



What are an employer's health and safety obligations in relation to its 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:

- Allow employees to work from home, where possible, in line with the latest government guidance where only vital workers are now permitted to continue working.
- Ensure that only 20% or 30% of employees (as applicable depending on location) are working where companies are permitted to keep working to provide vital services.
- Ensure that there is sufficient space in the workplace for those providing vital services to comply with social distancing rules.
- Comply with government requirements to carry out temperature checks for employees at the entrance and exit of work premises to check employees as they enter and leave work.
- Ensure staff are aware of the symptoms and the latest advice on how to minimise the risk of infection.
- Implement a reporting procedure for anyone with symptoms of COVID-19 or who has been in contact with a suspected or confirmed case.
- Make individuals aware of the latest government guidance.

Things are changing very quickly and, therefore, employers need to constantly review the risk assessment to ensure that any control measures are aligned with the government's latest advice.

Should employers place restrictions on work-related international travel?

The UAE has now effectively closed its borders until further notice, with the following restrictions now in place:

- UAE national citizens have been banned from travelling overseas and those currently overseas have been advised to return to the UAE.
- With effect from 19 March 2020, UAE residents who are currently out of the country have not been able to enter the UAE. Emirates and Etihad have indicated that a limited number of flights may be resumed from a limited number of locations with effect from 6 April 2020, with the sole aim of enabling outbound passengers to leave the UAE. Further details are to follow.
- All visas on arrival have been suspended until further notice.
- The issuance of all entry visas has been suspended, with effect from 17 March 2020, and those entry visas issued prior to 17 March 2020 are no longer valid. In addition, the Ministry of Human Resources and Emiratisation has suspended the issuance of any new work permits for individuals currently located outside of the country. This means that employers will not be able to hire any new employees from outside the country, including those who have already been issued with an entry visa, until further notice. The authorities have advised that the current restrictions will not prevent the issuance of new work permits/entry visas if the individual is already in the UAE and the change of status is completed in country.

In light of the above restrictions, employers have no choice but to suspend all overseas work-related travel until the restrictions are lifted.

Under what circumstances can employees continue working or leave the house?

In order to contain the spread of the virus, and in accordance with the current 24 hour curfew for disinfection purposes set to continue for a further two weeks, effective from 8 p.m. on 4 April 2020, no one is permitted to leave home except for:

- Essential purposes (buying food or medicines or obtaining medical assistance)
- Those who work in areas identified by the UAE government as providing vital services

Anyone leaving home for essential purposes will be required to register here for permission to do so: <https://dxbpermit.gov.ae/home>.

Those individuals identified as working for companies providing vital services are exempt from the restrictions in place, but will require a letter from their employer stating the purpose and details of their hours and commute to work. They may also need to seek permission online to avoid fines.

All people leaving home are mandated to wear a mask and gloves and ensure that they keep a safe distance from others.

An individual will be required to undergo a period of quarantine, whether at home or in a health facility, in the following circumstances:

- Where they are suspected to have the virus, but a diagnosis has not yet been confirmed
- Where they have tested positive to the virus
- Where they have been in contact with someone diagnosed with the virus or who is suspected to have the virus, but a diagnosis has not yet been confirmed

The Ministry of Health and Prevention has now listed COVID-19 as a communicable disease under Federal Law No. 14 of 2014 On the Control of Communicable Diseases (Communicable Disease Law), which means that anyone who fails to comply with the authorities' preventative measures or instructions may be subject to fines and/or imprisonment. It is, therefore, extremely important for employers to ensure they closely monitor developments and that they stay up-to-date with any government guidance or advice from public health authorities.

What is the latest guidance from the government regarding employment measures that can be taken to protect jobs?

The UAE government has set out a number of measures in three Ministerial Resolutions which apply to all onshore companies under the remit of the MOHRE.

Ministerial Resolution No. 279 of 2020 is calling for companies to try to avoid making employees redundant by committing to other measures by agreement with employees. Pursuant to the resolution, employers may mutually agree any of the following options with their non-national employees:

- Remote working
- Paid leave
- Unpaid leave
- Temporary reduction of salary (to be recorded in an addendum to the employment contract in the prescribed form provided by the MOHRE)
- Permanent reduction of salary (which will require an amendment to be made to the employee's employment contract signed by both parties to be lodged with the MOHRE)

The resolution also introduces the "Virtual Labour Market System" which enables non-UAE national employees to work for other employers where they are surplus to requirements for their own employer. However, their current employer would remain the primary employer and would remain liable for the employee's entitlements, such as medical insurance costs, leave costs and allowance costs, e.g. housing allowance. The Virtual Labour Market can be accessed here: <https://mohre.hyrd.com/>.

Ministerial Resolution No. 280 of 2020

This resolution has been brought in for the government to take steps to promote and protect the employment of UAE nationals in the private sector. This resolution permits the establishment of a committee to assist with job security for UAE nationals. The role of the committee will include reviewing the information provided in exit interviews submitted when the employment of a UAE national is terminated and making recommendations for measures to be introduced to try and promote stability of employment for UAE nationals.

Ministerial Resolution No. 281 of 2020

This latest resolution provides specific limits regarding the percentage of an employer's workforce that can physically continue to work from the employer's premises to 30% of the total workforce at the establishment, with certain conditions also applied to strictly observe health and safety measures, such as:

- Providing checkpoints at the entrance and exit of the workplace for temperature checks to be carried out twice daily as a minimum (upon entering and leaving work)
- Reducing the number of workers who can have meals in workplace restaurant facilities, leaving a minimum space of 2 metres between employees
- Restricting customer visits to work premises to 30% of the seating capacity

Activities relating to infrastructure projects, supply, communication, health, education, energy, banking, hospitality and entertainment and food manufacturing are exempt from the percentage restrictions.

In respect of employees working remotely, employers are required to comply with the temporary guide issued which requires that the employer provides the relevant technical equipment needed to facilitate proper home/remote working and, with this, employers should give priority to pregnant women, those aged 55 and above, those with disabilities, respiratory or chronic diseases and female workers who are mothers of children in grade nine and below.

<p>Do the requirements under Ministerial Resolutions 279, 280 and 281 of 2020 apply to Free Zone companies?</p>	<p>Not officially, as the Ministerial Resolutions specify that they only apply to companies registered with the MOHRE. However, in practice, most free zones (save for the DIFC and ADGM) have said they are applying the same or similar provisions and some may issue their own circulars to businesses operating within their free zone in this regard.</p>
<p>Will making reductions to employees' salaries cause issues for employers being in breach of the wage protection system?</p>	<p>One of the main concerns around reducing salaries or placing employees on unpaid leave has been how this will impact on the wage protection system in place for onshore employers and some free zone employers, such as companies within JAFZA, and whether or not implementing these changes could lead to a block on the employer's establishment card. In our view, the implementation of Ministerial Resolution No 279. Of 2020 should negate any issues provided that employers can evidence that they have followed the procedural steps outlined in the resolution.</p>
<p>Do employers have to pay an employee if they are required to self-isolate?</p>	<p>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.</p> <p>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 in quarantine or 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, and most employers are choosing to treat such periods of absence as sickness for their own company sick pay purposes.</p> <p>It would clearly be best practice to pay employees their normal pay in these circumstances (and particularly for those who have recently come back into the UAE or have been otherwise directed by the authorities to quarantine themselves and it would be a criminal offence for them not to self-quarantine), or to treat this period as sick leave. 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.</p> <p>Where employees are unable to come into work due to government restrictions, but cannot work from home, employers should continue to pay such employees their full salary and benefits unless a mutual agreement to the contrary has been agreed in writing with the employees.</p>
<p>What should employers do if a member of staff is confirmed as having the virus and has recently been in the workplace?</p>	<p>Employers have an obligation under the Communicable Disease Law to report suspected and confirmed cases to the Ministry of Health and Prevention (800 1111) immediately and a failure to do so will constitute a crime. Employers should also take immediate steps to contain the spread and to ascertain those individuals who have been in contact with the infected individual.</p>
<p>If the situation worsens and employers are considering closing one of their sites, do they have a right to lay off/furlough staff in these circumstances? Are they obliged to continue to pay them?</p>	<p>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. Where possible, onshore employers (and employers in free zones, such as JAFZA, where the wage protection system applies) 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.</p>

What other steps are employers taking to respond to the challenging economic situation caused by coronavirus?

There are various steps that employers are considering and implementing, particularly in light of the new Ministerial Resolutions, including:

- Compelling staff to take some of their paid annual leave entitlement. Employers in the DIFC and the ADGM should be aware that they must provide at least seven days' written notice of the requirement to take leave, unless the employee agrees to dispense with this notice requirement.
- Asking for volunteers for unpaid leave/sabbaticals.
- Reducing individuals' working hours or basic pay by consent, or introducing job-sharing arrangements.
- Bans on travel and other expenses.
- Deferral of annual pay increases and/or bonuses.

The majority of these changes can only be implemented with the consent of the employees and any changes to employees' terms and conditions should be clearly documented in writing. Under Ministerial Resolution 279 of 2020, onshore employers looking to make temporary changes to salary and/or benefits are required to conclude a "Temporary Additional Addendum" in accordance with the template provided by the MOHRE (which must be signed by both the employer and the employee and submitted to or provided to the MOHRE upon request) or, for those employers wishing to make permanent salary reductions, an amended MOHRE contract should be submitted.

Employees are more likely to consent to some of the above suggested measures if it is made clear to employees that the employer is taking such steps to minimise the need for possible redundancies and that the financial pain is being shared to at least the same extent by management.

Are redundancies permitted?

Yes, redundancies are permitted, but should be a last resort and employers need to carefully consider any arbitrary dismissal or early termination compensation risks before proceeding with redundancies. The risk of arbitrary dismissal claims may be further reduced if an employer has tried first and exhausted all other possible options, as set out under Ministerial Resolution No. 279 of 2020 as detailed above.

It also remains unclear whether the requirement to continue to pay for housing and other allowances and benefits, such as medical insurance, applies to employees whose employment has been formally terminated. Ministerial Resolution No. 279 of 2020 requires that, where an employee is surplus to requirements and listed on the Virtual Labour Market System, the employer must continue to provide such employees with housing and all of their entitlements (save for their basic salary) until the earlier of the individual obtaining authorisation to work for another employer or exiting the UAE (or the repeal of the Ministerial Resolution). This requirement appears to be in place to prevent severe hardship to employees who are not required by their sponsoring employer, but who also cannot leave the UAE due to the travel restrictions in place. It would, therefore, seem to go against the sentiment of the Ministerial Resolution if employers could terminate employees' employment without having to continue to pay these basic living costs in situations where the terminated employees remain unable to leave the country.