or the Workplace Relations Commission (the Irish employment tribunal) against the backdrop of this national call.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

An employer may place an employee on a period of lay-off where there is a temporary workplace shutdown. The employer must show that (i) they are unable to provide work for which the employee was employed to do and (ii) the employer reasonably believes that the cessation will not be permanent.



An employee may be placed on a period of short-time, which occurs where there is a shortage of work (but not a complete cessation of work). An employee is deemed to be on short-time where his/her hours of work or remuneration are less than half of their normal weekly amount by reason of a diminution in the work provided for the employee by the employer. The employer must have a reasonable belief that the diminution will be temporary.

The employer must give notice to the employee prior to placing him/her on a period of lay-off or short-time. There is no statutory minimum timeframe in relation to such notice, but the employer should provide as much notice as is reasonably possible in the circumstances.

There is no general right under Irish employment law to lay off employees or put employees on a period of short-time without pay. Accordingly, in the absence of an express clause permitting lay-off or short-time without pay or in the absence of an implied right established by way of custom and practice, prior agreement from the employees should be obtained in order to lawfully withhold wages during any such period. Where no such consent is obtained, there is a risk that the employees could take a claim for unlawful deduction of wages under the Irish payment of wages legislation or a claim for constructive dismissal.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Employees who refuse to come to the workplace due to COVID-19 should not be terminated for job abandonment as such a termination would likely be viewed by the Workplace Relations Commission (the Irish employment tribunal) as an unfair dismissal under Irish law.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

There are no mandatory notification requirements on an employer under Irish law to report instances of their employees testing positive to the health authorities. The obligation to notify applies to medical practitioners, not employers.

The Irish Data Protection Commissioner (DPC) confirmed in its recent guidance that an employer would be justified in informing staff that there has been a case, or suspected case, of COVID-19 in the organization and requesting them to work from home, if such an arrangement is not already implemented. However, that communication should not name the affected individual and the confidentiality of the employee's personal data should be protected to the extent possible.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Force majeure clauses must be expressly provided for by contract. The principle of *force majeure* is not automatically implied under Irish law. Where a *force majeure* clause exists, the party seeking to rely on it must show that the event falls within the definition of *force majeure* in that contract and that the inability to perform the contractual obligations is because of the *force majeure* event. The fact that an event makes compliance more onerous or expensive is not sufficient to excuse a party from performing their obligations.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

In some circumstances, yes. The party will need to show that (i) a *force majeure* clause is contained in the contract, (ii) under the wording of this clause, COVID-19 (or the associated event triggered by COVID-19) constitutes a *force majeure* event, and (iii) that the event has prevented compliance with contractual obligations. Any notification procedures contained in the *force majeure* clause should also be carefully complied with.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

No. Ireland's emergency legislation dealing with COVID-19 does not address this issue.

What remedies are available to businesses in the event they default on their contractual obligations?

None, other than reliance on the contractual doctrines of *force majeure* and frustration which may or may not be applicable in the circumstances. Businesses may have taken out insurance for business interruption. A contract may be terminated on the grounds of frustration when something occurs after entering into it that is not the fault of any of the parties to it, which makes it physically or commercially impossible to perform it, or which changes performance into a completely different obligation from that which the parties intended when the contract was concluded. The burden for establishing a frustration defense is extremely high.



Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

The government has introduced a wide range of measures to support Irish business, most notably (i) the SME Credit Guarantee Scheme for COVID-19, which aims to encourage additional lending to small and medium-sized enterprises (SMEs) by offering a partial government guarantee (currently 80%) to banks against losses on qualifying loans to eligible SMEs; (ii) the Microfinance Ireland COVID-19 Business Loan Scheme; and (iii) a €200 million Package for Enterprise Supports, including a Rescue and Restructuring Scheme that is available through Enterprise Ireland for vulnerable but viable firms that need to restructure or transform their business. More details of supports are contained on the Department of Business, Enterprise and Innovation website. Qualification criteria will differ between each of these schemes. Even though the focus of these schemes is on assisting domestic industry, in principle, the local subsidiary of a foreign entity could qualify.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Yes. As of the date of this posting, all of the Court's offices remain operational and can be contacted. Time limits for commencing cases apply as usual, as court filings can still be accepted. However, all court hearings have been adjourned until after April 20, 2020, unless particular urgency can be shown, and new hearing dates will be set after April 20, 2020, or when the situation sufficiently improves. The High Court is available to hear urgent applications, including injunctions and their enforcement, and urgent judicial review applications. Judgments are being delivered by email rather than in court.

Has your country issued any tax amnesty or relief programs because of COVID-19?

So far, Revenue has been primarily focused on SMEs. SMEs that are experiencing financial difficulty are asked to continue to file their tax returns by existing deadlines, however, no interest will be applied to amounts of value added tax and payroll taxes that go unpaid during this time.

Businesses other than SMEs that are experiencing financial difficulties are encouraged to contact Revenue.

Revenue's debt collection activities have been suspended.

Has the tax filing deadline been extended?

Deadlines for filing certain notifications with Revenue have been extended and relaxed. However, the tax return filing dates for corporation tax and income tax remain unchanged. Revenue is requesting that returns continue to be filed on time, but recognize that key personnel may not be available to prepare the required computations. In those cases,



IRELAND

Contributed by: Matheson (Denise Moran, Bryan Dunne, Jill Barrett)

Revenue is requesting businesses to file on a best-estimate basis. Revenue has suspended surcharges on underpaid corporation tax for accounting periods ending June 2019 onwards (*i.e.*, due by March 23, 2020, onwards).

Are tax refunds and other claims being timely processed?

Revenue has committed to prioritizing repayments of value-added tax and certain withholding taxes imposed on payments to Irish businesses.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. Israel has enacted new employment-related legislation regarding acknowledging the mandatory isolation period as sick leave, prohibiting employees under mandatory isolation to enter the workplace, and prohibiting employers from dismissing employees on mandatory isolation. In addition, certain employers (*i.e.*, movie theaters, pubs, shops, etc.) are not allowed to operate their businesses. Those businesses that may remain open must reduce their workforce to no more than 10 employees or one-third of the total employees (whichever is greater).

Can employers furlough employees during this COVID-19 health crisis?

Israeli employees accrue annual vacation and may be required to take either a short vacation (up to seven (7) days) upon one day's notice or a long leave (more than seven (7) days) upon 14 days' notice. In addition, the terms of eligibility for unemployment benefits were eased in order to prevent mass layoffs and motivate employers to put employees on unpaid leave. Public employees have been forced to take paid leave on account of their accrued and future leave.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

As noted above, the terms of eligibility for unemployment benefits were eased. Eligible employees required to take unpaid leave will be entitled to unemployment benefits even if they still have accrued unused vacation. In addition, the unemployment benefit requirement that employees be employed for 12 months over the last 18 months was shortened to six (6) months over the last 18 months.

Employers have received extensions to make tax payments. Further, the government has announced a plan to provide benefits to independent contractors.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Employers will need to close their businesses and prevent the entry of employees. In addition, they will need to decide if the employees will be put on unpaid leave, sent on annual vacation, allowed to work from home, or terminated.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Employers are required to deny entrance to the workplace from any employee with symptoms of high fever (38°C or higher). No other symptoms qualify grounds to deny entrance. Currently, workplaces in the industry, production and services sectors may have the greater of 30% of their employees come to work, or 10 workers at the same time at the



same workplace. To meet the self-regulated “purple badge” standard businesses must appoint someone to be responsible for coronavirus awareness, check body temperatures upon entry, adhere to hygiene rules, ban gatherings in food and coffee areas, maintain a distance of two meters between people, and arrange transportation for the same group of employees on the same shift, to the extent possible.

Additionally, two workers may be present in a room of up to 20 square meters, and more workers may be present if there is a barrier to prevent the transfer of droplets; five workers may be present in a room larger than 20 square meters – more if there is a barrier; meetings and discussions are allowed for up to eight people.

Can employers implement a mandatory screening program for COVID-19 symptoms?

See response to question 1(e) above.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Under normal circumstances, employees in Israel are not required to disclose the nature of their illness, and this is not specified in medical certificates provided to the employer. Under COVID-19 regulations, an employee who has tested positive for COVID-19 or who has been in contact with someone who has tested positive must stay in isolation. As a result, the employer might learn that an employee has tested positive for COVID-19 from other sources.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

No. This is considered a breach of the employees’ right to privacy.

Can employers force employees to take vacation time during the COVID-19 health crisis?

See responses to questions 1(b) and (c).

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. Mandatory severance should be paid.



If a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

In the private sector, employers can put employees on unpaid leave and suspend the employment relationship. In the public sector, there is an obligation to provide employees with paid leave.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

In general, causing a change in an employee's terms of work (such as a reduction in hours/wages) or putting them on unpaid leave requires employee consent. Currently, there is a debate as to whether employee consent is required in the current COVID-19 crisis. Nevertheless, the employee always has the right to resign under these circumstances, resulting in a "constructive dismissal."

If employees refuse to come to work, can their employment be terminated for job abandonment?

If the employee decides, for no legal reason and without the employer's approval, not to come to work, the employer may initiate a hearing procedure in order to terminate the employee.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

The COVID-19 tests are conducted by the Ministry of Health. According to government regulations, anyone who came into contact with someone who tested positive for COVID-19 must enter isolation. As a result, other employees are likely to be notified by the Ministry of Health that they, too, should self-isolate. While there are no regulations ordering the employer to notify other employees, it may be considered justified as long as it was done in good faith and to the minimum extent possible, without releasing unnecessary identifying information.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Israeli Contract Law (Remedies for Breach of Contract), Section 5730-1970, provides that when a contract is breached due to circumstances of which the breaching party (1) was unaware at the time of entering into the contract, (2) was not supposed to be aware of, or did not see or foresee it in advance, (3) could not have prevented it, and (4) as a result performance is impossible or fundamentally different from what was agreed to between the parties, a breach of the contract will support compensation to the allegedly harmed party.

Nevertheless, if the court finds it justified to do so under the circumstances and to the extent it considers it appropriate, the court may (whether the contract is terminated or not), require each party to return to the other party what it received under the contract, or to pay its value and require the breaching party to pay the injured party the reasonable expenses or liabilities the injured party reasonably incurred fulfilling the terms of the contract.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Generally, the court's approach and interpretation for *force majeure* is narrow. Cases of *force majeure* are analyzed on a case-by-case basis, dependent on the specific contractual provisions (including the governing law and specific *force majeure* provisions) at play and each case's unique factual circumstances. For example, the court may take into account the parties' ability to anticipate and prepare for the crisis, guidelines issued by competent authorities with respect to the specific subject matter of the contract, and/or the measures taken to find reasonable alternatives, among other things.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

As of the date of this posting, there are no instructions from a competent authority providing relief from the obligation to comply with contractual terms. As noted above, we expect that guidelines issued by competent authorities regarding the specific subject matter of the breached contract could potentially influence specific claims brought before the Israeli courts. However, as of the date of this posting, there is no case law with respect to COVID-19-specific issues.

What remedies are available to businesses in the event they default on their contractual obligations?

Once attempts to reach a mutual new understanding have failed, the remedies offered to businesses defaulting on their contractual obligations vary depending on the circumstances of each business. For example, a contractual breach for a business that is still able to continue its operations can try to reach an out-of-court settlement with its



creditors. A business in severe crisis may apply for a court order "for the opening of proceedings," which may include operating the business under court supervision and, in certain cases, granting a stay of proceedings and/or approval of a rehabilitation plan for the company. Nevertheless, before initiating any such proceedings, a business would need to consider the availability of the judiciary at this time, as described below.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

As of the date of this posting, the government has introduced several benefits for small and medium-sized businesses, including (1) providing NIS 1 billion in state aid to allow banks and institutions to increase credit lines to distressed businesses; (2) postponing certain business property tax payments and water payments; (3) providing flexibility in certain cases where businesses cannot pay electric bills; (4) postponing VAT filings and payments; (5) postponing social security and health insurance payments, originally due in April 2020; (6) freezing enforcement actions; (7) providing grants to businesses, including individuals deemed authorized dealers, up to approximately NIS 6,000, on terms to be published; and (8) providing state-guaranteed, limited collateral loans provided through banks.

The chairman of the Temporary Finance Committee has instructed the government to present a comprehensive plan to address the economic impact on the business sector through a full-scale aid program.

For now, it seems there is no specific guideline or instruction which excludes local subsidiaries of foreign entities from accessing these benefits.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Emergency Regulations, extended through April 16, 2020, provide that the judiciary is to operate under an "emergency" status. During this time, only certain cases are heard, as per the Emergency Regulations and a notice published by the Israeli Courts Administration (the Court Notice). Per the Emergency Regulations and the Court Notice, only certain proceedings may be conducted, such as High Court petitions, urgent criminal, civil and administrative proceedings, arrests and releases, urgent temporary remedies in civil cases, and other matters pending. Hearings on matters other than those specifically addressed in the Emergency Regulations or the Courts Notice are to be cancelled and rescheduled after the end of the emergency period.



Has your country issued any tax amnesty or relief programs because of COVID-19?

The government is providing a grant to self-employed individuals running businesses affected economically by the coronavirus crisis.

In addition to satisfying other conditions, the funds will be granted to individuals who are over the age of 20 whose average monthly income is over NIS 2,000 (US\$550) but under NIS 20,000 (US\$5,500), who run businesses that have seen at least a 25% decline since the start of the crisis in Israel in March 2020, compared to the same period the prior year.

Recipients will receive 65% of their average monthly income, up to NIS 6,000 (US\$1,640). There are additional conditions that should be met.

Has the tax filing deadline been extended?

Yes—the 2019 tax filing deadline has been extended to July 30, 2020, for companies, non-profit organizations and individuals. Similarly, VAT remitting deadlines have been extended as well.

Are tax refunds and other claims being timely processed?

Delays are expected because the ITA reduced its manpower in accordance with the emergency regulations enacted by the government.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes, the measures include the following:

- The Public Order (State Curfew) Order, 2020
- The Public Order (State Curfew) Variation Order, 2020
- The Public Order (State Curfew) (Extension) Order 2020
- The Public Health (Prevention, Control and Suppression of COVID-19) Regulations, 2020
- Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020
- The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Variation Rules No. 2 of 2020
- The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Nairobi Metropolitan Area) Order, 2020
- The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mombasa County) Order, 2020
- The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Kilifi County) Order, 2020
- The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Kwale County) Order, 2020
- Pandemic Response Management Bill, which inter alia seeks to prohibit employers from terminating contracts of service and implementing salary cuts.

Public Order (State Curfew) Order, 2020, establishes a 30-day curfew, which took effect on March 27, 2020, that applies from 7:00 p.m. to 5:00 a.m. The curfew does not apply to employees who offer essential services as prescribed in the order and in the Public Order (State Curfew) Variation Order, 2020. To facilitate compliance, the Public Order (State Curfew) Variation Order, 2020, provides that all employers who are not designated as



critical or essential services shall ensure that their employees leave the work place no later than 4:00 p.m.

The Public Health (Prevention, Control and Suppression of COVID-19) Regulations, 2020, provide that employers shall notify a medical officer, public health officer, medical practitioner or the nearest administrator if they suspect that an employee is suffering from COVID-19, or take the employee to a medical officer, medical practitioner or health facility for treatment.

Under the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) orders, the Cabinet Secretary of Health declared the Nairobi Metropolitan Area, Mombasa, Kilifi and Kwale counties as infected areas. Movement in and out of these areas is restricted for 21 days, beginning April 6, 2020, with regard to the Nairobi Metropolitan Area and April 8, 2020, with regard to Mombasa, Kilifi and Kwale counties. On April 25, the president extended the cessation of movement into and out of these areas for an additional 21 days. Additionally, Mandera County was declared an infected area and, on April 22, the interior ministry restricted movement into and out of Mandera County for a period of 21 days. Movement in or out of these areas is permitted only for transportation of food and farm produce for commercial purposes, as well as other lawful cargo and goods such as construction material, fuel and pharmaceutical products. Ambulances transporting patients to health facilities are permitted within an infected area. Individuals who are permitted in and out of the infected areas must be designated in writing by the employer and shall be able to produce the necessary documentation to law enforcement.

Further, the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020, provide that a public place includes a workplace. As such, employees must wear a face mask that covers their mouth and nose while at work. Additionally, every organization, business entity, trader or vendor, whether in a market or enclosed premises, must:

- I. Provide a handwashing station with soap and water or an alcohol-based sanitizer approved for use by the Kenya Bureau of Standards at their business location or entrance to their premises
- II. Institute measures to ensure that at least one meter is maintained between persons accessing or within their premises or business location
- III. Sanitize their premises or business location regularly.



Can employers furlough employees during this COVID-19 health crisis?

Yes, initially with pay. The terms more frequently used in Kenya are paid or unpaid leave. If an employee exhausts their paid leave days, an employer may request that an employee take unpaid leave. However, the employer must seek and obtain consent from the employee before sending them on unpaid leave. In the event that the employee does not give their consent and the employer is unable to financially sustain the employee, the employer may consider terminating the employee's employment contract on account of redundancy. However, the employer must strictly follow the requirements and procedures of affecting a lawful redundancy as set out in the Employment Act.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes. The Tax Laws (Amendment) Act 2020, effective as of April 25, 2020, provides the following tax relief for employers and employees:

- i. 100% tax relief for persons earning gross monthly income of up to KES 28,8000
- ii. Reduction of income tax rate (Pay-As-You-Earn) from 30% to 25% and an expansion on the individual bands of tax
- iii. Reduction of the tax rate from 30% to 25% for withdrawals from a registered pension fund, provident fund/pension scheme or the national social security fund after the expiration of 15 years from the date of joining for amounts over KES 1,200,000.00
- iv. Reduction of resident income tax (corporation tax) from 30% to 25%, effective as of January 1, 2020
- v. Reduction of the turnover tax rate from 3% to 1%; the turnover tax rate has been extended to incorporated companies (previously the rate was applicable to sole proprietors and partnerships) and the upper limit for the turnover tax rate has been increased from KES 5 million to 50 million
- vi. Reduction of the VAT from 16% to 14%, effective April 1, 2020
- vii. The presumptive tax of 15% that was subject to small businesses was repealed.

Additionally, The Retirement Benefits Authority (RBA), the state entity in charge of regulating and supervising the establishment and management of retirement benefits schemes in Kenya, has allowed employers, upon application to RBA and seeking approval



from employees or union representative, to either suspend, reduce or discontinue the employer retirement contribution to pension schemes until the pandemic comes to an end.

Non-fiscal measures include:

- i. Temporary suspension of the listing with credit reference bureaus (CRB) of any person, micro, small and medium enterprises (MSMES) and corporate entity whose loan account is overdue or is in arrears, effective April 1, 2020.
- ii. To improve cash flow for business, the president directed the Kenya Revenue Authority to expedite the payment of all verified VAT refund claims amounting to KES 10 billion within three weeks; or in the alternative, allow for offsetting of Withholding VAT. The president also encouraged the private sector to play a role in helping Kenyans against the economic effect of the COVID-19 pandemic. As such, to improve liquidity in the economy and ensure businesses remain afloat by enhancing cash flows, the president encouraged businesses in the private sector to settle any outstanding payments among themselves within three weeks from March 25, 2020.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

The government has directed employees who are not working in critical areas to work from home or remotely. Employers are required to provide employees with the necessary resources to work from home. Employers should evaluate whether they have the necessary infrastructure to enable a large number of employees to work from home and whether the IT system is able to accommodate a high number of employees working remotely. Employers may also update the current work from home policy to ensure that employees are aware of their obligations while working remotely.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. An employer has a legal obligation to keep the workplace and its employees safe.

Can employers implement a mandatory screening program for COVID-19 symptoms?

As a general rule, an employer cannot compel an employee to undergo a medical examination without their consent. However, because the COVID-19 virus presents a serious public health risk under the Public Health Act, mandatory screening for COVID-19 symptoms may not be considered a violation of an employee's right. Any other test that



may not be linked to a COVID-19 test is likely to be considered a violation of an employee's right.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

In these circumstances, an employee has a legal duty to disclose if they have any symptoms or if they have tested positive for COVID-19. The Occupational Safety and Health Act, 2007, imposes a duty on employees to ensure their own safety and health in the workplace, as well as the safety and health of other persons in the workplace. Further, an employee must comply with safety and health procedures requirements or instructions given by the employer; it is an offense not to comply.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes. Employers have a responsibility to protect the health, safety and welfare of their employees and must do whatever is reasonably practicable to achieve this. The Occupational Safety and Health Act, 2007, requires that employers put certain measures in place to ensure the safety of employees in the workplace. One such measure is to have a policy requiring employees to report if they or a coworker has COVID-19 symptoms. Further, the Occupational Safety and Health Advisory on COVID-19 published by the director of Occupational Safety and Health Services on March 14, 2020, advised workplaces to institute a reporting requirement in the event of a suspected case of COVID-19.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Yes. The Employment Act provides that an employee is entitled to annual leave of 21 days with full pay. It also states that an employee may take their annual leave when they wish, subject to the employer's schedule. As such, an employer may deem the current health crisis an appropriate time for an employee to take their paid annual leave.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. Employers must strictly follow the requirements and procedures for implementing a lawful redundancy as set out in the Employment Act.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers

No. Any change in the terms of an employee's contract must be made in consult with the employee and is subject to the employee's consent.



interrupt the accrual of seniority and other employment benefits during that period?

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes. However, the Employment Act provides *inter alia* that the employee's place of work, working hours, remuneration and details of benefits must be indicated in the employment contract. To this end, any variation in the employee's contract must be made in consult with the employee, subject to their unequivocal consent, and must be in writing.

If employees refuse to come to work, can their employment be terminated for job abandonment?

If an employer has put in place reasonable measures to ensure that the workplace is safe, employees would not be justified in refusing to come to work. In this circumstance, the refusal could be deemed as an act of gross misconduct, which is a ground for dismissal under the Employment Act.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Regulations, 2020, provide that every employer who suspects that any employee is suffering from COVID-19 shall notify a medical officer, public health officer, a medical practitioner and/or the nearest administrator, or take that person to a medical officer, medical practitioner or health facility for treatment.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Kenya is a common law jurisdiction, and the common law principles on *force majeure* are applicable to contracts under Kenyan law. The scope of *force majeure* varies from contract to contract and, accordingly, each contract must be examined carefully to determine how the *force majeure* clauses cover business disruption caused by various events or situations.

Notably, Kenyan courts have referred to *force majeure* as “those situations outside the control of parties and which prevent them from performing the obligations assumed under the contract. These events may include the destruction of the subject matter, unavailability of the subject matter, death of a person, performance impossibility among others.”

Kenyan courts have stated that a party pleading *force majeure* must prove that the failure was due to an impediment beyond his control; that he could not reasonably be expected to have taken the impediment and its effects upon his ability to perform the contract into account at the time of the conclusion of the contract; and that he could not reasonably have avoided or overcome it or at least its effects.

A party seeking to rely on this clause would, therefore, need to consider the following:

- i. Whether the contract contains any *force majeure* clauses (which need not be labelled *force majeure*) that anticipate that there may be some sort of supervening event(s) beyond the control of the parties that may affect the performance of some or all of their obligations.
- ii. Whether such clause can be relied upon. The party seeking to rely on the *force majeure* clause will need to consider the various *force majeure* events and whether the event falls within the purview of the defined scope.
- iii. Whether their non-performance is due to circumstances beyond their control.
- iv. That there were no reasonable steps that could have been taken to avoid or mitigate the supervening event or its consequences.
- v. Careful consideration should also be given to any specific timing and notice requirements.



The consequence of any *force majeure* provision is contingent on its wording, interpretation and application to the specific facts. Common provisions in a *force majeure* clause may:

- i. Excuse one or both parties from performing the contract, in whole or in part.
- ii. Allow one or both parties to suspend or defer performance.
- iii. Require some element of causation in the contract and the affected party may need to show that the *force majeure* trigger has prevented, delayed or hindered its performance.
- iv. Require the affected party to take reasonable steps to mitigate the event or its consequences; and notify the other party and keep it informed.

If there is no express *force majeure* type provision, parties may consider relying upon other contractual provisions such as material adverse effect, price adjustment, change in law provisions, liability limitations and exclusions, extensions of time.

Finally, the affected party may consider relying upon the doctrine of frustration. A contract may be discharged on frustration grounds when something occurs after the formation of the contract that renders it physically or commercially impossible to fulfil or transforms the obligation to perform into a radically different obligation from the obligation undertaken when the parties entered into the contract. However, courts are generally reluctant to find that a contract has been frustrated.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Consistent with the above, parties would need to consider the scope of the *force majeure* provisions in their contract. The *force majeure* provisions may also be triggered by subsequent material adverse effects of COVID-19, such as labor and supply shortages, or any other events or circumstances beyond the party's control that are unavoidable and not attributable to the other party.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

The president of Kenya has not yet declared a state of emergency in the country.

If the president were to declare a state of emergency, legislation may be enacted granting the necessary relief, and such legislation would need to be published in the Kenya Gazette. While there has been no state of emergency declaration, various government



directives, subsidiary legislation and proposed amendments to the law are aimed at giving some form of relief to affected persons. For example, please see small-business protections discussed below.

What remedies are available to businesses in the event they default on their contractual obligations?

Currently, there are no specific remedies available or protections offered under Kenya's COVID-19-related emergency legislation for businesses that default on their contractual obligations as a result of the pandemic.

The ordinary principles of contract law apply. However, please see small-business protections discussed in response to question (e) below.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

The Central Bank of Kenya has outlined emergency measures to protect borrowers, including:

- a) Provision of relief to borrowers on their personal loans based on their individual circumstances
- b) Extension of personal loans for periods of up to one year by the individual commercial banks
- c) Assessment and restructuring loans taken by corporate borrowers (and SMEs) based on their respective circumstances as agreed between commercial banks and the borrower
- d) A requirement for commercial banks to meet all costs related to extension and restructuring of loans by the banks

These measures are optional and largely depend on negotiations between lenders and borrowers. We believe these measures are available to small businesses (SMEs) as well local subsidiaries of foreign entities.

Additionally, the Central Bank of Kenya suspended the listing of negative credit information for a period of six months for borrowers whose loans were performing previously but have become non-performing as of April 1, 2020, to shield borrowers from the adverse impact of COVID-19. The Central Bank of Kenya also set a minimum threshold of KES 1,000 (approximately US\$10) for listing negative credit information regarding borrowers.



Please see our comments on tax below.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Since March 15, 2020, all appeals, mentions and hearings of criminal and civil cases in all courts are suspended. Courts are closed and there are no open court appearances. During this closure, however, courts may hear matters under certificate of urgency and take plea for serious cases. The court registries are working with significantly reduced staff capacity.

And various electronic platforms are being used for urgent hearings, mentions as well as the delivery of rulings and judgements.

Has your country issued any tax amnesty or relief programs because of COVID-19?

On April 25, 2020, the Kenyan president assented to the Tax Laws (Amendment) Act (Tax Act), which became effective on the same date.

The measures introduced under the Tax Act are set out below.

For employees:

- a) A 100% tax relief for persons earning gross monthly income of KES 24,000 or less
- b) The reduction on income tax rate (PAYE) from 30% to 25%
- c) The rate of tax has been reduced from 30% to 25% on withdrawals from a provident fund and/or a pension scheme or the national social security fund after 15 years from the date of joining for amounts over KES 1,200,000.

For companies:

To help small and medium enterprises, the government introduced the following tax relief measures:

- a) Corporation tax

Corporation tax is reduced from 30% to 25%. This is intended to enhance cash flows for companies and is effective as of January 1, 2020. The withholding tax rate for dividend payments to non-residents has been increased from 10% to 15%.



b) Turnover tax

The turnover tax rate introduced under the Finance Act 2019 is reduced from 3% to 1%. The turnover tax applies to companies whose turnover does not exceed or is expected not to exceed KES 5,000,000 in a financial year.

c) Value added tax (VAT)

The VAT rate is reduced to 14% from 16%. VAT is applicable to taxable goods and services provided by a person registered in Kenya. The VAT tax rate is to become effective April 1, 2020.

Additionally, the government directed that the Kenya Revenue Authority (KRA) release verified VAT returns within three weeks or allow VAT refunds to be offset against VAT withheld to the KRA on a monthly basis.

Other measures introduced to help those most vulnerable and enhance the provision of healthcare services:

- a) The disbursement of KES 1,000,000,000 for recruiting additional medical personnel and healthcare workers
- b) Directing the Credit Reference Bureau to suspend negative listing for borrowers whose loans are in arrears and overdue, effective April 1, 2020
- c) A voluntary reduction of salaries of senior government officials between 80% and 20%
- d) Requiring all government employees aged 58 years and above in job group S and below or their equivalent to work from home
- e) Requiring county governments to release all outstanding payments of approximately KES 13,000,000,000 to suppliers within a period of three weeks
- f) The appropriation of additional KES 10,000,000,000 to the elderly, orphans and other vulnerable members of our society through cash transfers by the Ministry of Labor and Social Protection.

Central Bank of Kenya monetary policies:



Finally, the following measures were introduced by the Central Bank of Kenya through its Monetary Policy Committee on 24 March 24, 2020:

- a) Reducing the Central Bank of Kenya (CBK) Rate from 8.25% to 7.25%. This is aimed at enabling banks to lower interest lending rates to borrowers on existing and new facilities.
- b) The CBK has proposed the reduction of the Cash Reserve Ratio from 5.25% to 4.25%. This is aimed at providing additional liquidity to banks to support distressed borrowers.

The Monetary Policy Committee aims to monitor the changes and reconvene within a month to assess the measures and the evolution of the COVID-19 pandemic.

Has the tax filing deadline been extended?

No.

Are tax refunds and other claims being timely processed?

With the exception of VAT refunds, the government has not discussed the processing of tax refunds. Where a claim for a tax refund is fully supported, it is processed within 90 days from the time of lodgment.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes, idle time benefits have been approved by the Cabinet of Ministers for employers on a state-approved list of selected industries affected by the state of emergency (effective until at least April 14, 2020). Under the new law, where the employer cannot provide enough work for its employees (referred to as “idle time”), employees may receive up to 75% of the employee’s previous six-month average earnings, capped at €700 per calendar month. According to Latvian labor law, where employees are eligible for and receive idle time benefits, employers are not obligated to pay the employee the difference between what the employee would have earned and the state benefits they receive under this new law. Personal income tax (PIT) and mandatory state social insurance contributions shall not apply to idle time benefits.

Can employers furlough employees during this COVID-19 health crisis?

No, local regulations do not allow employers to suspend work and send employees home without pay during the COVID-19 health crisis. If the employer is forced to shut down its operations, employers must pay employees in full.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

See the response to question 1(a) above.

What are the employers’ obligations if the competent authority in your country issues a “stay-in-place” or similar order?

Local regulations at this point do not provide any specific obligations for the employers if a “stay-in-place” or similar order is issued. In such a case, however, additional obligations for employers could be imposed.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

If there is a cause for suspicion that the employee has become infected with COVID-19 and/or may threaten another person’s safety or health, the employer is allowed to order the employee to undergo a health examination. However, if the employee does not voluntarily submit to the health examination, the examination expenses shall be covered by the employer. If the employee refuses to undergo a health exam, the employer has the right to suspend the employee without pay and deny the employee access to the workplace.



Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes. Among other things, the employer is obligated to ensure fair and safe working conditions that are not harmful to its employees' health, which includes taking steps to guard against the risk of infectious diseases (*i.e.*, by instituting a mandatory screening program).

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes, employees must refrain from actions that endanger the life, health, or property of other employees or other persons. As such, they are obligated to disclose to their employer if they have tested positive for COVID-19.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, employers are permitted to implement an internal policy that requires employees to report if they or their co-workers have COVID-19 symptoms, in order to ensure safe working conditions that are not harmful to other employees' health.

Can employers force employees to take vacation time during the COVID-19 health crisis?

No, employers are not allowed to force employees to take paid or unpaid leave during the COVID-19 health crisis. The employer and employee may only mutually agree on the use of the employee's vacation time during this crisis.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No, the employer is not relieved from severance liabilities even if a reduction in force is necessary due to the COVID-19 health crisis. General requirements would still apply (*i.e.*, one (1) month termination notice period, severance payment, compensation for unused vacation days, among other things).

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No, according to local regulations, if the employer is forced to shut down its operations and therefore does not provide work to an employee (idle time), the employer still has the obligation to pay employees in full. Regulations do not provide any exemptions if such temporary operational shut down is caused by the competent authority. Interruption of the accrual of seniority and other employment benefits during a temporary operational shutdown period is also not allowed.



Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Temporary changes, such as a temporary workplace shutdown or reduction in hours, salary and/or benefits, cannot be forced upon employees. Rather, the employer may institute such measures and the parties (employer and employees) may agree to them.

If employees refuse to come to work, can their employment be terminated for job abandonment?

In general, the employee may not refuse to come to work if there is no justifiable reason (*i.e.*, a period of temporary incapacity or “self-isolation period” prescribed by the doctor (issued sick-leave certificate)). If there are no such justifiable reasons, the employer can unilaterally terminate employment relations according to the general procedures and requirements.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Local regulations do not require the employer to do so. In practice, after an employee tests positive for COVID-19, the health authorities inform the employer and all possible persons with whom the infected person had contact.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Force majeure is caused by extraordinary circumstances, which are unforeseen, beyond the control of the parties, which the parties are unable to prevent, due to which any party is unable to perform its contractual obligations, and as a result of which other parties incur or may incur a loss. If there is a situation of *force majeure*, such loss incurred by the other party is not subject to compensation. In such a case, performance of contractual obligations is either suspended for the period of *force majeure* or, if performance is no longer possible due to *force majeure*, the contract is terminated.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

In general, parties are allowed to claim *force majeure*. Whether or not an event of *force majeure* arises out of COVID-19-related events, however, would be evaluated on a case-by-case basis. A finding of *force majeure* depends on the terms of the contract and the wording of the *force majeure* clause (*i.e.*, whether the clause refers to a "pandemic," "epidemic," "disease," "government action" or "government orders," *etc.*).

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

No, such relief has not yet been provided.

What remedies are available to businesses in the event they default on their contractual obligations?

Due to the COVID-19 health crisis, until September 1, 2020, creditors shall be prohibited from submitting an application for insolvency proceedings if any of the features referred to in Section 57, Paragraph one, Clauses 1, 2, 3 or 4 of the Insolvency Law exist. Additional temporary changes have been implemented regarding the right to exercise the commercial pledge.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

Yes, entrepreneurs may use the following support mechanisms: loan guarantees up to €5 million for one undertaking, as well as loans for crisis resolution up to €1 million for one undertaking. Currently, there are no specific restrictions prohibiting a local subsidiary of a foreign entity from accessing these support mechanisms.



Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Yes, the judiciary is operating, however, the Chairperson of the Supreme Court may, in consultation with chairpersons of regional courts and district (city) courts, determine the procedures and conditions under which scheduled court hearings may be suspended or not examined, or otherwise restrict oral judicial proceedings in all courts of the Republic of Latvia.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Yes, companies in crisis-affected sectors (defined by the Cabinet of Ministers) are entitled to special support mechanisms, including postponing their tax payment obligations for up to three (3) years. A late payment charge is not calculated for the late tax payment in relation to which an extension of the term for the payment of taxes has been granted. In addition, if an extension to the term for paying taxes has been granted to the taxpayer, information regarding the taxpayer is not included in the database of tax (duty) debtors administered by the State Revenue Service.

Has the tax filing deadline been extended?

Yes, as described above, companies in sectors identified by the state may postpone tax payments for up to three (3) years. Additionally, companies have been granted an additional three (3) months to file their 2019 annual reports (required under the Law on the Annual Financial Statements and Consolidated Financial Statements of Latvia).

Are tax refunds and other claims being timely processed?

In general, tax refunds and other claims are being processed in a timely manner, and there are no temporary changes with respect to prolonging such processing times. The Tax Administration must now repay overpaid VAT in 30 days, shortening the time for refund payments under the current VAT Law and thus raising available funds for overcoming the crisis caused by COVID-19.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

On April 7, 2020, the Parliament approved amendments to the Law on Occupation regulating the requirements to receive state subsidies in case downtime is announced for employees. The amount of subsidy in the downtime is calculated as a percentage of the employee's salary and at the discretion of the employer shall amount to: (1) 90% of the employee's salary during downtime, but not more than 1 months minimum salary; or (2) 70% of the employee's salary during downtime, but not more than 1.5 months minimum salary. In addition, the employer must maintain no less than 50% of jobs for at least 3 months after then end of the payment of the subsidies.

As of March 19, 2020, sick leave can be granted to an employee (and the government will pay the following percentage of the employee's gross salary): (1) who has become ill with COVID-19 or has become ill while performing his/her necessary functions (e.g., doctors) (77.58%); (2) who is suffering from a severe chronic disease and has a higher risk of becoming ill while performing his/her work function, is unable to work remotely and has not been sent to idle time (62.06%); (3) who needs to take care of his/her young or disabled child due to closed schools (65.94%); or (4) who needs to take care of a disabled or older person if a respective institution has stopped taking care of the person due to the current situation (65.94%).

Can employers furlough employees during this COVID-19 health crisis?

Employers can encourage, but cannot force, an employee to use his/her annual leave. Annual leave must be paid at the employee's average salary rate. Unpaid leave can be provided at the employee's request. However, employers cannot force employees to take unpaid leave.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes, see response to question 1(a) above.



What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Private employers are advised to organize remote work if the nature of the work permits working remotely. If the employer's activities are prohibited and there is no possibility to work remotely, the employer shall announce "idle time" for all or a group of employees.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

If there is a suspicion that a certain employee's health status threatens the health of other employees, the employer must offer remote work or sick leave (if remote working is not possible) to that employee. If the employee refuses, the employer should suspend the employee from work without pay.

Can employers implement a mandatory screening program for COVID-19 symptoms?

As of the date of this posting, government authorities recommend using less invasive procedures, such as the use of a thermovisor, as taking an employee's temperature by thermometer is considered a disproportionate and avoidable measure. The employer may provide the employee with a temperature test upon request or, if the employer has a reasonable suspicion that the employee has the virus (*i.e.*, the employee has a fever), the employer may instruct the employee to test for other COVID-19 symptoms.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Employers have the right to ask employees if they have symptoms of COVID-19 or have been diagnosed with COVID-19, whether they are sick in general, have recently returned from abroad, have been in contact with a person who has returned from abroad, or have been in contact with a person who has symptoms of or has been diagnosed with COVID-19. The requested information should be narrow in scope (*i.e.*, asking for the identity of persons the employee has been in contact with may be deemed unnecessary and disproportionate). Employers may document the information it receives from the employee, but such information must be kept strictly confidential and cannot be kept for longer than absolutely necessary (*i.e.*, after the end of the pandemic).

Further, to prevent further spread of the virus the employer may disclose to other employees that someone in the company has contracted COVID-19, but should not disclose the infected employee's identity.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, employers may have a policy requiring employees to disclose whether they or their co-workers have COVID-19 symptoms, but the requested information should be narrow in



scope (as described above), kept strictly confidential and cannot be kept for longer than absolutely necessary.

Can employers force employees to take vacation time during the COVID-19 health crisis?

See answer 1(b) above.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

The employer can announce idle time if there is no work due to an emergency situation or quarantine. The employer will have to pay a monthly minimum salary, currently €607 gross, during the period of idle time. An employee can partially reduce hours, but the work week must be shortened by not less than two days, or a workday by no less than three hours.

If employees refuse to come to work, can their employment be terminated for job abandonment?

An employee shall have the right to refuse to work if there is a risk to his or her safety or health. An employee's substantiated refusal to work shall not be deemed a violation of his/her job duties. Failure to come to work for the entire workday or shift without a valid reason can be considered a gross violation of job duties and cause for termination of the employee.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

While some information is required to remain confidential (e.g., the name of the employee), it is imperative to report that an employee has tested positive.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Generally, *force majeure* may be invoked if all following conditions have been met:

- (i) The circumstances of *force majeure* were not present at the time of the conclusion of the agreement nor could they have reasonably been foreseen.
- (ii) The circumstances have rendered the contractual obligations impossible to perform.
- (iii) The affected party could not control or prevent the aforementioned circumstances or their consequences.
- (iv) The affected party did not assume the risk of such circumstances or their consequences.

If all of these conditions have been met, the affected party must inform the other party about its inability to perform the contractual obligations within a reasonable timeframe.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Generally, the current spread of COVID-19 and measures taken by the government do not constitute a *force majeure* situation *per se*. Every case must be assessed individually to determine whether *force majeure* may be applied. The company invoking *force majeure* bears the burden of proof.

It should be noted that the Lithuanian Civil Code specifically provides that *force majeure* shall not include circumstances such as absence in the market of goods needed for the performance of the obligation, or lack of the necessary financial resources on the part of the party, or violation of their own obligations committed by the other partners of the debtor. This means that for monetary obligations, a party cannot claim *force majeure*.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

State of emergency declaration and related unappealable government decisions may be a legal ground to suspend and postpone the performance of contractual obligations if all conditions of *force majeure* have been met. A state of emergency declaration is not *per se force majeure* nor is it a state action that releases the parties from obligations or civil liability.



What remedies are available to businesses in the event they default on their contractual obligations?

Businesses may invoke *clausula rebus sic stantibus* (material constraint of performance of contractual obligations due to unforeseen circumstances), provided that the following conditions apply:

- (i) The circumstances were not present at the time of the conclusion of the agreement and could not reasonably have been foreseen.
- (ii) The circumstances have resulted in a substantially constrained performance of the contractual obligations.
- (iii) The affected party could not control or prevent the aforementioned circumstances.
- (iv) The affected party did not assume the risk of such circumstances or their consequences.

In this case, the party suffering from these circumstances may apply to the other party and request a change to the contract. If the other party refuses, the requesting party must seek relief before the court. The request to change the contract does not release the party from performance of the contract.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

Yes, there are several measures available:

- (i) Employment measures indicated in point 1(a) above
- (ii) Compensation of 50% to 100% interest payable by small and medium-sized entities to financial institutions, subject to conditions
- (iii) Businesses are allowed to defer or postpone payments for electricity and natural gas provided by Ignitis UAB
- (iv) Municipalities are recommended to exempt businesses from taxes payable for commercial real estate and land
- (v) Municipalities are recommended to allow businesses to defer or postpone payments for utilities and heating.



LITHUANIA

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There are no restrictions for subsidiaries of foreign companies to obtain these benefits. However, the specific conditions that allow businesses to apply for benefits, and the benefits themselves, are subject to changes and revisions on a daily basis.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

All in-person hearings have been postponed, but proceedings are not suspended. Written proceedings are continuing as usual, as courts have been operating remotely.

Has your country issued any tax amnesty or relief programs because of COVID-19?

The tax authority has made a list of businesses that directly suffered from the quarantine order prohibiting or restricting their operations. Payment of taxes has been deferred for these businesses, with no interest charged to the businesses for the duration of the quarantine period. Further, these businesses may enter into agreements within two months after the end of the quarantine to postpone any overdue taxes and determine a payment schedule. Businesses will not pay any interest for such a postponement or payment schedule. An analogous procedure applies to the payment of state social insurance contributions.

Businesses that are not on the list but have also suffered from the quarantine also have the right to request a deferral, a release from default interest, and may enter into agreements to postpone tax payments, without interest.

If businesses had tax debts before the quarantine and had agreements to postpone payment or create a payment schedule, but were unable to pay these debts or follow the payment schedule after the quarantine announcement, they can seek to amend the agreed-upon payment schedule.

Authorities have waived the prohibition under the law preventing businesses from postponing or creating payment schedules for personal income tax withheld by a business.

Has the tax filing deadline been extended?

As of the date of this posting, advance corporate income tax payments had been postponed until March 30, 2020. Personal income tax payments have been postponed for two months, until July 1, 2020.



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Companies that do not perform any activities and do not earn any income can ask the tax authority for permission not to file a tax return before business resumes.

Are tax refunds and other claims being timely processed? As of the date of this posting, tax refunds have been timely.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

On May 8, 2020, Mozambique passed Decree Number 26/20, which contains several rules regarding labor/employment measures, namely:

- Maintenance of employment relationships
- Health safety rules to prevent and control COVID-19 within workplaces
- Special protection rules for those 60 years of age or older, pregnant or with high-risk diseases.

Can employers furlough employees during this COVID-19 health crisis?

Mozambican law establishes the possibility of suspension of employment agreements by the employer for reasons related to unpredictable and irregular economic circumstances where the employer is temporarily prevented or exempted from having all or some of the employees work due to (in this case) a calamity/*force majeure* situation that, in turn, leads to temporary closure or a decrease in the company's activities.

During this suspension period, rights and duties inherent to the performance of work of the employer and employees cease, except respect and loyalty duties.

Employees are entitled to receive 75% of their salary in the first month of suspension, 50% in the second and 25% in the third. Salaries payable during the suspension of employment agreements may not be lower than Mozambican minimum wage.

After the third month, if the causes of the suspension still exist, employers may cease payment of salaries. In this event, the parties may also reach an amicable agreement to terminate the employment agreement (the employer is still required to pay the compensation to which the employee is entitled).

Additionally, employees who are 60 years of age or older, pregnant or have certain diseases, have priority in being dismissed from performing on-site work.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If

At the moment, no specific economic measures related to the COVID-19 pandemic for employers and/or employees have been passed.



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so, please identify such relief or support if not included in (a) above.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Employers are required to comply with the order issued by the competent authorities. The obligations arising from the employment relationship are not affected, except if the employer suspends the employment contracts, as mentioned above.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

The employer may deny access to the facilities for employees with COVID-19 symptoms for safety and hygiene reasons. Nevertheless, the employer may not prejudice the employee (e.g., the employee's salary must be paid).

Can employers implement a mandatory screening program for COVID-19 symptoms?

Under Mozambican law, employers are required to ensure that all safety and hygiene measures are taken so that the employees may perform their duties under safe conditions. In light of this specific duty, employers may implement screening programs for COVID-19 symptoms.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes, by not disclosing that information the employee could violate an employee's obligation under the labor law by potentially making the workplace unsafe and harming the results of production.

Employees are also required to not report to work if they are infected or present symptoms, which thus helps to prevent the spread of the disease.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

This specific issue is not addressed under Mozambican law. Arguably, under the duty to ensure safe and healthy work conditions for employees, employers may implement such policies.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Vacations should be scheduled by agreement between the employer and employee. Whenever an agreement is not reached, the employer may schedule vacations in coordination with the union.



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Under some conditions related to the company, employers may postpone vacations of the employees, either in part or in total.

Mozambican law does not allow for the accrual of more than 30 days of vacation per year.

Accordingly, Mozambican law does not clearly prohibit an employer from scheduling vacations for its employees, although doing so may raise issues for the employer.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. The legal consequences of dismissal procedures are still in force, so any severance the employees are entitled to through dismissal are still due from the employers. The only modification is regarding dismissal with fair cause by absences, which is no longer permitted during the state of emergency period. Note that employees that nevertheless are required to come to work may be subject to disciplinary procedures if they fail to do so.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

The accrual of seniority may not be interrupted since the employment relationship was not terminated. Other benefits related to the effective performance of work may be interrupted.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

If there is a temporary workplace shutdown and the employment agreements are suspended, employees are entitled to receive 75% in the first month of suspension, 50% in the second and 25% in the third, as mentioned in (b) above. Salaries payable during the suspension of employment agreements may not be lower than Mozambican minimum wage.

Employers may try to reach an agreement with the employees to reduce working hours.

If employees refuse to come to work, can their employment be terminated for job abandonment?

There is a general prohibition against dismissing employees due to work absence. Employees that nevertheless are required to report to work physically may be subject to disciplinary procedures if they fail to do so.

A simple abstract fear of infection is not sufficient grounds to justify absence to work.



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Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Yes, employers must notify the authorities so that adequate measures are taken to ensure that COVID-19 does not spread in the work center/community. The Mozambican legal framework does not address the specific matter regarding the disclosure of this sort of information to other employees.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Lack of compliance with obligations due to the current pandemic may qualify as a *force majeure* matter. A *force majeure* means any unpredictable, unavoidable and out-of-control obstruction that leads to a complete impossibility to comply with an obligation in light of the unpredictability, seriousness and exceptionality of this event. This has, as a consequence, the extinction of the obligation and the debtor's exoneration. Note, however, that a *force majeure* assessment must be done on a case-by-case basis.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

To benefit from the *force majeure* principle, it is required that the compliance with the obligation has become objectively impossible, not just more difficult. It must correspond to the occurrence of the circumstance or event, without any contribution from the debtor, of an insurmountable objective barrier that prevents compliance with the contract.

If this objective impossibility is only temporary, the obligations of the contract are suspended for as long as the event lasts and, during this period, the debtor is not liable for damages caused by the delay.

When compliance becomes impossible (permanently or temporarily), the creditor is also exonerated from complying with his obligations and has a right to demand restitution of what was already performed/complied with, so long as the creditor's conduct is consistent with the good faith principle.

This assessment shall be made on a case by case basis.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

As of the time of this posting, the Mozambican legal framework only provides for the *force majeure* events mentioned above.

Nevertheless, all limitation terms are suspended.

What remedies are available to businesses in the event they default on their contractual obligations?

Force majeure or "change of circumstances" arguments may be invoked to avoid legal consequences arising from the lack of compliance with legal obligations.



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Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

As of the time of this posting, the Mozambican government has not passed any legislation specific for small businesses.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Regarding courts' operation, the general rule is that all procedures are subject to the judicial vacation regime until further notice, which means that courts are only operating for urgent legal actions such as the protection of minors or legal proceedings regarding arrested or detained individuals. The only remedy available is a protective order regarding urgent actions.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Payment of taxes on the import of food, medicines and other essential goods is subject to an *a posteriori* regularization regime.

In addition, regarding the corporate income tax, it is possible for companies with turnover under MZN2.5 million and a regularized tax situation to request two kinds of relief: (i) remission of payment on account that should be carried out in the months of May, July and September 2020; and (ii) postponement of the special payment on account that should be made during June, August and October 2020 for the months of January, February and March 2021.

The Mozambican government will also allow entities to compensation of VAT credits with other taxes until December 31, 2020.

Another relief measure passed by the Mozambican government was the forgiveness of fines and reduction of interest on arrears (up to 98%) arising from non-payment or delay in payment of mandatory social security contributions. It is applicable to: (i) small and medium companies subject to mandatory the social security system; (ii) companies that never registered with the mandatory social security system (which are required to register in the social security system to access this measure); (iii) companies with pending claims regarding coercive debt collection procedures; and (iv) the remaining value arising from a debt to the social security system on which a payment agreement was reached. This measure is only applicable if the total amount of social security contributions is paid.

It is possible to request the payment in multiple installments (until December 31, 2020), in which case a reduction up to 75% of interest on arrears will be applicable. In order to



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benefit from this regime, the potential beneficiaries shall submit a request to the Social Security Office within 90 days from the entry into force of Decree 22/2020 (April 27).

Has the tax filing deadline been extended?

The tax filing deadline to comply with tax obligations for the month of March was extended until April 10.

Are tax refunds and other claims being timely processed?

As of the time of this posting, we are not aware of any delays in processing tax refunds.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. On March 17, 2020, the president declared a state of emergency pursuant to Article 26 of the Namibian Constitution in response to the COVID-19 pandemic. Notice of the declaration was published in Government Gazette No 7148.

On March 28, 2020, the government expanded on the original declaration by issuing the following regulations in Government Gazette No 7159:

- (i) Implementing a lockdown restricting movement within the country from 2:00 pm, March 28, 2020, until 11:59 pm, April 17, 2020
- (ii) Designating the Khomas and Erongo regions as restricted areas and prohibiting travel to or from these areas without authorization
- (iii) Mandating that, during the lockdown, individuals must stay confined to their residence unless they are leaving for one of the following reasons:
 - 1. Performing a critical service
 - 2. Obtaining essential goods or services, as further defined by the declaration
 - 3. Seeking medical attention
 - 4. Conducting business at a pharmacy, food supply store, court, or bank
 - 5. Engaging in physical exercise, provided that no more than three people congregate to exercise together.

The lockdown was subsequently extended through May 4, 2020, and additional regulations are expected soon.

Namibia has also issued various measures in response to COVID-19 that have not been incorporated as regulations and do not carry the force of law. However, these measures are often carried out as if they have already been incorporated.



Can employers furlough employees during this COVID-19 health crisis?

Possibly. While there is no concept of a furlough in Namibian Labor and Employment Law, an employer and employee (or union, where applicable) may agree to a temporary suspension of the employment relationship. A temporary suspension may be appropriate in the current environment since the governmental regulations issued in response to the COVID-19 pandemic prevent employers and employees from performing under most employment agreements. Suspension would not be appropriate where critical services are rendered or employees can work remotely.

If no agreement is reached, the Namibian Labour Act has not been suspended or modified during the COVID-19 pandemic and requires employers to provide a minimum of four weeks' notice of any collective termination to the Labour Commissioner and the affected employees (or union, where applicable).

Employers can arguably require employees to take vacation leave during the lockdown period pursuant to Section 23(5) of the Labour Act.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes. The Government Economic Relief and Stimulus Package will provide a one-time payment of N\$750.00 to formal and informal sector employees who have lost their jobs during the pandemic, provided they are Namibian citizens between the ages of 18 and 60, and not benefiting from any social grants like the Employees Compensation Act of 1941. The N\$750.00 payment is based on Namibia' poverty line of approximately N\$250.00 per week.

The stimulus package should also provide financial assistance to employers in the form of payroll assistance, although the government has not yet issued concrete details on the program. As part of the stimulus package, employers may apply for government guaranteed loans up to one-twelfth of their 2019 tax payment from recognized banking institutions.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Under the lockdown regulations, an employer could not require its employees to report to the workplace unless they were performing critical services (as defined by the regulations), although it was permitted to ask employees to work remotely when feasible.



Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes, if the denial of access is reasonable after considering the safety of the employee and other employees in the workplace.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes. An employer may implement a reasonable mandatory screening program as long as it is tailored to infringe as little as possible upon its employee's rights and is not implemented in a discriminatory manner.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Probably. Under normal circumstances, an employee's medical information is protected as confidential under Namibian law and an employer cannot compel an employee to disclose it. However, given the unique circumstances presented by the COVID-19 pandemic and in light of the national state of emergency, employers can probably require employees to disclose if they have tested positive for the virus given the employee's duty to ensure a healthy and safe working environment for their fellow employees. If the employee refuses, he or she can be denied access to the workplace.

Employers may also be permitted to require employees to undergo COVID-19 testing as long as they pay for the testing and it does not violate any internal policies.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, for the same reasons as above and in order to comply with its legal obligation to ensure a safe working environment for its employees.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Probably. While there is no clear authority on whether an employer can compel an employee to take vacation leave (or some other form of leave) during a statutory lockdown, the Namibian Labour Act remains in force and requires employees take annual leave at a time determined by the employer.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. Sections 34 and 35 of the Labour Act require severance for employees that are terminated during a reduction of force following the re-organization or transfer of the business or the discontinuance or reduction of the business for economic or technological reasons. Since the act has not be suspended or modified by recent regulations, employers



are still required to pay severance to employees that are terminated as a result of the COVID-19 pandemic.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

Maybe. Employment contracts remain in force during an operational shutdown so continuity of service and accrual of seniority cannot be interrupted. However, other employment benefits can be suspended and, given that benefits are accrued according to the terms and conditions of employment agreements, the accrual of benefits is arguably conditional on an employee being present for work.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes, these types of measures can be implemented with employee consent or under Sections 12(6) & (7) of the Labour Act. The stimulus package also provides the following relaxation of labor regulations:

Relaxation of labor regulations to protect jobs. To avoid major retrenchments and business closures, employers, including government and business owners, will be allowed to negotiate a temporary 20% reduction of salaries and wages during the crisis period. The worst-hit industries may negotiate a temporary 40% reduction. The negotiations will be undertaken through a consultative process with employees and labor unions.

The stimulus package's wording indicates these relaxations are in addition to Sections 12(6) and (7) of the Labour Act, meaning that a salary reduction may be negotiated without a reduction in hours. However, we recommend caution when invoking Stimulus Package provisions as it is not currently entrenched as an official regulation and does not yet have the effect of law.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Maybe. Employee dismissals must comply with procedural and substantive fairness. If an employee's refusal to come to work is reasonable and justifiable, his or her dismissal may successfully be challenged as being substantively unfair.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

No. However, it may be advisable that employers report positive tests to allow health authorities to provide necessary treatment and allow other employees to protect themselves.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Under Namibian Roman-Dutch common law, it is possible for a contracting party to avoid or excuse contractual performance on account of *vis maior* or *casus fortuitous*. In terms of Namibian law, however, *vis maior* or *casus fortuitous* may only be invoked when the intervening facts or circumstances render it objectively impossible for a party to perform its obligations.

Namibian law interprets objective impossibility narrowly and does not recognize any doctrine of hardship to excuse a party from contractual performance. Examples of objective impossibility include statutes prohibiting performance or facts rendering it objectively impossible to perform. On the other hand, lack of funds or changed circumstances rendering performance uneconomical or unprofitable would, at best, constitute a subjective impossibility or hardship and not excuse a party from contractual performance.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Possibly. As discussed above, any set of facts or circumstances, including those resulting from the COVID-19 pandemic, making performance of contractual obligations objectively impossible under Namibian law may constitute an event of *vis maior* or *casus fortuitous*.

In our observation of various legal questions that we have been requested to answer in the wake of the COVID-19 pandemic, however, it seems that in most cases it is not the COVID-19 pandemic itself that results in an objective impossibility of performance, but some other facts or circumstances, often arising directly or indirectly from the pandemic. For example, goods cannot be delivered because borders are closed. The border closure is, however, only a consequence of the COVID-19 pandemic, which arises from statute or administrative action. As a further example, in a lease agreement, a lessor of a supermarket may by statute be obligated to require its lessee to close the supermarket, failing which, the lessor may be obligated to close the supermarket itself, thereby infringing on the lessee's rights of peaceful possession. On a proper analysis, it is then not the COVID-19 epidemic itself that constitutes the objective impossibility of performance on the part of the lessor, but the statute forcing his hand.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of

Probably not. The current State of Emergency Regulation is silent on this issue and it can be argued that the status quo therefore remains intact.



relief in their obligation to comply with contractual terms for delivery or payment?

What remedies are available to businesses in the event they default on their contractual obligations?

As discussed in response 2(a) above, unless performance was objectively impossible and therefore excused under the *vis maior* and *casus fortuitous* doctrines, businesses have no legal defense for defaulting on their contractual obligations. The business could attempt to enter into a moratorium or make arrangements with their creditors.

One exception to the general rule applies to businesses incorporated under Namibia's 2004 Companies Act. These companies and their creditors may enter into a so-called compromise or a scheme of arrangement under section 317 if three-fourths of the creditors and the High Court of Namibia approve. Please note the compromise and scheme of arrangement procedure is cumbersome and time-consuming.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

Technically yes, but it is not clear how it will be provided in practice. The April 1, 2020, stimulus package mentioned the following benefits:

- (i) Non-agricultural small-business loan scheme: Government will facilitate a N\$500 million loan scheme for non-agricultural small businesses guaranteed by the Development Bank of Namibia. The loans will be extended to cash flow-constrained small businesses that have experienced a significant loss of revenue.
- (ii) Agricultural business loan scheme: Government will further facilitate a N\$200 million loan scheme for farmers and agricultural businesses guaranteed by the Agricultural Bank of Namibia. The loans will be extended to cash flow-constrained farmers and small to medium-sized businesses that have experienced a significant loss of revenue.

However, these programs have not been explained further and we are not aware of any other small-business protections (*i.e.*, moratoria or protections against insolvency).

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves

Yes, but in a reduced capacity. On March 31, 2020, The Chief Justice issued Government Notice No. 90 in Government Gazette 7160, limiting court operations to the following:



of the judiciary in the event it is necessary during the current COVID-19 health crisis?

- (i) Urgent matters
- (ii) First court appearances in criminal matters
- (iii) Bail applications
- (iv) Appeals against refusal of bail
- (v) Domestic violence and matters involving children.

In addition, legal deadlines, including time or prescription periods under the 1969 Prescription Act and legal or procedural deadlines set by law, court rules, or court orders in pending cases, were tolled during the lockdown.

Has your country issued any tax amnesty or relief programs because of COVID-19?

No. While the April 1, 2020, stimulus package did not contain any 2020 tax amnesty or relief provisions; it did include the following tax-related relief measures:

- (i) Accelerated repayment of overdue and undisputed VAT refunds: The government will immediately speed up VAT repayments to enhance the cash flow of enterprises paying VAT. Within one week of the implementation of these N\$3 billion in refunds has been repaid.
- (ii) Tax-back loan scheme for non-mining corporates: Cash flow-constrained businesses in non-mining sectors that have properly paid taxes can apply to a commercial bank for a government-guaranteed loan equal to 1/12th of their tax payment from the previous tax year. The loans are repayable after one year and the scheme provides a favorable interest rate of 1% less than the prime lending rate. The government guarantee is capped at N\$470 million.
- (iii) Tax-back loan scheme for tax registered and tax paying (PAYE) employees and self-employed individual persons who have lost income: Cash flow-constrained individuals who have paid their taxes can apply for a government-guaranteed loan equal to 1/12th of their tax payment from the previous tax year. The loans are repayable after one year and the scheme provides a favorable interest rate of 1% less than the prime lending rate. The government guarantee is capped at N\$1.1 billion, based on the PAYE tax register and the potential loan size. The government, in collaboration with the



NAMIBIA

Contributed by: Ruben Philander, Hartmut Ruppel

banking institutions, may institute statutory and administrative measures to enhance compliance with loan obligations.

Has the tax filing deadline been extended?

No.

Are tax refunds and other claims being timely processed?

Not according to currently available information.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes, Norway has implemented several measures in order to meet the challenges caused by COVID-19. Measures include, but are not limited to, the following: (1) additional unemployment benefits to employees laid off due to COVID-19; (2) reduction in the minimum income eligibility requirement for unemployment benefits; (3) waiver of the three-day waiting period to receive unemployment benefits; (4) increased eligibility for unemployment benefits for employees whose work schedules have been reduced; and (5) reduction in the employer-financed period (the period during which the employer must pay laid-off workers their full pay) from 15 to 2 days.

As of the date of this posting, there are additional measures being considered by the government. For a complete overview of the labor and employment measures made, please follow this link: <https://www.regjeringen.no/en/aktuelt/changes-to-the-rules-for-temporary-layoffs-and-unemployment-benefits/id2694346/>.

Can employers furlough employees during this COVID-19 health crisis?

Without the employees' consent, employers cannot unilaterally furlough employees due to the COVID-19 health crisis. However, an employer can implement temporary layoffs due to the COVID-19 health crisis if there is a justifiable basis for the layoff (*i.e.*, there is a temporary lack of work). Further, the employer would need to follow certain procedures before implementing a temporary layoff, including discussing the need for layoffs and the scope of the layoffs with employee representatives.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes, see (a) above.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Any employer obligations under an employment agreement (*i.e.*, continue to pay salary even where remote work not possible) will continue irrespective of a "stay-in-place" order.



NORWAY

Contributed by: Schjødt (Martin Jetlund, Vilde Viktoria Fagerbakke, Kaare M. Risung, Cecilie Amdahl)

Outside of an employer's obligations, should the government impose a quarantine, employees may be entitled to government-paid sick pay.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

The employer can deny employees access to the workplace if symptoms of COVID-19 are detected or suspected.

Can employers implement a mandatory screening program for COVID-19 symptoms?

A screening program may be implemented if strict criteria by law are fulfilled, including, but not limited to, adhering to privacy regulations.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes, the employer may ask the employees to disclose such information.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes. Due to COVID-19, many Norwegian employers have implemented internal guidelines or policies on employee conduct related to the danger of spreading the virus to comply with other measures implemented by government authorities. These guidelines may require that employees inform the employer of a potential COVID-19 diagnosis.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Yes, but some laws, such as the provisions set out in the Norwegian Holiday Act, must be followed. This includes, *inter alia*, that the employee is entitled to three (3) weeks of holiday during the period from June 1, 2020, to September 30, 2020.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

There is no mandatory severance regulation in Norway. Whether employers can be relieved from severance liabilities because of COVID-19 depends on contractual obligations and must be assessed on a case-by-case basis. As a general starting point, we consider it unlikely that employers can be exempted from a contractual obligation to pay severance where an agreement was entered into before the COVID-19 outbreak. However, we stress that a specific assessment must be made in each case and that no clear answer can be given.



NORWAY

Contributed by: Schjødt (Martin Jetlund, Vilde Viktoria Fagerbakke, Kaare M. Risung, Cecilie Amdahl)

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

Accrual of seniority cannot be interrupted by any operational shutdown. Other employment benefits, however, may be interrupted, depending on the agreement between the employer and its employees.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Employers may implement a temporary layoff process, whether full or partial. In a partial layoff, an employee's working hours are partially reduced, along with a corresponding reduction in salary.

If employees refuse to come to work, can their employment be terminated for job abandonment?

This may be a reason for termination, depending on the reason for such refusal. If the employee has a justifiable basis for the refusal, for instance because of quarantine decreed by the authorities, the employment cannot be terminated because of alleged job abandonment. If the employee is in voluntary isolation or quarantine or refuses to go to work due to other reasons that are not objectively justified, the employment may be terminated after an individual assessment has been carried out.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

No, employers are under no obligation to report to the authorities or other employees when other employees test positive for COVID-19.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

The principle of *force majeure* may apply to the provider of goods or services that is prevented from performing its contractual obligations due to COVID-19. Although pandemics are seldom mentioned in clauses, there is little doubt that the outbreak is of the same nature as acts of God described in contracts. For contracts entered into before the outbreak, the pandemic was also not *foreseeable*. The issue in practice is then the extent to which the party may reasonably *overcome* the obstacle. This will depend on issues such as whether materials have simply become more expensive (*economic force majeure*) or whether government authorities have issued orders legally preventing performance. The position of a recipient who simply no longer has any need for the performance contracted, but is not legally prevented from receiving such goods or services under contract, would normally be assessed under concepts such as frustration or a test of contract revision due to qualified unreasonableness.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

A party may be able to assert a *force majeure* defense if COVID-19-related events prevent such party from complying with its contractual obligations, consistent with the answer to question (a) above.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

Yes, a state of emergency declaration by a competent authority may provide legal basis for excuse for non-performance. However, as of the date of this posting, no payment systems are yet affected by the COVID-19 pandemic.

What remedies are available to businesses in the event they default on their contractual obligations?

The main remedy is the suspension of time limits and costs related thereto. The duration of the delay a counter party must tolerate must be determined on the basis of a holistic assessment of the contract and circumstances. It is also subject to contractual principles established in jurisprudence.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

Most benefits take the form of various loan arrangements, which may be available to small businesses. Lessors of real estate have also been advised to negotiate relaxed rent payments, but there is no legal requirement to do so.



NORWAY

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Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Yes, but in most instances by video.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Companies may offset taxable profit from 2018 and 2019 against losses in 2020, by amounts up to NOK 30 million. The tax value of the losses will be paid out as part of the tax settlement for 2020 to be processed in 2021.

The payroll tax rate has been reduced by four percentage points, from 14.1% to 10.1%, for two months. As of the date of this posting, the details of implementation had not been issued yet.

The VAT rate for passenger transport, accommodation, broadcasting, cinemas, sports events and amusement parks have been reduced from 12% to 8% in the period running from April 1, 2020, to October 31, 2020.

Has the tax filing deadline been extended?

The deadline for advanced payment of taxes for individual taxpayers has been extended from March 16, 2020, to May 1, 2020.

The deadline for advanced payment of taxes for companies has been extended from April 15, 2020, to September 1, 2020.

The deadline for submission of tax returns for limited companies and individuals that are self-employed has not been extended, but late-filing penalties will not be issued for the time being.

The deadline for submission of tax returns for self-employed individuals has been extended from May 31, 2020, to August 31, 2020.

VAT payments for the first term have been delayed from April 10, 2020, to June 10, 2020. Late-filing penalties will not be issued for the time being.

Payment of finance tax (levied on banks and investments firms) has been delayed from May 15, 2020, to August 15, 2020.



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Individual owners of businesses and shareholders of companies that have a negative result in 2020 may delay payment of the wealth tax.

Are tax refunds and other claims being timely processed? As of the date of this posting, there have not yet been significant delays.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes, as of the date of this posting, Polish authorities have instituted the following measures:

Remote work. According to *ad hoc* legislation, the employer is authorized to unilaterally order the employee to work remotely for a fixed time. The employee's consent is not required.

Childcare allowance. In the event of nursery, kindergarten and school closures, the employees who are parents of children up to eight years old are entitled to an extra 28 days release from work with a right to childcare allowance instead of remuneration (amounts to 80% of remuneration fully paid by the Social Security Institution).

Crisis package. Anti-Crisis Shield legislation was passed by the Parliament and then signed by the president on April 1, 2020. A summary of the key provisions of the Anti-Crisis Shield legislation can be found at <https://skslegal.pl/pl/publikacje/tarcza-antykryzysowa-a-danina-solidarnosciowa/>.

Anti-Crisis Shield. Two Anti-Crisis Shield laws were adopted on March 31, 2020 and April 16, 2020, respectively. The newly introduced legislation provides several types of state aid measures aimed to protect jobs. The most important employment measures are as follows:

Economic Downtime. In the event of economic downtime (i.e., the workplace is closed due to the decline in turnover), the employer is authorized to reduce employee's remuneration (regardless of the type of employment relationship) by no more than 50% (the reduced salary cannot be lower than the minimum wage). Reduced remuneration is co-financed by the Guaranteed Employee Benefits Fund up to 50% of the minimum wage. Economic downtime may be introduced in the workplace only if the collective agreement with trade unions or employee representatives has been concluded. The employer cannot terminate the employment of employees and contractors whose remuneration was subject to the state co-financing, otherwise, the employer will be obliged to proportionally reimburse a refund with interest.

Reduced working time. If the employer's turnover drops by at least 15% as a result of COVID-19, the employer is authorized to reduce employee's working time by a maximum of 20% but no more than to 0.5 full-time equivalent. Such reduction is possible only if the collective agreement with trade unions or employee



representatives has been concluded. The remuneration is co-financed by the Guaranteed Employee Benefits Fund by up to one half of pay but no more than 40% of the average monthly salary for the previous quarter as published by the President of the Central Statistical Office, and cannot be lower than the minimum wage. The employer cannot terminate the employment of employees and contractors whose remuneration was subject to the state co-financing, otherwise, the employer will be obliged to proportionally reimburse the refund with interest.

Flexible terms of employment. It is possible to conclude an agreement with trade unions or employee representatives to: (i) introduce an equivalent working time system (daily working time can be extended but cannot exceed 12 hours in a reference period not exceeding 12 months); or (ii) apply less favorable employment conditions than as set forth under contracts of employment. Even without such agreement, the uninterrupted rest period can be reduced but not to less than 8 hours a day (32 hours respectively). No amending termination notices are required.

The Anti-Crisis Shield legislation provides employers and employees/workers with additional financial benefits such as: exemption from social insurance contributions, one-off loan, pay co-financing, or downtime benefits, as described more fully in 1(c) below.

Can employers furlough employees during this COVID-19 health crisis?

Downtime. If an employer closes a worksite due to COVID-19 infection at the worksite, the employees who cannot perform work are released from work with a right to receive downtime pay (calculated based on one's hourly or monthly rate or, in very limited cases, remuneration only in the form of commission: 60% of remuneration). Downtime pay cannot be lower than the minimum wage. This type of downtime cannot be introduced due to economic reasons.

Economic Downtime. If the employer's turnover drops by at least 15% as a result of COVID-19, the employer may introduce economic downtime in the worksite. During the economic downtime, the worksite is closed and the employees are released from work with a right to receive pay reduced by up to 50%. Collective agreements with trade unions or employee representatives for conditions and manner of performing work during the period of economic downtime should be concluded.



Furlough. If the employer does not meet the criteria to introduce economic downtime, an employer may release employees from the obligation to perform work for an indicated time. During this time, the employer must pay the employee his/her wages in full.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Postponement of social insurance contributions. In addition to the measures set forth in (a) above, the Social Insurance Institution (pol. ZUS) has instituted a measure by which an employer may postpone the payment of social insurance contributions for three (3) months (from February to April 2020). To postpone payments, the employer must show how the COVID-19 pandemic has affected the company's finances and its inability to pay the due contributions. Discounts are granted as part of state aid.

Anti-Crisis Shield Measures. The Anti-Crisis Shield legislation includes several state benefits which may be granted to employers and employees, as follows:

Exemption from social insurance contributions. Employers are exempt from paying social security (ZUS) contributions from March 1, 2020 to May 31, 2020: (1) if an entrepreneur has registered for social insurance for less than 10 persons (exemption is determined from the current lowest basis for measuring the contributions); or (2) if an entrepreneur has registered for social insurance between 10 - 49 persons (in which case, the exemption is in the amount of 50% of the total unpaid social contributions declared for a given month).

Downtime Benefits. The downtime benefit in the amount up to 80% of the minimum wage may be granted to: (1) entrepreneurs conducting business activity before February 1, 2020, if their revenue obtained in the month preceding the month of submitting the application was at least 15% lower than the revenue obtained in the month preceding that month and was not higher than 300% of the average monthly salary from the previous quarter published by the President of the Central Statistical Office; and (2) contractors, if they cannot perform work due to the downtime (failure or limitation of the civil law contract) and they are not subject to social insurance obligations from a different title and the revenue from the civil law contract obtained in the month preceding the month in which the application was submitted was not higher than 300% of the average monthly salary from the previous quarter announced by the President of the Central Statistical Office.

Pay Co-Financing. Sole traders, micro, small, and medium-sized enterprises that recorded an economic decline may apply for state aid to co-finance the



employee's remuneration. The amount of state co-financing depends on the turnover decline, as follows:

1. If the turnover declines by at least 30%, the benefit amounts to 50% of pay of individual employees covered by the application, but not more than 50% of the minimum wage (PLN 1,300);
2. If the turnover declines by at least 50%, the benefit amounts to 70% of pay of individual employees covered by the application, but not more than 70% of the minimum wage (PLN 1,820);
3. If the turnover declines by at least 80%, the benefit amounts to 90% of pay of individual employees covered by the application, but not more than 90% of the minimum wage (PLN 2,340).

Sole employees who recorded an economic decline are entitled to a similar amount of state aid, however the benefit is granted to co-finance the costs of running a business.

One-off loan. Micro undertakings operating before March 1, 2020 may apply for a one-off loan of up to PLN 5,000 to cover the current costs of running a business. Loan repayment may be cancelled if the entrepreneur maintains headcount over a period of three months from the date of granting thereof.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

On March 25, 2020, the government instituted a series of restrictive measures due to COVID-19, including encouraging employees to work remotely. The restrictions do not apply to work-related travel or performing essential activities or business tasks.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. According to the government's latest recommendation, the employer is entitled to refuse an employee admission to the workplace if the employee displays any signs of COVID-19 symptoms (i.e., respiratory tract infection, coughing, shortness of breath and fever). Such employee should be sent home immediately and instructed to contact the State Sanitary Inspection. An infected employee should be transported by private car or taxi and equipped with a face mask and disposable gloves. Note that the above-mentioned actions should be taken only if there is a justified suspicion of illness, otherwise the employer's behavior may be considered discriminatory.



Can employers implement a mandatory screening program for COVID-19 symptoms?

No. The employer is not authorized to examine the employee or refer them to a compulsory COVID-19 medical examination. At most, the employer may measure the employee's temperature, observe symptoms, and strongly recommend or insist on a medical check.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Generally, the employer is not authorized to collect information about the employee's health without the employee's express consent. However, if an employee has COVID-19, the employee must go on sick leave and present a medical certificate of illness to his/her employer. The employer may also be informed of an employee's positive test results by the state epidemic authority in order to protect other employees.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

The employer is not authorized to collect information about the employee's health without the employee's express consent. However, the employer should encourage the employees to immediately inform the state epidemic authority about COVID-19 symptoms.

Can employers force employees to take vacation time during the COVID-19 health crisis?

The employer cannot unilaterally require that the employee take a vacation leave. In general, vacation leave is granted upon the employee's request. However, the employer may try to reach an agreement with the employee concerning the use of the vacation leave, in particular concerning the outstanding leave.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. Employers are still obliged to pay severance.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

If a government sanitary inspection decides to close the worksite, downtime provisions shall apply. The employees who were ready to perform work are entitled to receive downtime pay (see 1(b) above). Additional salary components, such as shift allowances, are not taken into account in calculating downtime pay. Downtime does not interrupt the accrual of seniority.



Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Temporary shutdown/downtime. The employer may decide on a temporary workplace shutdown (see 1(b) above) but this decision cannot be motivated only by economic reasons.

Salary and hours reduction. Such reduction requires the employee's consent and may be introduced by (i) agreement concluded with the employee concerned, or (ii) notice of termination of work or remuneration conditions (so-called alteration notice). In some cases, giving an alteration notice to a group of employees may result in collective dismissals and the obligation to pay severance pay.

The planned Anti-Crisis Shield legislations includes measures that would temporarily alter terms and conditions of employment, if justified by the employer's financial situation.

If employees refuse to come to work, can their employment be terminated for job abandonment?

In general, the employee's refusal to come to work without any specific reason may justify the employee's termination. However, if the employee refuses to come to work due to reasons related to COVID-19 (*i.e.*, the absence of preventive measures in the worksite), such termination could be found unjustified by the labor court.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

The employer can neither collect nor process information about the employee's health. However, in the event that an employer learns that one of its employees has tested positive for COVID-19, the employer is entitled to inform other employees who may be affected. The health authorities receive this information automatically.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Force majeure is not defined in the Civil Code, but it is undisputedly one of the circumstances for which the debtor is not liable, save such an exceptional case when the debtor explicitly stipulates in a contract to be liable for any damage caused due to non-performance or improper performance of its obligations. Hence, in principle, the debtor who failed to perform or properly perform (or delayed performance of) its contractual obligation because of *force majeure* should not be held liable for damage caused to the creditor by this non-performance or improper performance.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Generally, yes, as some, but certainly not all, factual and legal implications of the COVID-19 pandemic can be treated as *force majeure*, impacting contractual performance. The impact of the implications of COVID-19 on performing contractual obligations should be assessed on a case-by-case basis.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

Except for a few types of businesses prohibited from conducting activities (such as cinemas, fitness clubs, etc.), and except leases of certain premises (see below), no general relief has been introduced so far regarding the obligation to comply with contractual terms for delivery or payment. The Anti-Crisis Shield legislation, in force as of March 31, 2020, includes certain material reliefs for tenants and landlords of commercial premises in shopping malls (commercial buildings of a sale area over 2,000 square meters) for the duration of the prohibition of business activity.

The exact scope of application of the relevant provision is not yet clear, but it seems to include all commercial premises in the mentioned shopping malls, whose activity was restricted by the government due to COVID-19. For such cases, the said legislation provides that for the duration of the said prohibitions, mutual obligations stemming from the contracts of lease and other similar contracts aimed at providing access to certain commercial surface, “expire.” At the same time, tenants are to submit their irrevocable and legally binding offer to prolong the existing contracts with the landlords for the additional period equal to the time of duration of the prohibition extended by 6 months, and that said offer should be made within 3 months after the cancellation of the prohibitions. If this offer is not made, the effects of the expiry of obligations are deemed as if not having happened. It seems that it should be interpreted as the debts of the tenant for rent become due after the said 3 months if the tenant’s offer is not made. A further relief applies to all tenants and provides that all lease contracts which would normally terminate after March 31, 2020, but



before June 30, 2020, are automatically prolonged until June 30, 2020 (with some exceptions). Furthermore, the law provides that no lease agreements may be terminated before June 30, 2020 (again, with some exceptions).

What remedies are available to businesses in the event they default on their contractual obligations?

Businesses can try to defend against any liability for damage caused by non-performance or improper performance of their contractual obligation caused by *force majeure*. However, they will be relieved neither from their monetary obligations (except for some tenants in shopping malls), nor from statutory interest for delay. Depending on the case, they should also (and in certain cases, must) seek restructuring or file for bankruptcy. Depending on the circumstances, they can also try to obtain a court verdict (optionally preceded by various kinds of interim measures) changing their obligations or even dissolving the contract due to the extraordinary change of circumstances (*rebus sic stantibus*).

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

The Anti-Crisis Shield legislation includes a number of such benefits, including, but not limited to, allowing a reduction in pay for those employees on downtime and allowing reduced hours; tax benefits such as the deferment of payment of advance of income tax on wages and salaries paid for employees for March and April 2020; fixed rates of cash liabilities; and certain protections in amending loan or credit terms. The legislation does not differentiate between local businesses or those owned by foreign entities.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Most courts may work, but with limited scope, and may only hold in camera (not public) sessions and public hearings in exceptional and delineated cases. Deadlines to submit legal papers have been suspended for the duration of the pandemic. The courts are supposed to address urgent cases (including cases for interim relief) and issue decisions on closed sessions (if applicable). Businesses can thus submit all claims, try to obtain interim relief, and request that all decisions be issued at closed sessions.

Has your country issued any tax amnesty or relief programs because of COVID-19?

The Anti-Crisis Shield legislation extends deadlines for personal income tax advances for March and April 2020 until June 2020. Taxpayers may also request a reduction of or exemption from real estate taxes imposed by municipalities and deduct tax losses incurred in 2020 against taxable income derived in 2019. The latter tax credit may only be enjoyed where turnover for 2020 is below 50% of turnover for 2019. Deadlines for the payment of



minimal commercial property taxes from March 2020 to May 2020 was postponed until July 2020.

According to amendments to the Anti-Crisis Shield legislation, tax capital groups could still operate in 2021 in case of a failure to meet a minimum profitability ratio in FY 2020 (normally such drop of profitability would automatically terminate the existence of a tax capital group).

Has the tax filing deadline been extended?

The obligation to submit extended monthly SAF-T files replacing VAT returns was postponed from April 1, 2020, to July 1, 2020. Reporting tax schemes within the meaning of the DAC-6 Directive has been postponed until July 2020. TP reporting related to transactions occurring in 2019 is also postponed until September 2020..

Are tax refunds and other claims being timely processed?

There is no new legislation accelerating tax refunds. There have been few remarks from the market so far on delays in VAT refunds.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. On March 26, 2020, Decree Law no. 10-G/2020, as later amended by Rectification no. 14/2020, enacted the following measures to assist companies deal with the COVID-19 pandemic:

Extraordinary measures to support the maintenance of employment agreements in light of temporary reductions of normal working hours or suspensions of employment agreements

- An extraordinary training program
- Extraordinary financial incentives to assist companies resume operations
- Temporary exemptions of employers' social security contribution obligations.

Can employers furlough employees during this COVID-19 health crisis?

Yes. As noted above, employers may suspend employment agreements or reduce normal working hours under the new employment measures adopted in response to the COVID-19 health crisis.

Employees who are furloughed or have their hours reduced are entitled to benefits totaling two thirds of their base salary, 70% of which is paid by Social Security and the remaining 30% by the employer. All other rights between the parties remain in force.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes. In addition to the measures listed above, the following economic measures have been implemented:

- Assistance to employees and self-employed workers in prophylactic isolation
- Assistance to employees missing work while having to care for family
- Children and grandchildren care assistance for employees
- Exceptional family assistance for employees



- Extraordinary support for self-employed workers
- Exceptional family assistance for self-employed workers
- Deferral of deadlines to comply with tax and contributory obligations
- Allowances for VAT payment and personal and corporate income tax
- Issuance of credit lines
- Extraordinary measures to increase companies' and families' liquidity (specifically related to moratorium on bank loans or credits).

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

From March 9 to May 4, 2020, only essential businesses were permitted to operate. Restaurants and similar establishments were permitted to operate as take-away or home delivery businesses only.

Essential businesses still operating during this time were required to respect safety and hygiene rules and have a contingency plan in case of infection or suspicion of infection. Whenever possible, remote work was mandatory.

Employers who were required to suspend operations and could not implement remote work could invoke the furlough measures previously discussed in response 1(b).

Beginning May 4, the Government of Portugal replaced the previous state of emergency with a state of calamity for 15 days. During this time, measures to contain and mitigate the COVID-19 virus include the following:

- Mandatory use of masks in crowded, enclosed spaces (e.g., public transportation, schools, supermarkets, stores)
- All events with more than 10 people are prohibited
- Maximum capacity of five people per 100 square meters in enclosed spaces
- Family members are authorized to attend funerals



PORTUGAL

Contributed by: Duarte Marques da Cruz and Marco Correia Gadanha

- Residents of Portugal have a “civic duty” to stay home unless there is a justified reason
- Small establishments of up to 200 square meters will be allowed to open, including libraries, barber shops/hair salons, car dealers, real estate agencies and bookshops
- Outdoor, individual, non-professional sports, are authorized; group sports will not be allowed
- Restaurants, cafés, nightclubs and bars will remain closed
- Businesses that do reopen will be limited to one client every 20 square meters with a mandated minimum distance between them
- Public transportation will operate at a maximum capacity of two thirds
- An appointment must be scheduled in advance for tax offices, conservatories and other public offices
- Telework remains mandatory for the entire month of May, when possible.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Employers are required to maintain a safe and hygienic workplace for their employees. As a part of this mandate, companies must maintain a contingency plan that would apply to suspected cases of COVID-19 infections by employees. While the law does not specify the terms for each plan, employers must follow all health authority regulations and recommendations.

However, note that employers must deny access to the workplace to any employee who has tested positive for COVID-19 or potentially face criminal liability.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes.



Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes, unless the employee is working remotely. Employees that are still reporting to the workplace must report a positive test to their employer so the employer may apply its contingency plan and put that employee in isolation. After that, the employer must report the situation to the authorities.

Employees who fail to report a positive test to their employer may face criminal liability.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, unless the employee is working remotely. Employees who continue to report to the workplace must report if they or their co-workers have COVID-19 symptoms in order to trigger the contingency plan (otherwise the employee may be criminally liable).

Employers must inform employees of their duty to report COVID-19 symptoms as a part of their contingency plan.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Yes. Under current government orders, certain employers may be required to cease operations depending on the nature of their business. If they do, employers and employees must try to reach an agreement on using vacation time during the closure. If they cannot reach an agreement, employers may unilaterally schedule their employees' vacation time between May 1, 2020, and October 31, 2020.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

Probably not. The laws governing terminations of employment agreements are still in full effect. However, companies invoking the measures mentioned in responses 1(a) and (b) are prohibited from collective dismissals and are not relieved from severance liabilities.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No, all rights and obligations arising from the employment relationship remain in full effect.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes. Employers may implement furloughs or reduce employee hours with a corresponding reduction of pay under the extraordinary measures previously discussed. If this occurs,



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employees are entitled to two thirds of their gross salary in assistance, 70% of which is paid by Social Security and the remaining 30% by the employer.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Yes. Employees who are have not tested positive for, or show symptoms of, COVID-19 and are not teleworking may not refuse to report for work.

Note that remote work is mandatory whenever possible.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Yes. Employers are required to notify authorities of positive tests and of suspected cases of COVID-19 under their contingency plan.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Portuguese law defines *force majeure* as any unpredictable and insurmountable event, not caused by the debtor party, which affects compliance with the party's contractual obligations. *Force majeure* relieves the debtor party from its contractual obligations to the creditor.

In order to apply the principle of *force majeure*, compliance with the contractual obligations must be objectively impossible and not only more difficult.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Yes, but only if the party's obligations become objectively impossible. Objective impossibility is defined as an objectively insurmountable barrier preventing the debtor, or any replacing party, from complying with its contractual obligations.

If a permanent or temporary *force majeure* event occurs, the creditor is also relieved of its contractual obligations and has the right to demand the return of any prior performance under the contract (always in accordance with the Good Faith Principle or *Boa Fé*).

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

Yes. Electric bill payments were extended 30 days and the Portuguese government has passed measures to assist with rent payments.

Parties may also try to invoke *force majeure*.

What remedies are available to businesses in the event they default on their contractual obligations?

The following legal remedies are available to businesses in the event of a default:

- *Force majeure*
- Exemption of non-compliance
- Changes of circumstances.



PORTUGAL

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Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

Yes. Micro companies in the tourism sector may access a special credit line.

Please note that under Portuguese law, local subsidiaries of foreign entities are not always considered micro, small or medium-sized companies.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

No. As of the time of this posting, all legal proceedings, other than urgent matters involving fundamental rights, are currently suspended.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Yes. As previously noted in response 1(a), employers are temporarily exempted from their social security contribution obligations.

Has the tax filing deadline been extended?

Yes. The following tax deadlines have been extended:

- Special Payment on Account is extended from March 31 to June 30
- IRC Model 22 is extended from May 31 to July 31
- First Payment on Account and First Additional Payment on Account is extended from July 31 to August 31.

Measures easing requirements for VAT payments and withholding taxes on personal and corporate income tax were also implemented.

Are tax refunds and other claims being timely processed?

Yes. As of the time of this posting, we are not aware of any delays in processing tax refunds.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

On April 2, 2020, the Russian president announced a nationwide non-working paid period until April 30, 2020. During this period, all employees are directed to not work but are entitled to receive their regular remuneration. Only a limited group of companies are allowed to continue working. Some exceptions may be also established by regional governments.

The Russian government recommends that employers proceed with remote work where possible. The Federal Service for Labor and Employment (Rostrud) recommends avoiding visiting high-risk areas until the situation stabilizes. The Ministry of Foreign Affairs of the Russian Federation advises Russian citizens to refrain from traveling to high-risk areas, except in an emergency. On March 16, 2020, the Russian government ordered the temporary restriction of entry into the country by foreign nationals and stateless individuals, including those entering the Russian Federation through Belarus, including Belarusian nationals, from March 18, 2020, to May 1, 2020. There are exceptions for diplomats, certain professional categories and for individuals applying in the context of the death of a close relative.

In most regions of Russia, residents 65 years old or older and people with chronic diseases are directed to self-isolate from March 26, 2020, to April 14, 2020. Managerial employees whose presence at the workplace is critical to the functioning of the company are exempt from this isolation measure.

Can employers furlough employees during this COVID-19 health crisis?

Employers are not entitled to force employees to take their accrued vacations, which are paid and subject to employee consent. Similarly, employers cannot force employees to take unpaid vacation, since that is also subject to employee consent. Further, the Russian Labor Code provides for a limited list of grounds for dismissal and does not include the COVID-19 health crisis on this list. Employers can, however, avail themselves of other measures, such as reductions in force or separation by mutual consent.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes, the Russian government has identified a list of measures designed to provide economic relief. Among other things, as of the date of this posting, the government has now issued (1) a special procedure for the payment of sick leave, (2) additional incentives for doctors, (3) temporary relief from tax and social contribution payments, (4) an expansion of loans available to businesses, (5) the suspension of state audits, (6) the



RUSSIA

Contributed by: ALRUD Law Firm (Irina Anyukhina, Margarita Egizarova)

authorization for e-sale of medications via the internet, and (7) preferences for distribution networks and importers of products.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Employers should suspend such employees from work and may allow them to work remotely for this period and pay them as they normally would. If the employee cannot work remotely, the employer may negotiate with the employee to use the employee's annual leave to cover the employee's absence. Alternatively, employees (even those without COVID-19 symptoms) may be given a formal medical certificate and should be paid at their usual rate of pay for their absence from work due to sick leave.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes, employers should suspend employees who have symptoms of COVID-19 as well as those returning from a high-risk area (who are required under recent government measures to inform state authorities of their travel and self-isolate for 14 days).

Can employers implement a mandatory screening program for COVID-19 symptoms?

Employers are now required to conduct daily temperature tests on all employees and suspend any that have a high temperature. Apart from this test, however, employers cannot force an employee to undergo a medical examination.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Under the Russian Labor Code, employees must, without delay, inform employers of any situation presenting a hazard to the life and health of people. Employers should suspend such employees from work.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, employers can have a policy that would be effective during the period of the COVID-19 health crisis, requiring employees to report if they or their co-workers have COVID-19 symptoms.

Can employers force employees to take vacation time during the COVID-19 health crisis?

No, vacation time is possible only by mutual consent between the employer and employee.



RUSSIA

Contributed by: ALRUD Law Firm (Irina Anyukhina, Margarita Egjazarova)

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No, a reduction in force is possible only in accordance with the mandatory procedures set forth by the Russian Labor Code, which requires payment of severance.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No, employers cannot interrupt the accrual of seniority and other employment benefits during the shutdown period. A shutdown period is considered a payable period of downtime.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Employers may negotiate a temporary reduction in salary and benefits upon mutual consent of the parties by concluding a supplemental agreement to the employment contract it has with each affected employee. The employer may unilaterally implement changes that are organizational or technological (*i.e.*, not economical) in nature upon two (2) months' notice to employees. In the case of a temporary workplace shutdown, employees need not work and must be paid at least two-thirds of their normal monthly salary for this time (downtime).

If employees refuse to come to work, can their employment be terminated for job abandonment?

During the period of the nationwide non-working month until April 30, 2020, all employees are allowed to not work and employers may not dismiss or discipline them.

By general regulation, employees may refuse to come to work if they have a justified reason for their absence (*i.e.*, they have obtained a sick leave certificate from a medical professional). If their absence is not justified, their absence may be deemed gross misconduct, which can result in dismissal.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employers?

Employers must immediately provide information on all work contacts of employees suffering from COVID-19 upon receipt of a request to do so from the Russian Federal Service for Consumer Rights and Human Welfare Protection (Rosпотребнадзор) or other authorized state authority.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

According to the Russian Civil Code, *force majeure* occurs where there is an extraordinary and objectively unavoidable event, the occurrence of which excludes liability for the breach or non-performance of a contract party's obligations. *Force majeure* does not lead to termination of the obligation. Rather, once the event causing *force majeure* ceases, the parties will have to perform their obligations unless the obligations are terminated based on other grounds. Note that parties may elect to exclude *force majeure* from their contract.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Yes, a party can claim *force majeure* as a defense for its non-performance of contractual obligations. The courts will determine, on a case-by-case basis, whether a particular event (including COVID-19 and/or restrictive measures taken in connection with its spread) qualify as *force majeure* for a particular contract. This approach applies even if a contract under the court's review expressly identifies COVID-19 and all related events as *force majeure*.

Note that on March 18, 2020, the Russian Federal Antimonopoly Service clarified that the COVID-19 pandemic was a *force majeure* event and that such finding should be taken into account by state authorities when considering government procurement-related complaints, administrative violations cases and other issues.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

A finding of *force majeure* based on a state of emergency declaration would provide temporary relief. In Russia, the president possesses the authority to issue such a declaration. In practice, courts would find that such a declaration qualifies as *force majeure* if the declaration were to prevent contractual performance. The current high-alert regime in place may qualify as *force majeure*.

As explained above, however, a finding of *force majeure* does not terminate the contract; it only excludes liability for the breach (*i.e.*, compensation for losses and penalty).

What remedies are available to businesses in the event they default on their contractual obligations?

Where parties default on their contractual obligations due to *force majeure*, such party shall be released from any contractual liability. Further, courts might consider the spread of COVID-19 to result in an objective inability to perform obligations or a material change of



circumstances. Upon such a finding, the court may terminate the party's obligations under the contract or modify them in order to ensure the economic equilibrium of the parties.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

As of the date of this posting, the following measures have been introduced so far to support Russian businesses:

- (1) Companies from industries most affected by COVID-19 may apply to the banks for credit payment deferral until September 30, 2020.
- (2) A half-year ban on opening insolvency cases has been introduced against essential enterprises, strategic companies, and small-and-medium enterprises (SMEs) strongly affected by COVID-19.
- (3) Five (5) billion rubles state aid for banks to support SMEs.
- (4) Exemption from liability under currency control rules for local companies for non-repatriation of foreign currency funds paid to non-resident companies to the extent such violations are due to the spread of COVID-19.
- (5) State procurement: Particular products may be procured without a tender. Additionally, companies breaching contracts as a result of public tenders can be released from liability to the extent such violations are caused by COVID-19 and respective measures are implemented by state authorities.
- (6) Lease of property: On March 31, 2020, a bill was approved by the Russian Parliament and sent to the president for signature, requiring property owners, upon the request of lessees, to provide for a deferral on lease payments for 2020. As of the date of this posting, the bill had not yet entered into force.
- (7) Additional measures for SMEs include, for example, (1) reduction of insurance premium payments from 30% to 15%, (2) deferral on lease payments on federal property, and (3) suspension of audit and inspections.

Each region of the Russian Federation may implement additional measures for SMEs.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves

According to the Decree of the Russian Supreme Court, access to all courts was limited from March 19, 2020, to April 10, 2020. Only cases of an urgent nature will be considered.



of the judiciary in the event it is necessary during the current COVID-19 health crisis?

During this limitation, documents to be sent to the court should be sent by mail or via the Internet. As of the date of this posting, it is plausible that the courts will not get back to regular operation until at least April 30, 2020.

There is no list of cases that courts should suspend until the end of the "quarantine" and some cases may be considered by the court without summoning the parties. Therefore, all arguments should be submitted to the courts in writing in advance of any scheduled hearings.

During the period of the pandemic, litigation may be longer, so the parties should take the opportunity to collect necessary evidence of *force majeure*. The most common evidence is the certificate of *force majeure* issued by the Chamber of Commerce and Industry of the Russian Federation (RF CCI). Starting from March 20, 2020, the RF CCI and its regional structures issue certificates of *force majeure* for export and domestic contracts. In addition, there is a hotline of the RF CCI where businesses and individuals can get answers to questions about the qualification of the circumstances of COVID-19 as *force majeure* and consult about obtaining a certificate of *force majeure*.

Has your country issued any tax amnesty or relief programs because of COVID-19?

As of the date of this posting, there are no tax amnesty programs because of COVID-19. At the same time, the government and the president of the Russian Federation have agreed to certain programs providing tax benefits, mainly for the micro, small and medium enterprises and for the industries primarily suffering from COVID-19. These programs, depending on the category of taxpayer, include tax deferrals, reduction in rates for social security taxes, postponement of existing tax audits and tax control measures.

Has the tax filing deadline been extended?

Yes, the government of the Russian Federation has extended the tax filing deadlines up to three months for almost all taxes, except for VAT and calculations of the social security taxes for the first quarter of 2020. The deadline for these two types of taxes is extended to May 15, 2020.

Are tax refunds and other claims being timely processed?

The government of the Russian Federation did not announce any changes regarding postponing review of claims and processing tax refunds. At the same time, practically, certain delays will arise due to changes in the workplace (*i.e.*, moving in-person work to remote work and limitations in the work schedule of the tax offices).



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes, a national lockdown was declared by the Office of the Prime Minister on March 21, 2020, and has been extended until April 30, 2020. As a result, all employees, excluding those engaged in essential services, must work from home. As of the date of this posting, no other measures deal specifically with employment issues. As of May 22, 2020, some of the restrictions of the lockdown were eased.

Can employers furlough employees during this COVID-19 health crisis?

Yes, although the terms commonly used in Rwanda are suspension of employment contract or layoff. Article 18 of the Rwandan labor code recognizes, among others, economic difficulty, technical difficulty and *force majeure* as legitimate grounds that may trigger the suspension of employment contracts. In this circumstance, because the ongoing lockdown has halted or at least substantially crippled revenues to businesses, employers can suspend employees citing economic difficulties as the cause. Bear in mind, if suspending an employment contract due to economic or technical reasons, an employee cannot have their contract suspended one or more times for a period longer than 90 days during the same period of one year.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

No. However, the government declared a social protection plan through which people who have been hit by the consequences of COVID-19 may receive assistance to meet their basic needs, including, but not limited to, food and hygiene materials.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

As mentioned above, Rwanda is currently under lockdown. Employers cannot require their employees to work from their usual workplaces/offices unless they perform essential services, including medical services and banking services. Employers are, therefore, required to comply with the measures relating to the current lockdown and to ensure that their employees comply as well.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. In fact, denying such an employee access to the workplace would be in line with the provisions of article 77 of the Rwandan labor code that obligates employers to ensure the



health, safety and welfare in the workplace for employees working in his/her enterprise and for all persons visiting the enterprise.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes, provided they have the means to do so, that the screening process is reasonable and that it is not conducted in a manner that violates employees' rights (*i.e.*, the screening does not obtain more information than necessary to achieve the sought result).

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Generally speaking, there is no such obligation in Rwanda. Persons' medical information and any medical condition from which they may suffer is confidential and the law does not allow an employer to compel an employee to disclose this kind of information. However, every individual who tests positive or has COVID-19 symptoms is required, and encouraged, to disclose such symptoms to the Ministry of Health. To make disclosure easier, a toll-free line (114) was created.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, for the same reasons as stated above and in order for an employer to take all necessary steps to ensure a safe working environment for its employees.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Yes, but employers cannot compel employees to take leave that is scheduled to be taken within three months of the request. In all cases, and while on leave, the employee will be entitled to his/her salary.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No, employers are not relieved of their obligations to pay terminal benefits, or severance, to employees if they need to terminate them as a result of the COVID-19 outbreak. The Rwandan labor code only relieves employers from paying severance liabilities when the employee is terminated for non-economic reasons.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers

Under these circumstances, employers may suspend employment contracts, and accordingly, employment benefits the employee is entitled to. This action would also affect accrual of the employee's seniority.



RWANDA

Contributed by: ENSafrica Rwanda

interrupt the accrual of seniority and other employment benefits during that period?

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes, workplace shutdowns or hour reductions can be negotiated and implemented with the consent of the employees on economic difficulty grounds, as discussed above.

If employees refuse to come to work, can their employment be terminated for job abandonment?

If the employer has a business that provides essential services allowed to continue operations, the refusal of the employee to show up at the workplace without proper justification or notifying his/her employer may be a valid ground for termination of employment.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

There is no obligation for employers specifically, rather it is a legal obligation for everyone to report any person whose symptoms are similar to those of COVID-19 to the authorities.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Rwandan contract law recognizes *force majeure* as a legitimate factor that extinguishes contractual obligations. Article 92 of Rwandan contract law provides that where a party's performance is made impossible for reasons beyond their control, including the absence of the object matter of the contract or another case of *force majeure*, the party's obligation to perform is extinguished, unless the circumstances indicate otherwise.

Additionally, apart from full impossibility of performance, Rwandan contract law also recognizes partial impossibility of performance. Specifically, article 96 provides that where performance is only partially impossible, the debtor's remaining obligations are unaffected if: (i) the remaining part is still practicable and is substantial and (ii) within a reasonable time, the creditor agrees to perform all remaining obligations and allows the debtor to retain performance already rendered.

The law does not further elaborate how this principle is applied, but Rwandan courts have held that for an event to constitute *force majeure* it must be unforeseeable, irresistible and unavoidable.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Yes, but the outcome of such a claim will depend on the level of impossibility of performance.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

Rwandan contract law does not provide contracting parties with any type of relief from their obligation to comply with contractual terms for delivery or payment on the grounds of state of emergency declaration, except if the state of emergency declaration constitutes a *force majeure*.

What remedies are available to businesses in the event they default on their contractual obligations?

Generally, no remedies or protections are available under contract law for businesses who default on contractual obligations as a result of a lockdown. However, to the extent the defaulting party can establish that the lockdown constitutes a *force majeure*, they may be relieved from the consequences of not performing their contractual obligations.



RWANDA

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Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

We are not aware of any small-business protections or benefits in response to COVID-19 effects.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

No. Through a notice to the public dated March 15, 2020, the Bureau of the High Council of the Judiciary ordered the suspension of court hearings, pre-trial hearings and scheduled meetings between litigants, court administration and the Inspectorate of Courts, with other court services being accessed through the integrated electronic case management system (IECMS).

However, on April 9, 2020, the Judiciary of Rwanda launched the hearing of specific urgent cases in criminal matters using a video-conference platform.

Has your country issued any tax amnesty or relief programs because of COVID-19?

As of the date of this posting, no tax amnesty or relief programs have been issued.

The Rwanda Revenue Authority has, however, extended deadlines for tax declarations/filings and payments. Comprehensive tax audits have also been suspended since March.

Are tax refunds and other claims being timely processed?

Yes. There is no indication that tax refunds due to taxpayers are being delayed because of COVID-19.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. In line with the Interim Measure of Partial Reimbursement of Wage Compensation dated March 20, 2020, employers who were forced to suspend the work of at least 30% of all employees and meet other requirements (e.g., regular payment of salaries, taxes and social contributions before filing an application) may apply for reimbursement of 40% of salary compensation paid to affected employees. Reimbursements will be covered by the state for a period of three months and paid directly to employers.

In the case of a healthy employee who is ordered to self-quarantine by the decision of the Ministry of Health—and the employee cannot work remotely from home—the state will reimburse 100% of the employee's salary.

Employees suffering from COVID-19 are entitled to sick leave and compensation of salary for the relevant period, 90% of which will be borne by the state during the first 90 days and 100% of which will be borne by the state thereafter.

On March 24, 2020, the government announced that the above-mentioned measures will soon be amended and/or supplemented with new and improved measures; however, as of the date of this posting, such new measures have not gone into effect. And on April 2, 2020, the National Assembly adopted the Anti-Corona Act, which will be applied retroactively from March 13, 2020, onwards and shall remain in force until at least May 31, 2020. The measures regulated by the Anti-Corona Act include:

- Reimbursement of salary compensation

Salary compensation for all employees ordered to wait for work at home, as well as all employees who cannot work due to *force majeure*, will be reimbursed by the state in full. Salary compensation for both types of employees amount to 80% of average salary in the last three months, but not less than €940.58 gross. Although there is no cap on salary compensation, no more than the amount of the average monthly salary in 2019 (minus contributions) shall be reimbursed per employee.

- Exemption from payment of social contributions

From March 13, 2020, to May 31, 2020, all social security contributions for employees who have been ordered to wait for work at home, as well as all employees who cannot work due to *force majeure*, shall be paid by the state; however, only up to the amount of salary



compensation, which does not exceed the amount of average monthly salary in the Republic of Slovenia for 2019.

- Exemption from payment of disability and pension insurance contributions

All disability and pension insurance contributions due in April and May 2020 for employees working during the validity of the Anti-Corona Act will be paid by the state.

- Sick leave compensation

Salary compensation for employees on sick leave will be borne by the state, applicable from the date the Anti-Corona Act enters into force until May 31, 2020.

- Crisis supplement

From March 13, 2020, to May 31, 2020, employers must pay the "crisis supplement" in the amount of €200 (free of taxes and contributions) to all employees who are working during this period and whose gross salary does not exceed triple the amount of minimum wage in Slovenia. There is an exemption for employers that directly or indirectly use the state or municipal budget and employers engaged in financial and insurance activities under group K of the standard classification of activities.

Can employers furlough employees during this COVID-19 health crisis?

No. It is not permissible to order unpaid leave for employer-related reasons.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Apart from measures mentioned in the response to question (a) above, on March 24, 2020, the government announced that new and improved measures will be introduced soon.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Employers are obligated to comply with decrees and laws adopted by the state authorities. As of March 16, 2020, employers were required to close all stores covered by the decree on the provisional prohibition of the sale of goods and services to consumers in the Republic of Slovenia (exceptions apply). So far, no similar decree has been issued for



other business activities. In general, businesses that have not been suspended are under an obligation to assess whether they can ensure safe and healthy work conditions and must comply with all preventive measures (e.g., requiring remote work if possible, maintaining appropriate distance between workers).

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. In that circumstance, employers should suspend the work of the affected employee by issuing a written order. Such employee will be entitled to 80% of salary compensation (i.e., 80% of the average salary in the last three months) during the period that work is suspended.

Can employers implement a mandatory screening program for COVID-19 symptoms?

No. Self-paid testing for COVID-19 is not allowed in Slovenia. Therefore, doctors are the only ones entitled to order testing.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes, but only in specific situations. All employees are under a statutory obligation to perform their work with due care to protect their own life and health, and the health and lives of others. At the same time, employees are not obligated to disclose the details of their medical status to their employer. Depending on the working process and the type of work performed by the employee (e.g., cashiers, teachers, blue collar workers, medical workers—all of whom are in constant contact with co-workers and/or clients), employers may impose on employees an obligation to disclose if they have tested positive for COVID-19, provided that such measure was advised by the authorized occupational health officer or competent authorities.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes. In line with the recently published guidelines by the Ministry of Labour, employers must implement additional measures in order to provide safe and healthy work condition to employees to the maximum extent possible. However, the processing of personal data obtained based on such a policy must be done in line with the General Data Protection Regulation (GDPR).

Can employers force employees to take vacation time during the COVID-19 health crisis?

No.



SLOVENIA

Contributed by: Karanovic Partners (Minu Gvardjančič, Igor Angelovski, Dalia Cerovšek)

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No. Although, employers who apply for measures under the Anti-Corona Act are prohibited from distributing profits, paying management bonuses and/or business performance bonuses in 2020 (applicable from the date the Anti-Corona Act enters into force).

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes, employers may implement temporary workplace shutdowns and/or temporary reductions of working time. However, a unilateral temporary reduction in salary and benefits due to COVID-19 is not permissible and shall only be possible with employees' consent (*i.e.*, by concluding a new employment contract or an annex to the existing employment contract).

If employees refuse to come to work, can their employment be terminated for job abandonment?

Yes, but only in specific situations. In line with the Health and Safety at Work Act, employees are entitled to not come to work if they are exposed to imminent danger to their health or life because the employer failed to implement mandatory safety measures. If all safety measures have been implemented, and if there is no other justified reason for absence (*e.g.*, care of a child up to the fifth grade of grammar school or sick leave), the employee is obligated to come to work. If the employee fails to come to work, his or her employment contract may be terminated (depending on the seriousness of the violation and circumstances of each individual case).

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employers?

No. In Slovenia, testing for COVID-19 is done only by the health authorities, which will immediately contact the employer in case of detected infections and provide instructions on how to proceed. In any case, employers are obligated to call upon their employees and instruct them to stay at home in case of sickness and follow a doctor's instructions.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Slovenian courts interpret *force majeure* narrowly as “an event, the occurrence of which was outside the control of the affected party, was not foreseeable, could not be mitigated, avoided or prevented and prevents the performance of contractual obligations.” Whether or not the *force majeure* clause can be invoked, and to what extent, depends on (i) whether the contract includes such a clause, (ii) the wording of such clause, and (iii) the time when the contract was executed. When adjudicating such matters, the courts also evaluate the circumstances and the effects that the pandemic (including governmental restrictive measures) had on the affected party and its ability to fulfill contractual obligations.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Yes. To successfully claim *force majeure*, all conditions under Slovenian law need to be met (as indicated under 2(a) above). *Force majeure* cannot be successfully claimed if the performance of one’s obligation was merely more expensive or burdensome; fulfillment of contractual obligation needs to be *prevented* by the pandemic or by governmental restrictive measures, and furthermore, a causal link must exist between the party’s non-performance and the pandemic (including governmental restrictive measures).

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

Not automatically. Relief from obligations to comply with contractual terms can be obtained by invoking the *force majeure* clause, or by resorting to one of the remedies stipulated in the Obligations Code (as indicated under (d) below). Note that it is questionable whether COVID-19 and governmental restrictive measures give rise to *force majeure* if contracts were negotiated and concluded after December 2019 (*i.e.*, after the coronavirus outbreak in China), because the pandemic in Europe could arguably have been foreseen and anticipated as of December 2019.

What remedies are available to businesses in the event they default on their contractual obligations?

Apart from contractual *force majeure* clauses, the Obligations Code provides for the following remedies:

- Rescission or amendment of contract due to changed circumstances (Article 112 of Obligations Code)

To obtain this remedy, changed circumstances must (i) occur after the contract was signed, and before the default or a breach; and (ii) be of such nature that the affected party



could not have anticipated, overcome or avoided them. At the request of the non-affected party, a court can order the affected party to pay the fair share of the damage incurred by the non-affected party due to the rescission.

- Inability of performance of contractual obligations (Article 116 of Obligations Code)

The affected party can claim inability to perform contractual obligations, which causes the obligation to expire; however, the parties must return anything they received under the contract. In the event of partial inability, the other party may withdraw from the contract if the partial fulfilment of contractual obligations does not meet the party's needs. Otherwise, the contract remains in force and the affected party has the right to request a proportional reduction of its contractual obligations.

- Exoneration of liability for failure to perform a contract (Article 240 Obligations Code)

In this case, the contract is not automatically terminated, but the affected party is not liable for damage resulting from the breach if it proves that (i) it was unable to fulfill contractual obligations; or (ii) that it failed to fulfill contractual obligations due to circumstances arising after the conclusion of the contract that could not be prevented, mitigated or avoided.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

Yes, several measures have been adopted to protect local businesses. Pursuant to the Act on Interim Measures in the Fiscal Area, the deadlines for filing tax returns and submission of annual reports have been extended to May 31, 2020. Pursuant to the Act on Interim Measures on Deferral of Payment of Borrower's Liabilities, local legal entities that are not be able to pay their monthly installments due to COVID-19 may request a 12-month deferral of their payment obligations under loan agreements. Additionally, several credit lines will be made available by the Slovenian investment and development bank (SID), Slovenian Enterprise Fund (SEF) and Ministry of Economic Development and Technology (MEDT). SID is making available certain financial products up to €800 million, of which €200 million will be dedicated to resolving liquidity problems and €600 million will be provided in the form of indirect financing of companies through the banks (NLB, NKBM, Abanka, Addiko bank, Gorenjska banka and Sberbank). Other financial products will be available in April 2020.

The funds are designed to assist small to medium-sized enterprises, self-employed persons and even large companies; however, the subjects will be eligible only if they have been conducting business for at least two years and have at least two employees. SID is



also preparing a financing program that will provide short-term loans to small, medium and large companies. Micro, small and medium enterprises can also obtain liquidity loans from SEF, which will be providing in total €115 million for the repayment of existing loans and obligations. Of this amount, up to €25 million will be available as direct liquidity loans (*i.e.*, as of March 27, 2020, companies can obtain loans from EUR of €40,000 up to €125,000) and €79.2 million will be available as guarantees for bank loans (available as of March 20, 2020), whereas €12.9 million is already available in the form of micro-loans. Businesses in need can also turn to the MEDT, which can distribute €6 million in loans. If the requests exceed these allocations, additional funds in the form of guarantees in an aggregate amount up to €20 million will be provided.

Additionally, the Anti-Corona Act supplements provisions of the Act on Interim Measures in the Fiscal Area on deferral of payments arising from loan agreements by enacting an extension of maturity on all security agreements. During the 12-month moratorium, interest shall be charged at the same rate as agreed upon in the loan agreement.

Entities granted deferrals are prohibited from distributing profits, paying business performance bonuses to the management and employees, or paying any other financial obligations towards their parent company, affiliated companies or owners.

Finally, the state shall provide sureties for financial obligations of lenders granted with deferral (up to 25% or 50%).

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

As of March 16, 2020, the judiciary is operating only in urgent matters as stipulated by the law, such as bill of exchange disputes, compulsory settlement and bankruptcy procedures, criminal procedures, and the like. For non-urgent matters, all court hearings have been cancelled until further notice. Statutory deadlines and court-imposed deadlines in non-urgent judicial and administrative matters have been suspended.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Private entrepreneurs who do not act as employers, and whose self-employment is the sole basis for inclusion in compulsory social insurance, are entitled to a deferral of social security contribution payments due in April, May and June 2020. Unsettled liabilities must be paid by March 31, 2022. As of the date of this posting, additional measures are in the process of being adopted, pursuant to which private entrepreneurs will be exempt from



social security contribution payments for the respective period; contributions would be covered by the state for that period.

Certain changes are expected in the practical implementation of tax obligation enforcements in the period of COVID-19 measures.

Additional measures, which are in the process of being adopted, contain some additional relief and benefits for taxpayers. Namely, the state will cover social security contributions for employees whose work has been suspended as well as pension-related contributions for working employees. Additional measures entail a deferral of advance tax payments for corporate entities and private entrepreneurs. Specifically, legal entities and private entrepreneurs will not be required to pay advance tax payments for the period of April and May 2020.

Further, private entrepreneurs and farmers (conditions of eligibility apply) affected by the COVID-19 pandemic will be entitled to a monthly contingency allowance in the amount of €350 for March and €700 for April and May 2020, respectively.

Has the tax filing deadline been extended?

The deadline for the submission of the corporate income tax return and personal income tax return for natural persons/entrepreneurs is extended to May 31, 2020. For the taxpayers whose tax period is not the same as the calendar period and the return would regularly need to be submitted during the validity of COVID-19 measures, the deadline for the submission of their returns is extended for two months.

Because the deadline for the respective returns is extended, taxpayers are required to apply/disapply for the lump-sum taxation system by May 31, 2020.

In case of ex-post control procedures (e.g., tax inspections) that are not considered as a matter of urgency, procedural and material deadlines would not run during emergency measures.

Are tax refunds and other claims being timely processed?

For matters not considered urgent, certain delays can be expected. Based on explanations available so far, this should not apply for regular tax refunds, but only for certain procedures and processes in which taxpayers' material position is not directly affected.



SOUTH AFRICA

Contributed by: Brian Patterson, Valentine Mayer, Céline Bellouard, Maxime Sauzier, Natasha Behary Paray, Audrey Johnson, Samantha Bonato, Ian Hayes, Brian Jennings, Arnaaz Camay

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

A national lockdown was declared under the Disaster Management Act, 2002, through April 30, 2020. South Africa initiated a phased reopening of some business and industries on May 1, 2020, subject to restrictions. Under the lockdown, all employees, except those engaged in an essential service, must stay at home and are precluded from attending work. Several labor- and employment-related regulations have been promulgated that govern the lockdown, including:

Regulations under section 27(2) of the Disaster Management Act, 2002 (Published under Government Gazette number 43107 on March 18, 2020, including amendments under Government Gazette number 43148 published on March 25, 2020; Government Gazette number 43168 published on March 26, 2020; and Government Gazette number 43119 published on April 1, 2020)

COVID-19 Temporary Employee/Employer Relief Scheme (C19 TERS), published on March 25, 2020, in notice number 215 of 2020 in Government Gazette number 43161, thereafter amended by Department of Labour notice 240 of 2020 (published on April 6, 2020 in Government Gazette number 43216)

Notice number 193 of 2020 published by the Department of Labour on Compensation for Occupationally-acquired Novel Corona Virus Disease under the Compensation for Occupational Injuries and Diseases Act, 1993 (published on March 20, 2020 in Government Gazette number 43126).

Can employers furlough employees during this COVID-19 health crisis?

Yes, although the term more frequently used in South Africa is a temporary layoff. A temporary layoff can be implemented only if employers obtain employee consent. However, because South Africa is currently under national lockdown, subject to the regulations mentioned above, this has resulted in a statutory supervening impossibility of performance of the employment contract. As a result, employees cannot lawfully tender their services, employers are not allowed to accept such tender of services and employers are arguably released from the obligation to pay employees during such statutory absence. The government is, however, encouraging employers to continue to pay employees if they are in a position to do so. Employers can also ask employees to consider utilizing any accrued annual leave during the lockdown so that they will be treated as if they are on paid annual leave. Alternatively, special COVID-19 benefits have been made available through



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the Unemployment Insurance Funds, which employers can claim on behalf of their employees if they are unable to pay them.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes, the COVID-19 Temporary Employee/Employer Relief Scheme (C19 TERS) and notice in terms of the Compensation for Occupational Injuries and Diseases Act, mentioned above.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

As mentioned above, South Africa is currently under lockdown. Employers may not require their employees to work unless they perform essential services (declared in terms of the abovementioned regulations) or are able to work from their homes. Employers are arguably released from the obligation to pay employees. Employers must comply with the regulations relating to the lockdown and ensure that their employees comply as well.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes, provided that such denial is reasonable, taking into consideration the safety of the employee and other employees in the workplace.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes, provided it has the means to do so, that such screening process is reasonable and that it does not infringe on the rights of employees beyond what is necessary to achieve its purpose.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Generally speaking, in South Africa, an employee's medical information and any medical condition from which they may suffer is confidential and an employer cannot compel an employee to disclose this information. However, in unique circumstances such as these and in light of the national state of disaster that has been declared in South Africa, employers can probably require employees to disclose whether they have tested positive for COVID-19, and the employee would be obligated to do so in light of their own duty to ensure a healthy and safe working environment for their fellow employees. If an employee refuses, the employee can be refused access to work (assuming the employee provides an essential service and the lockdown does not apply).



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Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, for the same reasons as above and in order for an employer to take all necessary steps to comply with its legal obligation to ensure a safe working environment for its employees.

Can employers force employees to take vacation time during the COVID-19 health crisis?

There is no clear authority on the issue of whether an employer can compel an employee to take annual leave during a statutory lockdown. Although the Basic Conditions of Employment Act provides that, in the absence of an agreement between the employee and the employer, an employee must take annual leave at a time determined by the employer, it is debatable whether these provisions apply and can be relied upon when the employee is already on a statutorily enforced period of absence as a result of the lockdown. The employer can request that employees utilize annual leave during this period, but probably cannot compel employees to do so. Nonetheless, many employees may agree to these conditions in order to secure payment.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No, employers would not be relieved of their obligations to pay severance to employees who are retrenched as a result of the COVID-19 crisis.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No. Although the employee cannot work and the employer is relieved of its obligation to pay remuneration (*i.e.*, salaries) due to the supervening impossibility of performance of the employment contract, the remainder of the contract of employment still exists. As such, an employee's continuity of service is not interrupted, and the employee's seniority must continue to be recognized. Whether benefits continue to accrue to employees depends on the terms and conditions of employment, although because employees cannot currently tender their services, an argument can be made that benefits do not continue to accrue.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes, these measures can be negotiated and implemented with the consent of the employee.



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If employees refuse to come to work, can their employment be terminated for job abandonment?

Whether an employee can be terminated for job abandonment will depend on the lawfulness and reasonableness of the refusal to come to work. The dismissal of an employee must comply with the requirements of procedural and substantive fairness. In the event that an employee's refusal to come to work was reasonable and justifiable, his or her dismissal may successfully be challenged as being substantively unfair.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

There is no legal obligation under the published directives and regulations. However, employers are encouraged to report such instances to allow the health authorities to take all necessary steps to provide any necessary treatment to employees and to allow other employees to safeguard themselves.



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BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

South Africa's common law recognizes the principle of *force majeure*, although parties are free to contract out of it. Accordingly, each applicable contract must be examined carefully to determine whether any of the contractual provisions alter the common law position.

With respect to the common law position, South Africa recognizes instances where a party's contractual performance may either be at the outset unenforceable or may become unenforceable (temporarily or permanently) during the life of the contract.

The occurrence of a *force majeure*, *vis major* (i.e., a superior force) or *casus fortuitous* event may prevent a party from performing its contractual obligations. Such impossibility of performance, in order to be defensible under common law, would need to qualify as a "supervening impossibility of performance."

At common law, the requirements for supervening impossibility of performance are as follows: the performance must be objectively impossible and the impossibility must be unavoidable by a reasonable person.

It is not possible to claim damages as a result of a supervening impossibility of performance, as there is no fault attributable to any party. Instead, a party may withhold its reciprocal counter-performance or claim restitution if they already performed.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

In relation to non-essential goods or non-essential services, the regulations that give force and effect to the national lockdown, specifically sections 11B(1)(b) and 11B(1)(e), make it clear that COVID-19-related events would give rise to a supervening impossibility of performance by any party who, during the lockdown, is legally prevented from performing or operating its business, as the lockdown would constitute a *vis major* event, and it is objectively beyond any party's control.

The advice does not apply to businesses supplying or manufacturing essential goods or performing essential services, as the lockdown does not restrict their ability to operate. As such, there would be no *vis major* event in respect of such businesses. While they may have decreased trade as a result of the lockdown and, as a result, be under financial distress, such decreased trade or financial distress would not constitute an objective impossibility of performance, but rather a subjective one.



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Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

The government of South Africa has not declared a state of emergency (which is governed by separate enabling legislation) but rather a state of disaster, governed by the Disaster Management Act, 2002.

With the exception of what has already been discussed, the regulations governing the lockdown do not provide contracting parties with any type of relief in their obligation to comply with contractual terms for delivery or payment. This is governed by each party's respective terms of agreement, and absent any applicable terms, by the common law.

What remedies are available to businesses in the event they default on their contractual obligations?

Generally, there are no remedies available or protections offered under the DMA Regulations for businesses who default on their contractual obligations as a result of the lockdown. The ordinary principles of contract law apply — the remedies would arise in the hands of the counterparty to the contract to whom the contractual obligation is owed.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

Small Business Relief Measures

The Department of Small Business Development has established a Debt Relief Finance Scheme and a Business Growth/Resilience Facility. The Debt Relief Finance Scheme will provide soft-loan funding for existing small businesses in distress due to the COVID-19 pandemic. The relief will be for a period of six months, as of April 1, 2020. If small, medium and micro enterprises (SMMEs) require assistance for longer than six months, the term may be extended dependent on their needs.

The Business Growth/Resilience Facility is targeted at SMMEs that locally manufacture or supply hygiene, medical and other products that are in demand in order to curb and manage the spread of the COVID-19 virus.

To qualify for the Business Growth/Resilience Facility and the Debt Finance Relief Finance Scheme, the entity must be 100% South African owned, 70% of its employees must be South African, and the entity must be registered and be compliant with the requirements of the South African Revenue Service (SARS).

The Small Enterprise Funding Agency (SEFA) Debt Restructuring Facility is geared towards existing SEFA-funded SMMEs that are negatively affected by the pandemic. A payment moratorium will be granted to qualifying SMMEs for a maximum of six months.



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These SMMEs will be required to illustrate a direct link between their business distress and the pandemic.

Industrial Funding Relief

The Industrial Development Corporation (IDC), with the Department of Trade, Industry and Competition, put a package together of more than R3 billion for industrial funding (a) to assist vulnerable firms; (b) to fast-track financing for companies critical to efforts to fight the virus and its economic impact (IDC COVID-19 Essential Supplies Intervention); (c) in the form of trade finance to import essential medical products; and (d) to finance working capital and equipment and machinery. Priority areas for IDC funding include ensuring food security by prioritizing support to agriculture and food value chains; tourism sector support for working capital; bridging finance to support supply chain interruptions; working capital to ensure energy security by supporting suppliers of primary energy; and working capital and bridging finance to SMEs that provide components to car makers. In addition, the IDC is engaging industry players to address surges in demand.

South African Reserve Bank

The Central Bank (South African Reserve Bank) announced that it will restructure its market liquidity management strategy, which will give some relief to banks and funding markets strained from the COVID-related market crash. The Central Bank said it would begin buying an unspecified amount of government bonds as part of additional emergency policy measures aimed at easing a severe liquidity crunch triggered by the coronavirus.

Sectoral Relief Measures

A number of sectoral relief funding programs have been established. For example, the Tourism Relief Fund was setup for businesses operating in the areas of accommodation, hospitality and related services, and travel and related services sectors. The Department of Sport, Arts and Culture, and the National Film and Video Foundation also established relief programs for performing artists and practitioners, commissioned film/video producers and young or emerging producers.

Solidarity Fund

The Solidarity Fund is a public/private donations-based initiative that aims to prevent the spread of COVID-19, detect and understand the magnitude of the virus, care for hospitalized individuals or those in need of medical care as a result of the virus, and



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support those whose lives have been disrupted by the pandemic. The fund was established as a vehicle through which individuals and organizations can support these efforts through secure, tax-deductible donations. The activities of the Solidarity Fund are intended to complement state interventions and provide critical gap funding to accelerate the delivery of critical interventions benefitting the most vulnerable in South African society.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Under Government Notice number 440 published in Government Gazette number 43191 on March 30, 2020, entry into courts and court precincts may only be allowed for urgent and essential matters (for which the relevant permits and authorization must be obtained) and the number of persons entering courts is limited. Civil cases that are not identified as urgent and essential may not be placed on the court roll for the duration of the period of the lockdown. However, heads of courts have the discretion to authorize hearings through electronic means. In terms of the judge president's directive published on April 2, 2020, time periods for serving and filing processes or delivering documents will continue to run during the lockdown, and such service and filing can be done electronically; nobody will be permitted access to court buildings for purposes of filing.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Yes. The following tax-relief measures were announced and all took effect April 1, 2020:

In order to minimize unemployment, the government expanded the current Employment Tax Incentive (ETI) for a period of four months (from April 1, 2020, to July 31, 2020) to help employers retain employees during this critical period of social distancing and lockdown and thereby reduce the risk of low income earners losing their employment.

- Expansion of the ETI

This relief measure increases the maximum amount of ETI claimable by employers during the four-month period for eligible employees from R1000 to R1500 in the first qualifying twelve months and from R500 to R1000 in the second twelve qualifying months. This entitles employers to a monthly ETI claim in the amount of R500 during this four-month period. The South African Revenue Service (SARS) will increase the payment of ETI reimbursements from twice a year to monthly as a means of getting cash into the hands of employers as soon as possible.

- Tax measures for small to medium-sized businesses



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1. Employees tax deferral

The employees' tax deferral allows qualifying taxpayers to defer 20% of their employees' tax liability for each tax period from April 1, 2020, to July 31, 2020. The deferred liability must be paid to SARS in equal installments over the six-month period commencing on August 1, 2020.

2. Provisional tax deferral

The provisional tax deferral allows qualifying taxpayers to pay for the:

- a. First provisional tax period: 15% of total estimated tax liability
- b. Second provisional tax period: 65% of total estimated tax liability
- c. Third provisional tax period: the deferred 35% of total estimated tax liability.

This applies to first provisional tax payments that are due during the period from April 1, 2020, to September 30, 2020, and to second provisional tax payments that are due during the period from April 1, 2020, to March 31, 2021. No penalties or interest will be levied on the deferred amounts.

There are two sets of qualification requirements that apply to the employees' tax and to the provisional tax relief. First, a taxpayer must be conducting a trade with a gross income of R50 million or less for the year in which the payment is being made, and the gross income must not include more than 10% of income derived from interest, dividends, foreign dividends, rental from letting fixed property and any remuneration received from an employer. Second, the taxpayer must be fully tax compliant. That is to say, the taxpayer's tax returns across tax types must have been filed and tax debts paid (or arrangements made with SARS regarding any outstanding tax debts).

Has the tax filing deadline been extended?

No. The tax filing deadline for individuals was due on February 29, 2020.



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Are tax refunds and other claims being timely processed?

Yes. There is no indication that refunds due to taxpayers are being delayed by SARS. In relation to the specific tax measures introduced, ETI refunds have been increased from twice a year to monthly for the period of May 7, 2020, through August 7, 2020.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. As of the date of this posting, the Spanish government has approved several employment measures to deal with COVID-19, including:

- Royal Decree Law 6/2020, issued March 10, 2020, adopting urgent measures in the economic sphere and for the protection of public health (Real Decreto-ley 6/2020, de 10 de marzo, por el que se adoptan determinadas medidas urgentes en el ámbito económico y para la protección de la salud pública)
- Royal Decree Law 7/2020, issued March 12, 2020, adopting urgent measures to cope with the economic impact of COVID-19 (Real Decreto-ley 7/2020, de 12 de marzo, por el que se adoptan medidas urgentes para responder al impacto económico del COVID-19)
- Royal Decree 463/2020, issued March 14, 2020, declaring a state of alarm for the management of the health crisis caused by COVID-19 (Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19); as of the time of this posting, the state of alarm is set to end on May 9
- Royal Decree Law 8/2020, issued March 17, 2020, adopting urgent and extraordinary measures to confront the economic and social impact of COVID-19 (Real Decreto-ley 8/2020, de 17 de marzo, de medidas urgentes y extraordinarias para hacer frente al impacto económico y social del COVID-19)
- Royal Decree Law 9/2020, issued March 27, 2020, adopting additional employment measures in order to mitigate the effects of COVID-19 (Real Decreto-ley 9/2020, de 27 de marzo, por el que se adoptan medidas complementarias, en el ámbito laboral, para paliar los efectos derivados del COVID-19)
- Royal Decree Law 10/2020, issued March 29, 2020, regulating recoverable paid leave for employees providing non-essential services in order to reduce population mobility (Real Decreto-ley 10/2020, de 29 de marzo, por el que se regula un permiso retribuido recuperable para las personas trabajadoras por cuenta ajena que no presten servicios esenciales, con el fin de reducir la movilidad de la población en el contexto de la lucha contra el COVID-19)



- Royal Decree Law 11/2020, issued March 31, 2020, adopting additional urgent social and economic measures to deal with COVID-19 (Real Decreto-ley 11/2020, de 31 de marzo, por el que se adoptan medidas urgentes complementarias en el ámbito social y económico para hacer frente al COVID-19)
- Royal Decree Law 13/2020, issued April 7, 2020, adopting urgent measures regarding agricultural employment (Real Decreto-ley 13/2020, de 7 de abril, por el que se adoptan determinadas medidas urgentes en materia de empleo agrario)
- Royal Decree Law 15/2020, issued April 21, 2020, on urgent complementary measures to support the economy and employment (Real Decreto-ley 15/2020, de 21 de abril, de medidas urgentes complementarias para apoyar la economía y el empleo).
- Royal Decree Law 18/2020, issued May 12, 2020, on social measures to protect employment (*Real Decreto-ley 18/2020, de 12 de mayo, de medidas sociales en defensa del empleo*).
- Royal Decree-Law 19/2020, issued May 26, 2020, on additional measures in the agricultural, scientific, economic, employment and social security and tax fields in order to mitigate the effects of COVID-19 (*Real Decreto-ley 19/2020, de 26 de mayo, por el que se adoptan medidas complementarias en materia agraria, científica, económica, de empleo y Seguridad Social y tributarias para paliar los efectos del COVID-19*).

Can employers furlough employees during this COVID-19 health crisis?

Yes. In Spain, employers of all sizes may implement temporary hour reductions or employment contract suspensions known as *expedientes de regulación temporal de empleo* (ERTE). During the ERTE, employees are placed on unpaid leave and are entitled to receive official unemployment benefits.

There are two types of ERTEs: (i) ERTEs due to *force majeure* and (ii) ERTEs based on objective grounds (economic, technical, organizational and productive causes).

The Spanish government has shortened the time periods and relaxed the procedures for implementing ERTEs in response to the COVID-19 pandemic.



SPAIN

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Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes. At a state level, the Spanish government has authorized the following relief:

- For March and April 2020, employers with fewer than 50 employees are not required to pay any company or joint collections contributions. Employers with more than 50 employees are exempted from paying 75% of the contributions. In the event of a total ERTE due to *force majeure*, this relief would be extended through June 2020. However, in the event of a partial ERTE due to *force majeure* (i.e., where business activity partially resumes), employer contributions to social security shall be as follows:

Employees returning to work	Fewer than 50 employees	85% (May) and 70% (June)
	50 or more employees	60% (May) and 45% (June)
Employees remaining in suspended activities	Fewer than 50 employees	60% (May) and 45% (June)
	50 or more employees	45% (May) and 30% (June)

- During any ERTE, employees are entitled to unemployment benefits even if they do not meet usual minimum contribution period requirements. Similarly, unemployment benefits received by an employee during an ERTE caused by the COVID-19 pandemic will not preclude that individual from receiving benefits in the future.

Employees impacted by an ERTE cannot be laid off within six months of their return to work.

- Companies that have ceased operations as result of the state of alarm and self-employed individuals may suspend social security contributions for six months. Companies that continue to operate may suspend contributions from April to June 2020. Note the social security suspensions will not apply to any contribution already exempted under an ERTE.



- As long as they do not have any other debts under deferment, companies and self-employed individuals may apply for a deferral of social security debt payments due between April and June 2020, subject to the terms and conditions set out in the social security legislation, including a 0.5% interest.
- Domestic employees who registered for social security benefits prior to the state of alarm and are either out of work or working reduced hours are entitled to receive benefits equal to 70% of the employee's regulatory base. The regulatory base is a factor/reference number determined according to the employee's contribution base to social security.
- Temporary employees who were employed for at least two months prior to the state of alarm (and are not entitled to regular unemployment benefits) will be entitled to an exceptional subsidy of 80% of the Spanish Multiplier for the Public Income Index (*IPREM*).

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Generally, employers must facilitate and promote working remotely when possible (e.g., allow employees to work from home and, if possible, provide them with the necessary working tools). If working remotely is not possible, employers should carry out a risk assessment to keep employees safe and limit the spread of COVID-19 given the circumstances of their business and workplace (e.g., ensure physical distancing between employees, encourage workers to frequently wash their hands, make sure the workplace is regularly cleaned).

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. Employers can deny an employee access to the workplace based on labor and occupational risk prevention regulations (i.e., employers need to keep employees safe), provided the affected employee cannot work remotely. In any case, this measure should meet the criterion of proportionality and the employer's decision should be based on objective reasons. Therefore, if an employee exhibits symptoms of COVID-19, the employer can deny the employee access to the workplace and request that the employee undergo a medical examination. In addition, the employee's access to the workplace should only be denied for a reasonable period.



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Can employers implement a mandatory screening program for COVID-19 symptoms?

Probably. While employers are generally prohibited from requiring medical screening, such a measure is permitted when it is essential to verify whether an employee's health may be hazardous to the employee or other people in the workplace. Based on this exception, employers should be permitted to ask their employees to undergo a medical examination during the COVID-19 pandemic.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes. Employees are obligated to disclose a positive diagnosis to their employer. The diagnoses should also be disclosed to the risk prevention service and, if applicable, to the risk prevention delegates of the company.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes. However, this policy should meet the criterion of proportionality. Thus, while this policy can require employees to report COVID-19 symptoms, it should not interfere with employee privacy rights by requiring the disclosure of symptoms or illnesses not related to COVID-19. In any case, the processing of personal data must be carried out in accordance with the regulations on the protection of personal data.

Can employers force employees to take vacation time during the COVID-19 health crisis?

No.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. If a reduction in force is needed, employers must comply with Spanish labor law, including required statutory severance compensation.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

If a temporary operational shutdown is ordered by the competent authority, employers must apply for an ERTE due to *force majeure* (please see response to question (b) above). The accrual of seniority cannot be interrupted while the ERTE is in force. In connection with other employment benefits, it should be analyzed on a case-by-case basis.



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Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes. However, this temporary shutdown or reduction in hours must be carried out through the ERTE procedure (please see response to question (b) above).

If employees refuse to come to work, can their employment be terminated for job abandonment?

Maybe. Generally, employers can terminate employees for repeated and unjustified absences from work. However, if an employee believes there is a serious and imminent risk to his or her health, he or she is entitled to challenge their employer's decision to require attendance. A court will determine if there is a serious and imminent risk and assess proper damages if it rules in the employee's favor.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Yes. For reasons of public health, employers are required to report a positive test of the virus to health authorities and other employees of the company. However, they cannot disclose affected employee's identity to other employees.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Article 1.105 of the Spanish Civil Code covers *force majeure* events. It states that “outside the cases expressly mentioned in the law, and those in which the obligation should require it, no one shall be liable for events which cannot be foreseen or which, being foreseen, would be inevitable.”

When properly invoked, *force majeure* relieves a party’s liability for damages following a material breach of contract, without prejudice to the existence of other remedies available for said creditor (termination, for instance).

The fundamental characteristics of all *force majeure* events referred to in Article 1.105 of the Civil Code are unpredictability and inevitability. Under Spanish case law, both the unpredictability and the inevitability of an event are determined at the time of execution of the contract, meaning that COVID-19 may not qualify as a *force majeure* if the pandemic was already foreseeable at the time the contract was executed.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Maybe. A *force majeure* relieves a party’s liability for damages resulting from a material breach of a contract. However, whether the contingencies arising from COVID-19 can be considered *force majeure* will depend on the unpredictability and the inevitability of the event. Therefore, it will be necessary to analyze the circumstances on a case-by-case basis, considering, among other factors: (i) any *force majeure* terms included in the contract, (ii) the parties’ knowledge of the COVID-19 pandemic and its associate risks at the time of the engagement and (iii) the specific reasons that lead to the breach of contract.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

Yes. On March 14, 2020, Royal Decree 463/2020 declared a state of alarm. On March 17, 2020, Royal Decree-Law 8/2020 adopted urgent extraordinary measures to deal with the economic and social impact of COVID-19. On March 31, 2020, Royal Decree-Law 11/2020 adopted additional urgent measures in the social and economic spheres to address COVID-19. On April 21, 2020, Royal Decree Law 15/2020 adopted additional urgent measures to support the economy and employment. On April 28, 2020, Royal Decree Law 16/2020 adopted measures to address Justice Administration. And on May 26, 2020, Royal Decree Law 19/2020 adopted supplementary measures in the agricultural, scientific, economic, employment and social



security and tax fields to mitigate the consequences of COVID-19. These decrees, among others, established the following measures:

- **Mortgage Payment Relief:** A three-month suspension of mortgage payments for individuals in a situation of special vulnerability.
- **Non-Mortgage Loan Payment Relief:** A three-month, temporary suspension of non-mortgage loan payments for individuals in a situation of special vulnerability has been established. Specifically, the decree temporarily suspends contractual obligations arising from any loan or credit without a mortgage guarantee.
- **Rent Payment Relief:** Tenants may automatically defer rent payments as long as the landlord qualifies as a public housing company or entity or a large holder under Spanish Law and the parties have not voluntarily agreed a total or partial postponement or forgiveness of rent. Additionally, Article 9 of Royal Decree Law 11/2020 allows for a guarantee line covered by the state for financing socially and economically vulnerable tenants up to €1,200 million.

Self-employed individuals and certain small companies whose activity is suspended under the state of alarm, or whose turnover was reduced by a 75% during the previous month, may also defer rent payments on commercial leases. Payments to commercial landlords classified as large holders and public housing companies/entities can be automatically deferred up to four months, with the full amount due within two years; for other commercial landlords, payments can be deferred up to two months, with the full amount due within one year.

- **Special moratorium between debtors and financial institutions under a sectoral framework agreement:** This conventional moratorium may establish the deferral payment to be paid by: (a) redistributing the installments without changing the maturity, or (b) extending the maturity by a number of months equivalent to the duration of the moratorium, in either case without prejudice to accrual of interest as agreed upon in the original loan agreement. This moratorium may not be used to establish new conditions in the loan agreements or to amend interest rates. Additionally, the notarization process has been simplified.
- **Additional Measures:**
- The Institute for Energy Diversification and Saving may, upon request of the relevant debtors (other than public entities or similar entities), defer payments of installments



under reimbursable grants or loans until two months after the termination of the state of alarm, provided that such debtors are affected by the health crisis and (i) are not in bankruptcy or pre-bankruptcy or (ii) have not paid debts to public sector companies or to the administration or (iii) are not in default on any obligations under the reimbursable grants or loans.

Royal Decree Law 16/2020 promotes the renegotiation of composition arrangements in execution and approved financing arrangements with creditors, regardless of the debtor's default or possible default.

- Measures Promoting Liquidity:
- Guarantee line on behalf of the Spanish State: The Spanish State set up a line of guarantees through which the Ministry of Economic Affairs and Digital Transformation may grant guarantees for companies and self-employed persons up to €100 billion in order to cover loan renewals (which must be understood as including the rehabilitation of the available tranche of existing financing contracts) and new financing. Additionally, the Ministry of Economic Affairs and Digital Transformation may grant guarantees for financing businesses and self-employed individuals to satisfy payroll, other invoices, working capital requirements, maturities of financial or tax obligations, or other liquidity needs.
- The *Instituto de Crédito Oficial* or Official Credit Institute (ICO) Debt Ceiling: The net borrowing capacity of the ICO has been increased by €10 billion to provide additional liquidity to companies, especially small and mid-sized enterprises and the self-employed, through existing ICO financing lines. The ICO is empowered to adopt the necessary measures to make the financing available more flexible and extensive, and these measures must therefore be implemented in order to confirm the terms on which the financing can be accessed.
- Extraordinary line of insurance coverage: Until September 17, 2020, at the latest, the CESCE's capacity to provide insurance coverage through the Internationalization Risk Reserve Fund (*Fondo de Reserva de los Riesgos de la Internacionalización*) has been increased by €2 billion.

Small and medium-sized companies (as defined in Annex I to Commission Regulation EU 651/2014) as well as other larger companies may benefit from this coverage provided that: (i) they are not listed, (ii) their international business represents at least one third of their turnover or they are companies that have regularly exported during



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the last four years in accordance with the criteria, (iii) they have liquidity difficulties derived from COVID-19 and (iv) they are not in a situation of bankruptcy or pre-bankruptcy or in a situation of non-payment of debts to public sector companies or to the administration.

What remedies are available to businesses in the event they default on their contractual obligations?

Companies may look towards the terms of the contract, the defense of *force majeure* under the Spanish Civil Code and the specific relief provide by Royal Decrees discussed in response 2(c) above.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

The measures explained in 2(c) above are accessible to local subsidiaries of foreign entities provided they meet the requirements of the relevant Royal decrees.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Yes, but in an extremely limited capacity. For the duration of the state of alarm, Royal decrees have:

- Suspended procedural time limits, with certain exceptions (lifted as of June 4, 2020).
- Suspended time limits and deadlines in cases involving public sector entities (lifted as of June 1, 2020).
- Relieved insolvent individuals from their duty to request a declaration of bankruptcy until December 21, 2020.
- Suspended admission of applications for the necessary tender of bankruptcy until December 31, 2020.

Debtors who have informed the court of negotiations with creditors before September 30, 2020, will be subject to the general regime established by the Insolvency law.

Additionally, the Standing Committee of the General Council of the Judiciary suspended legal proceedings and procedural time limits throughout the country, with the



Administration of Justice ensuring all essential services. The committee also mandated that procedural documents may only be submitted electronically and are limited to procedures that are declared urgent and require immediate attention for the duration of the state of alarm.

Has your country issued any tax amnesty or relief programs because of COVID-19?

As of the time of this posting, the Spanish Tax Authorities introduced a 0% VAT rate applicable to imports and EU-acquisitions of certain goods necessary to fight COVID-19, as well as an option for entities that are taxed on a stand-alone basis with a net turnover below €6 million in 2019 to use the current year's accounting results to calculate corporate income tax payments.

In addition to these measures, Royal Decree Law 17/2020 increased the percentages and limits of tax relief available for Spanish corporate income tax purposes on certain investments in cinematographic and audio-visual works, live shows and live music spectacles in order to stimulate activity in such sectors. And the Spanish Tax Authorities have introduced, at the federal level, certain Stamp Duty exemptions relating to the novation of mortgages under Royal Decree-law 8/2020 and postponement of SME tax payments up to €30,000 have been introduced. However, no tax amnesty or relief programs have been approved at a country (*i.e.*, federal) level.

At the state and municipal levels, some tax amnesty or relief programs have been issued or are under discussion (*e.g.*, a tax relief for real estate property tax and business tax is currently under discussion in the Municipality of Madrid). However, given the wide range of legislation issued by regional and municipal tax authorities in Spain as a result of the pandemic, this issue should be analyzed on a case-by-case basis.

Has the tax filing deadline been extended?

As of the time of this posting, the tax filing deadline for self-employed individuals and SMEs was extended from April 20 to May 20, 2020. For those tax returns that were to be filed no later than April 15, 2020, because of the direct debit payment method, the deadline was extended to May 15, 2020.

Please note that certain regional and municipal tax authorities have extended certain tax filing deadlines.



Although not a proper tax-filing deadline extension, the modification of Royal Decree Law 19/2020 introduced a fiscal year 2019 Corporate Income Tax (CIT) return into the filing regime, under which those CIT taxpayers that had not approved their annual accounts when they filed their fiscal year 2019 CIT return shall prepare their CIT return using the available accounting information. Subsequently, once the accounts for fiscal year 2019 have been closed and approved, if necessary, such taxpayers must file a supplementary CIT return by November 30, 2020. No tax surcharges will apply to the additional payable CIT that could arise from a supplemental CIT return, only late payment interest (*i.e.*, 3.75% for fiscal year 2020).

Are tax refunds and other claims being timely processed?

It is unknown at this time. There is reason to believe tax refunds are being timely processed since there have been no official notifications of a delay and the Spanish Tax Authorities COVID-19 FAQ specifically foresees that late payment interest will be accrued as usual.

On the other hand, other tax deadlines and time limits have been extended as a result of the COVID-19 pandemic and delays would not be surprising while the state of alarm remains in force. For these reasons, the timeliness of tax refunds must be analyzed on a case-by-case basis.



SWEDEN

Contributed by: Delphi (Rebecka Thörn, Jonas Vikbladh)

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes, specifically a short-term work (also referred to as short-time layoffs) measure. Under it, employers' salary costs can be reduced by half, as the Swedish government will bear a significant responsibility for the salary costs.

Can employers furlough employees during this COVID-19 health crisis?

Yes.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

In addition to providing short-term work with state support, the Swedish state will fully compensate employers for the costs for sick pay during April and May 2020, provide short relief from payment of value-added tax, social fees and preliminary tax, and allow for a temporary reduction of social fees for employers.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

If a stay-in-place or similar order is issued, employers must provide a safe and sound work environment and the equipment needed to work from home.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

There is no new legislation regarding denial of access to the workplace if COVID-19 symptoms are detected. However, employers have a responsibility to provide a safe work environment for all employees, which can be referred to if denying workplace access to an employee who has symptoms of COVID-19.

Can employers implement a mandatory screening program for COVID-19 symptoms?

There is no new legislation regarding mandatory screening of employees with COVID-19 symptoms. Since most Swedish employers are bound by collective bargaining agreements, employers should consult with the relevant unions in relation to such a program.



SWEDEN

Contributed by: Delphi (Rebecka Thörn, Jonas Vikbladh)

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes. Anyone who has tested positive for COVID-19 has a legal obligation to participate in contact-tracing in order to avoid further spread of the COVID-19 virus.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, such a policy can be implemented. However, it is unclear what the consequences will be if employees do not follow such a policy.

Can employers force employees to take vacation time during the COVID-19 health crisis?

The legislation regarding vacation is very complex. In some situations, employers are able to force employees to take vacation time.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

Salary during the notice period needs to be paid. Employees in Sweden are not eligible for severance payments unless severance is specifically agreed to in an individual employment agreement (which applies mainly to managing directors).

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Yes.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

No, this obligation lies with the individual employee who has tested positive for COVID-19.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

It applies regardless of whether or not it is included in the contract.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Yes, but the party claiming *force majeure* should inform the other party of any inability to comply with their obligations.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

Yes, but it is not called for if there is a *force majeure* situation, which is the case now.

What remedies are available to businesses in the event they default on their contractual obligations?

There is not a clear answer to this question. *Force majeure* excludes any liability for delays in performance, but what is unclear is for how long, for example, a buyer must accept the delay. In some cases, written contracts spell out such periods (*i.e.*, after a certain number of weeks, a buyer is entitled to cancel or terminate without consequences). However, in the absence of such contractual regulation, there would be some reasonable length of time during which the buyer must tolerate the delay and only after that reasonable length of time has elapsed may the buyer terminate or cancel the contract. It is impossible to say how long this period would be in general; it would depend on a number of factors and would have to be considered on a case-by-case basis.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

No, not in particular relating to a *force majeure* situation. All companies are treated the same way, regardless of size.



SWEDEN

Contributed by: Delphi (Rebecka Thörn, Jonas Vikbladh)

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

There are local differences, but in general criminal cases are a priority. Civil or business cases of an urgent nature will also be given priority.

Has your country issued any tax amnesty or relief programs because of COVID-19?

The government will make the following proposals: a 70% loan guarantee to companies experiencing financial difficulties due to the COVID-19 virus but which are otherwise financially sound; a temporary reduction of employers' social security contributions from March 1, 2020, to June 30, 2020; and temporary rule changes for tax allocation reserves so that sole proprietors who are severely affected by COVID-19 will receive tax cuts.

Has the tax filing deadline been extended?

No, but the Swedish Tax Agency has stated that it will accept delayed filings caused by COVID-19 and will take this into account when determining fees and penalties.

Are tax refunds and other claims being timely processed?

As of the date of this posting, we are not aware of any delays in processing.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

The Federal Council has enacted several Ordinances on Measures to fight COVID-19 and is continuously supervising and adjusting such measures. The ordinance dated March 13, 2020 and amended March 24, 2020 ([COVID-19-Ordinance 2; SR 818.101.24](#)) affects employment contracts governed by [Articles 319 et seq. of the Swiss Code of Obligations](#) (CO; SR 220).

The most important measure is stipulated in [Article 10b COVID-19-Ordinance 2](#): persons at high risk should remain at home and avoid gatherings of people. The Federal Council has defined persons at high risk as persons aged 65 and over and persons suffering from any of the following diseases in particular: high blood pressure, diabetes, cardiovascular diseases, chronic respiratory diseases, diseases and treatments that weaken the immune system, and cancer.

The Federal Council has stipulated obligations for all employers in [Article 10c COVID-19-Ordinance 2](#):

- Employers shall make it possible for employees who are at high risk to carry out their work from home.
- If work can only be carried out at the customary place of work because of the nature of the activity or the absence of feasible measures, employers must take appropriate measures to ensure compliance with the federal recommendations on hygiene and social distancing.
- If it is not possible for employees at high risk to carry out their work from home, or in compliance with federal recommendations on hygiene and social distancing at their customary place of work, employer shall grant them paid leave.
- Employees shall provide a personal declaration giving notice if they are at high risk. Employers may request a medical certificate.

Can employers furlough employees during this COVID-19 health crisis?

Yes, they can and, under certain circumstances (according to Article 10c Paragraph 3), they must. However, furloughing outside of Article 10c Paragraph 3 is limited by Article 329c CO.



Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

As many companies were ordered to shut down, many employers had to grant leave to employees. However, short-time work is providing relief to most employers. Over 400,000 requests from companies for short-time work compensation have been filed in Switzerland. The Federal Council expanded the groups of eligible persons to include, for example, temporary workers, certain shareholders of small and medium-sized enterprises, and apprenticeships, and enacted compensation for loss of earnings for self-employed individuals.

Furthermore, the Federal Council addressed the issue of liquidity for small and medium-sized enterprises by providing rapid access to credit facilities to bridge liquidity shortfalls caused by the new coronavirus pandemic. The Swiss Government has secured credits for CHF 40 billion so far and will likely raise that amount.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Apart from Articles 10b and 10c of COVID-19-Ordinance 2, an employer must determine whether it is allowed to continue operating, is bound to limitations, or must shut down entirely under Article 6 COVID-19-Ordinance 2. Any person who willfully fails to comply with any measures under this article is liable to a custodial sentence not exceeding three years or to a monetary penalty.

Businesses that have to shut down due to the Federal Council's orders must grant employees leave and continue to pay their salaries. Employers may only apply for short-time work compensation.

However, as long as the Federal Council's orders do not lead to a complete shutdown, the salary due to an employee may be reduced by the amount the employee saved on expenses it would have typically incurred in connection with work (*i.e.*, travel expenses, meals, costs for caregivers) but did not as a result of being prevented from working, that the employee earned by performing other work, or would have earned had he not intentionally foregone such work (Article 324 Paragraph 2 CO). Also, employees' general duty of allegiance (Article 321a CO) gives employers the capacity to order employees to fulfill their duties at a different place of work (*e.g.*, from home) or carry out different duties than they are typically assigned to.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes, they can, pursuant to Article 321a CO and Article 321d CO of COVID-19 Ordinance 2.



Can employers implement a mandatory screening program for COVID-19 symptoms?

At the moment, no, as only hospital organizations carry out screenings upon prescription of a doctor, and the Federal Council advises against it. Certain employers in the private sector are conducting screenings, but their legality is uncertain.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Employees have the right to withhold information from employers about their health condition as long as they carry out their duties (see Supreme Court Decision BGer 4C.192/2001), but employees must not endanger their own health or the health of others. They owe a duty of care and loyalty to their employers (Article 321a CO) and are, therefore, obliged to inform employers if they have tested positive for COVID-19.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes. Employees must not endanger their own health or the health of others, and therefore are obliged to inform employers of possible COVID-19 symptoms (Article 321a CO).

Can employers force employees to take vacation time during the COVID-19 health crisis?

Employers determine the timing of holidays, taking into account the employees' wishes to the extent they are compatible with the business' interests. Accordingly, employers can determine company holidays in case of a pandemic. Although it is common practice that company holidays be determined three months in advance, if the purpose of recreation can be achieved, employers may provide less advance notice.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. Reductions in force may be governed as “mass redundancies” according to Article 335d CO. Additionally, employers may not terminate employment while employees are ill for a certain time period (up to 30 days in the first year of service, 90 days in the second to fifth years of service, and 180 days in the sixth and subsequent years of service, according to Article 336c CO).

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No, not at this point.



SWITZERLAND

Contributed by: Law Firm Seidenhof (Matthias R. Schönbächler, Robert Bühler)

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

No. If employers initiate any reduction in hours, they are most likely to remain obligated to pay the employees' full salaries. Employers may only apply for short-time work compensation.

If employees refuse to come to work, can their employment be terminated for job abandonment?

In theory, yes. However, if employers do not meet their obligations according to Article 10c COVID-19-Ordinance 2, employers risk a wrongful termination claim (Article 336 et seq. CO).

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

No, but the Federal Council has the authority to enact such an obligation due to the Federal Epidemic Legislation.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Force majeure is governed by the general rules of performance and is, generally speaking, a subsequent impossibility of performance without liability (*nachträgliche unverschuldete Unmöglichkeit*). Therefore, the contractual parties are freed from performing under the contract (Article 119 CO). The requirements are:

- The performance has become impossible to provide.
- The performance was originally possible to provide.
- None of the contractual parties is liable for the impossibility of the performance.

However, for purchase contracts (Article 185 CO) or in the event that the transfer of risks and benefits are stipulated to in the contract, the party against whom the risk is assigned suffers from the impossibility (e.g., the purchaser suffers from the risk of performance and/or risk of price after the conclusion of a purchase contract, unless the risk was assigned to the seller in the contract or due to specific circumstances).

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

If any party is prevented from rendering services under a contract due to COVID-19-related events, they may claim that the service has become subsequently impossible and they should not be liable. However, if the transfer of risks and benefits are governed by the contract or by the Swiss Code of Obligations, the non-performing may suffer monetary consequences.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

No, the state of emergency declaration may only indicate the impossibility of performance.

What remedies are available to businesses in the event they default on their contractual obligations?

If it becomes impossible to perform under a contract and a party must default, the defaulting party may still request payment if the risk of performance and/or risk of price was transferred to the other party in the contract or by the Swiss Code of Obligations.



Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

Several COVID-19 related small-business protections and benefits have been enacted, such as short-time work compensation, extension of the duration of short-time work permits, benefits in mandatory occupational pensions, expedited loans from Swiss banks, payment extensions for social security contributions, and payment extensions and waivers on interest for federal taxes, incentive taxes and customs duties. If a local subsidiary of a foreign entity is a legal entity according to Swiss Law (e.g., a Swiss stock company or a Swiss limited liability company), it has access to these protections and benefits.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

As of the date of this posting, the judiciary is fully operating in Switzerland. However, due to COVID-19, the Federal Council has prolonged the judicial recess and granted a suspension of the judicial deadlines until April 19, 2020. Court hearings are suspended.

Has your country issued any tax amnesty or relief programs because of COVID-19?

The Federal Council has enacted relief from interest on late payments for taxes, incentive taxes and customs duties. Furthermore, businesses may postpone social security contributions.

The Federal Council has also enacted a measure stating that debtors cannot be prosecuted under the Federal Act on Insolvency and Bankruptcy; debt collection requests (so-called prosecution requests) are suspended until April 4, 2020.

Has the tax filing deadline been extended?

No, not as of the date of this posting.

Are tax refunds and other claims being timely processed?

Yes, as of the date of this posting, the tax offices are fully operating in Switzerland, as most authorities have switched to home office.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. The UK government has announced the following measures:

- The Coronavirus Job Retention Scheme (*i.e.*, “furlough” leave, please see further below for details)
- The Self-employment Income Support Scheme, which offers grants of up to 80% of trading profit, capped at £2,500 per month, to self-employed individuals
- Provision for employees who are absent from work because of coronavirus symptoms or household isolation to be eligible for statutory sick pay (SSP)
- The extension of SSP to apply from day one of absence rather than day four, where such absence is because of coronavirus
- Provision for employers with fewer than 250 employees to reclaim the cost of up to two weeks’ SSP in respect of eligible employees off work due to coronavirus
- Provision for the carryover of certain untaken holiday, due to coronavirus, to the next two holiday years.

Further details of the UK government’s measures can be accessed [here](#).

Can employers furlough employees during this COVID-19 health crisis?

Yes, in principle. Under the new Coronavirus Job Retention Scheme, UK employers can designate employees who have been asked to stop working as “furloughed workers.” The government will reimburse up to 80% of the furloughed employees’ usual monthly wage costs (up to £2,500 per month), plus employer national insurance contributions and minimum automatic enrollment employer pension contributions. Further details can be access [here](#).

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

The UK government has announced other business support measures, which are addressed below.



UNITED KINGDOM

Contributed by: McDermott Will & Emery (Paul McGrath, Katie Clark, Chris Lynn, Nick Azis, James Ross, Laurence Rogers, Tom Calnan)

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

The UK government has enacted legislation requiring the closure of certain businesses in order to slow the spread of COVID-19. Such employers are therefore required to close their businesses as far as required, and therefore send employees in such businesses home.

If employees can work from home, the expectation is that they will do so, in which case they will remain entitled to their normal pay.

Employees who are ill/incapacitated, or who are deemed to be incapacitated because they are complying with official UK public health guidance issued on March 16, 2020, regarding isolation and for that reason cannot work, will be entitled to SSP.

The entitlements of those employees who cannot work because they are "strongly advised" to stay at home under the UK government's social distancing guidance will depend on individual circumstances and is potentially subject to further changes in the underlying legal framework.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. If an employee starts to display symptoms of COVID-19 or is diagnosed with the virus, the UK government's advice (and that of other official bodies) is to send that employee home. This is consistent with an employers' duty of care to other employees. Excluding an employee from the workplace without good reason, however, could be a breach of the implied term of mutual trust and confidence.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Generally speaking, no. Health information about an individual is special category data under applicable data protection laws. In principle, the processing of such data is permitted with the individual's express consent and/or for health purposes where the activity is undertaken by an occupational health professional and is necessary for the purposes of preventative or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, or management and treatment.

Absent any regulatory or governmental guidance that recommends screening takes place, it may be difficult for an employer to demonstrate that the program is "necessary." Furthermore, valid consent to data processing is notoriously difficult to establish in the context of an employment relationship (for instance, particularly where a failure to provide consent could have severe consequences for an employee, such as being denied access to their workplace).



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Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

No. There is no positive obligation by the employee to disclose test results specifically with respect to COVID-19. However, an employee will be required to tell their employer that they are unfit to work and, typically, why, in order to receive sick pay.

Additionally, in the United Kingdom, as of the time of this posting, COVID-19 testing is not widely available. It is conceivable, therefore, that employees could suffer from the virus without ever being formally diagnosed.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

The focus should preferably be on requiring staff to self-identify if they are experiencing symptoms. Requiring employees to report on the health of a co-worker is unlikely to be justified from a data protection law perspective. There has been no guidance from the UK government or other official bodies recommending this. Moreover, it might be envisaged that such a policy could promote unnecessary tensions and disputes between employees.

In practice, if employees have concerns regarding the health of a co-worker, they are likely to raise them regardless of whether there is a policy requiring them to do so.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Yes, in principle. Under UK law, employers can require employees to take vacation (annual leave), subject to providing twice as much notice as the length of the leave (*i.e.*, two weeks' notice must be given for one week's leave). However, given the furlough alternative under the Job Retention Scheme and the provision allowing carryover of certain annual leave to future years, employees may assert that any requirement to take leave is unreasonable.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. As of the date of this posting, the usual UK unfair dismissal and collective redundancy laws continue to apply. New legislation would be required to change this.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No. Continuity of employment (*i.e.*, seniority) will only be interrupted if the employee is dismissed or their employment contract otherwise terminates. Continuity will continue through any period of furlough or lay-off.



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Benefits should also continue uninterrupted, unless the employer retains the contractual right to suspend or cease particular benefits, or employees otherwise agree to an interruption.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes. A shutdown of the workplace can be imposed, but if the employee is unable to work from home, they will typically remain entitled to their pay even if not working. An employer can impose unpaid lay-off or short-time working (*i.e.*, reduced hours for reduced pay), if the express right to do so is contained in the employment contract, though it is unusual for UK contracts of employment to contain such a right. Otherwise, an employer will need to obtain an employee's agreement (express or implied) to a reduction in pay or benefits.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Potentially, yes (whether on grounds of misconduct or "some other substantial reason"), depending on the circumstances. However, an employer must take care to avoid liability for unfair dismissal, including by taking into account the reason and circumstances of the employee's refusal to come to work.

For instance, if an employee who is deemed "high risk" chooses to self-isolate on the "strong advice" of the UK government, an employment tribunal is likely to find dismissal to be an unreasonable response. It could also give rise to claims of unlawful discrimination (*e.g.*, arising from disability).

Applicable Advisory, Conciliation and Arbitration Service (ACAS) guidance advises that employers "should listen to any concerns staff may have and if they are genuine, the employer must try to resolve them to protect the health and safety of their staff. For example, if possible, the employer could offer flexible working, or allow the employee to take holiday or unpaid leave."

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

No. There is no obligation for employers to report instances of their employees testing positive for COVID-19 to the health authorities. Generally, testing in the United Kingdom is currently carried out by the health authorities, who make the relevant reports.

Consistent with the implied term of trust and confidence and health and safety obligations, an employer should notify other employees of the risk of infection as soon as possible if the employer becomes aware that those employees may have been exposed to COVID-19. However, in order to comply with applicable data protection laws, the identity of



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the individual who tested positive should not be disclosed unless necessary in the circumstances.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

There is no concept of the principle of *force majeure* in English common law or statute and a party will only be able to consider *force majeure* to excuse non-performance if the contract contains an express *force majeure* clause. The onus is on the party seeking to rely on the *force majeure* clause to prove that (i) one of the events referred to in the *force majeure* clause has occurred which is beyond the party's control; (ii) the event has prevented, hindered or delayed the party's performance of the contract; and (iii) the party has taken all reasonable steps to avoid or mitigate the event or the event's consequences. For a *force majeure* clause to be instituted, performance must become "physically or legally impossible, not difficult or unprofitable."

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

The contract must contain a *force majeure* clause that specifies a type of event capable of encompassing the COVID-19 outbreak. If "disease" or "pandemic" is not expressly included as a *force majeure* event, it may be that another term such as "act of God" or some other catch-all provision that covers all events "outside the reasonable control of the parties" will suffice.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

The contract might contain a *force majeure* clause that includes "acts of government" as a *force majeure* event. An act of government will have occurred where a government body has imposed travel bans and restrictions, city lockdowns and mandatory business closures; however, the position is less clear where the government makes recommendations rather than makes orders using legal powers. It will be a question of interpretation of the clause whether the parties intended such an event to be covered.

What remedies are available to businesses in the event they default on their contractual obligations?

Generally, if a *force majeure* event occurs, performance of certain obligations within the contract will be suspended for a specific period of time. Alternatively, the parties may seek to terminate the contract entirely.

If there is no *force majeure* clause in the contract, or the impact of the COVID-19 outbreak is outside its scope, the parties may need to consider whether the contract has terminated by operation of law on any other basis, such as by "frustration." A contract will terminate automatically when a frustrating event occurs (*i.e.*, one which is (i) unexpected, (ii) beyond the parties' control, and (iii) makes performance impossible or radically different from that



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which the parties contemplated at the time of entering into the contract). The frustrating event must “significantly change the nature of the outstanding contractual rights or obligations.” If successful, parties can recover amounts paid under the contract before it was frustrated.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

Yes. Small businesses are eligible for the following:

Cash grants. Businesses that are entitled to relief from business rates (local property taxes) as small businesses will be entitled to a one-off cash grant of £10,000, with smaller businesses in the retail, hospitality and leisure sectors potentially eligible for a £25,000 grant. Such businesses should also receive a one-off business rates holiday for the year beginning April 1, 2020 (see response to question g., below).

Business Loan Interruption Scheme. Small or medium-sized businesses in England can avail themselves of the Coronavirus Business Loan Interruption Scheme, which provides an 80% government guarantee to loans and overdrafts taken out by such businesses of up to £5 million. The UK government will not charge for such guarantees and will cover the interest payments for the first six months. This scheme will be provided for the UK government by a stable of 40 banks (members of the British Business Banks) and all loans are government guaranteed on the principal and the government will pay the first six months of interest payments too. The borrower will remain liable for capital repayment. This scheme will be available to small businesses (i) that are UK-based (including, in principle, local subsidiaries of a foreign entity) with maximum £41 million turnover; (ii) on a (very expansive) list of approved business types; and (iii) that have a sound borrowing proposal and insufficient security to meet a traditional lender’s requirements. The duration of the loans are three months to 10 years for term loans and up to three years for revolving facilities and invoice facilities. UK subsidiaries of foreign entities can participate in this scheme.

Business tenancies. Until June 30, 2020, a landlord will be unable to forfeit a lease if a tenant fails to pay rent (or other sums, including service charge and insurance rent). It is expected that this will only delay a landlord’s right to forfeit. Therefore, as the legislation currently stands, tenants will still be liable for payment of this accrued rent following June 30, 2020. Enforcement actions for non-payment of rent already issued by landlords will also be suspended until June 30, 2020.

Residential tenancies. Until September 30, 2020, the notice period for evictions is extended to three months.



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The above concessions do not appear to cover those occupying premises on a licence, those on commercial contracts, or other arrangements.

Residential mortgages. The government has published guidance that urges financial institutions to provide lenders with a mortgage payment holiday to residential homeowners and buy-to-let landlords for the next three months.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

As of the date of this posting, the majority of UK courts are closed, with only a few standing ready to deal in person with priority cases. “Priority cases” include freezing orders, injunctions (including relating to post-termination employment restrictions), applications to stay enforcement of existing possession orders, applications in cases listed for trial in the next three months and applications where there is a substantial hearing listed in the next month.

All other hearings are being dealt with by telephone or video conferencing and the parties to proceedings are being encouraged to keep cases moving and to deal with as many matters as possible in this way. The rules on obeying court orders and deadlines continue.

New proceedings can be issued electronically. Currently, all limitation periods (the deadline in which a claim must be issued) remain unchanged and must be adhered to.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Yes; these include the following:

Value-added tax and income tax payments to be deferred:

- Value-added tax payments due between March 20, 2020, to June 30, 2020, will be deferred to March 31, 2021.
- Income tax payments due on July 31, 2020, under the United Kingdom’s self-assessment system for individuals will be deferred until January 31, 2021.

One hundred percent (100%) business rates holiday for retail, hospitality and leisure sectors:

- Businesses in these sectors will not have to pay business rates (a tax on property values) for the UK tax year 2020/2021, regardless of their rateable value. Those



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businesses will also receive extra cash injections of £25,000 each to help them get through the crisis.

- UK government is also to provide £3,000 to around 700,000 businesses currently eligible for Small Business Rates Relief or Rural Rate Relief, to help meet their ongoing business costs.

Time to pay (TTP) arrangements:

- Her Majesty's Revenue and Customs (HMRC) have set up a dedicated COVID-19 helpline (updated to 0800 024 1222) to help businesses and self-employed individuals in financial distress and with outstanding tax liabilities receive support with their tax affairs, and agree to a TTP arrangement.
- Companies that wish to apply for an accounts filing extension may cause late return filing and payment of corporation tax due, in which case a TTP arrangement should be considered.

HMRC's preferred creditor status delayed to December 1, 2020:

- HMRC will become a preferential creditor in a business insolvency as of December 1, 2020, rather than April 6, 2020, with respect to VAT, PAYE income tax, student loan repayments, employee national insurance contributions (NICs) and construction industry scheme withholding tax.

New stamp duty d-filing arrangements announced on March 25, 2020:

- Electronic copies of stock transfer forms, SH03 (share buy-back) forms or other transfer instruments can now be emailed to the following address: stampdutymailbox@hmrc.gov.uk.

Has the tax filing deadline been extended?

No.

Are tax refunds and other claims being timely processed?

As far as we are aware, yes.



ARGENTINA

Contributed by: Beccar Varela (Casiana Silveryra Perdriel, Lucía Guardone, Rocio Laban, Alvaro J. Galli)

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

The Ministry of Labor issued Resolution 207/2020 (the Resolution) on March 16, 2020, suspending, with pay, in-person work for employees, independent contractors and interns, among others, who (i) are over 60 years of age, unless they are deemed “essential staff” working in the health care sector; (ii) are pregnant; or (iii) have chronic lung or heart diseases, immunodeficiency, diabetes, chronic kidney diseases under dialysis or are expected to require dialysis within the following six months. Employees in the above-mentioned categories, whose regular or similar duties can be performed remotely, should agree with their employer on the conditions under which such work will be done. The Resolution recommends that employers limit the presence of employees in the workplace to those who are essential for business operations and implement remote work policies.

The Resolution further provides that absence from work be justified where an employee must stay at home to care for their child(ren), given that all schools have been closed pursuant to Resolution 108/2020. Such employee must notify the employer of the need to stay at home. Finally, said resolution recommends employers to take all necessary measures.

The following resolutions have also been entered:

- Executive Decree 297/20, issued on March 19, 2020, ordered a preventive and mandatory isolation (the Lockdown) for the whole population from March 20–31, 2020.
- Executive Decree 325/20, issued on March 31, 2020, extends the social, preventive and mandatory isolation until April 12, 2020, and through Executive Decree 329/20, prohibits employers, for a 60-day period, from (i) terminating employees without cause or due to *force majeure* or lack or reduction of work that is not attributable to the employees; and (ii) suspending employees due to *force majeure* or lack or reduction of work, except for those suspensions negotiated with the applicable union or each employee individually and approved by the Ministry of Labor.
- Executive Decree 332/20, issued on April 1, 2020, provides some relief alternatives to employers, except those who perform essential activities or services and, therefore, have been operating despite the isolation order. This decree has been amended by Decree 347/20 and 376/20.



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- Executive Decree 493/20 extended the social, preventive and mandatory isolation order until June 7, 2020.

Resolution 279/20 specifically states that the isolation period is not a rest period, or vacation or holiday, and therefore employers should not pay employees as such.

Can employers furlough employees during this COVID-19 health crisis?

Executive Decree 325/20, enacted on March 31, 2020, prohibits employers, for a 60-day period, from suspending employees due to *force majeure*, lack of work or reduction of work, except for those suspensions negotiated with the applicable union or each employee pursuant to Section 223 of Employment Contract Law. The 60-day period has been extended for an additional 60 days, expiring at the end of July.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes. Pursuant to Executive Decree 332/20, enacted on April 1, 2020, employers who qualify can apply to obtain:

- Postponement of social security contributions, with the availability of a payment plan, for March and April, or a reduction of up to 95% of social security contributions for the month of March. In case of a reduction, if the employer has more than 60 employees, the Preventive Crisis Procedure must be filed first.
- For companies with up to 100 employees, non-salary compensation for employees covered by a collective bargaining agreement, up to one minimum salary per employee (currently AR\$16,875); the employer must complete the amount in order to pay the full salary and withhold the taxes payable to the pension, regular healthcare and healthcare for the retired systems.
- For companies with more than 100 employees, access to the Production Recovery Program, consisting of a payment between AR\$6,000 and AR\$10,000 (approx. US\$91 and US\$151) per employee covered by a collective bargaining agreement.

These benefits have not yet been implemented.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

During the current stay-in-place order, employers must continue paying their employees' full salaries unless they agree to a suspension of work and payment of a percentage of their salaries.



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Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. Employers have an obligation to protect the health and wellbeing of all their employees and, therefore, can deny an employee access to the workplace.

Can employers implement a mandatory screening program for COVID-19 symptoms?

This matter is not regulated by local employment regulations and, in general, screenings must be used restrictively and can be challenged. Despite that, we understand that during this crisis there are grounds, given the employer's obligation to protect other employees' health, to defend the employer's decision to implement a screening program.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

There are no general rules, but under the current situation and given the employer's obligation to protect all its employees' health, there are grounds to defend the implementation of such a policy.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Since Resolution 279/20 was issued on April 1, 2020, the Ministry of Labor stated that the isolation period is not a rest, vacation or holiday period, and, therefore, our interpretation is that employers cannot force employees to take vacation time during the isolation period.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. Terminations due to *force majeure*, lack of work or reduction of work that are not attributable to the employer and that enable the employer to pay half the statutory severance have been prohibited for a 60-day period, per Executive Decree 329/20. Such prohibition has been extended for an additional 60-day period.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

Local labor regulations do not enable any of those alternatives. Even if any such measure were to be agreed upon with a union, where employees are covered by a collective bargaining agreement, such a measure could still be challenged by employees since employment rights arising out of law, the collective bargaining agreement or the individual employment contract are all inalienable. Of course, this does not apply to those benefits



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that are connected to working at the employer's premises, in which case, if the employees are not able to attend, they may be discontinued.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Employers can institute workplace shutdowns and suspend their employees with pay equal to a percentage of their salary through an agreement with the applicable union as described in 1(b) above. In principle, the law prohibits the employer from unilaterally changing essential aspects of an employment agreement, such as working hours, which can only be done through an agreement with the employee. When the measure affects all or part of the employees covered by a collective bargaining agreement, an agreement could be reached with the union. Whether through agreement with the individual or with the union, an employee could still challenge such an agreement since individual rights are inalienable.

If employees refuse to come to work, can their employment be terminated for job abandonment?

In order to terminate for job abandonment, employers must have requested that the employee come to the workplace and such request must have been given twice in writing. Employees can be terminated if they have no valid and legal justification to refuse to attend.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Yes, employers are obligated to report positive cases to the authorities.



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BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

A *force majeure* event is defined by our National Civil and Commercial Code as an event that may not be foreseen and, if foreseen, may not be avoided. If such event is not attributable to the person alleging *force majeure* and makes it impossible for said party to fulfill its obligations under the contract, it shall free such party of its liability under the contract. The party may ask to terminate the contract if such impossibility was permanent. If such impossibility was temporary, the debtor shall be freed of its liability, but the agreement shall only be terminated if the time elapsed was essential to or frustrated the interest of the creditor in an irreversible way.

Notwithstanding the above, this does not imply that all parties shall automatically be freed of fulfilling their contractual obligations. The party that wishes to free itself from certain obligations or reduce its obligations under the contract must prove that the *force majeure* event caused it to be unable to fulfill its obligations and that it was not in arrears itself at the moment of *force majeure* event (unless such arrears were irrelevant to the event).

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Where there is an executed agreement governed by Argentine law, such agreement must be reviewed for any clauses that govern *force majeure* events, events materially adverse to the parties or other similar provisions. Such contractual term, agreed to by the parties in writing, may prevail over any relevant case law.

Where there is no executed agreement between the parties with governing *force majeure* or other relevant provision, Argentine courts might conclude that the COVID-19 pandemic, including government emergency regulations issued as a result of COVID-19, constitutes a *force majeure* event or an extraordinary unforeseen event outside of the parties' liabilities. Indeed, certain measures issued by the government have already referred to the COVID-19 pandemic as an event of *force majeure*.

Each case should be assessed on a case-by-case basis. Besides the *force majeure* event, other factors should also be considered, such as the actual damage caused to any of the parties, the type of business involved, and the obligations owed since, in certain cases, a party might benefit from the *force majeure* event.

Moreover, in 2001, Argentina suffered one of the worst economic crises of the country's history. In that scenario, judges ruled that the parties should share the cost of the losses of



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agreements that were unfulfilled because of the economic crisis. This is known as the Theory of Joint Effort.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

A state of emergency declaration in Argentina does not, in principle, provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery of payment.

However, Decree 311/2020, dated March 24, 2020, grants certain relief to PYMEs, small and medium sized businesses, classified as such based on their activity/industry, annual amount of sales, assets and personnel involved. One such manner of relief is a reprieve from liability for failing to pay for essential services. If a PYME fails to pay for an essential service such as electricity, gas, water, mobile telephone, or internet and cable TV, for up to three months, the service provider shall not suspend or cut of such service. Further, the service provider will provide an alternative payment arrangement. These obligations will be in force for 180 calendar days, effective March 25, 2020.

What remedies are available to businesses in the event they default with contractual obligations?

See responses to questions 2(a) and 2(b) above regarding *force majeure* as a defense to a claim of failure to fulfill a contract.

Beyond such relief, in most cases, it will depend on what remedies, if any, are available under the written contract between the parties. Note that a breach of contract, however, usually gives the non-breaching party the right to request indemnification and the early termination of the agreement.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

The specific regulation that governs PYMEs provides for the following tax benefits and support, among other protective measures: (i) work with payment facilities to cancel their debts, (ii) debt reduction, (iii) waivers from the collection of fines and interest, (iv) tax deductions exports and (v) reduction in social security contributions. These benefits may change from time to time.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves

No, the federal tax authority (the “AFIP” by its Spanish acronym) has not issued any tax amnesty or general relief program because of COVID-19.



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of the judiciary in the event it is necessary during the current COVID-19 health crisis?

The National Supreme Court of Justice declared March 16–31, 2020, to be “non-working” days for all courts in Argentina. Courts will not operate during this time and will remain closed to the public. This closure period was extended until June 7, 2020. .

Despite the closure, parties have been able to request availability to be heard for matters that cannot be delayed, though such matters have not been defined by the court’s declaration. As such, the judge presiding over the case shall decide at his/her sole discretion the urgency required and, thus, the possibility of granting such exceptional availability. Case law and legal scholarship suggest that exceptions may be granted where, for example, there is a clear, justified and unbiased urgency, serious consequences could arise from a delay in hearing the case, or delay may cause irreparable damage or the frustration of a right.

When the National Supreme Court of Justice extended the extraordinary recess on May 11, it entrusted the lower courts to attend as many matters as possible and authorized the lower courts to grant parties the exceptional availability, as mentioned above, for more matters, even if these matters may not be considered as urgent (e.g., labor trials, damages, breach of contract, insolvency, bankruptcy, inheritance).

Moreover, since the provinces of Argentina are currently going through different phases regarding the restrictions in connection to the social, preventive and mandatory isolation, some of the Supreme Courts of Justice of certain provinces have ended the extraordinary recess and are operating primarily with a complete digital procedure and with certain restrictions applicable to in-person attendance in court offices.

Has your country issued any tax amnesty or relief programs because of COVID-19?

No, the federal tax authority (the AFIP by its Spanish acronym) has not issued any tax amnesty or general relief program because of COVID 19.

However:

- Through Decree No. 300/2020, the national government granted some tax reliefs to health care establishments and institutions as a temporary measure.
- Through General Resolution No. 4687/2020, (as amended by General Resolutions No. 4704/2020 and 4724/2020), the Federal Tax Authority decided:
 - (iv) To suspend the Monotributo’s exclusion procedure until June 1, 2020.



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- (v) That, as a temporary measure, March, April and May 2020 should not be included in the term calculation that leads to automatic cancellation of the Monotributo (lack of payment for 10 consecutive months).
- Through General Resolution No. 4684/2020, and General Resolution No. 4705/2020, the AFIP extended suspension of the enforcement of precautionary measures against entities registered as micro, small and medium-sized enterprises, as well as against entities registered in the registration system (Sistema Registral) as potential MiPyMEs—Frame I and II (Potencial Micro, Pequeña y Mediana Empresa—Tramo I y II) until June 30, 2020, in accordance with General Resolution (AFIP) No. 4568/2019.
- Through Law 27,541, sections 73 and 74 and Decree No. 333/2020, these measures were taken:
 - (vi) Exemption of import duties and any other tax or charge (as value-added tax) applicable to the import of vaccines and related medical supplies
 - (vii) Exemption of value-added tax on the import of vaccines and related medical supplies
 - (viii) Reduction of import duties rate to 0% and exemption from statistical customs for the import of ethylic alcohol, antiseptic products, medical supplies and medical equipment.
- Through General Resolution No. 4718/2020, the AFIP stated a new Installment Payment Plan for tax obligations included in previous installment payment plans; the deadline to apply for the installment plan is June 30, 2020.
- Through General Resolution No. 4730/2020 the AFIP suspended the filing of tax executions until June 30, 2020.

Certain local authorities instituted similar measures (e.g., suspension of the enforcement of precautionary measures, special installment plans).

Has the tax filing deadline been extended?

No, there has not been a general extension of tax filing deadlines.



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Nevertheless, some deadlines were extended as described below:

- The due date for employees to report their employers on general and personal deductions for 2019 income tax (Form 572) was extended to April 30, 2020, and the due date for the employers to prepare annual income tax returns on their employees for 2019 was also extended to July 3, 2020. Usually, the annual income tax return triggers an additional tax withholding for employees.
- Aggravated taxation will not apply if at least 5% of financial assets located abroad are converted into cash and repatriated before April 1, 2020. This term was extended to April 30, 2020, by Decree No. 330/2020.
- The deadline for advance payment in connection with aggravated taxation of taxpayers with offshore assets was postponed to May 6, 2020, by General Resolution No. 4691/2020.
- The deadline to file and pay the VAT tax return for tax period April 2020 was extended to between May 20 and 22, 2020, depending on the taxpayer's Tax ID.
- Extension of the term to subscribe to the Instalment Payment Plan for Tax, Social Security and Customs Obligations of Micro, Small and Medium Size Businesses (MiPyME) to June 30, 2020.
- Through General Resolution No. 4721/2020, extension of the date to file for and pay fiscal year 2019 income and personal assets tax returns for individuals and undivided estates, schedular income tax and informative returns for employees.
- Through General Resolution No. 4714/2020, extension of the date to file and pay fiscal year 2019 corporate income tax returns.
- Through Resolution No. 15/2020, extension of the due date for the filing fiscal year 2019 annual turnover tax returns to June 30, 2020.
- Up to June 30, 2020, with a 25% advance payment, companies are allowed to cancel their fiscal obligations regarding the corporate income tax, in up to three installments, for which SIPER categorization shall not be considered.



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- Some local tax authorities also postponed some of the due dates related to turnover tax and other taxes (e.g., tax on real estate, vehicle tax) for their local taxpayers.

Additionally, the Federal Tax Authority extended the number of permanent maximum installment payment plans that companies not included in the category Small and Medium Size Companies–Tier 1 can apply to.

Are tax refunds and other claims being timely processed?

In our experience, refunds and other similar claims are not usually timely processed and paid by the tax authority.

However, on March 17, 2020, the Ministry of Economy and the Ministry of Productive Development announced that payment of export-related refunds for industrial companies would be accelerated. No implementing measure has been issued yet.



BRAZIL

Contributed by: Chaves, Gelman, Machado, Gilberto e Barboza (Martim Machado, René Gelman, Maury Lobo de Atahyde, Patricia Medeiros Barboza, José Antonio Martho)

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. The Brazilian government has enacted Provisional Measures 927 and 928, which provide for interim measures to be adopted by employers to preserve jobs. Specifically, it allows for employees to telework; employers to institute a vacation advance upon a 48-hour notice, including vacation periods not yet accrued and non-religious holidays; compensation of hour account system (*Banco de horas*) within 18 months; delayed payment of FGTS (Government Severance Indemnity Fund); and suspension of procedural and administrative deadlines, except for lack of registration, imminent danger and slave/child labor, among other provisions. The Brazilian government also enacted Provisional Measure 936 on April 1, 2020.

Can employers furlough employees during this COVID-19 health crisis?

Yes, for up to 60 days, if certain requirements are met. In summary, Provisional Measure 936 states that if the employer's gross revenue in 2019 exceeded BRL 4.8 million, the employer will be required to pay employees a monthly Indemnification Allowance corresponding to 30% of the employee's monthly salary during the employment contract suspension period. If the employer's gross revenue in 2019 was BRL 4.8 million or less, the payment of an indemnification allowance during the period of suspension of employment agreement is optional and determined at the sole discretion of the employer.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes. Provisional Measure 927 suspended the employer's obligation to pay the FGTS for March, April and May 2020, and allows the payment to be made in six installments without restatement, fines or charges, with the first payment due in July 2020.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

According to Provisional Measure 927, employers may institute a teleworking policy. If teleworking is not feasible, employers can advance the use of public holidays (as religious holidays require employee's consent), permit the use of accrued overtime (if any), start a bank of hours to accrue overtime for future compensation, pay the days at home as paid leave, grant vacation, suspend employment agreements, reduce salaries and work hours or even terminate the employment relationship.



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Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes, but not arbitrarily. Employers shall provide a healthy and safe environment to its employees and act to mitigate contamination risks. So, if an employee has symptoms (e.g., fever, cough, sneezing, lethargy), the company shall direct this person to an occupational physician and immediately grant him/her medical leave. The occupational physician will be responsible for determining if removal from the workplace is recommended. The employer will be responsible for salary for up to a 15-day leave; after that, the company must notify the social security authorities (INSS) to arrange a medical pension for the employee.

Can employers implement a mandatory screening program for COVID-19 symptoms?

While employers have the obligation to provide a safe and healthy workplace, companies cannot force employees to be tested and a screening program can trigger exposure of employees' privacy. If the company wants to implement such program based on the collective interest over the individual interest, we recommend that the testing be made by a doctor or nurse and that there be no broad disclosure of personal information that may identify an employee who tested positive by other employees.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

There is no law requiring such disclosure by the employee to the employer. In general, employees are not required to disclose the exact medical condition that made them be absent from work and doctors cannot disclose it on medical notes unless so authorized.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, employers can require employees to report cases of COVID-19 symptoms, as it is the employer's obligation to maintain a safe workplace for all employees and to report cases of possible contact with coronavirus infectious agents and circulation in areas considered risk areas for disseminating coronavirus.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Yes. The employer has the discretion to determine the employee's vacation periods. According to Provisional Measure 927, employers may anticipate the employee's individual vacation during the COVID-19 crisis, as well as implement collective vacations upon a 48-hour notice, including vacation periods not yet accrued. It is also possible to suspend vacations of employees who perform essential activities with a 48-hour notice.



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Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. Severance liabilities have not been affected in light of the COVID-19 health crisis. So far, the government has only adopted relief for active employment agreements.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No. Interruption of seniority and other employment benefits during a shutdown would not be permitted unless the employer reaches a collective agreement with the applicable union.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes, an agreement can be negotiated a reduction in salary or hours directly with employees if the reduction is up to 25%, but for any higher percentage, union involvement is mandatory. Benefits cannot be reduced.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Employees have a right to refuse to work if carrying out their activities involves a significant risk to their health and life that goes beyond what is considered a general risk of infection. For example, if confirmed that someone with the virus has been in the workplace environment, the refusal to come to work may be considered legitimate. In any case, termination based on abandonment requires evidence of the employee's intention to quit work and harm the employer, which might be complicated in the context of COVID-19.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Yes. Employers must notify the sanitary authorities if there is an outbreak of any pandemic disease among employees. Employers do not need the employee's consent to communicate this information; it falls under the exemption for sharing data to fulfill a legal obligation.



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These provisions generally allow a contracting party to (i) have its obligation revised when, “for unforeseeable reasons,” there is a “manifest disproportion” between the obligation agreed and the obligation to be performed; or (ii) have its contract terminated or revised when the performance of its obligation “becomes excessively burdensome, with extreme advantage” to the other contracting party as a result of “extraordinary and unpredictable events.” If a business cannot satisfy these provisions, the business will likely be liable for damages and, in some cases, specific performance.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

The Brazilian government has implemented various measures to assist businesses in general (including small-businesses and local subsidiaries of foreign entities) to cope with the effects of the COVID-19 pandemic. These measures span from the offering of financial aid to the granting of payment relief in relation to certain labor and tax-related obligations.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

The judiciary is currently operating on a limited basis, hearing only urgent cases, pursuant to Resolution n° 313 of the Brazilian Council of Justice. All procedural deadlines are suspended until April 30, 2020.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Yes. The deadline for payment of taxes has been deferred for small businesses. Also, the collection of overdue tax debts has been suspended under certain circumstances. The federal government and some states and municipalities have issued special settlements for the payment of outstanding tax debts and the validity term of clearance certificates has been extended for 90 days. Finally, the acquisition of certain healthcare goods is now exempted from import duty (II) and tax on manufactured products (IPI).

Has the tax filing deadline been extended?

Yes, certain tax filings were postponed, such as the SIMPLES (Small Enterprises Tax System) tax return. Considering that almost all tax filings in Brazil can be delivered electronically, the tax authorities may soon determine if a tax filing extension is needed.

Are tax refunds and other claims being timely processed?

The Brazilian federal government and most of the states have suspended tax assessment notices and any measures to collect tax debts, and all administrative courts have suspended their judgements.



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Because the revenue service has drastically reduced its activities, the regular processing of claims, refunds and day-to-day requests has been impacted.



CHILE

Contributed by: Albagli Zaliasnik (Rodrigo Albagli, Daniela Hirsch, Stephanie Cruz, Eduardo Anguitia, David Ancelovici)

BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Chilean civil code defines *force majeure* as an unforeseeable and unavoidable event that cannot be resisted, such as a shipwreck, an earthquake, capture by enemy forces, governmental actions, etc. *Force majeure* is widely recognized in Chilean regulations, including laws governing lease agreements, late payments, land and maritime transport agreements, powers of attorney, custodial agreements and conditions of stay in hotels or similar venues.

When an event of *force majeure* occurs, a contract may generally be suspended and/or terminated. However, the parties are able to freely negotiate *force majeure* clauses. Accordingly, the parties may agree to special conditions that must be reviewed before determining if *force majeure* applies and its effects.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

A party can claim *force majeure* for COVID-19-related events provided that such events actually do make it impossible for the respective party to comply with its obligations. However, this analysis must be done on a case-by-case basis.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

This depends on the actual measures implemented by a state of emergency declaration. For example, regarding delivery obligations, if there are curfews and increased sanitary restrictions, any delays caused by such measures should be considered a consequence of the state of emergency. However, the respective party should take reasonable steps to mitigate the delay. In regard to payment, unless there is a specific order stating that payments are suspended, the obligation remains.

What remedies are available to businesses in the event they default with contractual obligations?

The general rule is that once a party has defaulted on its obligations, the other party is immediately empowered to begin the process to force the defaulting party to complete its obligation and/or pay damages. The enforcement of the complying party's rights must generally be conducted with judiciary intervention and oversight (not administrative).

Notwithstanding the above, parties may freely agree to specific remedies and periods that alter the general rule.



CHILE

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Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

At the time of this posting, no special protections for small businesses in Chile have been granted under the COVID-19 crisis.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Yes, at the time of this posting, the judiciary is operating but with certain restrictions. For example, only judges, clerks and summoned parties may be physically present at the courts and all inquiries must be made online to the respective court officials. Further restrictions are expected.

Has your country issued any tax amnesty or relief programs because of COVID-19?

On March 19, 2020, the minister of finance announced a series of tax measures to counter the social and economic effects of COVID-19. However, as of the time of this posting, we are still waiting for the local tax administration to formally implement each measure, either by formal tax rulings or special laws.

Has the tax filing deadline been extended?

One of the measures announced by the minister of finance consists of extending the deadline for corporate income tax payments until July 2020, applying exclusively to small and medium-sized enterprises. It should be noted that the deadline for payment is extended, not the deadline for filing tax returns.

Further, provisional corporate income tax payments will be suspended for three months, starting in April 2020.

Are tax refunds and other claims being timely processed?

Yes, they are. Another one of the measures announced by the minister of finance anticipates corporate income tax refunds for small and medium-sized enterprises from March to April, 2020.



COLOMBIA

Contributed by: Posse Herrera Ruiz (Jaime Herrera, Gabriel Sanchez, Susana Gomez)

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Several executive orders at national and local levels have been enacted to deal with COVID-19. These measures address employment, generally, including mandatory stay-in-place orders for all inhabitants (with exceptions aimed strictly at preserving the supply of essential goods and services). Measures include travelling restrictions and a general ban on agglomeration of persons. There are exceptions to these stay-in-place orders, but such exceptions (which were drafted to be too generic) are to be construed and applied restrictively and must adhere to the purpose and intent of the order: to preserve the health and life of citizens by avoiding personal contact and preventing the spread of COVID-19 while simultaneously guaranteeing the supply and disposal of essential food and services.

The Colombian Ministry of Labor has strongly encouraged employers to use a work-from-home strategy, as well as to implement alternatives available under Colombian labor law to avoid massive employment terminations due to the COVID-19 pandemic, such as anticipated vacation leaves. Specific measures targeting labor issues during the COVID-19 outbreak include: (i) prevention and mitigation guidelines to control the spread of the virus, (ii) stringent oversight by labor regulators over employers to safeguard compliance with labor obligations and (iii) limitations on work visas and other work permits for foreigners.

Can employers furlough employees during this COVID-19 health crisis?

Under Colombian law, there are no mandatory leaves without pay (furlough). There are, however, three (3) alternatives that may be implemented by employers to temporarily suspend their workforce: (i) non-paid leave, subject to mutual consent, (ii) employment suspension due to an act of god or *force majeure* and (iii) suspension of the employer's business based on economic circumstances affecting the employer. Particular restrictions and/or conditions may apply depending on the alternative used.

Do the federal, state or municipal governments provide any type of relief or support for employers and employees during a health crisis?

No financial assistance is provided by the Colombian government or local authorities to employers and/or employees during the health crisis.



COLOMBIA

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What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

From March 25, 2020, through April 27, 2020, there is a general and compulsory confinement order issued by the Colombian government. Unless otherwise agreed by employees, employers shall continue to comply with their obligations as set forth in applicable labor law and the relevant employment agreements, which include the payment of salary and parafiscal contributions. In any case, the payment of social security contributions cannot be waived by the employee.

During the term of the confinement order, the employer must authorize a work-from-home strategy, unless the employee's services are deemed exempted from such order. As long as working remotely during the COVID-19 outbreak is deemed by the Colombian Ministry of Labor as a temporary and exceptional measure, employers are not under the obligation to provide its employees with the minimum requirements and tools that applicable labor law would otherwise require for telecommuting status.

More broadly, employers must carefully abide by the confinement order and ensure that they do not run afoul of any potential criminal conduct. For example, a failure to maintain proper sanitation measures could be considered a crime against the public health. Failure to abide by the provisions set forth in the confinement order is punishable by up to eight (8) years in prison; spreading the epidemic is punishable by up to 10 years in prison.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes, employers can deny an employee access to the workplace to prevent the propagation of the virus.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes. A screening program is mandatory for those companies that are exempted from the compulsory confinement order and continue to provide services.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Yes. The Colombian Ministry of Labor has authorized employers to, unilaterally, implement an automatic vacation leave, either accrued or anticipated, without giving prior notice to the employee.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

In Colombia, severance liabilities must always be paid to an employee upon a termination of a labor relationship without cause. A reduction in force due to the health crisis could be characterized as collective dismissal, which is subject to prior authorization from the Colombian Ministry of Labor. In its most recent recommendations, the Colombian Ministry



COLOMBIA

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of Labor has stated that it will closely scrutinize a collective dismissal request and will only authorize collective dismissals under exceptional circumstances.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

Even in the event of an operational shutdown, unless otherwise agreed by employees, employers must comply with their obligations set forth in applicable labor law and the corresponding employment agreements, which includes the payment of salary and parafiscal contributions. Employers cannot waive the payment of social security contributions. In the event of an operational shutdown, the Ministry of Labor would probably intervene to analyze the collective dismissal due to the operational shutdown and to ensure that labor obligations are or will be satisfied.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Under Colombian labor laws, a reduction of working hours together with a reduction of salary can be implemented. Such a reduction needs to be previously consented by each employee and needs to be recorded by means of an amendment to the labor agreement. This alternative, if implemented, can create high risks of legal claims by the employees due to the deterioration of labor conditions for the employee.



COLOMBIA

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BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Under Colombian contract law principles, no party need perform an obligation deemed impossible to comply with. The law provides that *force majeure* is any unforeseeable event or an event that cannot be prevented. To be successful, the party must prove that *force majeure* was (i) unpredictable at the time of entering into the contract, (ii) could not be prevented and (iii) caused by an external event. The party successfully claiming *force majeure* is exempt from liability for breach of contract. In a case of *force majeure*, the causal link between the party's breach and its conduct is broken and, as such, the party is excused from indemnifying the affected party for damages caused by the breach.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

COVID-19 could be a *force majeure* event, to the extent that the invoking party can prove that such event prevented it from performing its obligations and that such event was in fact unpredictable and could not be prevented. The party invoking *force majeure* must demonstrate that it was diligent and took the corresponding precautionary measures aimed at preventing and anticipating the event.

Since COVID-19 is still developing and its effects are yet to be determined, no court or authority up to this date has concluded that it constitutes an event of *force majeure* in Colombia. In fact, there are no court precedents on whether a pandemic constitutes *force majeure* since an event of this magnitude has never occurred in Colombia.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

In general terms, the state of emergency recently declared by the Colombian government does not provide for general contractual relief for commercial agents. Compliance with contractual terms under the state of emergency in Colombia needs to be reviewed on a case-by-case basis so as to assess if there is a *force majeure* event or if a theory of unpredictability or hardship can be claimed by an affected party. As of the time of this posting, the Colombian government has granted relief in terms of compliance with tax obligations, but no specific relief for payment, delivery or compliance with contractual obligations. Commercial banks have also voluntarily granted reliefs (extensions) for the repayment of certain loans (principal and interest).



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What remedies are available to businesses in the event they default with contractual obligations?

As a general rule, in the absence of a contractual provision on *force majeure*, the parties of a contract could resort to the theory of unpredictability or hardship. Under this theory, commercial contracts may be reviewed by a judge if supervening and unforeseeable events occur after the execution of the contract that alter or aggravate the conditions for the specific performance of a future obligation of one of the parties. The application and effects of the theory of unpredictability or hardship must be construed on a case-by-case basis since there is no general rule regarding the degree of alteration of the initial equilibrium and/or the excessively burdensome performance of obligations.

In addition, parties to a certain contract can mutually agree upon the renegotiation of its terms, adopt measures aimed at the temporary suspension of the contract while the state of emergency ends or even request for the termination of the agreement by a competent judge. If a default in the payment of contractual obligations leads to the insolvency of certain businesses, Colombian law allows for (i) the direct negotiation of obligations with creditors or (ii) a reorganization or insolvency process that allows a business to normalize its obligations, comply with its creditors' obligations and continue performing its course of business.

In the case of insolvency, companies may file for bankruptcy in order to achieve special payment terms with creditors.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

Other than certain tax relief or exemptions (as described below), the Colombian government has not, as of the time of this posting, issued any general protections granted to small businesses in Colombia.

In the case of insolvency, as described above, companies may file for bankruptcy in order to set special payment terms with creditors. Insolvency procedures apply equally to small and large business (with certain special regulations for specific industries). Subsidiaries of foreign entities may access bankruptcy procedures.

Municipalities like Bogotá D.C. have created certain initiatives to provide for relief to the most vulnerable population in the city, such as offering a minimum wage to said population. To be eligible for this relief, individuals must meet certain criteria set forth by the mayor's office.



COLOMBIA

Contributed by: Posse Herrera Ruiz (Jaime Herrera, Gabriel Sanchez, Susana Gomez)

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

The Colombian Superior Council of the Judiciary (*Consejo Superior de la Judicatura*) approved the suspension of all judicial terms from March 16 through April 3, 2020. This suspension will not be applicable to arbitral terms, which shall be declared by the competent tribunals thereof. The decision only affects the terms expressed in days that were already running and, thus, any terms expressed in months and years will not be affected by the measure and will be counted without interruption.

All judicial employees, including judges and justices, must work from home, unless there is an exceptional need to go to the courthouse.

Has your country issued any tax amnesty or relief programs because of COVID-19?

The Colombian government has recently enacted several measures to tackle the COVID-19 effects on the domestic economy. These measures have been focused, among other things, on postponing tax filing and payment obligations. Special tax exemptions have also been granted in respect to VAT on the import of certain medical equipment.

Has the tax filing deadline been extended?

Yes, the deadlines for the filing and payment of tax obligations have been extended. The term for the filing of national tax obligations, such as VAT and income tax, have all been extended. In connection with municipal and in-state tax obligations, certain local authorities have also granted extension for the filing and payment of tax returns (such as real estate tax and mobilization tax in Bogotá D.C.). It is expected that all in-state authorities in Colombia will extend the corresponding tax deadlines.

Are tax refunds and other claims being timely processed?

In Colombia, a taxpayer has two (2) years to timely claim the tax refund with the tax administration (DIAN). This period starts when the respective income tax or VAT is filed in accordance with the tax calendar. To claim a tax refund, a taxpayer shall electronically file a request before DIAN. No judicial review of the claim is needed.

Given the current situation, this statute of limitations was suspended until April 3, 2020. Therefore, all statute of limitation periods for income tax claims have been suspended, including claiming a refund. With this suspension, the taxpayer to whom the statute of limitations would have expired during the COVID-19 period may still file the refund claim after April 3, 2020, since such expiration is interrupted during the said period of time. The tax administration has not expedited the refund procedure due to COVID-19. This



COLOMBIA

Contributed by: Posse Herrera Ruiz (Jaime Herrera, Gabriel Sanchez, Susana Gomez)

procedure normally takes from three (3) to six (6) months after the taxpayer properly files the claim.

This suspension also includes any administrative action the taxpayer may bring against a notice of proceedings of assessment and collection of taxes and/or to appeal a tax administration decision before a Colombian tax court. Based on recent discussions, at the time of this posting, it is expected that all such statute of limitations periods will be extended until June, 2020.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. Costa Rica's government has issued the following regulations: Guide for Teleworking Implementation in the Public Sector and a call to apply it in the private sector; Recommendations for Employees in Non-Teleworkable Positions; Executive Decree 42248 of 2020, which regulates the temporary suspension of employment contracts under *force majeure* or fortuitous case; and Legislative Decree 9823 of 2020, which authorizes the reduction of working hours in the face of the current national emergency declaration.

Can employers furlough employees during this COVID-19 health crisis?

No mention is made of furloughs, but rather of alternative measures, such as permitting telework, granting accumulated leave, advancement of leave by mutual agreement with employees, reduction of working hours or suspension of employment contracts. None of these measures should impact employees who are suspected or confirmed to have COVID-19 and are unable to work.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

The Costa Rican Social Security Fund has granted a moratorium on late-payment agreements until June 30, 2020, reduced the interest rate for payment arrangements by one percentage point until August 31, 2020, and reduced the minimum contribution for health insurance and pensions to 75% during the months of March, April and May 2020.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

Although at this time no such measure has been taken in Costa Rica, if the government orders a stay-in-place order, employers must abide by the guidelines established by any measure.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. If an employer has information that an employee has symptoms of COVID-19 and is present at work, the employer must send the employee to seek a medical evaluation and follow the health professional's recommendations regarding return to work.

Can employers implement a mandatory screening program for COVID-19 symptoms?

No. If an employer thinks that an employee should be screened, the employer must refer the employee to seek medical evaluation so health personnel can make the assessment and determine any measures to be followed.



COSTA RICA

Contributed by: Consortium Legal (Juan Manuel Godoy, Osvaldo Madriz, Diego Salto)

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

If a case is considered suspicious or an employee tests positive for COVID-19 by the health authority, the health authority will immediately put the employee in quarantine. The employee must immediately notify his or her employer of this fact, as well as provide the employer with the health order upon return.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, and such a policy is recommended.

Can employers force employees to take vacation time during the COVID-19 health crisis?

No, not unless taking advance holidays is mutually agreed upon between the employer and the employee.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

Not under current regulations.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

If a provisional closure of operations is ordered, employment contracts are, automatically, suspended temporarily, leaving service and payment obligations on hold until the measure is lifted. The conditions of the labor relationship must still be respected at all times.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes. As part of the measures taken by the declaration of national emergency, employers can request the General Labor Inspectorate to reduce the ordinary working hours and/or suspend labor contracts unilaterally.

If employees refuse to come to work, can their employment be terminated for job abandonment?

If an employee is not quarantined and does not have a health order of incapacity, the employee cannot be absent from work; if he/she does not come to work, the employee can be terminated for abandonment of work.



COSTA RICA

Contributed by: Consortium Legal (Juan Manuel Godoy, Osvaldo Madriz, Diego Salto)

McDermott
Will & Emery

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Since only health authorities are authorized to perform COVID-19 tests, employers cannot report whether the results are positive. However, they are required to inform the health authorities of suspicious cases for which they have requested medical evaluation.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

In general, contract law allows and acknowledges the concept of *force majeure*, which permits a party to terminate an agreement without responsibility if *force majeure* shall completely deter the respective party from fulfilling its obligations. There are certain exceptions to the application of *force majeure* (e.g., lease agreement law).

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Yes, if there is a direct relationship between COVID-19 and the impossibility to execute the respective obligations under the contract. Although the party affected by COVID-19 may not comply with their contractual obligations and will not be responsible in terms of indemnification, the other party may be allowed to terminate the agreement. If parties want to preserve the contract, a written agreement to that effect might be advisable.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

Not unless (i) the state of emergency declaration expressly stipulates for relief on terms of delivery or payment or any other obligations or (ii) *force majeure* directly impedes commercial agents from complying with the payment or the delivery.

What remedies are available to businesses in the event they default with contractual obligations?

If a business defaults on a contractual obligation, and the default is a direct consequence of *force majeure*, there is no obligation to comply with contractual obligations or to indemnify. Otherwise, general contract law and normal indemnity rules will apply.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

There are no protections or benefits available to small businesses. However, a number of public and private banks have implemented flexible policies on payments from a commercial perspective.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Judicial terms are suspended, with the exception of family and criminal procedures. There is no special process for businesses to avail themselves of the judiciary during the current COVID-19 health crisis.



COSTA RICA

Contributed by: Consortium Legal (Juan Manuel Godoy, Osvaldo Madriz, Diego Salto)

Has your country issued any tax amnesty or relief programs because of COVID-19?

Yes. Law 9830 establishes (i) suspension of the payment of value-added tax and selective consumption tax for April, May and June 2020; (ii) suspension of the estimated income tax payment for April, May and June 2020; (iii) suspension of importation tax duties during April, May and June 2020; and (iv) a value-added tax exemption for commercial leases for April, May and June 2020.

Has the tax filing deadline been extended?

No, the tax filing deadline has not been extended..

Are tax refunds and other claims being timely processed?

The Tax Administration is processing all of the requests and claims submitted. However, the Tax Administrative Court has decided to suspend the term for the filing of the complaint or the arguments until April 12, 2020. The Tax Administration is also now requiring that all documents be submitted through the official email channel.



ECUADOR

Contributed by: Bustamante & Bustamante (Juan Felipe Bustamante, Jose Rafael Bustamante)

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes, on March 12, 2020, the Ministry of Labor issued Ministerial Agreement No. 2020-076, which implemented teleworking for the public and private sectors during the health emergency declared by the Ministry of Public Health.

In addition, on March 15, 2020, the Ministry of Labor issued Ministerial Agreement No. 2020-077, effective through the state-declared health emergency, which allows employers to: (1) reduce employees' hours to a minimum of 30 hours per week for no longer than six months, with an option to renew that reduction one time only; (2) change employees' work hours to include weekend work, provided that the employer provides the employee with two rest days per week; and (3) temporarily suspend employees' hours for activities that cannot be performed through telework. Any such suspension does not terminate the employment relationship and employees may recover the time lost due to suspension by a recover schedule set by the employer (up to three hours per day or four continuous hours on Saturdays, without paying overtime). If employees do not recover the suspended hours, they must return the salary paid during the days of suspension to the employer. Any suspensions of hours must be registered with the Ministry of Labor.

On March 16, 2020, the president declared a state of emergency, ordering a nationwide work suspension (Suspension) from March 17, 2020, through March 24, 2020, (which has since been extended). All industries must abide by the Suspension or adopt telework measures where possible for employees, except: provision-commercialization and distribution of food, pharmaceutical, agricultural, livestock and animal care industries, strategic sectors, basic services, export chain, security and banking services, and airports and seaports.

Can employers furlough employees during this COVID-19 health crisis?

According to the state of emergency, in-person operation of most industries has been suspended and should be performed remotely, except for the industries detailed in the answer to question (a) above.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes, as described in the response to question (a) above. However, employers must continue to pay their employees throughout the suspension. The government has announced that the Ministry of Finance is developing economic plans to help companies overcome this economic crisis.



ECUADOR

Contributed by: Bustamante & Bustamante (Juan Felipe Bustamante, Jose Rafael Bustamante)

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

As described in the response to question (a) above, the government has mandated that in-person operations cease, except for certain industries listed above, and recommends employers institute remote work policies where possible.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes, according to the Guidelines for the Prevention and Protection of Workers and Public Servants from COVID-19 in Workplaces (hereinafter Prevention Guidelines), where a worker with COVID-19 symptoms accesses the workplace, the employer must immediately report such case to the Ministry of Public Health and ask the worker to go to a health facility for medical assessment.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes, according to the Prevention Guidelines, employers are allowed to implement policies and actions to protect their workers.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes, according to the Prevention Guidelines, employees are required to inform the employer immediately when they are diagnosed with COVID-19.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, as stated in the answer to question 1(f) above, employers are allowed to implement policies and actions to protect their workers, as per the guidelines issued by the Ministry of Health.

Can employers force employees to take vacation time during the COVID-19 health crisis?

According to the labor code, employers are empowered to force employees to take vacations. Nevertheless, such enforceability may not affect workers' rights in connection with vacation. Under the current crisis, workers are prevented from working by government mandate, and state entities have granted companies alternatives to address the health crisis. Therefore, if an employer forces its employees to take vacations without taking into account the alternatives granted by the government, the Ministry of Labor could consider such action as an infringement on the rights of the employee to earned vacation time.

Of course, the employer and employee may mutually agree to the employee taking such vacation time during this state of emergency.



Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

This is unclear in the current climate. The labor code empowers employers to terminate employment in cases of *force majeure* that make it impossible to perform work. According to the ministerial agreements and press statements that the Ministry of Labor has issued as of the time of this posting, however, it is clear that the government's position is that employers should keep their workers and guarantee all of their labor rights, either by suspending, modifying or reducing working hours and taking advantage of teleworking.

We have seen that certain sectors of industry have been forced to lay off workers to avoid bankruptcy, but as of the time of this posting there is no firm position from the authorities on this matter.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No, labor rights may not be interrupted due to the state of emergency or health crisis. Employers may only adopt the measures mentioned in the response to question (a) above.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes. As stated in the response to question (a) above, the state of emergency mandates that all businesses, except those providing certain enumerated essential services, must cease in-person operations and institute remote work procedures where possible. Employers, however, may reduce, modify or suspend working hours for activities that cannot be performed remotely.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Yes, if the employer operates in an industry exempt from the nationwide closure of businesses in the state of emergency and the employee refuses to come to work (without a justifiable reason), the employer may initiate a job abandonment procedure with the Ministry of Labor. Where, however, the employer does not fall within one of the exempted industries in the state of emergency, the employer may not initiate the job abandonment procedure against an employee.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employers?

Yes, according to the Prevention Guidelines and Health Care Law, employers must report possible or confirmed employee cases of coronavirus to the Ministry of Health.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Ecuadorian legislation defines *force majeure* as any unforeseen event that could not have been prevented and was unavoidable. A successful claim of *force majeure* releases the debtor from its liability regarding the breach of its obligations, provided that the debtor has alleged and duly proved the *force majeure* event.

The Civil Code provides a few examples of *force majeure*, such as earthquakes and acts of authority by a public official, among others. The Commerce Code expands the definition of *force majeure* and provides that for purchase agreements, a party shall not be liable for breaching its obligations if such party proves that the breach was caused by an event of *force majeure*. Where the event of *force majeure* delays the fulfillment of the obligation, the term of the agreement shall be extended for the duration of the *force majeure* event.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Yes, the party must prove how the *force majeure* event prevented it from complying with its obligations. The government measures detailed in the response to question (a) above (i.e., the state of emergency), which mandate the closure of all in-person operations of businesses not explicitly exempt and institute a national curfew, could be used to claim *force majeure*.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

It depends on the case and how the state of emergency declaration affects the commercial agent. As stated in the response to the previous question, the state of emergency restricts the operation and mobilization of most industries and businesses in Ecuador. In addition, according to the Civil Code, acts of authority by a public official are considered *force majeure*. Under such a scenario, the state of emergency could be used to prove the *force majeure* claimed. However, the debtor would also have to prove how the state of emergency prevented it from fulfilling its delivery or payment obligations.

What remedies are available to businesses in the event they default with contractual obligations?

Businesses can claim *force majeure*. Further, the government is working on financing plans to help companies survive this crisis, but as of the date of this posting these plans have not yet been published.



ECUADOR

Contributed by: Bustamante & Bustamante (Juan Felipe Bustamante, Jose Rafael Bustamante)

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

As of the date of this posting, the General Assembly was debating the Organic Law COVID-19 for Social Protection and Economic Recovery, which would establish mechanisms and benefits for surviving the current crisis.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

No, the judiciary has not been operating since March 17, 2020, when the Judiciary Council ordered the suspension of most judicial officers' work hours until the state of emergency is over. The criminal, transit and family *flagrante delicto* units are still operating.

Businesses must wait to file a claim until the Judiciary Council orders its officers to begin work again.

Has your country issued any tax amnesty or relief programs because of COVID-19?

As of the date of this posting, Ecuadorian authorities have not issued COVID-19-related amnesty or tax relief programs.

Has the tax filing deadline been extended?

As of the date of this posting, the due dates for tax payments have not been modified or extended by Ecuadorian authorities.

In accordance with the provisions of Resolution No. NAC-Resolution No. SRI-SRI-2020-0002-R, issued by the Internal Revenue Service, the deadline for the submission of the following annexes have been extended: The Annex to the Report of Operations and Economic and Financial Transactions (ROTEF); the Annex to the Information on Taxable Operations and Related to the Redeemable Tax on Non-Returnable Plastic Bottles (IBP); Annex ICE; and the Annex on International Currency Movement (MID); the Annex of Notaries, Property Registrars and Commercial Registrars; the Annex of Shareholders, Participants, Partners, Board Members and Administrators (APS) – Monthly; and the Annex of Commercial Trusts, Investment Funds and Complementary Funds (AFIC) – Monthly. The presentation will be in the month of August according to the ninth digit of the Unique Registry of Taxpayers.

Are tax refunds and other claims being timely processed?

In accordance with Resolution No. NAC-DGERCGC20-00000022, issued by the Internal Revenue Service, the terms of all tax administrative proceedings and the prescription periods of collection actions were suspended, from March 16, 2020, to March 31, 2020.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. Recently, El Salvador's Congress passed a bill regulating telecommuting (*Ley de Teletrabajo* or Telework Regulation Law). As of the date of this posting, the law is still in the process of being sanctioned and published by the president.

Can employers furlough employees during this COVID-19 health crisis?

According to Article 5 of Legislative Decree # 493, in which the national emergency was established, employees who are subject to a quarantine in accordance with the law will be guaranteed job security—their labor agreements may not be terminated during the quarantine period and up to three months after the quarantine period ends.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

The government has approved a payment of \$150 to public employees who are working in relation to COVID-19. For private employees, no economic relief measures have been instituted. However, families who have lost their income because of COVID-19 will be entitled to \$300. Also, families who have lost their income may suspend all payments for utilities, bank credits and credit cards for three months. Regarding employers, some economic relief has been authorized for small tax contributors in relation to the payment of income tax and tourism contributions. In addition, import tariffs related to essential goods have been suspended, so that these products may enter paying zero tariffs. Also, additional quotas for importation on beans have been authorized.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

The government has decreed a general quarantine, and only essential workers may go to work. Unless a business is considered essential (*i.e.*, supermarkets, electric power companies, pharmacies, manufacturers and distributors of food, medicines and medical supplies, security companies, public offices, among others) employers may not require their employees to mobilize to go to work, and they must stay at home. Teleworking from home is permitted. Only one member of each household may leave their house for the purpose of purchasing food and medicine.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. Employers must also report the instance of a symptomatic employee to the health authorities immediately.



EL SALVADOR

Contributed by: Consortium Legal (Oscar Samour, Carlos Rodriguez, Diego Martin)

Can employers implement a mandatory screening program for COVID-19 symptoms?

As of the time of this posting, the government requires employers to take the temperature of employees and customers before they are permitted to enter work or the business, and no more than 50 persons may be in a place at the same time.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

As of the time of this posting, only the government is conducting COVID-19 tests. If an individual tests positive for COVID-19, the government immediately moves this person to a controlled area for quarantine. Therefore, the employee would be obligated to report this situation to their employer.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes. In fact, health authorities are recommending these types of measures.

Can employers force employees to take vacation time during the COVID-19 health crisis?

No. Not unless taking vacation time was agreed to by both parties.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

Not under our current regulation.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

In theory, yes. Nonetheless, as of the time of this posting, the government is requiring employers to keep paying salaries without a clear legal basis to do so.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

No. Not unless both the employer and employee agree to measures of this kind.



EL SALVADOR

Contributed by: Consortium Legal (Oscar Samour, Carlos Rodriguez, Diego Martin)

If employees refuse to come to work, can their employment be terminated for job abandonment?

Essential workers who refuse to come to work may be terminated for job abandonment. However, in such cases, the employer will be obligated to prove the reason for termination of employment.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

As of the time of this posting, only the government was conducting COVID-19 tests and no private tests were being conducted. If a positive case is discovered, the government immediately moves the individual to a controlled area for quarantine. Employers are only obligated to report suspicious cases to the health authorities.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

In general, under the applicable legislation, *force majeure* allows contracting parties to terminate civil and/or commercial agreements without responsibility.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Yes, unless the parties agree otherwise in the contract or if the noticing party failed to act with care and diligence.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

As of the time of this posting, no specific economic relief has been granted to commercial agents in relation to commercial and civil agreements. Therefore, only general rules under the applicable legislation or under the specific terms and conditions of each contract may be alleged. Regarding customers, a three-month payment suspension period for utilities, bank credits and credit cards has been granted, but only to those who have lost their income due to COVID-19.

What remedies are available to businesses in the event they default with contractual obligations?

With the exception of credits granted by financial institutions (under Law #599 enacted on March 20, 2020), there are no special regulations related to COVID-19 regarding remedies to businesses in the event they default on their contractual obligations. Therefore, only general rules under civil and commercial legislation will be applicable (due to *force majeure*).

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

A commercial credit with Banco Hipotecario is available. Companies must first file a pre-qualification form with the Ministry of Labor to apply for this credit. No additional information has been published regarding this benefit.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves

Under Law #599 enacted on March 20, 2020, all judicial and administrative terms have been suspended, with the exception of the administrative and judicial detention terms and hearings for criminal procedures.



of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Has your country issued any tax amnesty or relief programs because of COVID-19?

No, there is no tax amnesty. Some payment deferrals have been granted to specific contributors, including:

- Deferral of the payment date for 2019 income taxes up to 30 days without any interest or penalty for individuals or companies in the tourism sector, if the tax to be paid is equal or less than \$25,000.
- Deferral of the payment date for 2019 income taxes up to 30 days without any interest or penalty for individuals or corporations with payments up to \$5,000. In addition, these individuals and entities will have the right to pay their 2019 income taxes in eight installments without any surcharges or interest.
- Suspension of the special contribution for tourism for three months.
- Deferral of the payment date for the withholding income tax for the months of March, April and May 2020. In addition, withholding taxes may be paid in six interest-free installments.
- Tax exemptions for donations made to the public sector by companies in free trade zones in order to attend to the emergency.

Has the tax filing deadline been extended?

No. Tax returns must be filed by the applicable dates.

Are tax refunds and other claims being timely processed?

There are no new resolutions or law regarding this matter.



GUATEMALA

Contributed by: Consortium Legal (Rafael Alvarado, Federico Zelada, Alejandra Fuentes)

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

The government in Guatemala requests that employers and employees negotiate arrangements in order to minimize the impact of the collective suspension of labor relationships. As of the date of this posting, there is no special provision related to employment contracts. However, the Social Security Administration has suspended employers' obligatory social security payments for March, April and May 2020, giving employers the opportunity to pay the required amounts over an 18-month period without charge or interest.

Can employers furlough employees during this COVID-19 health crisis?

Yes. Employers can furlough employees during the crisis. As a rule, employers are not required to pay salaries during this period, but the president requests that employers and employees try to find arrangements in order to minimize the effects of the contract suspensions.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

As of the date of this posting, the only relief measures that have been taken by the Social Security Administration as set forth in (a) above.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

The government has decreed a general quarantine and only essential workers may go to work. Unless a business is considered essential (e.g., supermarkets, electric power companies, pharmacies, manufacturers and distributors of food, medicines and medical supplies, security companies, public offices) employers may not require their employees to go to work, and they must stay at home. Teleworking from home is permitted.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. In order to protect health and safety of all employees and clients, employers have the power to deny employee access to work and order the employee to seek medical attention.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes. Employers have the right to implement mandatory screening programs in order to protect the health and safety of all employees and clients.



GUATEMALA

Contributed by: Consortium Legal (Rafael Alvarado, Federico Zelada, Alejandra Fuentes)

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

As of the date of this posting, only the government is conducting COVID-19 tests; thus, there are no private tests being conducted. If an employee tests positive for COVID-19, the employee must communicate the results to his employer.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, and employers must report any cases to the Health Ministry.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Employers have the right to schedule workers' vacations and, for that reason, employers may force workers to take vacation time during the COVID-19 health crisis.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. Employers must pay all severance obligations to workers if they terminate their labor contracts. Additionally, employers cannot terminate the employment relation with employees whose contracts are suspended.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

In the event of a temporary operational shutdown ordered by the government, accrual of seniority is not interrupted, but remaining employment benefits stop until the operation restarts, unless the government requires the employer to maintain certain benefits.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes, they can negotiate a reduction in salary benefits and working hours, but in the case of salary, it is not acceptable for employers to negotiate under the minimum wage established by the government. The employers can set a temporary shutdown; in such case, the employer does not have the obligation to pay salary.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Essential workers who refuse to come to work may be terminated for job abandonment. However, the employer will be obligated to prove the reason for termination of employment.



GUATEMALA

Contributed by: Consortium Legal (Rafael Alvarado, Federico Zelada, Alejandra Fuentes)

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Although there is no specific requirement that employers must report instances of their employees testing positive for COVID-19 to the health authorities or to other employees (as of the time of this posting, only the government is conducting COVID-19 tests), employers have a general duty to protect the health and safety of all employees and clients.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Force majeure is discussed in article 1426 of the Civil Code, which states: “The debtor is not responsible for the failure to comply with the obligation due to an act of God or *force majeure*, unless at the time it occurred, he was in default.”

To constitute *force majeure*: (i) the employer must be duly accredited, (ii) it must be impossible to foresee or prevent the event causing the failure to comply and (iii) the event may not be attributable to any of the parties.

It is not enough that the situation is unpredictable and unavoidable: it must also constitute, reasonably, a cause of exemption from responsibility for the breach of the obligations contracted.

It is also important to notify the other parties of the existence of an event of *force majeure* (according to the judgment of the affected party) and take all the remedial measures that may be adopted.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

If the parties approved a *force majeure* clause in their agreement, such clause would govern. In the event that a party is forced to suspend operations due to the closure of its establishments as ordered by government disposition or is unable to operate due to the restrictions imposed by the government, a party could likely claim *force majeure*. With respect to COVID-19, the problem is not that fulfilling contractual obligations becomes excessively onerous (which is regulated by the theory of unpredictability or hardship), but rather that the contractual obligations at that time are impossible to fulfill.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

No economic relief is available for commercial agents with respect to their obligations to comply with contractual terms for delivery or payment.

What remedies are available to businesses in the event they default with contractual obligations?

The Law of Emergency (Decree No. 12-2020 of Congress, which, as of the date of this posting, was pending to be ratified by the president and published in the Official Gazette) establishes in article 13, section 3, postponement for credit obligations. Among other things, the law states that “the banking institutions, at the simple request of the interested



GUATEMALA

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parties, will be granting deferrals or granting postponements on the credits to the debtors who, on the date that this Decree comes into force, do not have more than one-month default.” Additionally, the law states that such deferrals or postponements will be applied, as the case may be, to maturities of credit card installments, loans with fiduciary, pledge or mortgage guarantees for home acquisition, for the installments of two months; as well as to those granted to micro, small, or medium companies and any creditor of state institutions, for the installments of three months; payments may be deferred within a period of six months without late interest, as of the end of the COVID-19 public health crisis.

These benefits are also applicable to people who have signed payment agreements by mutual agreement with banking institutions and who have not incurred any delay in the installments of said agreement.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

The Emergency Law creates a Q400 million (approximately US\$51.3 million) revolving loan fund for micro, small and mid-size businesses.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

As of the date of this posting, the judiciary is partially operating. Only criminal courts are open. The appellate courts are receiving documents, but are not resolving any cases. In addition, although new lawsuits can be filed, they are not being resolved. Urgent matters, such as injunctions, can be addressed to the corresponding court.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Yes. The tax administration declared non-working days until April 14. This defers the payment of income tax and value-added tax until April 15. Social security contributions for the months of March, April, and May 2020 can also be deferred without penalties and interest as set forth above.

Has the tax filing deadline been extended?

Yes, until April 14.

Are tax refunds and other claims being timely processed?

There are no new resolutions or laws regarding this matter.



HONDURAS

Contributed by: Consortium Legal (Jose Rafael Rivera, Fernando Lopez, Armando Manzanares)

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

As of the date of this posting, specific labor or employment measures have not been issued in Honduras.

Can employers furlough employees during this COVID-19 health crisis?

As of the date of this posting, no official position has been issued regarding furloughs (work contract suspension), and any employer furlough has to be approved by labor authorities. Some private sector employers have furloughed employees and some have applied vacation days towards the lockdown days.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

As of the date of this posting, no economic relief or support for employers and/or employees has been granted.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

By executive decree, the government has issued a general lockdown exempting only essential businesses and, therefore, employers may not request that employees come to work. Businesses that are not listed as essential businesses may request authorization to continue operating before an exceptions committee. In any case, the employer must comply with work contract obligations if a furlough is not in place and teleworking from home has been authorized.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. Employers must also report the instance of a symptomatic employee to health authorities immediately and send the employee to authorized health services centers.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes. In fact, this measure is encouraged to ensure protection of the rest of employees or clients. Employers must also report any suspicious cases to the authorities.



HONDURAS

Contributed by: Consortium Legal (Jose Rafael Rivera, Fernando Lopez, Armando Manzanares)

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

As of the time of this posting, only the government is conducting COVID-19 tests. Because testing positive for COVID-19 results in confinement, the employee would be obligated to report this situation to their employer.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes. Employers can create such a policy and are being encouraged to do so.

Can employers force employees to take vacation time during the COVID-19 health crisis?

No. Not unless taking vacation time was agreed to between the employee and employer.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

Not under our current labor legislation.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

In the event of a legally permitted suspension of work contracts, employees would not lose seniority benefits; however, salaries and other benefits related to the salary (*i.e.*, social and health benefits) would be suspended. If a shutdown is ordered but the work contracts are not legally suspended, all benefits would remain in place.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Not unless any of these measures are agreed to by the employer and employee.

If employees refuse to come to work, can their employment be terminated for job abandonment?

If employees work for businesses that are considered essential businesses and are required to continue operating, then the employer could terminate a work contract if an employee is absent from work for two consecutive days or for three days in a one-month term.



HONDURAS

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Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

As of the date of this posting, only the government is conducting COVID-19 tests; however, should private tests be readily available, employers would have to notify the authorities.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

A single provision in the Honduran Civil Code refers to *force majeure* (*caso fortuito*) and provides that there will be no responsibility for a failure to meet obligations relating to a *force majeure* event, but does not specifically define the term or provide for such a termination to operate *de jure*. Therefore, it has been the prevailing criterion that any termination due to *force majeure* must be filed for and declared judicially if the agreed contractual provisions do not provide for *force majeure* as an *ipso jure* termination. Relating specifically to commercial contracts, the Commerce Code provides for the possibility to terminate a contract if meeting contractual obligations would be extremely onerous to a party. Again, this termination is not regulated as an *ipso jure* termination, unless agreed as such in the contract, and must be judicially declared.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

As per the response in 2(a) above, it is our opinion that the provisions in the Civil and Commerce Codes apply to the situation at hand but would require a judicial claim and declaration, unless the contractual provisions provide for *de jure* termination in case of *force majeure*.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

As of the date of this posting, no specific relief has been granted to commercial agents in relation to commercial or civil agreements. Therefore, only general rules under the applicable legislation or under the specific terms and conditions of each contract may be invoked. Borrowers subject to credit agreements may suspend payments for a three-month period if arranged with the lender or creditor, and if the borrower is in an industry affected by the pandemic or is a small business. After this payment suspension, a borrower may opt to refinance the credit or loan agreement before September 30, 2020.

What remedies are available to businesses in the event they default with contractual obligations?

There are no special regulations related to COVID-19 regarding remedies to businesses in the event they default on their contractual obligations. Therefore, only general rules under civil and commercial legislation will be applicable (due to *force majeure*).



HONDURAS

Contributed by: Consortium Legal (Jose Rafael Rivera, Fernando Lopez, Armando Manzanares)

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

If a borrower is in an industry affected by COVID-19 or is a small business, and arrangements are made with the lending institution or creditor bank, borrowers in credit agreements may suspend payments for a period of three months. After this payment suspension, a borrower may opt to refinance the credit or loan agreement before September 30, 2020. Since the administrative decree does not distinguish or expressly contain a prohibition, this benefit should be available to a local subsidiary of a foreign entity.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

The judiciary has suspended all activities, and therefore all judicial terms, until further notice.

Has your country issued any tax amnesty or relief programs because of COVID-19?

No, there is no tax amnesty or relief program.

Has the tax filing deadline been extended?

No, the tax filing deadline has not been extended.

Are tax refunds and other claims being timely processed?

The Tax Administration is processing all requests and claims that are submitted. These processes usually take months and can take up to a few years for a resolution to be notified.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Numerous measures have been enacted by the Peruvian government to deal with COVID-19. As of the date of this posting, the following are the main labor measures that have been enacted:

- Department of Labor Resolution 55-2020-TR that approves “Guidelines to prevent the spread of Coronavirus in the workplace”
- Supreme Decree 8-2020-SA that declares a State of Sanitary Emergency for 90 days and enacts measures to prevent and control COVID-19
- Emergency Decree 26-2020 that establishes exceptional and temporary measures to prevent the spread of COVID-19
- Supreme Decree 044-2020-PCM that declares a State of National Emergency due to the spread of COVID-19
- Supreme Decree 46-2020-PCM that modifies article 4 of Supreme Decree 44-2020-PCM
- Emergency Decree 29-2020, that establishes complementary measures to reduce the impact of COVID-19 in the Peruvian economy
- Migratory Authority Resolution 104-2020, that establishes applicable measures to procedures offered by such authority
- Supreme Decree 10-2020-TR, that establishes measures to regulate working from home

Can employers furlough employees during this COVID-19 health crisis?

Employers must grant a 90-day paid leave to “risky personnel”—employees older than 60 and/or those that suffer from heart or lung disease, diabetes or other diseases—who, due to the nature of their jobs, cannot work from home.

In addition, employers must grant a 15-day paid leave to employees that are not providing essential services during quarantine (e.g., employees of excluded industries and services, such as food, medicine, utilities, fuel, telecom, cleaning, garbage disposal and funeral



PERU

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services) or are not working from home and do not qualify as “risky personnel.” The parties are allowed to negotiate and define the terms and conditions of compensation during said paid leave, such as compensation for the provision of services during the weekly day of rest during upcoming months.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Peru’s government has implemented certain programs to grant a significant bonus to public employees working in health facilities in the prevention and control of the spread of COVID-19.

On the other hand, as working from home is not possible for employees who are sick from coronavirus, their labor relationships will be suspended. In this regard, and according to new regulations, as of the first day of the referred suspension, the Social Security will assume such wages and benefits as a subsidy. This subsidy will only be applicable for employees whose salary is equivalent to PEN 2,400.00 or less (approximately US\$700.00).

What are the employers’ obligations if the competent authority in your country issues a “stay-in-place” or similar order?

Peru enacted a stay-in-place order which, as of the date of this posting, has been extended until April 12, 2020.

This chart summarizes employer obligations in accordance with the lockdown:

“Risky Employee”	Employee that it is not considered a “Risky Employee”
Mandatory work from home for 90 days, as long as the nature and characteristics of the employee’s duties allow for remote work.	Mandatory work from home for 15 days as long as the nature and characteristics of the employee’s duties allow for remote work. Employers are entitled to extend this period up to 90 days.
If the employee cannot work from home, a 90-day mandatory paid license must be granted. The parties determine if this license is paid or not paid (e.g., compensation with the provision of	If the employee cannot work from home, a 90-day mandatory paid license must be granted. The parties determine if this license is paid or not paid (e.g., compensation with the provision of services



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services during the weekly rest day for the license period).

during the weekly rest day for the license period).

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes, as the employer must follow rigorous health and security measures in the workplace to prevent the spread of the virus.

Can employers implement a mandatory screening program for COVID-19 symptoms?

No particular disposition has been issued in this regard. However, based on general dispositions regarding health and security measures in the workplace, it is likely that employers may implement a mandatory screening program.

Nevertheless, taking into account the quarantine period and from a practical perspective, it would be difficult to implement such a measure in the short term for all company employees. Moreover, due to the reduced number of tests, only individuals who currently have COVID-19 symptoms have been screened by clinics and hospital.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

No particular disposition has been issued in this regard. However, based on general dispositions regarding health and security measures in the workplace and to prevent the spread of the virus at the workplace, we believe employees must inform employers if they have tested positive for COVID-19 and employers should analyze which particular measure applies to their labor situation (e.g., paid leave, subsidy).

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Based on general dispositions regarding health and security measures in the workplace, it is likely that employers would be entitled to implement such a policy.

Can employers force employees to take vacation time during the COVID-19 health crisis?

As of the date of this posting, no. Leave-related obligations to employees are outlined in the above chart.



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Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

As of the date of this posting, no relief from severance liabilities has been enacted. Regular severance liabilities are still in force.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

As of the date of this posting, no.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes, the parties are entitled to negotiate such alternatives. In the event of a negotiation, a written agreement must be executed. However, these alternatives may only be applicable after the stay-in-place order expires, because other mandatory measures currently apply.

If employees refuse to come to work, can their employment be terminated for job abandonment?

If an employee refuses to come to work after the conclusion of the stay-in-place order, his or her employment can be terminated for job abandonment.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Employers must report, to Social Security, instances of employees testing positive for COVID-19.

However, there is no current obligation to inform other employees.



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BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

The *force majeure* principle in Peru covers events that are unforeseeable, external and outside the sphere of control of the parties, which, physically or legally, makes it impossible for a party to duly fulfill a contractual obligation. Thus, this is a liability excuse for the party affected with the *force majeure* event in case such event causes a total, partial or defective breach of his or her obligation under the agreement.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Force majeure will only apply if the COVID-19 related events are the cause for the party's failure to fulfill their contractual obligations. Thus, the parties will need to precisely determine whether the cause of the breach is in fact a COVID-19-related event.

For example, if the obligation is to organize a social event and this is not possible because of Peru's mandatory stay-in-place quarantine, then the organizer of the event may claim *force majeure*. Nonetheless, Peruvian law provides a general duty to mitigate damages, even if *force majeure* applies.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

No, the current statutes issued by the government have not intervened in the contractual terms of private parties. Nonetheless, there are many cases of private actors agreeing to transition terms and waivers until the stay-in-place order is over (*i.e.*, banks deferring due payments, commercial centers waiving rent payments, among other waivers).

What remedies are available to businesses in the event they default on their contractual obligations?

There is no general answer to this question. Each case will have to be reviewed individually to determine the suitable legal remedy (*e.g.*, *force majeure*, frustration of the contract, hardship, counterparty breach).

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

Not in terms of contract law. However, the government has issued tax measures to aid businesses, as discussed further below.



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Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Judicial activities are currently suspended due to the stay-in-place order. If any procedural term elapses during the lockdown, this term will be extended to the first workable day after it ends. However emergency courts are allowed to review specific matters (*i.e.*, constitutional and criminal cases, alimony, domestic violence and other urgent family related affairs).

Has your country issued any tax amnesty or relief programs because of COVID-19?

Yes. The principal measures deal with tax filings and procedures' deadline extensions, flexibility of tax penalties application committed during the emergency, and customs duties' temporal exemption for certain medicines and related equipment.

Has the tax filing deadline been extended?

Yes, the annual income tax filing deadline has been extended for three months only for taxpayers with net income obtained during 2019 up to 5,000 tax units.

Are tax refunds and other claims being timely processed?

As of the date of this posting, all deadlines for tax procedures are suspended for 30 business days (from March 16, 2020). Automatic annual income tax refunds will be paid before the new deadlines for the tax filing.



URUGUAY

Contributed by: Bergstein Abogados (Leonardo Melos, Rodrigo Feijó, Mariana Pisón, Domingo Pereira, Guzmán Ramírez)

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes. The government has enacted measures urging citizens to self-quarantine and has taken labor, financial, migratory, technological and sanitary measures, such as providing special unemployment insurance for partial work suspensions, providing health insurance for employees over 65 years of age, treating COVID-19 as a professional illness for health employees and providing for employees to take paid vacations that employees have not yet accrued.

Executive Decree 94/020 urges employers to implement and promote remote work if possible. If so, employers should provide all necessary equipment to employees and provide the Ministry of Labor with a list of employees working remotely.

Finally, companies must establish a health and safety protocol for the workplace in response to COVID-19 that follows the Ministry of Labor's guidelines. The protocol must also set forth courses of action for when an employee develops symptoms of COVID

Can employers furlough employees during this COVID-19 health crisis?

In principle, no. Unpaid leave (*licencia sin goce de sueldo*) is not regulated under Uruguayan laws. However, according to scholarly opinion and legal precedent, it is legally possible as long as it is requested by the employee.

Employees are the only ones entitled to request this benefit; the employer can only decide whether to grant it or not.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes. For a maximum period of four (4) months, the employer can file an application with the Social Security Office (*Banco de Previsión Social*) to benefit from the unemployment insurance for total suspension of services (*seguro de desempleo por suspensión total*). In that case, the Social Security Office will pay the employees a sum of money amounting to 50% of the employees' salaries.

On March 18, 2020, the Ministry of Labor launched a special regime under which the Social Security Office will pay 25% of employees' salaries in the following scenarios: (i) partial suspension due to a reduction in the number of monthly working days (with a minimum reduction of six (6) and a maximum of nineteen (19) days per month); or (ii) total



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reduction of working hours by 50% or more. As of the time of this posting, this benefit will be in force until May 31, 2020.

In the period during which the employee is receiving such payments from the Social Security Office, the employer does not pay the salary to the employee.

Additionally, a recent draft act approved by the Parliament designates COVID-19 as a professional disease for all medical (or medical-related) personnel that are exposed to the virus while working for private institutions during the public health emergency. As a result of this legislation, if a registered employee contracts COVID-19 and the professional health insurance is applicable, the Insurance State Office must pay the employee 66% of their salary, subject to a maximum of \$4,000, for up to 45 days while the employee is sick.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

If such an order is issued, the following options may be implemented by the employer: (i) institute a remote work policy, where possible, (ii) unilaterally decide to put employees on paid vacation, (iii) suspend operations so that employees can obtain unemployment insurance, (iv) suspend the employment agreement based on *force majeure* or (v) agree with the employees on an alternative solution.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. In light of the employer obligation to protect its employees' health and maintain a safe environment, employers should deny an employee access to the workplace if COVID-19 symptoms are detected.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes, employers are not prohibited from implementing a mandatory screening program under the law. Due to data privacy regulations, however, employers should delete results of the test once taken.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes. Applicable regulations state that, in this case, the employee is mandated to communicate this information to the employer.



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Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, employers may implement such a policy; indeed, workers are required to immediately inform their boss of anything that could be considered as a risk.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Yes, as long as the vacations are paid. Additionally, paid vacation accrued during the course of a calendar year is typically only available to be taken the following calendar year in Uruguay (*i.e.*, an employee that accrues paid vacation time during 2019 may enjoy such paid vacation time in 2020). However, through Administrative Resolution 55/020, employers may permit employees to take paid vacation corresponding to the year 2020, even though the time has not accrued yet. If an employer and employee agree to this arrangement, the parties must formalize the agreement in writing and communicate it to the Ministry of Labor.

Unpaid vacations can only be requested by the employee.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. Such a solution is not viable in the absence of *force majeure*. As per Uruguayan labor law rules, the employer cannot reduce an employee's salary without paying a partial severance payment. If the employer reduces the employee's salary, this could be construed as a termination of the employment relationship due to indirect dismissal (in which case the employee would be entitled to receive a full severance payment). The only other means to reduce employee salary and benefits temporarily is to agree on such a reduction with the union, in which case such policy would preserve the employee's position and postpone payment of the partial severance at a later date in time.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

Although in Uruguay there are no express regulations, in the case of a temporary operational shut-down ordered by the competent authority, employers could interrupt the accrual of seniority and other employment benefits during that period. Scholarly opinions explain that *force majeure* requisites should be met in order for employers to interrupt employee benefits. However, since there is no case law in Uruguay regarding a health situation, it is not clear how a labor court would rule.



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Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

No. Such a solution is not legally possible.

If employees refuse to come to work, can their employment be terminated for job abandonment?

This would depend on the reasons given by the employee. If the employee gives grounded reasons to refuse to go to work, employment cannot be terminated due to job abandonment.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

No, the employer does not have the obligation of reporting this information to health authorities.

However, we understand that the employer, due to his/her obligation to protect employee's health, should report this situation to those employees who have been in touch with the employee who tested positive for COVID-19.



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BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Legal doctrine defines *force majeure* as an unforeseeable and unpreventable external circumstance, which would make it impossible for a party to fulfill its contractual obligations. *Force majeure* applies to all contracts even if not specified in the contract. Uruguayan law recognizes the concept of *force majeure* as an exception to liability as long as: (i) the circumstances constituting *force majeure* are not attributable to the debtor, (ii) the party was not in previous breach of contract (or default) prior to the *force majeure* event and (iii) the party did not resign or waive its right to invoke *force majeure* in the relevant contract.

A party cannot excuse its obligations under a contract merely because an event of *force majeure* exists. The event must specifically inhibit the party's performance, and the nonperforming party will have the burden of proving that the contract cannot be performed.

Force majeure provisions are narrowly construed and will generally only excuse a party's nonperformance if the event that caused the party's nonperformance is specifically identified in the contract or indisputably comprised.

Most *force majeure* provisions, after listing a series of specific events, contain general language such as "or other conditions or contingencies beyond a party's control." However, the parties must take into account that such wording may not be enough to enforce a *force majeure* clause before a court.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Yes, parties can claim *force majeure* in such a situation.

However, it would be advisable and customary to (i) promptly communicate to the other party that a *force majeure* situation has arisen, (ii) gather all evidence that demonstrates the occurrence of *force majeure*, and (iii) anticipate whether this is a temporal situation or permanent, and therefore, if the contract can be resumed or not.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

No, the competent authorities do not provide any type of relief on commercial agents' obligations.

However, an act of government (*fait du prince*) may be considered *force majeure* if it prevents a party from performing its obligations under contract. Commercial agents could



URUGUAY

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invoke the principle of *force majeure* where the state of emergency declaration prohibits a party from carrying out their main activities.

What remedies are available to businesses in the event they default on their contractual obligations?

If a party defaults on their contractual obligations and *force majeure* is not an available defense, the general legal remedy would be to apply for insolvency.

According to Uruguayan insolvency legislation, in the case of a judicial precautionary agreement, a provisional moratorium is granted to the debtor, which prevents unsecured creditors from enforcing any court orders that they may have obtained against the debtor.

Normally, in a default case, the non-defaulting party (*i.e.*, the damaged party) can demand (i) the fulfillment of the contract, if possible, or (ii) the termination of the contract plus monetary damages and losses, as a way of reestablishing the economic balance between the parties.

If *force majeure* is invoked, it is essential to determine if the default, whether temporary or permanent, is a consequence of *force majeure*. Even if *force majeure* is proven, the debtor is only exempted from paying for damages and losses to the other party; the debtor must still perform its obligations under the contract.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

Certain lines of credit and tax relief have been made available to small businesses, including subsidiaries and branches of foreign entities.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

As per Supreme Court of Justice Resolution No. 16/2020 from March 19, 2020, the judiciary is not fully operational. As of the date of this posting, general judicial activity is expected to resume, totally or partially, on May 4, 2020.

Only specific proceedings are available, such as criminal law proceedings, gender violence proceedings and precautionary measures (preventive relief). A party may seek special authorization to start proceedings based on urgency but, otherwise, no new cases may be initiated.



URUGUAY

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Has your country issued any tax amnesty or relief programs because of COVID-19?

Yes.

On March 20, 2020, the Uruguayan Tax Office (*Dirección General Impositiva*, or DGI) issued Resolution N° 550/2020, under which national taxes payable during March 23-26, 2020, shall be deferred. Such taxes may be paid before March 27, 2020, without any fines and/or surcharges. Public-sector companies shall not benefit from such relief measures.

The same resolution provides special due dates to benefit certain enterprises whose annual income does not exceed the amount of approximately US\$36,000. So-called *IVA Mínimo* (a single reduced levy on small companies) accrued in February and March 2020 may be paid in six (6) installments starting from next May 2020. Those taxpayers who have signed payment refinancing agreements with the Tax Office shall be included in such benefit.

The Uruguayan government has also announced the deferral of payments in connection with social security taxes to be accrued in April and May 2020. Sixty percent of such social security taxes may be paid in six (6) installments beginning next June 2020. The other 40% shall be waived by the Social Security Office (*Banco de Previsión Social*, or BPS). However, only micro-enterprises (*monotributistas*), sole-proprietorship companies (*empresas unipersonales*) and partnerships (*sociedades personales*) can take advantage of this measure.

Has the tax filing deadline been extended?

As of the date of this posting, no extension has been announced by the government.

Are tax refunds and other claims being timely processed?

We are not aware of any such delays as a result of the outbreak of COVID-19.



LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Yes, Canada has enacted several employment-related legislative measures specific to COVID-19. For information on the economic measures that Canada has recently taken, please see the CERB and CEWS programs, as detailed below.

As for non-economic, employment-specific measures, many provinces in Canada have recently passed emergency legislation that alter provincial lay-off time periods and create designated unpaid job-protected leaves of absences for those in quarantine or isolation (such as Ontario's *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020*). Several provinces have also passed legislation mandating business closures and creating lists of essential services, which designate a small and specific list of types of businesses that are allowed to remain open during the COVID-19 pandemic.

At the federal level, the Canadian government has taken temporary measures to restrict public gatherings as well as international air and land travel.

Can employers furlough employees during this COVID-19 health crisis?

A furlough is referred to in Canada as a "temporary lay-off." Temporary lay-offs are generally permitted for limited durations under the applicable provincial employment standards legislation. Certain provinces require notice of temporary lay-off (although in most there are exemptions for unforeseen circumstances).

While the legislation permits temporary lay-offs, in the event the employee's employment contract does not permit a temporary lay-off, there is a risk that it may constitute the constructive dismissal of the laid-off employee, giving the employee the ability to claim a severance package.

Further, under provincial law, temporary lay-offs become deemed terminations if they extend beyond the threshold specified in the applicable provincial legislation. If an employer has laid off several employees at once, the employer may also be at risk of incurring mass termination notice requirements. As such, employers should consult with Canadian counsel prior to undertaking temporary lay-offs of any size and keep accurate records of the date on which temporary lay-offs are implemented.

Are the federal, state or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

Yes, there are several new legislative measures and federal wage-assistance programs that have been enacted in Canada in response to the COVID-19 outbreak. These programs can be broken down into two categories based on their fundamental purposes: income assistance and pandemic-spread prevention.



To assist employers and employees, the Canadian federal government has created the following income assistance programs, designed to help the unemployed, employed, and businesses through wage subsidies:

- Canada Emergency Response Benefit (CERB)
- Canada Emergency Wage Subsidy (CEWS)

The CERB provides income support for those who are unemployed during these uncertain times (in addition to the regular employment insurance program). The CEWS allows businesses who have suffered a specific reduction in their recent revenues to retain their employees by reimbursing the businesses up to CAD847 per week per employee in wages paid directly to the employer.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

In Canada, this has thus far occurred on a provincial level, not a federal one, and, as such, employers are obligated to comply with all relevant provincial legislation whether this is temporary emergency legislation or more permanent occupational health and safety legislation. Several provinces have passed essential-services legislation, mandating the closures of all non-essential businesses. In these provinces, employers are obligated to comply with the applicable legislation and remain closed.

Those employers who are deemed essential are permitted (but not required) to remain open provided they comply with all health and safety directives regarding COVID-19 in ensuring their employees are sufficiently protected, and should also consider whether they wish to provide their employees with essential-service letters in case law enforcement requests proof of their ability to remain outside and actively working.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

If an employer encounters an employee with symptoms of COVID-19, the employer may deny the employee access to the workplace in order to protect the other workers and to limit the spread of the disease. The employer could also subject the employee to disciplinary action, if appropriate, for failure to comply with directives regarding health and safety, whether those directives emanate from the employer or from the public health authorities.

All employers should ensure that they have clear and consistent policies in place with respect to COVID-19, and that such policies are communicated to all of their employees



and are consistent with the messaging and directives published by public health authorities.

Can employers implement a mandatory screening program for COVID-19 symptoms?

An employer can require employees to report any flu-like symptoms, including a fever, cough, and/or shortness of breath, or other symptoms that may be indicative of COVID-19.

During this time, employers that are permitted to remain open can implement a mandatory screening program for COVID-19, provided that the program is as minimally invasive as possible and that it complies with privacy laws. For example, an employer must ensure that any tests are conducted by qualified individuals, should only collect/request personal information from employees that is reasonable given the circumstances, and this information must only be used for the specific purpose of screening, must be stored in a confidential manner, only accessed by authorized persons, and must be destroyed once it is no longer required (the Privacy Measures). Subject to implementing the Privacy Measures described above, given the COVID-19 pandemic and the need to ensure workplace safety, health questions, including a requirement that employees disclose symptoms that are indicative of COVID-19 would be reasonable. However, a requirement or request to disclose further personal information unrelated to the employer's legitimate interest in maintaining workplace safety would likely be unreasonable.

As for mandatory screening, it is arguable that given the infection rate of the virus, in certain workplaces, temperature checks or other non-invasive screening measures may be reasonable. However, employers conducting such screenings should be certain to use the least intrusive methods possible, should institute the Privacy Measures outlined above, and should provide advance notice to employees of any such testing as well as the fact that the Privacy Measures have been implemented. Employers must always be cognizant of the applicable medical and privacy legislation, which may be provincially specific, before undertaking such measures.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes. In accordance with Public Health directives, Canadians who test positive for COVID-19 are to isolate themselves at home quickly and call their health provider or local public health authority. As such, employees should inform their employer of their positive test and the requirement to self-quarantine. An employee who knowingly reports to work after testing positive for COVID-19 places the rest of the workplace at risk and may be held civilly liable or charged criminally.



Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes, an employer can institute a workplace policy requiring employees to report any flu-like symptoms, including a fever, cough, and/or shortness of breath, or other symptoms that may be indicative of COVID-19.

Employers should be mindful that, to comply with privacy laws, an employer should only collect/request personal information from employees that is reasonable given the circumstances. Given the COVID-19 pandemic and the need to ensure workplace safety, a requirement for employees to disclose symptoms that are indicative of COVID-19 would be reasonable. However, a requirement or request to disclose further personal information unrelated to the employer's legitimate interest in maintaining workplace safety would likely be unreasonable.

Can employers force employees to take vacation time during the COVID-19 health crisis?

In certain provinces, employers can mandate when employees take their vacation time. Employers who choose to do so should ensure they comply with provincial legislation, which may allow for certain employee rights with respect to the scheduling of vacation, including the right to a certain amount of advance notice before being required to take vacation time, as well as the right to take all or certain amounts of vacation time at once (*i.e.*, vacation blocks).

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

Subject to a very narrow potential exception based on frustration of contract or *force majeure*, employers will generally still need to comply with all termination and severance obligations (if applicable) with respect to any employee terminations, regardless of whether or not they arise as a result of the COVID-19 outbreak. Employers may be able to assert that employment contracts have been frustrated due to COVID-19 (relieving employers of their termination pay obligations). However, this position is uncertain since courts in Canada have not yet provided any jurisprudence specific to the matter.

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

This answer is specific to the province in which it occurs, the strategy employers decide to implement with respect to a shutdown, and any relevant employment contracts or collective agreements. In very general terms, in most cases when the operation is shut down, employers have engaged in temporary lay-offs, which provide for the accrual of seniority but which, in most provinces, do not require the continuation of employment benefits. Continuing to provide employment benefits gives the employer the advantage,



however, of reducing constructive dismissal risks and, in some provinces, providing for a longer period of time before the temporary lay-off becomes permanent.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Employers can do so, but must be aware that such a strategy, if not agreed to by the employees, will create the risk of multiple constructive dismissal claims and, in the unionized environment, must either comply with the collective agreement or be done with the union's consent. In addition, depending on the company's size, mass termination issues may arise. This may also negatively affect employee loyalty, employee retention, and public perception.

If employees refuse to come to work, can their employment be terminated for job abandonment?

It depends on why the employee is refusing to attend work and the relevant circumstances.

As identified above, several provinces have enacted new job-protected leaves of absence in response to the COVID-19 pandemic. The employer must first ensure that the employee's refusal to come to work does not trigger a right to a leave of absence under provincial legislation.

In addition, if the employee refuses to report to work because of legitimate safety concerns, proceeding to terminate or relying on job abandonment may expose the employer to penalties under applicable occupational health-and-safety or human-rights legislation.

Generally, employees have the right to refuse work or do particular work at a work site if the worker believes on reasonable grounds that there is a dangerous condition at the work site or that the work constitutes a danger to the worker's health and safety. Employers cannot force an employee to work if the employee has exercised his or her right to refuse work.

Provincial occupational health and safety legislation contains procedures an employer must follow where an employee has exercised the right to refuse work. Employers should consult legal counsel where an employee has exercised the right to refuse work in order to inform themselves of the applicable procedure in their jurisdiction.

In the event the employee's refusal is not based on circumstances for which the employee is entitled to a protected leave under provincial law and is not a legitimate work refusal based on occupational health and safety requirements, the employer may require the employee to attend work on site, and look at potentially terminating employment if the



employee continues to refuse. This is a highly fact-specific situation, and legal advice should be sought.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

If an employee has tested positive and has attended the workplace or been in contact with other employees within 14 days prior to the confirmed COVID-19 diagnosis, the employer must notify its other employees who may have been in contact with the individual that one of their co-workers has tested positive. The co-workers should further be notified that they should self-isolate for 14 days and seek medical advice if they display any symptoms of COVID-19. Depending on the nature of the affected employee's job and the nature of the employer's operations, this may require an entire office, a floor of an office, or persons in proximity to the affected employee to self-isolate. An employer should consult local health authorities for further information as to best steps.

An employer should not inform its workforce of the identity of the person with the confirmed diagnosis, or provide other identifying information about such person. If there is a need to provide identifying information about the affected person, the employer should consult with its legal counsel.

Employers should also be aware that they have an obligation to report occupational illnesses, and that this obligation may extend to COVID-19 if it arises in the workplace. Employers should make such a report to the applicable governmental bodies (the applicable Ministry of Labour and the workers' compensation board) and notify their joint health and safety committee, or a health and safety representative and the union, as applicable.



BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Canadian courts have yet to determine whether COVID-19 constitutes a *force majeure*, but this issue is certain to be litigated in the upcoming months. Whether COVID-19 is a *force majeure* event will be determined by the specific agreement under consideration, the *force majeure* clause, the agreement taken as a whole, and the factual matrix behind the agreement. (In the employment context, this would be referred to as a “frustration of contract” with a somewhat different analysis.)

While *force majeure* clauses tend to vary from contract to contract, a *force majeure* event is typically an event beyond the control of a party and which prevents or delays that party from contractual performance. There is no common law right in Canada to invoke *force majeure* where none is provided for in the governing agreement. *Force majeure* clauses tend to explicitly set out the terms under which a party who is unable to perform contractual duties as a result of such an event may be excused and avoid contractual remedies. As such, the applicable contract must be reviewed to determine whether COVID-19 would qualify as a *force majeure* event under the terms of the contract.

The question businesses will have to ask themselves in the coming months is whether they are truly prevented from performing their contractual obligations due to COVID-19, or whether these obligations are merely delayed or made more costly. Businesses should review the relevant contractual provision and seek advice from Canadian counsel before asserting *force majeure* or making decisions on the assumption that this doctrine will be applied.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

Whether a party can claim *force majeure* due to COVID-19 is a fact-dependent question, one that will largely depend upon the relevant contractual language by which the parties are bound.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

The emergency declarations in Canada to date have been enacted by each province and have mandated business closures without generally providing relief from compliance with contractual obligations other than in certain provinces providing some restrictions on the ability of landlords to proceed with evictions.

other financial institutions, and financial or operating lease contracts, for which, in case of delayed payment, no default interest or liquidated damages will accrue, no assets will be



CANADA

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confiscated, no payments will be accelerated, and no rescission rights will be exercised for the duration of the Emergency Period. Respectively, any other payment obligations are not exempted from any default-related consequences.

No special relief has been introduced for non-monetary contractual obligations, like delivery of goods/services, thus leaving the concerned parties, including commercial agents, to rely on *force majeure* where such an event precludes them from fulfilling their liabilities. However, the *force majeure* exemption may not apply to certain delivery obligations with a generic or non-personal nature in view of the principle *genus nunquam perit* (the class never perishes).

What remedies are available to businesses in the event they default with contractual obligations?

There are many strategic options available to businesses should they be forced to default on their contractual obligations in light of COVID-19. Businesses suffering from employee shortages, government-mandated closures, project closures or cancellations, and supply chain disruptions should work with Canadian counsel to assess their risks related to contract failure and to facilitate proactive discussions with their contractual partners to avoid costly litigation.

Businesses should also ensure that they work with counsel to develop an understanding of *force majeure* and whether or not it may apply to their specific contractual obligations.

Finally, businesses should review their insurance policies in order to understand their scope of coverage for business losses. Business disruption insurance generally covers losses of income as a result of physical damage to property, but may also cover disruption specifically caused by pandemics or closures ordered by public authorities. As such, businesses should proactively review their policies and note any required notice periods or any specific procedures they will be required to follow in pursuing a claim.

Are there any small-business protections available in your country and can the local subsidiary of a foreign entity access them?

While there is a federal government program that is only accessible to small employers (known as the 10% Temporary Wage Subsidy for Employers), the majority of the economic support measures put in place by the federal government in Canada do not specifically distinguish between the size of businesses that can utilize these programs, including the more recently announced 75% wage subsidy, otherwise known as the Canada Emergency Wage Subsidy. The 10% Temporary Wage Subsidy for Employers is only available to



Canadian-Controlled Private Corporations; however the 75% Wage Subsidy is available to local subsidiaries of foreign entities (with respect to their Canadian employees).

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

As part of the response to the COVID-19 pandemic, many federal and provincial courts and tribunals have limited in-person hearings to time-sensitive and/or emergency matters only, with some exceptions for family and child-protection matters, or matters related to public health and safety. Some matters are being heard by teleconference or other alternative means. The courts in most provinces are continuing to accept filings of materials electronically where available.

Further, many provinces have halted residential evictions.

If businesses have a non-urgent matter normally set to be heard before the courts, it is recommended that they speak with Canadian counsel to explore their strategic options during this period of judicial shutdown.

Has your country issued any tax amnesty or relief programs because of COVID-19?

Since March 18, 2020, the government of Canada has enacted tax and economic measures under Canada's COVID-19 Economic Response Plan (the Response Plan) to support the Canadian economy during the COVID-19 global pandemic. The Response Plan is designed to help stabilize the Canadian economy and includes measures to assist individuals and businesses through direct transfers, tax deferrals, and measures to ensure businesses continue to have access to credit.

On March 25, 2020, the government of Canada passed "Bill C-13, An Act respecting certain measures in response to COVID-19" (Bill C-13) in order to implement the Response Plan measures. Some of these measures include:

- Wage subsidies for Canadian businesses
- Permitted deferrals of income tax owing for Canadian businesses
- Extension of tax filing and information return deadlines
- Curtailment of audit and reassessment activity
- Temporary income support for individuals



- Longer-Term income support for workers
- Tax filing flexibility for registered charities
- GST/HST remittance deferrals for Canadian businesses
- Deferral of customs duty and GST for importers.

Certain provinces have also enacted tax-related amnesty or relief programs that are specifically applicable to their citizens.

The above-listed measures are complex and contain substantial details and limitations, such that employers and individuals must exercise caution in navigating the caveats therein. We encourage employers and individuals to seek Canadian counsel's assistance in taking advantage of these special measures.

Has the tax filing deadline been extended?

Yes. The federal Canadian tax return filing deadline for a 2019 personal income tax has been extended from April 30, 2020, to June 1, 2020, and payment of taxes owed has been deferred to a date to be determined. If a corporation's tax return filing deadline is between March 19, 2020, and May 31, 2020, the deadline has been extended to June 1, 2020.

Please note that there may be certain exceptions that vary by province.

Are tax refunds and other claims being timely processed?

While the government has extended the 2019 personal tax filing general deadline from April 30 to June 1, 2020, as a result of the COVID-19 pandemic, Canadians expecting a tax refund may wish to file as soon as possible in order to receive any refund owed to them by the Canada Revenue Agency (CRA).

The CRA is continuing to process returns throughout the COVID-19 pandemic and is encouraging Canadians to file their returns electronically and as early as possible before June 1, 2020, to make sure any benefits and credits are not interrupted. This is particularly important if the individual is receiving income-tested benefits, such as the GST/HST Credit or the Canada Child Benefit. The payments for the 2020–21 program year are based on the prior year's return and are set to begin in July 2020.



CANADA

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If an individual is not yet registered for direct deposit, the CRA recommends registration on the “My Account” self-service portal, as direct deposit is the fastest and most reliable way to obtain government benefit and credit payments.

With the outbreak of COVID-19, taxpayers are encouraged to file their 2019 tax returns electronically. Individuals and registered tax preparers can access copies of most 2019 tax slips (T4s, T5s, RRSP contribution slips, *etc.*) remotely using the CRA’s auto-fill My Return feature to download tax information into professional tax preparation software. A full list of CRA-certified software can be found online. Some of the software is free to anyone, while some paid tax software provides free offerings based on individual tax situations or income levels.



MEXICO

Contributed by: McDermott Will & Emery (Manuel Rajunov) And Garcia-Mingo Tejado (Alfonso Garcia-Mingo, Juan Tejado, And Carlos Acle)

LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

Mexico's Labor and Health Ministries enacted certain Guidelines for Employers to deal with the COVID-19 crisis on Saturday, March 22, 2020. On March 24, 2020, the Ministry of Health issued a decree for the purpose of preventing and mitigating risks for COVID-19, which is applicable until April 19, 2020. Specifically, it mandates that individuals in vulnerable cases (e.g., adults over 65 years of age, pregnant or lactating women, children under 18 years of age, individuals with disabilities, individuals with chronic non-communicable diseases, and individuals with any condition or pharmacological treatment that suppresses the immune system), should not work and will be entitled to receive full salary benefits. On March 30, 2020, the Ministry of Health declared a sanitary emergency in Mexico based on *force majeure* through April 30, 2020, and issued certain Sanitary Security Measures on March 31, 2020, to provide guidelines on which activities are considered essential and are to continue and how the government and private parties will conduct activities until April 30, 2020. On April 21, the Government extended the suspension of non-essential activities through May 30, 2020.

Can employers furlough employees during this COVID-19 health crisis?

The Federal Labor Law (the Law) provides causes for termination, pursuant to which employers have the right to terminate employee relationships, and with a declaration of a sanitary contingency, collective employment can be suspended; without a cause for termination under the Law, there is no authorization to terminate employees without severance equivalent to one daily minimum wage (currently MXN\$185.56 in the border region and MXN\$123.22 for the rest of the country) for as much as 30 days.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis?

The federal government has stated that it will not provide relief to large companies and will concentrate on assisting micro-industries and individuals. There have been announcements of relief for employers from several states and municipalities, mainly in the non-charging of the state payroll tax and state hotel tax, and aiding small and medium-sized companies.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

If the government issues a sanitary contingency and suspends activities, then employment relationships are suspended and employers will be obligated to pay employees a



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severance equivalent to one daily minimum wage (currently MXN\$185.56 in the border region and MXN\$123.22 for the rest of the country) for as much as 30 days.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. Employers can deny access if symptoms of COVID-19 are detected. Nevertheless, this should be considered as a paid leave if the presence of COVID-19 has not been yet confirmed. If an employee tests positive for COVID-19 and the employee is working within the exempt sector described earlier, employment can only be suspended as long as the contagious disease is confirmed.

Can employers implement a mandatory screening program for COVID-19 symptoms?

Yes, employers can implement mandatory screening programs for COVID-19 symptoms. In fact, federal authorities have already mandated this.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Yes. Employees must notify employers of any contagious disease they have, as soon as they are aware of it. Moreover, the Federal Labor Law provides as a justified cause for dismissal the fact that the employee compromises the security of the facilities or his/her co-workers due to his recklessness or carelessness.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Yes. However, the policy to disclose if a co-worker has the disease will not be enforceable if it is not contained within the internal work rules of the company, which are duly registered at the labor authority. Employers must also handle the information prudently and only for the purpose of protecting others at the workplace.

Can employers force employees to take vacation time during the COVID-19 health crisis?

Technically, vacation time must be agreed to by employers and employees, however, employers may establish general vacation periods for employees so long as such vacation period is established within six months following the employees' date of hire anniversary; otherwise, employees can unilaterally choose when to take vacation.

Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. In case of termination without just cause or reduction in force, employers are still liable for severance consisting of (i) 90 days of consolidated salary, (ii) seniority premium (12



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days per service year, capped at twice the applicable minimum wage), and (iii) accrued benefits (year-end bonus, vacations, vacations premium and any other relevant benefits).

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

No. If a shutdown is ordered, employees will continue to accrue seniority and other employment-related benefits for at least 30 days. After such period, seniority stops accruing until the shutdown ends.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes. Agreements may be entered into to institute a temporary workplace shutdown and reduce hours. In the case of unionized workers, an agreement can be made with the applicable union based on the terms of the collective bargaining agreement and which states the condition of the shutdown and establishes a higher indemnity (payment) than the one established by the Law. For example, in the automotive industry, companies have reached a technical shutdown with a payment of 50% of salaries and benefits during the temporary suspension. For non-unionized employees, a temporary workplace shutdown and reduction of hours can be instituted through an addendum to employees' individual employment agreements, whereby both parties agree to reduce proportionally both the salary and work hours.

In any case, if work is continued in the facilities of the company, it should only be continued if it is under an exception provided by the agreement.

If employees refuse to come to work, can their employment be terminated for job abandonment?

Yes. If there is no formal suspension of activities by the authorities, absences by employees will be considered unjustified and cause for termination if they refuse to come to work four or more times in a 30-day term.

Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employers?

Yes. Employers must also adopt immediate actions as provided by the Ministry of Health, including the Sanitary Security Measures published on March 31, 2020.



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BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

The general principle in Mexico is that if it is impossible to comply with an obligation because of an unforeseeable act of God or event *force majeure*, the contractual obligations may be suspended, deferred, or even terminated, as nobody is obligated to do the impossible. Bear in mind that, in any case, it is up to a court, and the non-performing party must demonstrate (i) the harm-causing external event (*force majeure*), (ii) that the event was unforeseeable and was the direct cause of the party's inability to perform, and (iii) that the party was unable to fulfill its contractual obligation despite reasonable efforts to do so. A party seeking to invoke *force majeure* usually must also show that there is no alternative means for performing under the contract.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

In principle, yes, subject to a demonstration that COVID-19 was reasonably unforeseeable, is the direct cause of the party's inability to perform, and the party was unable to fulfill its contractual obligation despite reasonable efforts to do so.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

There is no specific provision for commercial agents and thus the basic principle of *force majeure* applies. Any relief would depend on the terms of any emergency decree by the government.

What remedies are available to businesses in the event they default on their contractual obligations?

If a party fails to comply with its contractual obligation, absent a *force majeure* argument or a remedy the parties specifically bargained for, no remedy is available to the defaulting party under Mexican contract law. However, if such breach causes the defaulting party to fall under any of the causes for bankruptcy protection, then the defaulting party may seek bankruptcy protection before the competent courts.

Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

There are no official small-business protections, benefits or grants at this time.



MEXICO

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Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Federal and local courts suspended operations until April 19, 2020, with the exception of some courts attending to urgent matters (*i.e.*, cases involving the risk of privation of life, attacks on personal freedom outside judicial proceedings, isolation, deportation or expulsion, banishment, extradition, forced disappearance, abuse, torture, or segregation; and some family and criminal matters). Regarding civil matters, depending the jurisdiction (*i.e.*, Nuevo Leon) it may be possible to file precautionary measures or initiate pre-trial civil procedures in preparation for trial. Some injunction requests may also be heard.

Has your country issued any tax amnesty or relief programs because of COVID-19?

No. To the contrary, the Mexican government has officially declared that tax collection is an essential activity of the state and, therefore, all taxpayers are obligated to file and pay their taxes under applicable law without deferral or relief due to the current public health crisis. State governments have offered reductions in state taxes, but there is no general rule; it varies from state to state.

Has the tax filing deadline been extended?

For federal taxes, the deadline for companies (March 31, 2020) was not extended. However, the deadline for individuals was extended from April 30, 2020 to June 30, 2020. Some of Mexico's 32 states have provided temporary filing extensions in response to COVID-19.

Are tax refunds and other claims being timely processed?

The government has not addressed this and refunds and claims continue to be processed normally for now. However, a delay is expected since the government is shut down other than for essential activities (*i.e.*, health and security).



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LABOR AND EMPLOYMENT

Has your country enacted any special labor or employment measures to deal with COVID-19? If so, please provide the names of those new measures so our readers can easily access them.

There are two pieces of federal legislation with labor and employment measures meant to deal with COVID-19: the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

The FFCRA was signed into law on March 18, 2020, and became effective on April 1, 2020. The FFCRA requires most employers with less than 500 employees to provide two work weeks of emergency paid sick leave for six covered reasons related to COVID-19, including if the employee has tested positive for COVID-19, if the employee has symptoms of COVID-19, or if the employee needs to stay at home to care for a child whose school or child care provider has closed because of COVID-19. It then requires the same employers to provide an additional 10 work weeks of leave at a reduced rate (two-thirds pay) for just those employees who need to stay at home to care for a child whose school or child care provider has closed because of COVID-19. The costs of providing this leave is reimbursable by the federal government through payroll tax.

The CARES Act was signed into law on March 27, 2020. Among other things, the CARES Act greatly expands unemployment benefits for those unemployed as a result of COVID-19 by limiting certain eligibility requirements, increasing the unemployment benefit and increasing the length of unemployment availability. The CARES Act also provides an “employee retention” tax credit for employers who keep employees on payroll despite loss of revenues or business suspension due to COVID-19.

Can employers furlough employees during this COVID-19 health crisis?

Yes.

Are the federal, state, or municipal governments providing any type of economic relief or support for employers and/or employees during this health crisis? If so, please identify such relief or support if not included in (a) above.

In addition to the federal relief set forth in the FFCRA and the CARES Act, several states and municipalities have enacted their own analogues to the FFCRA, as well as measures to relax unemployment insurance (UI) eligibility requirements both to increase the number of individuals eligible to collect benefits and ensure that individuals can receive benefits expeditiously. For example, New York state enacted its Paid Sick Leave/Paid Quarantine Leave laws on March 18, 2020, that provide job-protected sick leave to employees who are subject to mandatory or precautionary orders of quarantine issued by the state, a health department or any other governmental entity due to COVID-19.



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Nearly all 50 states have enacted UI initiatives to eliminate work search and waiting requirements. Employees may claim UI benefits in several states if they have had their hours reduced, are temporarily furloughed, their employers temporarily shut down operations, or they are temporarily or permanently laid off. The \$600 per week UI benefit under the CARES legislation is provided on top of any state UI benefits that the employee may be eligible for.

What are the employers' obligations if the competent authority in your country issues a "stay-in-place" or similar order?

When a stay-in-place or similar order is implemented, employers should (1) transition to work-from-home (WFH) status all workers who can conceivably work from home, (2) assess whether the remaining workforce qualifies as "essential" under the order, (3) schedule essential workers and consider furloughing non-essential workers who are not able to work from home, and (4) coordinate closely with all essential/WFH workers to re-assign work from those who are sick, quarantined, or must stay home to care for children whose schools or places of child care are closed.

Can employers deny an employee access to the workplace if symptoms of COVID-19 are detected?

Yes. The Centers for Disease Control (CDC) advises that employees who appear to have symptoms (e.g., fever, cough, shortness of breath) on arrival at work or who develop symptoms during the workday should immediately be separated from other employees, customers/clients and visitors and sent home. The Equal Employment Opportunity Commission (EEOC) has reiterated that employers can send home employees with COVID-19 or symptoms associated with it. Employers should actively encourage employees who are experiencing flu-like symptoms to stay home and seek medical care as needed.

Can employers implement a mandatory screening program for COVID-19 symptoms?

The EEOC updated its guidance on April 23, 2020 confirming that employers may administer COVID-19 tests to determine if employees entering the workplace have COVID-19. The EEOC also noted that employers should look to [guidance](#) from the Food and Drug Administration regarding diagnostic tests to ensure that any testing they implement is accurate and reliable. Finally, employers should still ensure tests are implemented in a uniform or equitable manner.

Are employees obligated to disclose to their employer if they have tested positive for COVID-19?

Generally, no. However, the EEOC has stated that employers may ask employees who report feeling ill at work, or who call in sick, questions about their symptoms to determine if they have/may have COVID-19. This guidance suggests that employers may ask



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employees to inform the employer of any positive COVID-19 test results so the employers are able to take measures to protect the health and safety of other workers—an obligation employers bear under the Occupational Safety and Health Act (OSHA). Employers should make every effort to maintain all information about employee illness as a confidential medical record for purposes of ADA compliance.

Can employers have a policy requiring employees to report if they or their co-workers have COVID-19 symptoms?

Generally, yes. Based on the above-noted EEOC guidance permitting employers to ask employees about their symptoms to determine if they have/may have COVID-19, employers may also ask employees to self-report if they experience symptoms. Employers may want to consider implementing reporting mechanisms, such as a report hotline, that will help employees feel comfortable reporting this type of information and also allow the employer to efficiently track the information.

Asking employees to report their coworkers' symptoms could present more challenges than solutions. This runs the risk of inviting employees to make reports based on possible biases and stereotypes based on national origin or other protected categories. Instead, employers should inform and encourage employees to self-monitor for signs and symptoms of COVID-19, particularly if they suspect possible exposure, and self-report accordingly.

Can employers force employees to take vacation time during the COVID-19 health crisis?

There is no federal legislation that explicitly prevents an employer from generally forcing an employee to take vacation time during the COVID-19 crisis. There are, however, a few issues that may arise if doing so in certain circumstances. First, if the employee qualifies for the leave provided by the FFCRA, the employer cannot require the employee to first take accrued vacation time, other sick leave or paid time off (PTO) prior to the federally provided emergency leave. Second, if the employee is taking unpaid leave under the Family and Medical Leave Act (FMLA), the employer can require the employee to use any accrued vacation time, other sick leave or PTO, unless the employee is receiving money either through either a disability benefit plan or a workers' compensation plan.

Furthermore, employers may require that employees use any accrued vacation and/or PTO during unpaid leaves of absence, depending on applicable state laws and the employer's vacation/PTO policy. However, as discussed above, to the extent employees are eligible for the FFCRA, employers must allow employees to exhaust FFCRA leave entitlements prior to requiring employees to use any other accrued vacation and/or PTO.



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Are employers relieved from severance liabilities should a reduction in force be needed due to the COVID-19 health crisis?

No. A contractual promise to pay (for example, an executed employment contract, collective bargaining agreement or severance pay plan) is enforceable. Inability/refusal to pay contractually agreed upon severance pay obligations may subject the employer to breach of contract or other claims from terminated employees in the future (assuming no material breach by the employee).

In the event that a temporary operational shutdown is ordered by the competent authority, can employers interrupt the accrual of seniority and other employment benefits during that period?

Assuming that workers cannot work from home, the answer depends on the collective bargaining agreement, if any. Generally, seniority will continue to accrue but other benefits will not accrue. Typically, during a temporary shut-down, employees are entitled to unemployment benefits and, if the employer has a supplemental unemployment benefits (SUB-pay) plan, SUB pay as well. The employer may continue the employees' medical, dental, vision and possibly other benefit plans during the shut-down, but this is generally not legally required unless mandated by a collective bargaining agreement.

Can employers negotiate or institute a temporary workplace shutdown or reduction in hours along with a temporary reduction in salary and benefits?

Yes. It may need to be negotiated for workers governed by a collective bargaining agreement. Otherwise, an employer may institute a temporary shutdown or a temporary reduction in salary. Benefits entitlements will be governed by the terms of the benefit plans.

If employees refuse to come to work, can their employment be terminated for job abandonment?

In many cases, employers can terminate the employment of employees who refuse to come to work where the essential functions of the job cannot be performed from home. However, determining whether an employee can be terminated for job abandonment requires an assessment of the facts related to that particular employee. If the employee is entitled to leave under FMLA, a paid sick leave law or other similar law, the employer is required to grant leave for the required purpose and duration. For example, if an employee is entitled to FMLA leave due to a serious health condition, such leave generally cannot exceed 12 weeks—and the employee's doctor must certify the continuing need for the leave. After such leave has ended, if the employee does not return to work (or begin to work from home), the employer should consider whether a reasonable accommodation should be made (under the Americans with Disabilities Act (ADA) or similar state or local laws) to enable the employee to perform the essential functions of the job from home.



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Do employers have an obligation to report instances of their employees testing positive for COVID-19 to the health authorities or to other employees?

Employers covered by OSHA's recordkeeping requirements must log all illnesses caused by, or at, the workplace. Due to community-spread COVID-19, however, OSHA has acknowledged the inherent difficulty with knowing whether an employee contracted COVID-19 in the workplace instead of through another means. OSHA has therefore narrowed the recordkeeping requirement to include only those cases that (i) are confirmed cases of COVID-19, (ii) are work-related (as defined in 20 CFR 1904.5), and (iii) involve one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g., requires treatment beyond first aid or days away from work). Aside from OSHA, employers are not required to report employees' positive COVID-19 test results.

Employers may inform employees that one (or more) of their colleagues has a suspected or confirmed case of COVID-19, particularly if the sick employee may have come in contact with those colleagues, or if there are steps those colleagues might or should take to protect themselves and others from further transmission. However, employers are obligated to maintain sick employees' confidentiality to the extent possible.



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BUSINESS LAW

How does the principle of *force majeure* apply under the applicable contract laws of your country?

Force majeure is a legal concept that can, under appropriate circumstances, provide an excuse for partial or complete nonperformance of an agreement due to circumstances beyond the control of the parties. In the United States, *force majeure* language is typically negotiated by the parties to a contract. Consequently, *force majeure* contract provisions can be extremely broad or very narrow. Hence, in determining the applicability of a *force majeure* contract defense to a set of particular circumstances that may fall within the purview of the *force majeure* provision, one must critically review the language negotiated by the parties in the contract.

Certain events that have been agreed upon to trigger common *force majeure* contract defenses have included acts of God; natural disasters such as earthquakes, tornados, hurricanes, tsunamis and floods; war; labor strikes; civil disorder; acts of terrorism; governmental authority or regulation; epidemics, pandemics or contagious diseases; curtailment of transportation facilities; or any other emergency making it impossible to perform under the contract. If, however, a court determines that *force majeure* is applicable to the facts attendant to a party's non-performance, then the non-performing party may be entitled to terminate the contract (in whole or in part) and receive a refund of some or all prepaid deposits as well as a waiver of cancellation charges or liquidated damages.

Generally, *force majeure* clauses will only excuse non-performance where the circumstances attendant to the event were unforeseen, those circumstances are beyond the parties' control, and where the party claiming *force majeure* has provided appropriate notice and attempted to mitigate or avoid the *force majeure* event and/or the damages resulting therefrom. Assuming those elements are satisfied with an event such as the COVID-19 pandemic, a court of law must still determine whether any circumstances beyond those articulated in the contract by the parties as *force majeure* events will justify a party's non-performance.

Here, it is crucial to analyze and comprehend the law of the state that governs the contract. Many states, such as New York, construe *force majeure* clauses narrowly. Under New York law, if the clause includes an exclusive list of qualifying events, the event in question must fall within the scope of a listed item for one party to be excused from performing. For non-exclusive *force majeure* provisions that contain a standard catch-all clause that includes, "without limitation," a specific list of events plus "other events beyond



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the parties' control," the event in question must either be on the list or be of the same kind or nature as the expressly listed events to justify non-performance.

Can a party claim *force majeure* if COVID-19-related events prevent such party from complying with contractual obligations?

In the months to come, the current business closures, travel bans and quarantines imposed by various federal, state and local governments in the United States as a direct result of the COVID-19 global pandemic will undoubtedly prompt many companies seeking to excuse performance to assert their contractual *force majeure* rights and/or their applicable common-law defenses of impossibility, commercial impracticability, frustration of purpose or a similar defense. In the United States, the success or failure of these efforts will be determined on a case-by-case basis and premised primarily upon the specific language of the relevant contracts, the applicable law(s) and the facts attendant to their agreement as impacted by the COVID-19 pandemic. Accordingly, all contract parties should carefully review the *force majeure* provisions and any other termination or cancellation provisions in their agreements, as well as the applicable state law governing those contracts, when analyzing their obligations and potential risk of nonperformance.

Does a state of emergency declaration by the competent authority provide commercial agents with any type of relief in their obligation to comply with contractual terms for delivery or payment?

Any relief would depend on the terms of the *force majeure* provision (if any), other potential contractual bases to excuse performance (if any), the relevant facts and the applicable law(s).

What remedies are available to businesses in the event they default on their contractual obligations?

From the perspective of the defaulting party, depending on the terms of the contract, the applicable facts and the applicable law(s), they may be able to excuse performance under a theory of impracticability, impossibility, frustration of purpose or a similar defense. Available remedies also will differ and may include the ability to excuse obligations in whole or in part. Parties may have obligations to provide notice within a particular timeframe and in a specific format, and also may be obligated to mitigate the effect of and/or seek to avoid default. From the perspective of the non-defaulting party, they may be able to excuse their own performance under the contract and/or may have termination or other rights.



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Are there any small-business protections or benefits available in your country and can the local subsidiary of a foreign entity access them?

Among its many provisions, the CARES Act provides significant further relief for small businesses, including \$349 billion for Small Business Administration (SBA) loan guarantees and subsidies and additional funding for SBA resources.

7(a) Paycheck Protection Program

The 7(a) loan program is the SBA's primary program for providing financial assistance to small businesses. The CARES Act will increase the maximum 7(a) loan amount to \$10 million and will expand allowable uses of 7(a) loans to include payroll costs, costs related to group healthcare benefits during periods of paid sick, medical or family leave, and insurance premiums, as well as employee salaries, mortgage interest payments, rent, utilities and interest on other debt obligations.

Loan amounts will total the lesser of (1) \$10 million or (2) 2.5 times an applicant's average total monthly payments for payroll costs incurred during the one-year period before the date on which the loan is made, plus the outstanding amount of any loan made under the SBA's Disaster Loan Program, made available between January 31, 2020, and when a covered loan is made available, that is to be refinanced under a covered loan. Loan amounts for seasonal employers and other applicants that were not in business during the period between February 15, 2019, and June 30, 2019, will be determined using a modified version of the above formula.

Under the CARES Act, **and rules issued by the SBA**, the covered loan period for this program will begin on February 15, 2020, and end on June 30, 2020.

The legislation increases eligibility for certain small businesses and organizations, including:

- Small businesses, 501(c)(3) nonprofit organizations, 501(c)(19) veterans' organizations and tribal businesses with fewer than 500 employees (unless the covered industry's SBA size standard allows more than 500 employees).
- Sole proprietors, independent contractors and self-employed individuals.
- Businesses in the hospitality and restaurant industries with more than one physical location and with no more than 500 employees per physical location.

The legislation also waives affiliation rules for businesses in the hospitality and restaurant industries, franchises that are approved on the SBA's Franchise Directory and small



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businesses that receive financing through the Small Business Investment Company program.

For the purpose of determining whether a business, nonprofit, veterans' organization or tribal business employs no more than 500 employees, the term "employee" includes individuals employed on a full-time, part-time or other basis.

The legislation gives approved lenders the delegated authority to make and approve loans. In evaluating a borrower's eligibility, a lender must consider whether a business was operational on February 15, 2020, and had employees for whom it paid salaries and payroll taxes, or paid independent contractors.

Eligible borrowers will be required to make good faith certifications that the uncertainty of current economic conditions make the loan request necessary to support ongoing operations and that they will use funds to retain workers and maintain payroll and other debt obligations. A borrower must also certify that it does not have an application pending for a loan for the same purpose and duplicative of amounts applied for or received under a covered loan, nor has it received such a loan between February 15, 2020, and December 31, 2020.

Additional details include the following:

- A borrower that receives a 7(a) loan for employee salaries, payroll support, mortgage payments and/or other debt obligations will not be able to receive an SBA economic injury disaster loan (EIDL) for the same purpose.
- 1% interest rate.
- Borrower and lender fees for 7(a) loans will be waived.
- The "credit elsewhere" test and personal guarantee and collateral requirements will be waived during the covered period.
- The legislation provides that SBA affiliation rules apply to eligible nonprofits as they do to small businesses.
- Lenders are required to provide complete deferment of 7(a) loan payments for not less than six months and not more than one year, including payment of principal,



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interest and fees. SBA is required to disseminate guidance on the deferment process within 30 days.

- Existing 7(a) loans made between January 31, 2020, and the date on which covered loans are made available may be refinanced as part of a covered loan.
- The legislation also provides guidance on loans sold in the secondary market.
- The maximum loan for an SBA Express loan will be increased from \$350,000 to \$1 million through December 31, 2020, after which point the Express loan will have a maximum of \$500,000.

Other Provisions

Loan Forgiveness. The CARES Act provides a process by which small businesses will be eligible for loan forgiveness in an amount equal to the amount spent by the borrower during an eight-week period after the origination date of the loan on the following items:

- Payroll costs
- Interest payment on any mortgage incurred prior to February 15, 2020
- Payment of rent on any lease in force prior to February 15, 2020
- Payment on any utility for which service began before February 15, 2020

The amount forgiven will be reduced in proportion to any reduction in employees retained compared to the prior year and to the reduction in pay of any employee beyond 25% of their prior-year compensation.

To incentivize employers to rehire employees already laid off due to COVID-19, borrowers that rehire workers previously laid off will not be penalized for having reduced payroll at the beginning of the period.

Emergency EIDL Grants. The CARES Act establishes an emergency grant to allow an eligible entity that has applied for an EIDL loan due to COVID-19 to request an advance on that loan of no more than \$10,000, which the SBA must distribute within three days.



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- An applicant will not be required to repay such an advance payment, even if it is subsequently denied an EIDL loan.
- Eligible entities include startups, tribal businesses, cooperatives and ESOPs with fewer than 500 employees, and any individual operating as a sole proprietor or an independent contractor during the covered period (January 31, 2020, to December 31, 2020).
- For EIDL loans made in response to COVID-19 before December 31, 2020, the SBA must waive any personal guarantee on advances and loans below \$200,000, as well as the requirement that an applicant be in business for the one-year period before the disaster and the “credit elsewhere” requirement.

Entrepreneurial Development. The CARES Act authorizes the SBA to provide additional financial awards to resource partners (including Small Business Development Centers and Women’s Business Centers) to provide counseling, training and education on SBA resources and business resiliency to small business owners affected by COVID-19.

State Trade Expansion Program (STEP) Grants. The CARES Act allows for STEP grant recipients to be reimbursed for losses relating to canceled events due to COVID-19, as long as the reimbursement does not exceed the recipient’s grant funding.

Waiver of Matching Funds Requirement Under the Women’s Business Center Program. The CARES Act eliminates the non-federal match requirement for three months.

Minority Business Development Agency. The CARES Act authorizes \$10 million for grants to Minority Business Centers and Minority Chambers of Commerce for the purpose of providing counseling, training and education on federal resources and business response to COVID-19 for small businesses. It also eliminates the non-federal match requirement for three months and allows centers to waive fee-for-service requirements through September 2021.

US Treasury Program Management Authority. The CARES Act allows the Department of Treasury, the Farm Credit Administration and other federal financial regulatory agencies to establish a process by which lending institutions that are not currently authorized to offer SBA loan products are able to participate in the Paycheck Protection Program.



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Further, the Act allows Treasury to write regulations and guidance as needed, including to allow additional lenders to originate loans and establish terms, and allows all 7(a) lenders to opt-in to participate in the Paycheck Protection Program.

Subsidy for Certain Loan Repayments. The CARES Act requires the SBA to pay the principal, interest and any associated fees that are owed on the covered loans for a six-month period starting on the next payment due date. Loans that are already in deferment will include an additional six months of payment by the SBA beginning with the next payment. Loans made up until six months after the enactment of the legislation will also receive a full six months of loan payments by the SBA.

The Act defines eligible loans as existing 7(a) (including Community Advantage), 504 and microloan products. Paycheck Protection Program loans are not covered.

Bankruptcy. The CARES Act amends the Small Business Reorganization Act to increase the eligibility threshold to file under subchapter V of chapter 11 of the US Bankruptcy Code to trades with less than \$7,500,000 of debt. This increase sunsets after one year.

Is the judiciary operating in your country? If not, what processes are in place for businesses to avail themselves of the judiciary in the event it is necessary during the current COVID-19 health crisis?

Judicial operations vary significantly by state and jurisdiction, but courts are generally open for emergency and essential business or by videoconference.

Has your country issued any tax amnesty or relief programs because of COVID-19?

At the state level, many states and localities have issued guidance waiving late-filing and late-payment penalties for various taxes, including income taxes, payroll taxes, and sales and use taxes. Please see our [COVID-19 Resource Center](#) for state-by-state guidance.

Has the tax filing deadline been extended?

Yes, the federal income tax filing deadline has been extended from April 15, 2020, to July 15, 2020.

At the state level, some states have conformed to the extended federal income tax deadline, others have provided an extension to a different date, and some states have not (yet) provided an extension. Importantly, some states may allow taxpayers to file an extension but will still require an estimated payment to be made on the original filing deadline. States are also providing filing and payment extensions for other taxes, including



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sales and use taxes and payroll taxes. Please see our COVID-19 Resource Center for state-by-state guidance.

Are tax refunds and other claims being timely processed?

At the state level, this varies by state. However, generally, appeals of assessments and refund claim denials are being delayed due to court and tax tribunal closures. With respect to audits, auditors are generally working remotely, but we expect the pace at which audits progress to slow down a bit as well.

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