Responding to COVID-19

*Implications on employees and employment relations*

Questions & Answers

17 March 2020

Below is a list of the most common questions we, at Ernst and Young Law Partnership continue to receive over the past 10 days in relation to COVID - 19 and its implications on employees and employment relations. The answers are up-to-date as of 17 March 2020. We note that there are currently two bills* pending with the Bulgarian parliament for approval which may change some of the answers.

The questions and answers below are general and do not consider any specifics. They cannot be relied upon to replace an advice to address all facts related to a certain issue. Thus, each case shall be assessed individually, and the below overview may only be used as general information.

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<th>Question</th>
<th>Answer</th>
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| 1. Does the employer have any right to refuse office access to an employee? | Under the Labor Code the employer is responsible for making sure that the employee can perform his/her working obligations. However, an employer shall not grant access to the office to a sick or a quarantined employee.  
On the other hand, the employer shall procure healthy and safe working conditions. To the extent that an employee may increase the risks for the other employees, the employer is entitled to take the necessary measures to procure healthy and safe working environment. In such case, in particular, when the refusal is based on suspicions and such suspicions prove to be wrong, the employer may be subject to payment of a compensation to the employee in lieu of the employee’s remuneration. |
<p>| 2. Is there a risk for the employer to be subject to any liability in case the employer has sent all employees home? | Yes, to the extent that the employer is responsible for keeping the employees occupied. However, to the extent that all compensation obligations due to the employee are covered (i.e. the employee has received a compensation equal to the employees remuneration for the respective period) the risk of such claims is very limited. |</p>
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<td><strong>3. Does quarantine entitle the employee to compensation from the social security funds?</strong></td>
<td>Whenever a quarantine is imposed in accordance with the law and is supported with the relevant documents (in particular a sick leave certificate), it would be possible for the employee to receive compensation from the social security funds. Compensation from the social security funds would not be payable to an employee who violates the regime prescribed by the health authorities for the days of the violation.</td>
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<td><strong>4. Does the employer have an obligation to refuse an employee access to the working place?</strong></td>
<td>The employer is subject to extensive obligations for health and safety at work vis-à-vis its employees but also third parties at the employer’s premises. In case of reasonable doubt as to whether an employee is sick and may represent additional risk for the other employees or visitors of the employer’s premises, the employer may be subject to an obligation to isolate such employees.</td>
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<td><strong>5. Can an employee decide not to come to work?</strong></td>
<td>An employee may refuse to come to work whenever there is a considerable risk for the employee’s health and the employer has failed to procure safe and healthy working conditions. Whether or not such risk is real is subject to assessment on a case by case basis. Whenever, the employee has decided unilaterally not to come to work this may be a ground for a disciplinary dismissal where the above requirement is not met.</td>
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<td><strong>6. Can the employer introduce a distant work arrangement unilaterally?</strong></td>
<td>The distant work arrangements are generally subject to a mutual agreement between the employer and the employee. Thus, the consent of the employee is required, and the parties are required to enter into a bilateral annex to the existing employment agreement except where the existing employment agreement includes distant work options.</td>
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<td><strong>7. What are the requirements and challenges to introduce distant work?</strong></td>
<td>In case of distant work, the employer shall consider suitable working time arrangements, special provisions concerning assignment and delivery of work, reporting requirements. Moreover, the employer is responsible for healthy and safe working conditions. It shall be considered carefully how to limit the options for the employee to change his working place at the employee’s discretion. The employer is further responsible for providing the technical means for distant work and for ensuring that the employers property (i.e. the equipment provided to employees) is well preserved.</td>
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<td><strong>8. Can the employer introduce part time unilaterally?</strong></td>
<td>Yes, in certain, limited cases the employer may be entitled to introduce reduced working hours. In such case the employer shall comply with the minimum working time requirements and shall observe the applicable procedure.</td>
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<td><strong>9. Can the employer force the employees to take annual paid leave?</strong></td>
<td>Yes, in certain, limited cases (in general), reduced workload the employer may be entitled to force employees to take their annual paid leave or parts thereof at the employer’s discretion. However, all requirements under the Labour Code shall be complied with and the employer shall maintain the respective documents to be able to prove the legality of the procedure.</td>
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<td><strong>10. What is suspension of work and how can an employer benefit from it?</strong></td>
<td>In case of suspension of work for more than 15 business days the employer is entitled to dismiss the affected employees. In case of termination of employees due to suspension of work, a considerable part of the provisions concerning protection of employees does not apply. In case of a shorter period of suspension of work the employer may be entitled to assign the employee with different work for some limited periods of time. In case of reduced workload the employer may also be entitled to release part of the employees. However, in such case the special procedure and requirements as well as the criteria for dismissal set out in the law shall be observed.</td>
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<td><strong>11. Does the employer have any right to postpone the commencement of employment of a new hire?</strong></td>
<td>Yes, whenever the employer has considerable arguments to believe that such employer may cause risk for the other employees, e.g. the employee is sick and has received a sick leave certificate, the employee is obviously sick but does not have a sick leave certificate. Otherwise, the employee may be entitled to claim compensation from the employer.</td>
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<td><strong>12. Can a new hire request a postponement of his starting date?</strong></td>
<td>Yes, but only for a good reason. Otherwise, if the employee does not start work on the starting date agreed with the employer, the employment agreement terminates automatically.</td>
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<td><strong>13. Can an employer limit the employee to visit</strong></td>
<td>No. The employer does not have any powers in respect of the employee’s personal life. However, the employer is entitled (and obliged) to instruct the employee as to the recommendable</td>
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<td>high risk countries for private purposes?</td>
<td>measures to be taken by the employee in order for the employer to be able to ensure healthy and safe working conditions.</td>
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<td>14. Can an employee refuse a business trip?</td>
<td>An employee is entitled to refuse business trips (and basically any other assignment) whenever performing of the work may cause considerable risk for the employee’s life and integrity. However, to the extent that the employee may take additional protective measures to protect his/her health, the employee would hardly be able to justify a refusal. We note that this only applies for business trips of up to 30 days and only in case the business trip of the employee is not subject to additional consent requirements.</td>
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<td>15. What are the options available for employees to take care of their children due to the closure of schools and kindergartens?</td>
<td>Employees are entitled to obtain a sick leave certificate in order to take care of sick children. In certain cases employees may be entitled to a sick leave in case of quarantine in a kindergarten which affects the minor children of the employees. Other than that employees are entitled to request different types of leave (e.g. annual paid leave, unpaid leave, etc.)</td>
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<td>16. Can the employer introduce additional criteria to select the employees to visit “risky” places (e.g. age, marital status, whether the employee has kids, etc.)?</td>
<td>No, such criteria would usually represent a breach against the anti-discrimination legislation. The general perception of Bulgarian law is that lives cannot be weighted against other peoples’ lives. To the extent that the measures are based on objective criteria and are supported with sufficient information to justify their selection, certain criteria may be acceptable.</td>
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<td>17. Can the employer terminate all employees on trial period in order to reduce the employer costs?</td>
<td>An employment agreement with an employee on a trial period may be terminated at the discretion of the employer. However, in case the employer terminates a larger number of employees this may meet the mass dismissal requirements where a number of additional formal requirements shall be considered.</td>
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### 18. Can the employer inform the other employees in case an employee is diagnosed with COVID-19?

The information about the medical status of a person shall be handled with higher care as it involves sensitive personal data. Thus, whenever the employer can take appropriate measures to protect the remaining employees without disclosing the sick employee’s personal data, this shall be the preferred approach.

### 19. Can the employer measure the employees’ temperature?

The employer is not entitled to try to diagnose the employee. The employer is entitled to refuse access to its premises to an employee who is obviously sick and represents a higher risk for the remaining employees.

*The draft bill currently pending with the Bulgarian Parliament concerning among others the following:

- ban on all business trips in and outside of the country
- option for the employers to impose unilaterally distant work or home office arrangements
- right of the employer to suspend all or parts of the work in case of official state of emergency
- in case of suspension of work ordered by a public authority, the employer is not allowed to grant access to work to its employees
- employers are entitled to approve part-time work in case of state of emergency
- employers are entitled to force employees to take annual paid leave in case of state of emergency
- in case of a state of emergency the employer is subject to an obligation to approve all requests for an annual paid leave or unpaid leave of pregnant employees, parents of small kids, disabled employees and a number of other employees enjoying additional protection.

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