

Over the last few days, we have received an increasing number of enquiries from employers about the coronavirus disease 2019 (COVID-19) and what they should be doing from an employment law/HR perspective.

We set out below our answers to some of the questions we have been asked, together with some practical tips on how to deal with this issue.

We will keep this note under review, as we appreciate that the situation is evolving and the government's guidance to employers may change.

What are our obligations from a health and safety perspective in relation to our staff?

Onshore employers have an obligation to provide workers "with adequate protection means against hazards of occupational injuries and diseases that may occur during the work." Employers in the DIFC and ADGM have a general duty to ensure the health, safety and welfare of their employees at work so far as is reasonably practicable.

These health and safety duties would extend to taking reasonable steps to control the spread of COVID-19 at sites under the control of the employer. Employers should, therefore, carry out a risk assessment and implement reasonably practicable control measures to either eliminate or mitigate the virus hazard. From a practical perspective, we would recommend that employers:

1. Ensure staff are aware of the symptoms and the latest advice on how to minimise the risk of infection.
2. Implement a reporting procedure for anyone with symptoms. Employees may be reluctant to self-report if they think that such reporting will adversely affect their pay or work. Therefore, you may wish to consider making some assurances to employees to encourage reporting.
3. Implement a reporting procedure for individuals who have recently visited "high-risk" areas, such as China, Northern Italy, Syria and Lebanon, etc., and update this list regularly, given the risk areas are constantly evolving. This may mean that staff have to "self-isolate" if they have returned from a high-risk area (see below for further guidance).
4. Make individuals aware of the latest government guidance.
5. Ensure any control measures identified by the risk assessment are aligned with the government's advice.

Should we place restrictions on our staff in terms of work-related international travel?

The UAE has suspended all flights to and from Iran until further notice and has banned its citizens from travelling to and from Thailand and Iran. There is a travel warning in place for travel to China. In addition, on 5 March 2020, the UAE Ministry of Health and Community Protection requested that all citizens and residents avoid all travel due to the virus outbreak.

The UAE has now implemented medical screening at Dubai airports, and individuals re-entering the country will be subject to thermal screening on their return. Depending on the origin of the flight, the individual may also be subject to additional control measures, such as filling out a medical declaration form and undergoing a nasal swab. In suspected cases of the virus, the individual will be quarantined until testing has ruled out the virus.

In light of the UAE government's requests to avoid travel, employers should consider limiting work-related travel to circumstances in which travel is essential, and should consider whether there are any alternatives available to travel (for example, conducting meetings using video conferencing facilities, etc.). Employers should also clearly avoid sending employees to high-risk countries such as China, Iran, Italy and Lebanon, etc., for the foreseeable future.

In what circumstances are staff required to stay away from work?

The UAE authorities have not yet issued any clear official guidelines on the circumstances in which an individual will be required to self-isolate. However, it appears that individuals will be required to self-isolate, or in some cases be quarantined, in the following circumstances:

1. Where they have tested positive to the virus
2. Where they have travelled to a high-risk country and they are displaying symptoms of the virus but a diagnosis has not yet been confirmed
3. Where they have been in contact with someone diagnosed with the virus but a diagnosis has not yet been confirmed

As a general rule, therefore, employers should not require staff to stay away from work without their consent simply because they have travelled to particular countries. In the DIFC and the ADGM, taking any steps to force them to do so (even if under pressure from other members of staff) may amount to a breach of the implied term of trust and confidence.

Employees may be willing to work from home for a period of time (the incubation period for the virus is estimated to be between two and 14 days), but employers should be careful about how they approach such conversations so as not to put themselves at risk of a claim. However, the situation is changing quickly. Employers should ensure they closely monitor developments and that they stay up to date with any government guidance or advice from public health authorities on self-isolation.

Do we have to pay an employee if they self-isolate?

Clearly, if a member of staff is actually unwell with the virus, you should pay them in accordance with your usual sick pay/leave arrangements. The position becomes less clear if they are self-isolating in line with the latest government guidance, but are not (outwardly, at any rate) actually unwell. Employers should obviously check their own policies/contracts concerning sick pay, but it would be unusual for employees to have a contractual right to pay/sick pay in these circumstances. Some employers may choose to treat such periods of absence as sickness for their own company sick pay purposes.

It would clearly be best practice to pay employees their normal pay in these circumstances, or to treat this period as sick leave, and we note that some large employers have already adopted this approach, not least because otherwise employees may try to come into work, putting others at risk. We would, however, recommend that employers take specific advice on this issue and each particular case before agreeing to anything, as there may be circumstances where it is not appropriate to adopt/continue with this approach. For example, it may not be appropriate to provide normal pay in circumstances where the employee has travelled to a high-risk area ignoring government guidance or a travel ban without a reasonable excuse. It may also lead to "copycat" absences, once employees are aware that company policy is that they will be paid as normal when absent due to self-isolation.

If an employee is able to work from home, this makes things simpler, as the employer could do this and continue to pay the employee as normal. However, this may not be practicable for all employees due to the nature of their roles or their personal circumstances. Employers should also be aware that from a strict legal perspective, employees can only work from the employer's premises due to strict immigration requirements. However, given the current situation, and the UAE government's efforts to contain the spread of the virus, the authorities are unlikely to take issue with such working from home arrangements.

What happens if a member of an employee's family has the virus?

There is no statutory right to sick leave in the UAE (including in the ADGM and the DIFC) in these circumstances. However, employers should check their employment contracts and internal policies and procedures to see whether there is a contractual right to paid leave in these circumstances. In any event, we recommend employers consider requiring employees to take leave in these circumstances (or to require them to work from home if this is a practical option) to allow the individual to care for their family member and to prevent the spread of the virus.

However, employers in both the ADGM and the DIFC need to be aware that they can only require an employee to take annual leave on the provision of seven days' notice. Therefore, if an employee refuses to utilise their annual leave, the employer will not be able to force the employee to use their annual leave unless seven days' notice has been provided. There is no such restriction for onshore employers, who have the right to determine the date of commencement of an employee's leave.

What happens if an employee needs to take time off work or requests flexible working arrangements to care for children due to the closure of a nursery or school?

UAE authorities have temporarily closed nurseries as a precautionary measure to prevent the spread of the virus. In addition, schools are closed from 8 March 2020 to 5 April 2020. The closure of schools and nurseries is likely to lead to additional requests for flexible work arrangements and/or leave requests from staff to care for children.

There is no statutory right to "carer's leave." However, employers should check their employment contracts and internal policies to see if there are any contractual entitlements to leave in these circumstances (for example, emergency leave). As a matter of best practice, employers should accommodate requests for flexible working arrangements and/or paid leave where possible.

How should we deal with a member of staff who refuses to come to work because they are concerned about the risk of infection?

In light of the current threat level in the UAE, it is unlikely to be reasonable for an employee to refuse to come to work on this basis, especially if there have been no cases in their specific workplace, and such a refusal would likely constitute an unauthorised absence. Clearly, however, employers need to take a practical approach and they should take steps to understand an employee's concerns before taking any action, especially if they may be at greater risk from developing the virus. In light of the current media coverage of the virus, it is not surprising that some individuals are worried about contracting the virus and are keen to take steps to minimise the risk of infection.

If you are communicating with your staff about the virus and what steps the company is taking to protect the health and safety of its staff, the risk of employees refusing to come to work is likely to be reduced. If there is some basis for their concerns, you may want to think about allowing them to work from home for a period of time, taking some annual/unpaid leave, etc. It might also be useful to remind them of other support services you have in place, such as employee assistance programmes and wellbeing programmes.

What should we do if a member of staff is confirmed as having the virus and has recently been in the workplace?

In this case, the current government guidance is to immediately report the incident to the Dubai Health Authority (800 342), Estijaba service at the Operation Centre of the Department of Health (800 1717) and the Ministry of Health and Prevention (800 1111). Employers should also take immediate steps to contain the spread and to ascertain those individuals who have been in contact with the infected individual.

If the situation worsens and we are considering closing one of our sites, do we have a right to put employees on unpaid leave in these circumstances? Are we obliged to continue to pay them?

There is no right to lay off employees without pay in these circumstances. Any period of unpaid leave would need to be agreed with the employees. Onshore employers will also need to ensure that any agreed periods of unpaid leave are properly notified to the authorities to avoid any sanctions for breach of the wage protection system.

Can we prevent staff from going on holiday to high-risk areas?

While employers have some ability to decline the dates of annual leave requests on the basis of genuine business requirements, employers cannot ban or prevent employees from personal travel to affected areas. However, employers should consider implementing a reporting procedure, which requires employees to notify the employer of any travel to affected areas so that appropriate measures can be taken on their return. Employers should also remind staff about the latest government guidance on high-risk areas and the circumstances in which they may be required to self-isolate on their return.

Practical Tips for Employers

- 1. Stay up to date with the latest guidance** – The situation is obviously changing quite quickly, so employers should ensure they stay up to date with the latest government guidance and advice from public health authorities. Employers should continuously review their approach in light of the latest guidance.
- 2. Avoid knee-jerk reactions** – Employers should ensure they adopt a proportionate response to the virus outbreak, based on the current level of risk in the UAE, the nature of their business, available medical opinion, etc. Knee-jerk reactions could result in grievances and, at worst, claims.
- 3. Communicate with your staff** – While the risk in the UAE is not as high as some of the high-risk countries, the situation is changing quickly and the extensive media coverage is making many people concerned about the risks, especially if they are more vulnerable to infection (for example, the elderly and those with certain health conditions). Employers should, therefore, ensure they are communicating with their staff about the virus, letting them know what they can do to protect themselves against the risk of infection, together with the steps the company is taking to deal with the risk (for example, suspending business travel to China, travel reporting requirements etc.). Employers should clearly be careful about the tone of their communications to avoid any unnecessary panic. Employers also need to be mindful of potential discrimination issues, given there have been reports globally of individuals of Chinese or Asian descent being subject to racism linked to the virus.
- 4. Have contingency plans in place** – It would be sensible to review your business continuity plan to ensure you know what to do if the threat level increases. In addition, ensure that you have up-to-date contact details for your staff, emergency contact details, etc. Consider what you can do in advance to facilitate home working and to maintain key trading functions. For example, require employees to take home their laptops each night to ensure they will be able to continue to work remotely should the need arise.

If you have any questions about the virus, please speak to your usual contact in the Labour & Employment team.