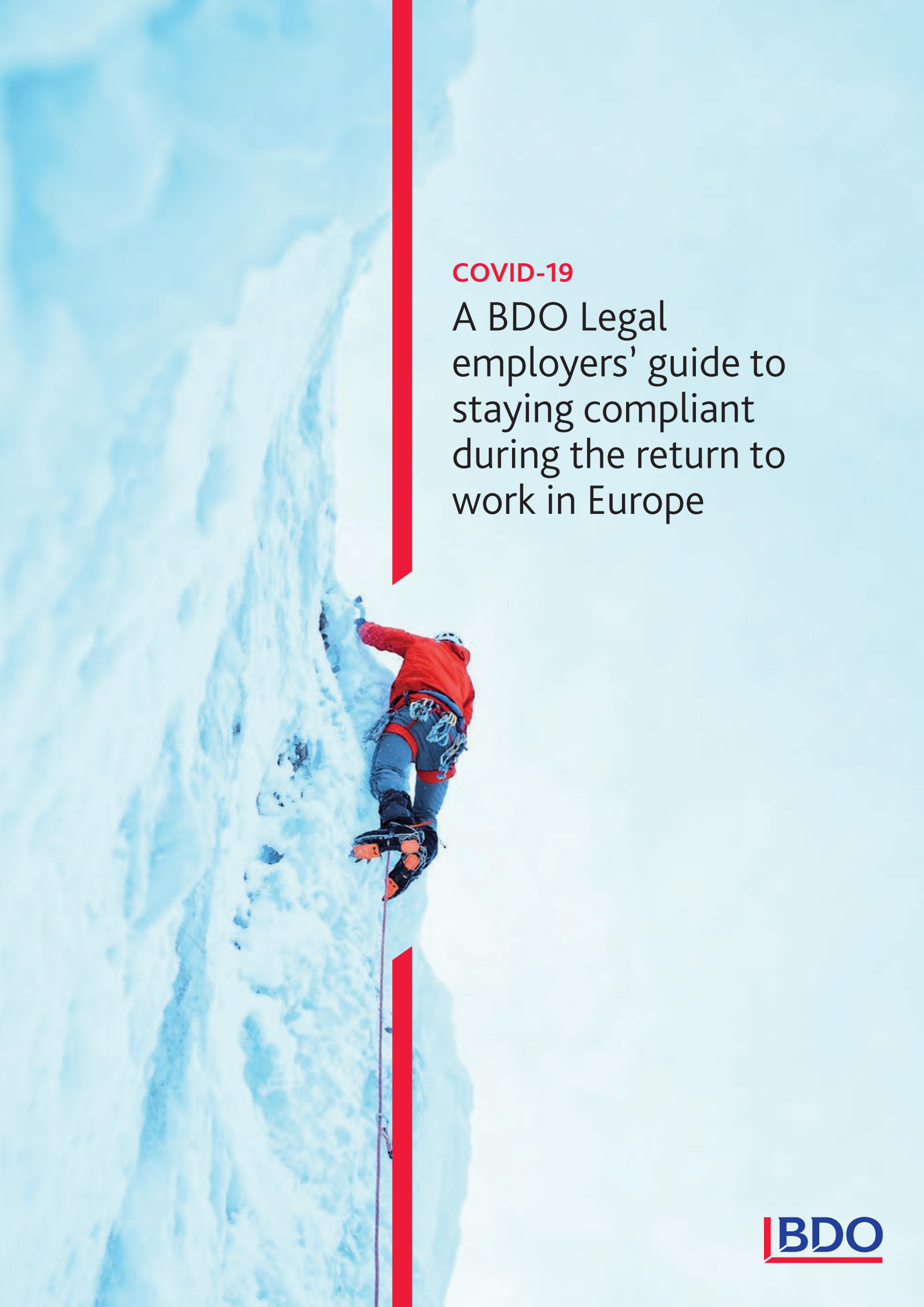


COVID-19

A BDO Legal employers' guide to staying compliant during the return to work in Europe

BDO

CONTENTS.

INTRODUCTION.

The spread of the Covid-19 virus continues to pose a threat to both health and the economy, with the workplace being one of the main settings. In order to ensure the safety of their employees and to keep operations running, employers face the challenge of developing appropriate safety policies and protecting their business from the virus. However, there still is a high degree of uncertainty as to which measures are permitted and which are perhaps even mandatory.

This brochure provides answers to the most important questions that employers in Europe are asking themselves in the context of this global pandemic and presents all relevant legal provisions for the individual countries in a clear and concise manner.

BDO Legal's local lawyers in the fields of employment law and data protection law can assist employers with the legal evaluation of individual safety measures and their legally compliant implementation.

Take a look at our quick legal compliance healthcheck on Page 54!

Unsure of whether the measures you are taking are in line with local and European regulations? Want to check if you have all the basis covered for the return to work?

BELGIUM.

JOHANNES PANNUS
BDO Legal Belgium

+32 474 39 50 10
johannes.pannus@bdo.be

LAURENCE TROUSSART
BDO Legal Belgium

+32 478 95 34 05
laurence.troussart@bdo.be

1. LEGAL FRAMEWORK

Employers must primarily comply with the EU General Data Protection Regulation (GDPR) and the Belgian Data Protection Act. The possibility of processing employee personal data in the framework of the Covid-19 pandemic will be mainly limited by Articles 6 and 9 of the GDPR.

Although employers have a principal obligation to ensure a safe and healthy work environment based on Article 20 Subs. 2 of the Employment Contracts Act and the Belgian Act on the well-being of workers, these dispositions are generally not considered specific enough to justify an exception to the fundamental prohibition of processing health data (Art. 9. Subs. 1 GDPR).

2. STATEMENTS FROM THE SUPERVISORY AUTHORITY

The Belgian Data Protection Authority has posted several statements in the context of the Covid-19 pandemic on its website, including statements specifically related to the employment context, such as:

- https://www.gegevensbeschermingsautoriteit.be/covid-19-en-de-verwerking-van-persoonsgegevens-op-de-werkvloer (guidelines and FAQ regarding employment)
- https://www.gegevensbeschermingsautoriteit.be/koorts-meten-het-kader-van-de-strijd-tegen-covid19 (general statement on measuring temperature)

3. QUESTIONS

a) Can employers collect and process information on whether an employee was on holiday in a risk area?

Yes, but only insofar as the employee agrees to share this information. The employer cannot force the employee to fill in a questionnaire regarding their whereabouts.

Based on the employment and well-being legislation, the employer has the obligation to analyse potential health risks in order to take adequate measures to ensure the health, safety and well-being of all employees.

The company doctor also has an important role in detecting and reporting health risks to the employer.

However, the Belgian Data Protection Authority is of the opinion that employees cannot be obliged to answer questions regarding the places they have visited or travelled to.

b) Can employers regularly ask their employees if they had direct contact with a sick person who had Covid-19 symptoms?

Yes, employers may ask their employees about contact with a sick person.

The company doctor is also responsible for detecting infections and informing the employer and the concerned employees who have been in contact with an infected person.

c) Are employers allowed to inform employees that a certain employee suffers from Covid-19 by mentioning the specific name?

No, based on the principles of confidentiality (Art. 5 Subs. 1 lit. f GDPR), data minimisation (Art. 5 Subs. 1 lit. c GDPR) and proportionality, revealing the identity of the specific employee is not permitted.

In most cases it is deemed not necessary (or even desirable) to mention a name.

The name of the infected person may be communicated to the company doctor or the competent public services.

d) Must employers inform health authorities if there is the risk that an employee is suffering from Covid-19?

There is no general obligation for all employers to report possible cases of Covid-19 infections. Obligations apply to specific employers, e.g. schools and retirements homes.

e) Are employees allowed to refuse a business trip to a country with high Covid-19 infection rates?

No, employees are not allowed to refuse to carry out their work. Based on the employer's right of instruction, they may instruct the employee to undertake a business trip. In each specific case, the employer will have to determine whether the economic interests of the company outweigh the possible health risks for the employee(s). The employer will need to take all possible safety measures to provide the employee with protective equipment, to organise appropriate transport and accommodation and to agree on the necessary guidelines to be respected locally, during the business trip and meetings, so that all essential safety rules (social distancing, use of masks, regular disinfection, etc.) are being complied with.

f) Quarantine due to Covid-19: Are employees entitled to continued payment of wages?

In the case of a confirmed illness, the employee will receive a medical certificate of incapacity for work, in which case they are initially entitled to continued payment of wages and later entitled to an allowance through social security as per the usual procedure in case of illness.

g) Suspected infection with Covid-19: Are employees who stay at home entitled to continued payment of wages?

If an employee stays at home because they have been declared unfit for work by a doctor due to (any) illness, they are entitled to continued payment of wages.

If an employee has not yet been declared sick, there is no entitlement to continued payment of wages for suspected but unconfirmed cases of Covid-19.

In the case an infection with Covid-19 is suspected, it is possible that a mandatory preventive quarantine measure is issued, either by the authorities or by a doctor. In that case the employee must mandatorily stay at home. If working from home is not possible for such an employee, the employer can apply for temporary unemployment and the employee will receive unemployment benefits. The employer will not pay wages.

For strictly voluntary quarantines, temporary unemployment is not possible.

h) Does the employer have to provide disinfectants, gloves and masks for employees to perform their activities?

In the first instance, the employer is obliged to organise the work in a way that respects the rules of social distancing, i.e. maintaining a distance of at least 1.5 metres between each person.

The employer is also obliged to provide a safe and healthy work environment by regularly disinfecting contact surfaces (desks, keyboards, door handles, …), to facilitate hand hygiene by providing soap/sanitisers/other disinfectants, and to provide for good respiratory hygiene (e.g. providing tissues/handkerchiefs).

Especially in circumstances where social distancing is not always or continuously possible, the employer must provide face masks.

i) Can an employer force employees to work in open-plan or shared offices?

Yes, provided the protection measures mentioned previously are respected.

j) Are employers allowed to have their employees' temperature measured daily before starting work?

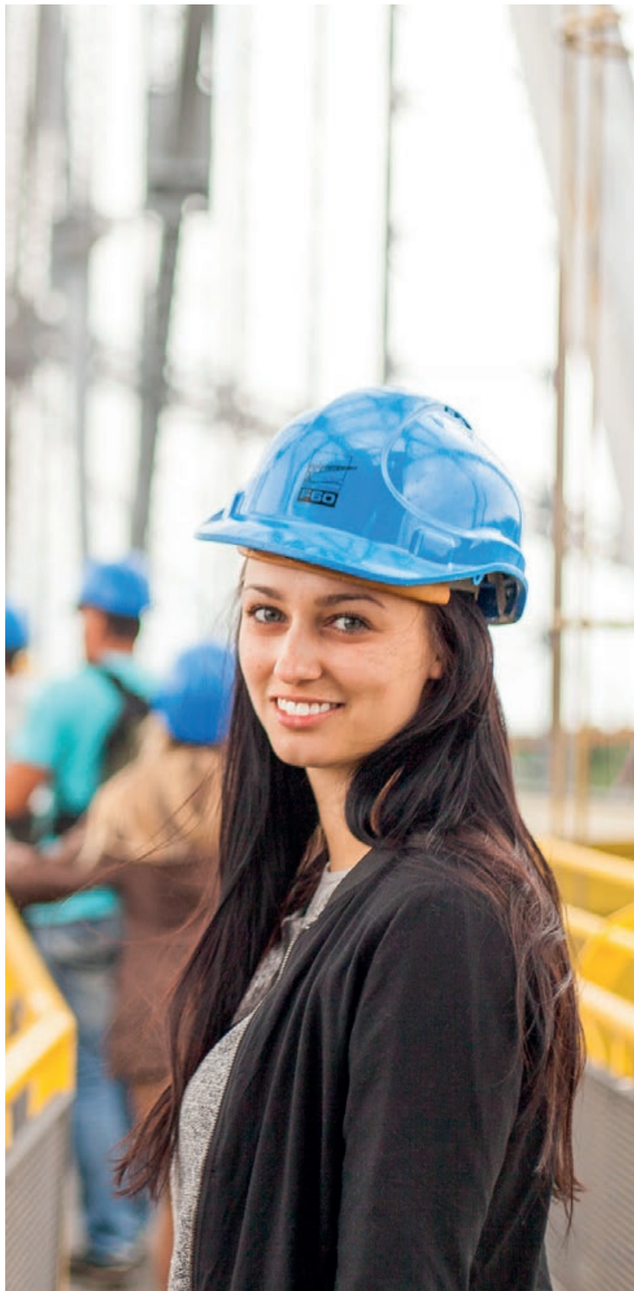
According to the Belgian Data Protection Authority, temperatures could be measured as long as the data is not processed.

If the data would be recorded so that individual employees can be identified, the Data Protection Authority is of the opinion that this is a prohibited processing of personal health data.

However, the employer may have arguments to measure the temperature of employees who have travelled to high risk areas or who have been in contact with Covid-19 patients.

k) Are employers allowed to arrange face-to-face meetings, although telephone or video conferencing may be used?

Yes, as long as the social distancing rules are respected. Companies must take necessary measures to ensure compliance with the rules of social distancing by providing for adapted meeting rooms (sufficiently large area, limitation of the number of occupants in a room, good ventilation, etc.).



FRANCE.

EMILIE DUCORPS-PROUVOST
BDO Legal France

+33 6 77 18 90 57
emilie.ducorpsprouvost@avocats-bdo.fr

1. LEGAL FRAMEWORK

In France, protection of personal data is primarily governed by the EU General Data Protection Regulation (GDPR), which applies in all Member States of the EU. At a national level, the law of 20 June 2018 and the ordinance of 12 December 2018 adjusted the French legal framework to the GDPR. More specifically, it is recalled by the French data protection authority (called the "CNIL"- see under 2. below) that Article 9 of the GDPR prohibits the processing of personal data and that under French law, employees' personal data are protected by their right to privacy.

2. STATEMENTS FROM THE SUPERVISORY AUTHORITY

In France, the data protection supervisory authority is the "Commission Nationale de l'Informatique et des Libertés" (CNIL). The CNIL made a statement regarding the collection of personal data by employers in the context of the Covid-19 health crisis that can be found through the following link:

- https://www.cnil.fr/fr/coronavirus-covid-19-les-rappels-de-la-cnil-sur-la-collecte-de-donnees-personnelles-par-les

A statement was also made about the use of so-called "smart" cameras and thermal imaging cameras to limit the health crisis, which can be found through the following link:

- https://www.cnil.fr/fr/cameras-dites-intelligentes-et-cameras-thermiques-les-points-de-vigilance-de-la-cnil-et-les-regles

3. QUESTIONS

a) Can employers collect and process information on whether an employee was on holiday in a risk area?

Under the French Labour Code, employers have a safety obligation towards their employees: they are responsible for the health and safety of their employees according to Articles L. 4121-1 and R. 4422-1 of the French Labour Code. Because of this duty, an employer is entitled to ask employees if they were on holiday in a risk area, in order to take the appropriate preventive measures to protect them.

b) Can employers regularly ask their employees if they had direct contact with a sick person who had Covid-19 symptoms?

Each employee must take care to preserve their own health and safety but also those of the people with whom they might come into contact during their professional activity according to Article L.4122-1 of the French Labour Code. Thus, an employee who works in contact with other people (colleagues and/or the public) must, whenever they may have exposed some of their colleagues to the virus, inform their employer in the event of infection or suspected infection with Covid-19. Employers are thus authorised to remind their employees working in contact with other persons of their obligation to provide individual feedback in the event of infection or suspected infection to the employer or to the competent health authorities, for the sole purpose of enabling them to adapt working conditions.

However, an employee who is working from home (teleworking) or working in isolation without contact with colleagues or the public does not have to report this information to their employer.

c) Are employers allowed to inform employees that a certain employee suffers from Covid-19 by mentioning the specific name?

In order to take the appropriate and necessary preventive measures, employers may process their employees' personal data. Only information related to the date, the identity of the person and the fact that the employee has indicated that they are infected or suspected of being infected with Covid-19 may be processed by the employer. However, in any case, the identity of the person likely to be infected must not be communicated to other employees.

d) Must employers inform health authorities if there is the risk that an employee is suffering from Covid-19?

According to the French Data protection authority (CNIL), if necessary, the employer is able to communicate to the competent health authorities the information necessary for any health or medical care of the exposed person but again, the identity of the person likely to be infected must be protected and not be communicated to other employees.

e) Are employees allowed to refuse a business trip to a country with high Covid-19 infection rates?

In principle, an employee cannot refuse a business trip except for family, medical, cost-related or security reasons. With regards to "security reasons", under the terms of Article L. 4131-1 of the Labour Code, the employee may withdraw from a situation posing a serious and imminent danger to their life or health. The employee may invoke this right when the employer does not comply with its safety obligation. Thus, if the employee feels that the conditions of the business trip are not suitable to guarantee their safety, they can refuse it. If it turns out that the employee did not have a reasonable cause to fear for their health, they will have committed a breach of this right. In this case, the employer has two means of action:

- On a disciplinary level, the employer can instigate a disciplinary sanction that can go as far as dismissal for serious misconduct;
- On a financial level, the employer can in principle make a deduction from the employee's salary, although the employee has remained at the disposal of their employer.

f) Quarantine due to Covid-19: Are employees entitled to continued payment of wages?

In the context of the health crisis, additional leaves were put in place: "leave for childcare" and "leave for vulnerable persons". Employees who could not work for these reasons have been placed under "partial activity" (technical unemployment scheme) since 1 May 2020. Prior to 1 May 2020, these employees were entitled to daily allowances from the French Social Security System and the complementary legal compensation paid by their employer. Since then, they receive an allowance for "partial activity" if they are unable to carry out their professional activity, in particular if there is no possibility for them to work from home.

g) Suspected infection with Covid-19: Are employees who stay at home entitled to continued payment of wages?

Employees on sick leave, whether or not they are suffering from Covid-19, are entitled to daily allowances from the French social security system (IJSS) without any waiting period from 24 March until the end of the state of health emergency, i.e. 10 July, 2020.

These employees also benefit from the complementary legal compensation from their employer:

- without a waiting period from 24 March and until 10 July 2020;
- without any condition on seniority from 12 March and until 31 December 2020.

h) Does the employer have to provide disinfectants, gloves and masks for employees to perform their activities?

As mentioned above, the employer has a safety obligation towards its employees: they must take all possible hygiene measures to ensure the health and safety of their employees. The French Ministry of Labour has drawn up a National Protocol giving guidelines on the rules to be observed to ensure the health and safety of employees. Among these rules, it is stated that the employer must provide its employees with masks and gloves when social distancing cannot be respected. In any case, the employer must provide disinfectants or soaps to employees.

i) Can an employer force employees to work in open-plan or shared offices?

Yes, employers can obligate their employees to work in open-plan or shared offices. However, social distancing measures must be respected in order to guarantee the health and safety of the employees. According to the National Protocol, one person per office is preferred, but if the offices cannot be individualised, face-to-face set-ups should be avoided and social distancing of 1 metre should be respected.

j) Are employers allowed to have their employees' temperature measured daily before starting work?

The French Ministry of Labour discourages employers from taking their employees' temperature. It is rather advised to let employees take their temperature themselves before going to work if they suspect they have a fever or any symptoms suggestive of Covid-19. Employers are prohibited from creating files containing temperature data on their employees. It is also forbidden for them to set up automatic temperature recording tools (such as thermal cameras).

Nevertheless, it is still possible to have the employees' temperature taken before they start work. In this case, internal rules must provide for the implementation of this measure. Employees must be informed in advance of the implementation of this measure and it must be applied in such a way as to preserve their dignity and protect their personal data. Since this is not a mandatory measure, the employees may refuse compliance and the employer may be required to pay the wage corresponding to the day lost if access to the workplace is refused.

k) Are employers allowed to arrange face-to-face meetings, although telephone or video conferencing may be used?

If possible, employers should give preference to telephone or video conferencing over face-to-face meetings. They are still allowed to arrange face-to-face meetings but, in this case, they must ensure the following safety measures to protect the employee: ensure social distancing of 1 metre between employees or install protective devices (e.g. transparent screen) if this distance cannot be guaranteed and ventilate the room by keeping the windows open or through the use of a ventilation system.

GERMANY.

FRANZISKA HÜGEL-SPOHNHEIMER
BDO Legal Germany

+49 152 56150226
franziska.huegel-spohnheimer@bdolegal.de

JULIA DÖNCH
BDO Legal Germany

+49 170 4225041
julia.doench@bdolegal.de

1. LEGAL FRAMEWORK

If an employer processes German employees' personal data in the event of prevention or investigation measures due to the Covid-19 pandemic, they must primarily comply with the EU General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG). Especially Articles 6 and 9 of the GDPR and Sections 22 and 26 of the BDSG are the key provisions in this context. Special characteristics in connection with the prevention of infections may result from the German Infection Protection Act (IfSG).

2. STATEMENTS FROM THE SUPERVISORY AUTHORITY

There have been several statements from the different data protection supervisory authorities competent for the individual federal states in Germany. As an example, you can find the FAQ of the data protection supervisory of Baden-Württemberg at https://www.baden-wuerttemberg.datenschutz.de/wp-content/uploads/2020/03/FAQ-Corona.pdf and of Rheinland-Pfalz at https://www.datenschutz.rlp.de/de/themenfelder-themen/beschaeftigtendatenschutz-corona/.

3. QUESTIONS

a) Can employers collect and process information on whether an employee was on holiday in a risk area?

Employers are obligated to protect their employees from being infected by another employee (so-called duty of care). For this purpose, an employer may ask employees returning from holiday whether they visited a risk area. The legal basis for this processing of employees' personal data necessary for the provision of occupational medicine is Article 6 Subs. 1 lit. c, Article 9 Subs. 1, Subs. 4 of the GDPR and Section 26 Subs. 1 S. 1, Section 22 Subs. 1 Nr. 1 lit. b of the BDSG.

b) Can employers regularly ask their employees if they had direct contact with a sick person who had Covid-19 symptoms?

Article 6 Subs. 1 lit. c, Article 9 Subs. 1, Subs. 4 of the GDPR and Section 26 Subs. 1 S. 1, Section 22 Subs. 1 Nr. 1 lit. b of the BDSG also allow the employer to ask their employees whether they had direct contact with a sick person who had Covid-19 symptoms. An employee does not have to tell the employer who the contact person is.

c) Are employers allowed to inform employees that a certain employee suffers from Covid-19 by mentioning the specific name?

Employers need to identify those employees who had previous contact with a sick employee and warn them about a possible infection. But in doing so, employers must refrain from giving a specific name as long as group-related information is possible. In cases where group-related measures are not an option, employers must seek help with the competent public health authority. Naming a specific person that is sick or suspected of being sick has to be the last resort to localise and contain sources of infection.

d) Must employers inform health authorities if there is the risk that an employee is suffering from Covid-19?

Accordingly to Section 6 Subs. 1 Nr. 1 lit. f, Section 36 Subs. 1 Nr. 1-6 of the IfSG, there is an obligation to inform the competent public health authority for medical doctors, members of other medical or nursing professions and heads of institutions such as schools, nurseries and preschools, nursing homes, retirement homes and other mass accommodation. Other employers are required to provide public health authorities with information on sick employees only upon request and in accordance with Section 16 Subs. 1, Subs. 2 S. 3 of the IfSG.

e) Are employees allowed to refuse a business trip to a country with high Covid-19 infection rates?

The instruction to undertake a business trip is generally covered by the employer's right of direction and may only be refused in exceptional cases. In each individual case, the risk associated with the business trip for the employee must be weighed against the employer's interest in the business trip. If important interests for the employer, e.g. an important business deal, are at stake during the business trip, it may also be permissible to order a business trip to a country with high Covid-19 infection rates. Then, the employee is not allowed to refuse such an order. However, the employer will then have to take safety measures to protect the employee, e.g. provide him with protective equipment, choose the means of transport in such a way that the risk of infection is kept as low as possible and, if necessary, issue guidelines for conduct.

f) Quarantine due to Covid-19: Are employees entitled to continued payment of wages?

Under certain circumstances, the competent authorities may, in accordance with Section 28, 30 of the IfSG, order a quarantine with prohibition of the pursuit of the previous occupation in accordance with Section 31 S. 2 of the IfSG. In cases where working from home is not possible, the employee is not entitled to continued remuneration but the employer must pay compensation in the amount of the salary for the duration of the quarantine, up to a maximum of six weeks, whereby the amounts paid out will be reimbursed by the authorities to the employer in accordance with Section 56 of the IfSG upon application. Insofar as working from home is possible for the employee and they perform their work from home, the employee shall retain their entitlement to remuneration even during the period of quarantine.

g) Suspected infection with Covid-19: Are employees who stay at home entitled to continued payment of wages?

The employer may release employees from work in the workplace for reasons of social distancing. Notwithstanding this, however, and if working from home is not possible, the employer is in default of acceptance in such cases, so that the wage claim continues to exist. If the release is granted due to justified suspicion of infection (not in the case of overcautiousness), an employer's right of recourse against the public health authority might be considered analogous to Section 56 Subs. 5 S. 2 of the IfSG if the health authority has not taken action - for example due to overwork - and (only) therefore the state compensation pursuant to Section 56 Subs. 5 of the IfSG does not apply.

h) Does the employer have to provide disinfectants, gloves and masks for employees to perform their activities?

In exercising its general duty of care, the employer must take into account the welfare and legitimate interests of employees in order to prevent damage to the employee. Therefore, the employer is also obliged to comply with the general conditions for the observance of Covid-19-related hygiene measures at the workplace. In particular, the employer must also provide disinfectants, gloves and masks to ensure compliance with these hygiene rules in the workplace.

i) Can an employer force employees to work in open-plan or shared offices?

Even during the Covid-19 crisis, it is not per se excluded that employers ask their employees to perform their work in open-plan or shared offices. However, employers must draw up a resulting risk assessment and take the necessary protective measures for the benefit of employees. Depending on the circumstances in each individual case, e.g. the following might be considered: installation of protective screens between workstations, maintaining the greatest possible safety distances between workstations, regular and adequate ventilation of the work areas, and requiring employees to comply with protective measures (hygiene rules, wearing mouth and nose masks when leaving the workplace, etc.).

j) Are employers allowed to have their employees' temperature measured daily before starting work?

In principle, employers are not entitled to grant their employees access to their workplace only after a daily temperature measurement. This affects the constitutionally protected personal rights of employees. Something different may apply, however, if there are already suspected cases of infection in the company, if an employee was in a risk area or if the company is located in a region in which there are demonstrably infected persons. Then there may be good arguments for such measures.

k) Are employers allowed to arrange face-to-face meetings, although telephone or video conferencing may be used?

As part of its duty of care and in order to protect the health of employees, employers are required to reduce face-to-face meetings to a minimum, i.e. to those situations in which the success of the meeting cannot be achieved equally well by video or telephone conference. If a face-to-face meeting is necessary, the employer will have to take safety measures to protect the employees, e.g. ensure sufficient safety distance between the participants of the meeting and good ventilation of the meeting room.

HUNGARY.

EMESE SIMON
BDO Legal Hungary
+36 30 688 0584
emese.simon@bdolegal.hu

ATTILA MÁRIÁS
BDO Legal Hungary
+36 1 235 3010
attila.marias@bdo.hu

1. LEGAL FRAMEWORK

- Act I on Labour Code
- Act XCIII on Occupational Safety
- EU General Data Protection Regulation (GDPR)
- 47/2020 (III.18) Government Decree
- Act LVII on the End of the State of Emergency.

2. STATEMENTS FROM THE SUPERVISORY AUTHORITY

The Hungarian National Authority for Data Protection and Freedom of Information issued a recommendation for employers in connection with data processing relating to Covid-19 health privacy data (NAIH/2020/2586: https://naih.hu/files/NAIH_2020_2586.pdf).

The Occupational Safety Department of the Ministry for Innovation and Technology published a work safety guide for employers for the return to work after the quarantine (http://ommf.gov.hu/letoltes.php?d_id=8009).

3. QUESTIONS

a) Can employers collect and process information on whether an employee was on holiday in a risk area?

The responsibility for compliance with occupational health and safety requirements lies with employers. Consequently, an employer must implement all measures which are suitable to protect employees' health and to avoid occupational diseases.

Employees are obliged to cooperate with their employer and must notify their employer about all facts, data and conditions that may be relevant with regards to the rights and obligations arising from the employment (Section 6 of the Labour Code).

Based on the employee's cooperation obligation and considering the above mentioned health and safety aspects, the employee is, without any specific instruction from the employer, obliged to disclose if they might represent a possible threat risk to other workers' health for whatever reason.

b) Can employers regularly ask their employees if they had direct contact with a sick person who had Covid-19 symptoms?

The employer, due to the occupational health and safety requirements, may issue a policy or other instruction in connection with the epidemic. In this policy or instruction the employer may prescribe a reporting obligation for the employees in relation to themselves or others, including the case of direct contact with a sick person.

These measures serve to maintain a safe working environment, therefore it is firstly an occupational safety issue, but not exclusively. In this case the statement (or scanning by questionnaires) also results in the processing of personal (and in some cases, sensitive) data of employees. Employees cannot be required to provide data regarding health or medical records, only that the employee noticed a risk factor that is specified in the policy or instruction (direct contact with a sick person who had Covid-19 symptoms).

c) Are employers allowed to inform employees that a certain employee suffers from Covid-19 by mentioning the specific name?

As the cooperation obligation refers not only to employees but to employers as well, the employer may, after assessing the risks and advantages of such disclosure, inform employees if a certain colleague, working in their close environment (i.e. in the same team) suffers from Covid-19. It may however, not be reasonable to inform those employees (mentioning the specific name) who do not have any direct contact with the sick employee.

d) Must employers inform health authorities if there is the risk that an employee is suffering from Covid-19?

Employers are only obliged to inform the health authorities if the employee was infected while at work.

If an employer notices signs of infection in an employee, they have to assess whether the employee is in an appropriate condition for work. In this case the employer must instruct the employee to leave the workplace and consult a doctor. The employer's only competence is to identify the condition of being fit for work, but the actual assessment of incapacity or disease is a medical question. Without a medical report, the employer can only assess that the employee is unfit for work, but as to the entitlement for sick leave or sick pay the employer needs the appropriate documentation issued by a doctor.

e) Are employees allowed to refuse a business trip to a country with high Covid-19 infection rates?

An employee has to fulfil their commitments arising from the employment contract and can only refuse to perform their employer's instructions in cases defined by law.

Section 55 Subs. 1 of the Labour Code defines the situations when an employee may be exempt from the requirement of availability and work duty, furthermore when they must or may refuse to fulfill instructions from their employer.

"Employees shall be exempt from the requirement of availability and work duty:

a) if they have an incapacity to work [In Hungarian: keresőképtelen],

[…]

j) for any duration of absence due to personal or family reasons deserving special consideration, or as justified by unavoidable external reasons; furthermore

k) for any duration specified by employment regulations."

Section 54 Subs. 1-3 of the Labour Code declares that employees can refuse to perform an instruction if it results in direct and grave risk to the health of others or to the environment. Furthermore, employees may (but are not obliged to) refuse to perform an instruction if it violates the provisions of employment regulations, or it results in direct and grave risk to the life, physical integrity or health of the employee performing said instruction. In the event of a refusal to work, the employee must still be available to perform work.

If the meeting or travel imposes a direct and grave risk to the health of the employee, they may refuse to attend the meeting or to travel. The burden of proof lies with the employee in this respect.

In our view, this may be the case if the meeting takes place in or the employee must travel to an area that is highly affected by Covid-19.

f) Quarantine due to Covid-19: Are employees entitled to continued payment of wages?

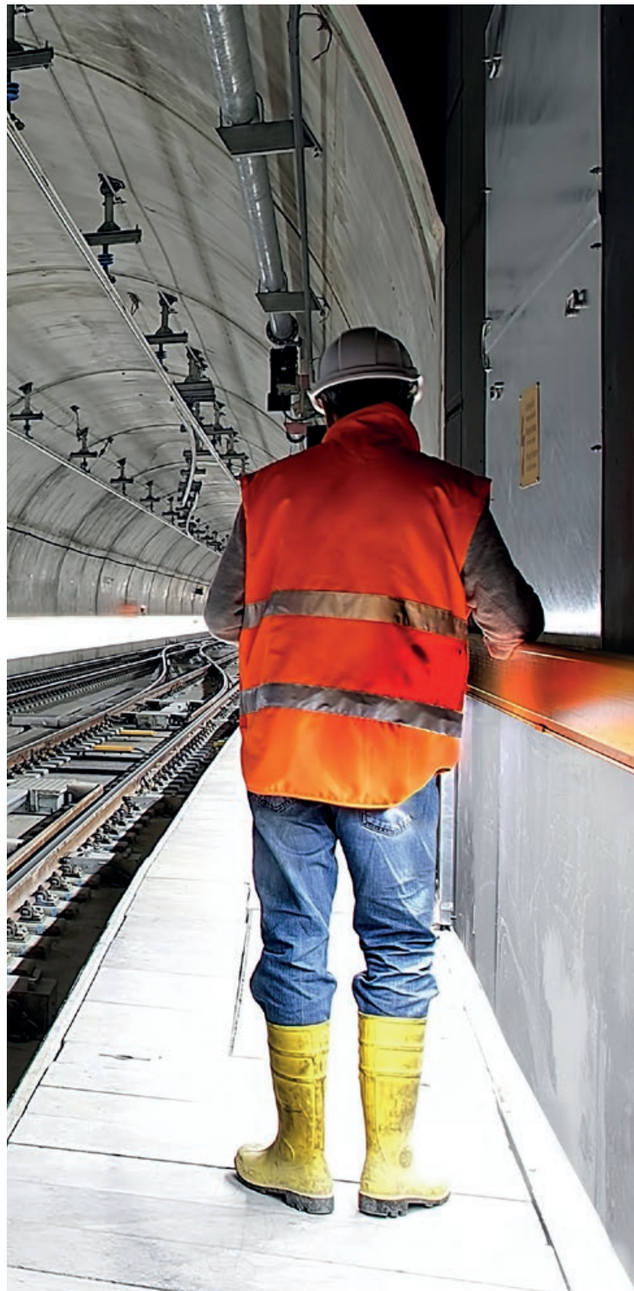
Employees shall be exempt from work if they are unfit to perform their work obligations. Employees may be exempt from work on account of their considerable personal or family reasons, or as justified by unavoidable external reasons. The employer, due to occupational health and safety requirements, may instruct the employees to suspend the performance of their work obligations.

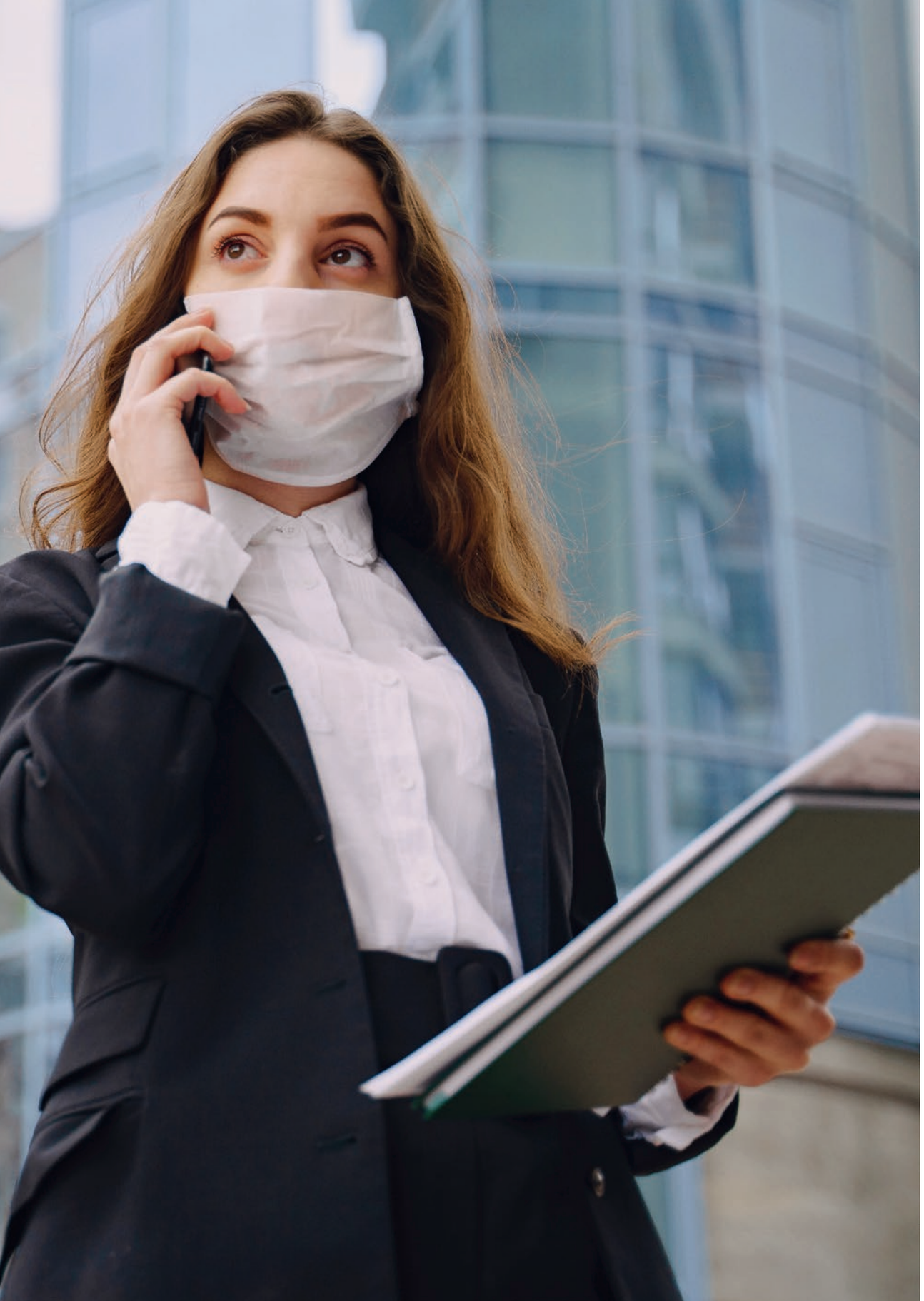
According to the Labour Code, if the employer does not fulfil its obligation to provide work to the employees during the scheduled working time, the employees will be entitled to their base wage, unless an unavoidable external reason led to this situation (*downtime*, in Hungarian: *állásidő*). Unavoidable external reasons would be for example an epidemiological measure ordered by an authority that directly affects the operation of the employer. We note however, that the mere suspension of work (without actual epidemiological measures) or the fact that the employer has less work to allocate to the employees, even if it is directly connected to Covid-19, would not qualify as an unavoidable external situation, therefore the employer would be obliged to pay wages. If the quarantine measures did not directly prescribe the closure of the employer's operations (as in the case of restaurants, theatres etc.), the employer would have to continue to pay wages, even if the employees had been sent home.

g) Suspected infection with Covid-19: Are employees who stay at home entitled to continued payment of wages?

If an employee is infected with Covid-19, they are exempt from working for reasons of incapacity. For the first 15 days of sickness, the employer has to pay wages, but as from the 16th day, social security will pay the allowance.

The mere suspicion of being infected (without being actually sick, so being unfit for work) is not a reason for the employee to stay home, however, the employer may instruct the employee to do so. In this latter case, the employer has to pay wages. However, if the employee needs to stay home due to an official quarantine order, they will be entitled to social security allowance.





h) Does the employer have to provide disinfectants, gloves and masks for employees to perform their activities?

The employer, due to occupational health and safety requirements, may issue a policy or other instruction in connection with the epidemic. In this policy or instruction the employer may prescribe certain safety measures. These measures serve to maintain a safe working environment, therefore it is firstly a work safety issue, but not exclusively. Such measures may prescribe the wearing of masks or gloves and using disinfectants. Currently, however, providing disinfectants, gloves and masks is not a general employer obligation in Hungary.

i) Can an employer force employees to work in open-plan or shared offices?

The responsibility for compliance with occupational health and safety requirements lies with employers. Consequently, an employer must implement all measures which are suitable to protect employees' health and to avoid occupational diseases.

If the employer could organise the work safely in an open-plan or shared office, the employee must fulfil their commitments arising from the employment contract and can only refuse to perform their employer's instructions in the cases listed by law (Section 55 Subs. 1 of the Labour Code and Point e) above).

j) Are employers allowed to have their employees' temperature measured daily before starting work?

The 47/2020 (III.18) Government Decree has established the right for the employer to take necessary and justified measures to monitor employees' state of health in relation to Covid-19. In view of this, employers can measure employees' temperatures on a daily basis. Act LVII on the End of State of Emergency declares that this right is maintained until 1 July, 2020. However, the Hungarian data protection authority (National Authority for Data Protection and Freedom of Information of Hungary) has elaborated that in its view, it is not lawful to generally apply the taking of temperature with respect to all employees, and as such measures can only be reasonably applied in justifiable cases.

k) Are employers allowed to arrange face-to-face meetings, although telephone or video conferencing may be used?

The responsibility for compliance with occupational health and safety requirements lies with employers. Consequently, an employer must implement all measures which are suitable to protect employees' health and to avoid occupational diseases.

If the employer can provide a safe working environment, they are also allowed to arrange face-to-face meetings.

However if an employee becomes infected with Covid-19 at the workplace in the course of their work (e.g.: due the participation in a face-to face meeting), this may be classified as an occupational disease. In this case, the employer would be considered responsible.

Point 1/D of Section 87 of Act of XCIII on Labour Safety declares:

"'Occupational disease' shall mean any acute and chronic disease contracted at work or while engaged in an occupation, or any chronic disease diagnosed following the performance of work that:

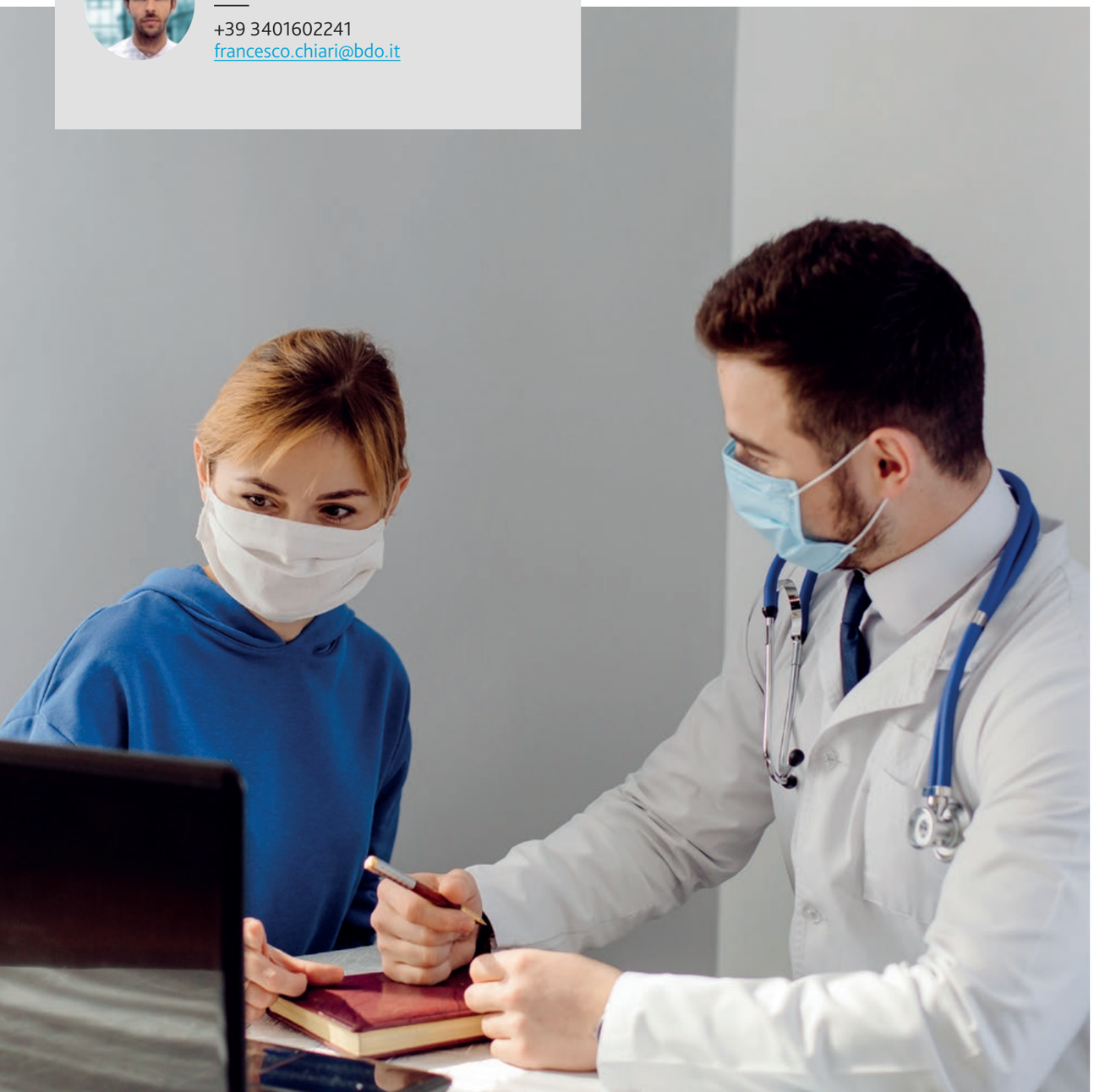
a) is closely related to work or occupation, and that may be attributed to physical, chemical and biological factors, psychological stress or ergonomic considerations arising at work or during the work process;

b) is attributed to the degree of engagement of the worker if greater or lesser than normal.".

ITALY.

FRANCESCO CHIARI
BDO Legal Italy

+39 3401602241
francesco.chiari@bdo.it



1. LEGAL FRAMEWORK

Processing personal data in Italy is mainly regulated by the EU General Data Protection Regulation (GDPR) and by Legislative Decree n. 196/2003 (hereinafter the Italian Privacy Code). When it comes to the processing of personal data of employees, the main source of regulations are the same.

The management of employment issues during the Covid-19 crisis, including all and any privacy aspects, has been regulated by a very wide range of legislative decrees, law decrees, ministerial decrees and agreements between the Government and trade unions, which have tried to adapt the carrying out of work activities to the current situation and to limit the organisational freedom of the employer.

These particular clauses have found their way into the existing legislative structure (with specific reference to work-related security legislation) which has always been aimed at balancing the employer's decision on how to organise employees' activity with the protection of employees' safety and integrity.

One of the most relevant sources of regulations on working activities with relation to Covid-19 is the Protocol signed by and between the Italian Government and Trade Unions on 24 March, later reviewed on 24 April 2020 (hereinafter the Protocol), which has been bound by all the latest ministerial and government decrees, the latest of which is the Ministerial decree dated 11 June 2020.

2. STATEMENTS FROM THE SUPERVISORY AUTHORITY

In Italy the Supervisory Authority for privacy issues, the so-called *"Garante privacy"*, has issued many opinions and general notifications over the last months, to give employers (and employees) a detailed overview on the impact of government measures on privacy. The FAQ provided by the *Garante* is worth highlighting because they provide many useful clarifications (link at https://www.garanteprivacy.it/temi/coronavirus/faq#lavoro).

3. QUESTIONS

a) Can employers collect and process information on whether an employee was on holiday in a risk area?

As per the Protocol, employees are obliged to share with their employer any Covid-19-related information, such as returning from high risk countries. So the main responsibility of the employer, according to Article 1 of the Protocol, is to inform all employees of their compulsory legal obligation with regard to Covid-19 prevention, such as:

- stay at home in case of fever or other flu-like symptoms;
- not come to work if any risk situation occurs (such as flu-like symptoms, having travelled to high risk countries);
- inform the employer of any contact with someone infected with Covid-19 and of any Covid-19 risk situation, according to law.

b) Can employers regularly ask their employees if they had direct contact with a sick person who had Covid-19 symptoms?

As explained above, employees have a legal obligation to inform their employer about any contact with a person diagnosed as having Covid-19 or exhibiting Covid-19 symptoms. In our experience, employers generally provide a short self-declaration to be signed by the employee, where the employee declares, based on their knowledge, not to have been in specific high risk situations and not to have been in contact with anyone infected with Covid-19 in the last 14 days.

c) Are employers allowed to inform employees that a certain employee suffers from Covid-19 by mentioning the specific name?

No, according to our view employers should avoid any communication of the sick employee's personal data to other employees. It should be underlined that, even according to the GDPR, sensitive employee data should be only be processed following specific protocols, such as by a professional with the obligation to preserve confidentiality.

We believe there would not be a situation in which, notwithstanding the need to protect and safeguard the health of all the other employees, sharing the name of those employees suffering from Covid-19 would be justified.

d) Must employers inform health authorities if there is the risk that an employee is suffering from Covid-19?

Yes, absolutely. More precisely the employer, along with the company doctor, should promptly inform the medical authorities of any risk situation related to its employees, so that the medical and governmental authorities are able to identify all Covid-19 cases.

e) Are employees allowed to refuse a business trip to a country with high Covid-19 infection rates?

Article 8 of the Protocol formally bans all national and international business trips. This prohibition was designed in the context where moving from one city to another was strictly forbidden in all the Italian State.

According to our interpretation in the current situation, such a prohibition, even if formally existing, cannot be deemed as effective and, therefore, employees should not be empowered with the authority to refuse a business trip, even to countries with high Covid-19 infection rates.

In fact, refusal by an employee to go on a business trip would constitute a refusal to carry out their work activity and may be challenged by the employer with disciplinary action.

The employer, on its part, has the obligation to protect employees' health and to provide all personal protection devices (so called *dispositivi di protezione individuale*).

f) Quarantine due to Covid-19: Are employees entitled to continued payment of wages?

Yes. According to Italian law, employees who are obliged to stay at home due to sickness and/or illness are always entitled to receive payment of wages, within a maximum period of time.

According to the main interpretation, as confirmed by INAIL (*istituto Nazionale per l'Assicurazione contro gli infortune sul lavoro*) with its note of 20 May 2020, Covid-19 infection is deemed to be a work-related illness (*infortunio sul lavoro*) and so gives employees the right to be paid when they are ill.

g) Suspected infection with Covid-19: Are employees who stay at home entitled to continued payment of wages?

Yes, the employee will be entitled to receive payment of wages, because the decision to not come to work is not theirs. There is still a legal prohibition on leaving home in cases of infection and/or suspected infection with Covid-19, as provided by the recent Ministerial Decree of 11 June 2020.

h) Does the employer have to provide disinfectants, gloves and masks for employees to perform their activities?

As part of its general duty of care (Article 18 of Legislative Decree n. 81/2008), employers must provide their employees with the individual protection devices (*dispositivi di protezione individuale*) needed to lower any specific work-related risk.

Therefore, the employer is obliged to provide its employees with disinfectants, gloves and masks, with particular reference to those cases where other organisation and prevention measures are not possible (or suitable) and, especially, when social distancing between the employees is less than 1 metre, as clarified by the Protocol.

i) Can an employer force employees to work in open-plan or shared offices?

Yes, the employer can require their employees to work in open-plan or shared offices, where in such cases the provision of individual protection devices would become fundamental. The employer cannot be obliged to continue having its employees work from home even if the Protocol, and other recent legislative decrees, facilitates and support the same: working from home is an option and is the employers' decision only and cannot become an obligation. That said, working from home could be considered as a prevention measure, which could be adopted by the employer to reduce the risk of Covid-19 infection, according to Legislative Decree n. 81/2008.

To summarise, the employer should not be "encouraged" to call employees back to work, because that would lead to a) an increase in costs to minimise infection risk and b) a risk for the employer's liability whenever one (or more) employee gets infected.

j) Are employers allowed to have their employees' temperature measured daily before starting work?

Yes, Article 2 of the Protocol authorises employers to check employees' temperature before they come to work. This issue has actually not been widely discussed, which gives rise to two different types of problem.

Firstly, any evaluation related to an employees' physical state, as well as their ability/capacity to work, must be carried out by the company doctor, as the employer is prohibited to make such an evaluation according to Article 5 of Law n. 300/1970. This means that, theoretically, the employer does not have the authority to stop an employee entering the working area if their body temperature is over 37.5 degrees, as this could be interpreted as a refusal by the employer to allow the employee to work which would be a potential breach of its contractual obligations.

Moreover, checking employees' temperature means that a particular category of personal data is processed and, consequently, the processing should be carried out by a professional, who is obliged to keep the information confidential, as in the case of a doctor.

k) Are employers allowed to arrange face-to-face meetings, although telephone or video conferencing may be used?

Face-to-face meetings are not recommended, in light of employers' responsibility to lower the Covid-19 infection risk as much as possible. They are not, however, forbidden as long as the meetings are carried out with the strict adoption of individual protection measures, particularly when employees are close to one another.

As explained above, the issue should be seen more from a decision of convenience for the employer (in terms of costs and in terms of potential liability) than from an exclusively prohibition/permission perspective.

LATVIA.

ROLANDS ZIGURS
BDO Legal Latvia

+371 67222237
rolands.zigurs@bdolaw.lv

1. LEGAL FRAMEWORK

The Covid-19 pandemic has become a challenge not only for health and safety regulations, but also for the right to privacy and protection of personal data. To process employees' personal data in Latvia, employers must comply with EU General Data Protection Regulation (GDPR) and Personal Data Processing Law (PDPL). During and after the emergency situation in Latvia, a set of regulatory enactments were adopted to reduce the risks of Covid-19, also implementing various restrictions and recommendations that must be taken into account by employers (in Latvian available at: https://likumi.lv/ta/tema/covid-19, in English available at: https://likumi.lv/p/en/covid-19).

2. STATEMENTS FROM THE SUPERVISORY AUTHORITY

The Data State Inspectorate, which is the main authority for the supervision of the lawful processing and protection of personal data, has issued some explanatory publications regarding data and privacy protection during the Covid-19 pandemic (Covid-19 section with FAQs and news available here at: https://www.dvi.gov.lv/lv/covid-19/). The State Labour Inspectorate has published short information notices regarding employment during the presence of Covid-19 (recommendations and answers available at: http://www.vdi.gov.lv/lv/darba-tiesiskas-attiecibas/valsts-darba-inspekcijas-ieteikumi-darba-devejiem-un-darbiniekiem-covid-19-izplatibas-laika/).

3. QUESTIONS

a) Can employers collect and process information on whether an employee was on holiday in a risk area?

In the view of the Latvian supervising authority, the collection, organisation, structuring, storing and processing of employees' personal data, including health data, is the responsibility of the employer. Employers' legal obligation to ensure safe and healthy working conditions derives from employment law. To fulfil this obligation, employers may obtain information on whether an employee has been in a high-risk country within the last 14 days. This information may help to make decisions regarding the management of Covid-19 within company.

b) Can employers regularly ask their employees if they had direct contact with a sick person who had Covid-19 symptoms?

The Data State Inspectorate explains that employers may obtain information from employees whether they have been in contact with a person who is either infected with Covid-19 or with an infected person's contact persons. The information obtained makes it possible to prevent potential health risks to other employees.

c) Are employers allowed to inform employees that a certain employee suffers from Covid-19 by mentioning the specific name?

The employer has the right to inform employees that Covid-19 has been diagnosed within the team without disclosing the employee's name (or any other information relating to an identified or identifiable person) to inform employees that they must comply with the health and safety measures for Covid-19 set by the competent authorities.

d) Must employers inform health authorities if there is the risk that an employee is suffering from Covid-19?

According to the Data State Inspectorate's opinion, an employer's legal obligation to ensure safe and healthy working conditions also means the employer has the right to inform the competent authorities, including reporting to the State Police and Centre for Disease Prevention and Control (CDPC), if an employee could be infected with Covid-19.

e) Are employees allowed to refuse a business trip to a country with high Covid-19 infection rates?

An employee's obligation to go on a business trip must be included in the employment contract, however each time before sending an employee on a business trip, the employer issues an order specifying the place of the business trip, the procedure for the reimbursement of expenses and any other issues. At the same time, the Labour Law stipulates that such orders from the employer that would worsen the position of the employee are void. This means that if going on a business trip during Covid-19 is likely to pose a risk to the employee's health, then the employee may have the right to refuse to go on the business trip. However, it would always be advisable to negotiate with the employer about the best solution to the situation, such as rescheduling the planned business trip or reimbursement of living expenses after returning from high-risk countries during the 14-day quarantine period (State Revenue Service explanation available at: https://www.vid.gov.lv/lv/komercsabiedriba-nosutija-darbinieku-komandejuma-vai-darba-brauciena-un-kad-arkartas-situacijas-del).

f) Quarantine due to Covid-19: Are employees entitled to continued payment of wages?

If an employee is subject to home quarantine, they cannot go to work or other public places. In this case, the employee may, if the nature of the work allows it, continue to work from home and receive remuneration accordingly.

In cases where the nature of the work does not allow for it to be done at home, the employer must pay a downtime allowance. However, this compensation does not have to be paid if the downtime has occurred due to the employee's own fault..

g) Suspected infection with Covid-19: Are employees who stay at home entitled to continued payment of wages?

If an employee is unwell or has Covid-19 symptoms, they may ask the employer to allow them to work from home and thus receive remuneration. On the other hand, if a person has been in contact with a person infected with Covid-19 or has symptoms and is unable to work due to being unwell, they are also entitled to sick leave and compensation from the state budget.

If the employee feels unwell, they will be paid by the employer for the first 10 days during the sick leave and, if exceeding this period, the state will grant sickness benefit.

h) Does the employer have to provide disinfectants, gloves and masks for employees to perform their activities?

Pursuant to Article 4 Subs. 1 Nr. 4 of the Employment Protection Law, employers must take employment protection measures to avoid possible working environment risks or to reduce unavoidable risks. Covid-19 threats may be reduced by providing protective shields, masks, disinfectants, gloves etc. for employees. During the Covid-19 pandemic employers are obliged to evaluate possible risks depending on the nature of the work and the number of employees in the workplace. However, it also remains the employees' responsibility and obligation to take care of their own health and safety and the health and safety of persons who are or may be affected by them.

i) Can an employer force employees to work in open-plan or shared offices?

When arranging the work environment, the employer must take care not to pose risks to the safety of employees. Open-plan offices are a convenient solution for organising team work, however, during Covid-19, the risk of spreading the virus in such an environment is much higher. Given that the employer has a legal obligation to ensure a healthy environment, the use of an open-plan office should be assessed to reduce the risks of Covid-19 and, if necessary, warning signs should be placed to determine the number of employees working on site, determining distance or deciding to work remotely.

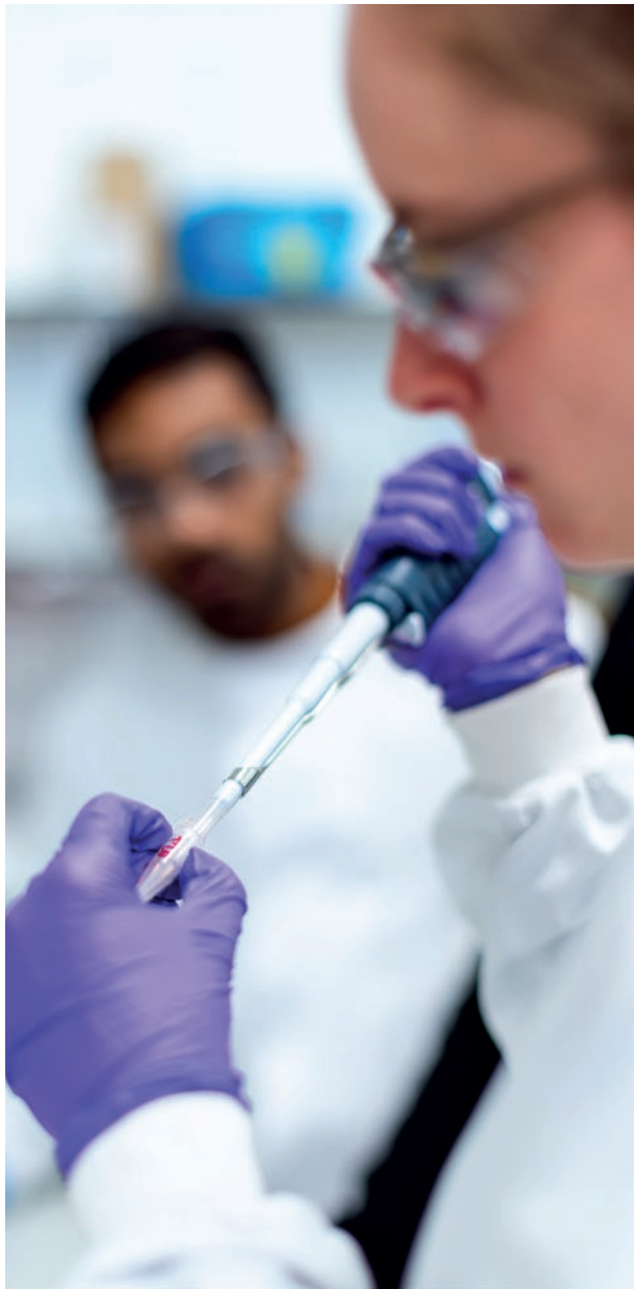
j) Are employers allowed to have their employees' temperature measured daily before starting work?

For prevention purposes, the employer may measure the temperature of employees to determine whether or not the employee can be admitted to the workplace, but may not store or compile the obtained data or otherwise use the same thereafter.

k) Are employers allowed to arrange face-to-face meetings, although telephone or video conferencing may be used?

Even though the emergency situation in Latvia is over, the competent authorities' recommendation regarding the observance of social distancing and prohibition of mass-gathering is still in force. Although the 2m distance requirement does not apply to employees and workplaces, the Centre for Disease Prevention and Control has indicated that companies must ensure that these requirements are met.

If possible, employees are encouraged to take advantage of technology to hold meetings remotely. However, if a meeting is required in person, disinfectants should be provided and social distancing must be observed.



NETHERLANDS.

STEFAN ZRNIC
BDO Legal Netherlands
+31 30 633 63 25
stefan.zrnic@bdo.nl

REINEKE VORSELAARS-VELTHOVEN
BDO Legal Netherlands
+31 73 640 57 18
reineke.Vorselaars-Velthoven@bdo.nl

1. LEGAL FRAMEWORK

If an employer processes employees' personal data in the event of prevention or investigation measures due to the Covid-19 pandemic, they must primarily comply with the EU General Data Protection Regulation (GDPR) and the Dutch General Data Protection Regulation (Implementation) Act. In the case that the personal data of the employee is not being processed, the GDPR is not applicable. However, the employee still has the fundamental right to privacy according to clause 10 of the Dutch Constitution.

2. STATEMENTS FROM THE SUPERVISORY AUTHORITY

There have been several statements from the Dutch Data Protection Authority (DDPA) regarding Covid-19, relating to the majority of the questions covered in this brochure. You can find the Q&A of the DDPA at https://autoriteitpersoonsgegevens.nl/nl/onderwerpen/corona/corona-op-de-werkvloer (in Dutch).

3. QUESTIONS

a) Can employers collect and process information on whether an employee was on holiday in a risk area?

At the beginning of the Covid-19 pandemic, the DDPA published a statement that the employer is not allowed to ask the employee if they had been on holiday in a risk area. However, the statement was at a later stage removed without any clarification from the DDPA. At the moment, it is unclear if the point of view of the DDPA has changed. Employers have the obligation to protect their employees from being infected by another employee. Therefore, for this purpose and in our opinion, an employer may ask employees returning from holiday whether they visited a risk area.

b) Can employers regularly ask their employees if they had direct contact with a sick person who had Covid-19 symptoms?

This is a topic of discussion. The DDPA has published a statement that Covid-19 does not release the employer from their obligations according to the GDPR. This means that they are not allowed to ask about the nature of an employees' illness or to register their answer. If there are clear Covid-19-related complaints and the employee does not provide information or does not go home on their own initiative, the advice is to send the employee home and contact the company doctor. The company doctor can discuss this with the employee and advise whether it is necessary to take further measures.

c) Are employers allowed to inform employees that a certain employee suffers from Covid-19 by mentioning the specific name?

The processing of personal data regarding the health status of an employee falls under the processing of special personal data under the GDPR. There is in principle a general prohibition for this processing, unless there is an exception. This exception will not be available soon. In addition, the DDPA is strict when it comes to the processing of special personal data. It is therefore advisable to keep Covid-19-related complaints confidential, or (if

necessary) to inform the company that there is an employee with Covid-19-related complaints, without mentioning the name of the employee concerned.

d) Must employers inform health authorities if there is the risk that an employee is suffering from Covid-19?

If an infection is suspected, the National Institute for Public Health and the Environment (in Dutch: Rijksinstituut voor Volksgezondheid en Milieu (RIVM)) recommends that the person in question be isolated, for example through home quarantine. The employee must then contact the company doctor (as soon as possible). The employer can also contact the company doctor themselves. The company doctor can then advise whether it is necessary to take further measures for the company and the rest of the staff.

e) Are employees allowed to refuse a business trip to a country with high Covid-19 infection rates?

An employer must ensure that employees can work safely and healthily. This means that an employer cannot, in principle, impose travel to a risk area. This is different for employees in the so-called "essential sectors". In principle, they must continue to work when the job requires it. This could be different if traveling to a risk area entails an extra high risk for the employee, for example when the employee is part of an at-risk group.

f) Quarantine due to Covid-19: Are employees entitled to continued payment of wages?

An employee is either incapacitated for work or not. If an employee is incapacitated for work, the employee is entitled to wages during illness in the usual manner. If an employee is not incapacitated for work but remains in accordance with government's health advice at home because of suspicious health-related complaints, it is generally assumed that an employee retains the right to wages because not working is not at their own expense and risk. In this case, however, an employee can be expected to perform work from home, of course insofar as this is reasonably possible.

g) Suspected infection with Covid-19: Are employees who stay at home entitled to continued payment of wages?

The same applies here as with the previous question.

h) Does the employer have to provide disinfectants, gloves and masks for employees to perform their activities?

In exercising its general duty of care, the employer must take into account the welfare and legitimate interests of employees in order to provide a safe work environment for the employee. Therefore, the employer is also obliged to comply with the general conditions for the observance of Covid-19-related hygiene measures at the workplace.

i) Can an employer force employees to work in open-plan or shared offices?

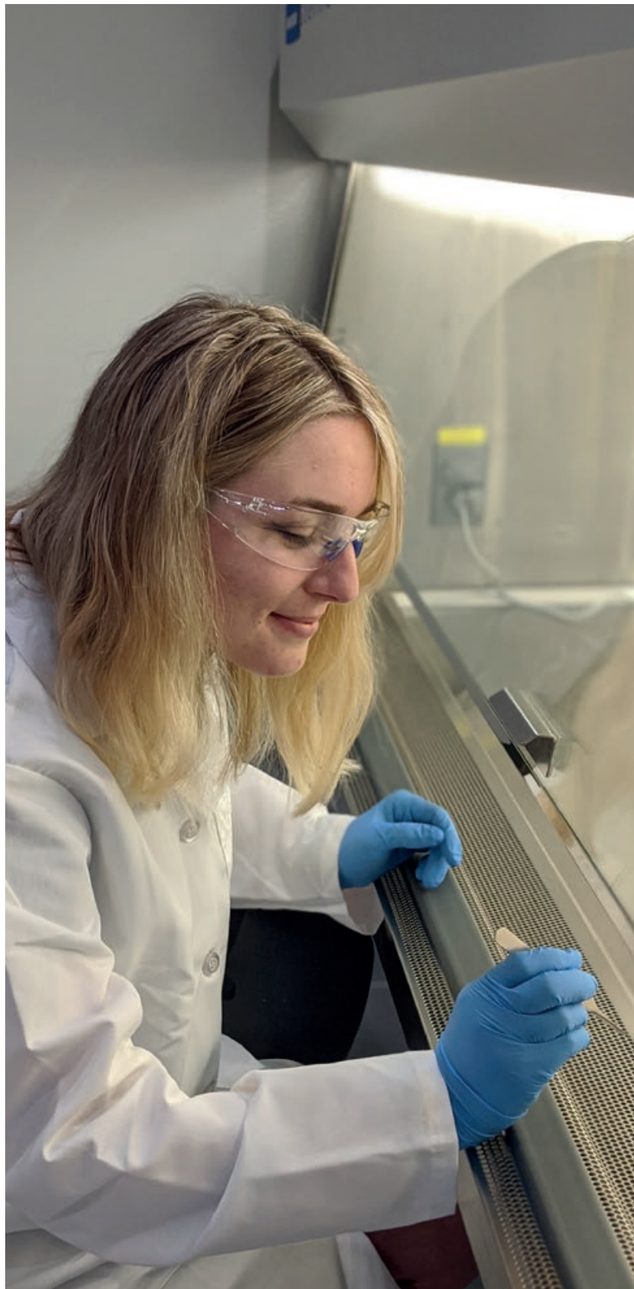
It is important to pay extra attention to employees who (must) come to their workplace. As an employer it is in any case important to follow the regulations from the government and the National Institute for Public Health and the Environment, and to pay extra attention to hygiene measures, to properly inform employees and to limit physical contact. For questions about the options for safe and healthy work, the employer can contact the company doctor.

j) Are employers allowed to have their employees' temperature measured daily before starting work?

To measure and to register the temperature of the employee is a special category of personal data under the GDPR and according to the DDPA therefore not allowed. The DDPA states that the foregoing is only prohibited if the data subject has given their consent. However, according to the DDPA, an employee cannot give consent freely. However, if the temperature is only measured, but not registered, the GDPR is not applicable. It should be kept in mind that the employee still has the fundamental right to privacy according to clause 10 of the Dutch Constitution.

k) Are employers allowed to arrange face-to-face meetings, although telephone or video conferencing may be used?

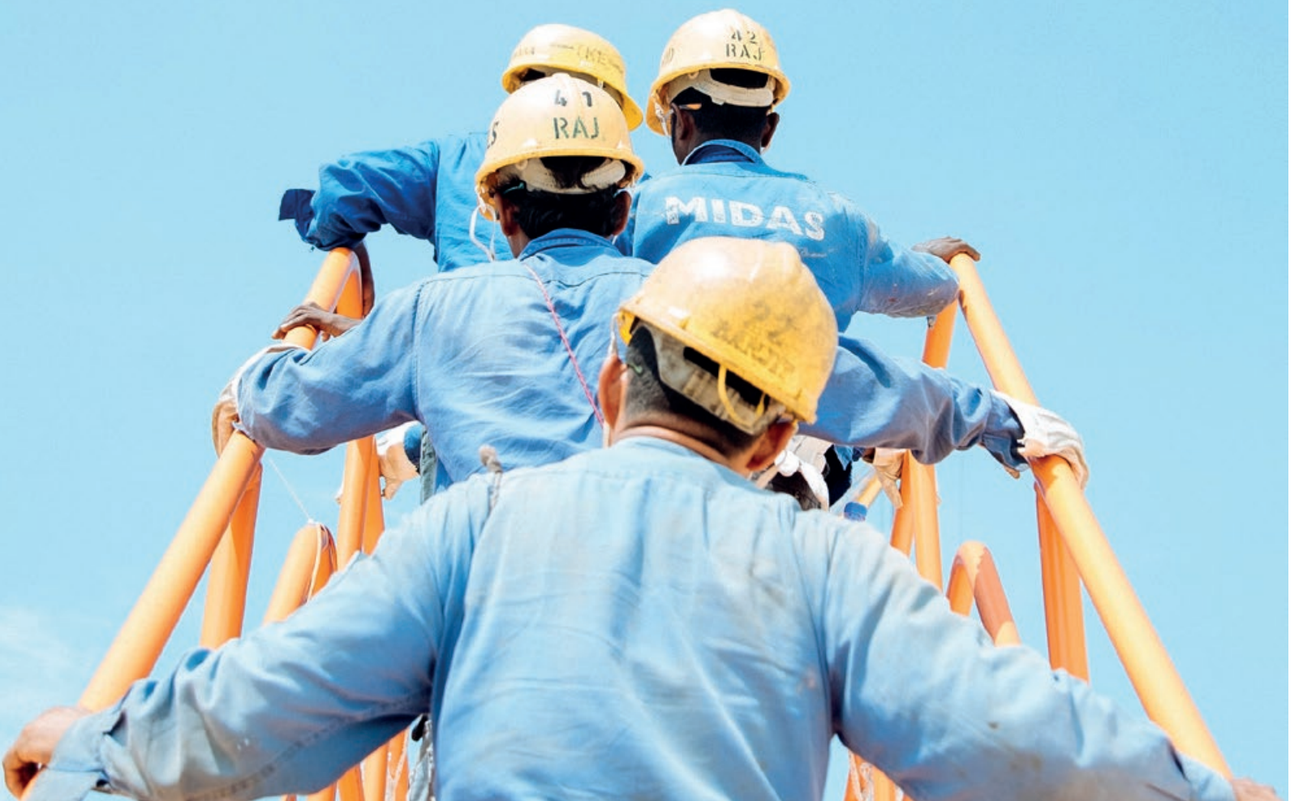
As part of its duty of care and in order to protect the health of the employees, employers are required to reduce face-to-face meetings to a minimum, i.e. to those situations in which the success of the meeting cannot be achieved in the same way by video or telephone conference. If a face-to-face meeting is necessary, the employer will have to take safety measures to protect the employees, e.g. ensure sufficient safety distance between the participants of the meeting and good ventilation of the meeting room.



NORWAY.

TORE HOEM
BDO Legal Norway

+47 406 99 669
tore.hoem@bdo.no



1. LEGAL FRAMEWORK

If an employer processes Norwegian employees' personal data with the intention of prevention or investigation due to the Covid-19 pandemic, they must primarily comply with the Personal Data Act and the General Data Protection Act (GDPR) and the Personal Data Act supplemented with the Personal Data Regulation, the Personal Data Filing Act, the Infection Control Act and the Working Environment Act (the GDPR is formally incorporated into the Personal Data Act and is fully considered as Norwegian law but for practical matters it'll be referred to as either the GDPR or the Personal Data Act in the following).

Especially relevant is: Article 6 and 9 of the GDPR, Section 6 of the Data Protection Act, Section 9-4 lit. c of the Working Environment Act, and Section 4-2 of the Infection Control Act.

2. STATEMENTS FROM THE SUPERVISORY AUTHORITY

There have been several statements from both the Data Protection Agency, the Norwegian Labour and Welfare Administration, the Norwegian Directorate of Health and the Norwegian Institute of Public Health. Updated statements are to be found on their websites, but as per now these links should be of good use for employers looking for information:

- https://www.datatilsynet.no/personvern-pa-ulike-omrader/korona/korona-og-personvern-arbeidsplassen/
- https://www.helsedirektoratet.no/english/corona
- https://www.nav.no/person/koronaveiviser/
- https://www.fhi.no/nettpub/coronavirus/rad-og-informasjon-til-andre-sektorer-og-yrkesgrupper/rad_til_arbeidsplasser/?term=&h=1

3. QUESTIONS

a) Can employers collect and process information on whether an employee was on holiday in a risk area?

Yes. Employers are obligated to take effective measurements to protect their other employees from being infected by colleagues. For this purpose, they can ask their employees returning from holiday if they visited a risk area. The legal authority for this processing of an employee's personal data is among others Article 6 Subs. 1 lit. c, e and f of the GDPR, and Section 4-1 of the Working Environment Act.

b) Can employers regularly ask their employees if they had direct contact with a sick person who had Covid-19 symptoms?

Yes. Employers are obliged to take effective measurements to protect their other employees from being infected by colleagues. The employee does not have to tell the employer who the person they have been in contact with is. The legal authority for this processing of an employee's personal data is among others Article 6 Subs. 1 lit. c, e and f, Article 9 Subs. 2 lit. b, c and i of the GDPR, and Section 4-1 of the Working Environment Act.

c) Are employers allowed to inform employees that a certain employee suffers from Covid-19 by mentioning the specific name?

If considered necessary to provide a safe and secure working environment the employer can inform other employees about the infection-status of another colleague. The employer should however always be careful to consider if the interests of the other employees could be taken care of in a less comprehensive way. For example, employers must refrain from giving a specific name as long as group-related information is possible. In cases where group-related measures are not an option, employers should seek help with the competent public health authority. Naming a specific person that is sick or suspected of being sick has to be the last resort and should be done in cooperation with the infected employee and in a way that also protects their integrity and dignity.

The legal authority for such measurements is Article 9 of the GDPR, Section 6 of the Data Protection Act, Section 4-1 of the Working Environment Act.

d) Must employers inform health authorities if there is the risk that an employee is suffering from Covid-19?

There is an obligation to inform the competent public health authority for medical doctors who have been made aware of a person with an infectious disease. This also applies to nurses, dentists and midwives who discover a person's status as infected during the course of their work.

Other employers are required to provide public health authorities with information on sick employees only upon special request from the relevant authorities and at the moment no such general requests have been made.

The legal authority would be Section 2-3 of the Infection Control Act and Article 9 of the GDPR.

e) Are employees allowed to refuse a business trip to a country with high Covid-19 infection rates?

The instruction to undertake a business trip is generally covered by the employer's management prerogative and may only be refused in exceptional cases. In each individual case, the risk associated with the business trip for the employee must be weighed against the employer's interest in the business trip. If important interests for the employer, e.g. an important business deal, are at stake it may also be permissible to order a business trip to a country with high Covid-19 infection rates. However, the employer will have to take safety measures to protect the employee, e.g. provide them with protective equipment, choose the means of transport in such a way that the risk of infection is kept as low as possible and, if necessary, issue guidelines for conduct.

f) Quarantine due to Covid-19: Are employees entitled to continued payment of wages?

An employee who needs to be isolated due to Covd-19 is entitled to sick pay from the employer, and sick benefits from the government if the sickness period lasts for a period of more than 16 days. The employee can stay home on the basis of a "medical self-certificate" for the 3 first days but will have to obtain a sick note from their doctor for the remaining 16-day period if the employer demands it. At the moment there is a temporary system that allows employers to get a refund for wages paid to employees who are absent from work due to covid-19 related causes after day 3 of the employee's sick period.

Also, the general terms to obtain sick payment have to be met. For those who have to stay isolated but are able to work from home normal payment is the main rule.

The legal authority is the National Insurance Act Chapter 8, and guidelines and information is found on the website of the Norwegian Labour and Welfare Administration.

g) Suspected infection with Covid-19: Are employees who stay at home entitled to continued payment of wages?

An employee who is suspected of being infected with Covid-19 and stays at home is entitled to sick pay from the employer, and sick benefits from the government if the sickness period lasts for a period of more than 16 days. The employee can stay home on the basis of a "medical self-certificate" for the 3 first days but will have to obtain a sick note from their doctor for the remaining 16-day period if the employer demands it. At the moment there is a temporary system that allows employers to get a refund for wages paid to employees who are absent from work due to Covid-19 related causes after day 3 of the employee's sick period. However, the general terms to obtain sick payment has to be met by the employee. These are found in the National Insurance Act Chapter 8, and guidelines and information can be found on the website of the Norwegian Labour and Welfare Administration.

h) Does the employer have to provide disinfectants, gloves and masks for employees to perform their activities?

It is the employer's obligation to provide a safe and secure working environment for the employees, including organising the proper initiatives with regards to infection control. The question of what kind of initiatives the employer should take to provide protection for the employees should be part of the employers' risk assessment. For instance, at the moment masks are not mandatory or recommended to be worn by the general public in Norway but given that the nature of the work being performed makes it natural for the employees to wear masks to protect themselves, the employer should accommodate such initiatives. The measurements taken should always as a minimum be in accordance with the updated guidelines given by the Norwegian Institute of Public Health and other relevant authorities.

The legal authority is Section 4-2 of the Working Environment Act and the guidelines from the Norwegian Institute of Public Health.

i) Can an employer force employees to work in open-plan or shared offices?

It is the employer's obligation to provide a safe and secure working environment for the employees. The employer needs to perform a risk assessment, and if the assessment is that the employee's health and safety can be properly taken care of while working in open-plan or shared offices they have the right to demand that employees return to work. The guidelines provided by the health authorities need to be followed, the arrangements should be routinely evaluated, and the employees should get to have a say in the matter of how to make it work.

The legal authority is Section 4-2 of the Working Environment Act and the guidelines from the Norwegian Institute of Public Health.

j) Are employers allowed to have their employees' temperature measured daily before starting work?

In principle the employer cannot decide as a general rule that the employees' temperature has to be measured (and possibly registered) before entering the workplace. Such a practice would affect the constitutionally protected personal rights of employees. However, based on an overall risk assessment and evaluation of the nature of the work being performed at the workplace and the circumstances regarding infection status in society in general and among the employees specifically it is possible that the employer would be able to take such measurements to prevent spreading of the virus among the workforce. The legal authority for such measurements would be Article 9 of the GDPR, Chapter 9 of the Working Environment Act.

k) Are employers allowed to arrange face-to-face meetings, although telephone or video conferencing may be used?

Yes, but the employer has to make sure that all the necessary precautions are being made to ensure that the employees have a safe and secure working environment which includes being able to keep the necessary distance in meetings.

POLAND.

DOROTA SZLACHETKO-REITER
BDO Legal Poland

+48 12 423 23 23
dorota.szlachetko@bdolegal.pl

MALGORZATA MEDRALA
BDO Legal Poland

+48 12 423 23 23
malgorzata.medrala@bdolegal.pl

1. LEGAL FRAMEWORK

If an employer processes Polish employees' personal data in the event of prevention or investigation measures due to the Covid-19 pandemic, they must primarily comply with the EU General Data Protection Regulation (GDPR), the Polish Data Protection Act of 10 May 2018, Dz.U. [Journal of Laws] 2019, item 1781) and the Polish Act of 26 June 1974 - Labour Code, Dz.U. [Journal of Laws] 2019, item 1040). Especially Articles 6 and 9 of the GDPR and Articles 221-223 of the Labour Code are the key provisions in this context. Special characteristics in connection with the prevention of infections may result from the Polish Infection Protection Acts, especially Acts of 5 December 2008 on combating and preventing from infectious diseases Dz.U. [Journal of Laws] 2019, item 1239 and Act of 2 March 2020 on special solutions on preventing and combating COVID-19, other infectious diseases and the crisis situations caused by them, Dz.U. [Journal of Laws] 2020, item 374, 567, 568, 695 i 875.

2. STATEMENTS FROM THE SUPERVISORY AUTHORITY

There have been several statements from the Polish President of the Personal Data Protection Office. As an example, you can find the statement about the taking of temperature to prevent the spread of COVID-19, https://uodo.gov.pl/en/553/1134 or the safe use of videoconferencing, https://uodo.gov.pl/en/553/1136.

3. QUESTIONS

a) Can employers collect and process information on whether an employee was on holiday in a risk area?

An employer may ask employees returning from holiday whether they visited a risk area, but they cannot ask about any personal details connected with the holiday. The legal basis for this processing of employees' personal data necessary for the provision of occupational medicine is Article 6 Subs. 1 lit. c, Article 9 Subs. 1, Subs. 4 of the GDPR, the Articles 207 and 211 Nr. 7 of the Polish Labour Code. An employer is responsible for health and safety in the workplace. It is the basic duty of an employee to comply with the provisions and principles of occupational health and safety. In particular, an employee shall co-operate with the employer and superiors in the performance of duties relating to occupational health and safety.

b) Can employers regularly ask their employees if they had direct contact with a sick person who had Covid-19 symptoms?

Article 6 Subs. 1 lit. c, Article 9 Subs. 1, 4 of the GDPR and the Articles 207 and 211 Nr. 7 of the Polish Labour Code also allow the employer to ask their employees whether they had direct contact with a sick person who had Covid-19 symptoms. An employee does not have to tell the employer who the contact person is.

c) Are employers allowed to inform employees that a certain employee suffers from Covid-19 by mentioning the specific name?

Employers need to identify those employees who had previous contact with a sick employee and warn them about a possible infection. It is not recommended to give a specific name.

d) Must employers inform health authorities if there is the risk that an employee is suffering from Covid-19?

Due to the Acts of 5 December 2008 on combating and preventing infectious diseases an employer should inform health authorities if there is high risk that an employee is suffering from Covid-19. Additionally, due to the Article 2071 of the Polish Labour Code an employer shall inform employees of: 1) any hazards to the life and health of employees with respect to both the establishment in general and each type of workstation and job, including the procedures to be followed in the event of a breakdown or any other situation that endangers the life and health of employees, 2) protective and preventive measures introduced to eliminate or reduce the hazards mentioned above. So an employer should inform his employees about risk of Covid-19 in the workplace.

e) Are employees allowed to refuse a business trip to a country with high Covid-19 infection rates?

The instruction to undertake a business trip is generally covered by the employer's right of direction and may only be refused in exceptional cases. In each individual case, the risk associated with the business trip for the employee must be weighed against the employer's interest in the business trip. The employer will have to take safety measures to protect the employee.

f) Quarantine due to Covid-19: Are employees entitled to continued payment of wages?

In cases where working from home is not possible in such situations, the employer must pay employees renumeration according to Article 92 of the Polish Labour Code. For the period of an employee's incapacity for work due to isolation due to a contagious disease that lasts up to 33 days in total during one calendar year, and if the employee is 50 years of age or more - up to 14 days in total during one calendar year, the employee shall be entitled to 80% of the remuneration, unless the provisions of labour law adopted by the employer provide for a higher amount of remuneration in such a case.

g) Suspected infection with Covid-19: Are employees who stay at home entitled to continued payment of wages?

The employer may release employees from work in the workplace for reasons of social distancing. The employer can recommend the employee works remotely. In the case of working remotely the same renumeration is still due to the employee. If working remotely is not possible in a such situation the employee is entitled to remuneration according to the abovementioned article 92 of Polish Labour code if they are under quarantine.

h) Does the employer have to provide disinfectants, gloves and masks for employees to perform their activities?

Yes. According to Article 207 of the Polish Labour Code an employer is responsible for health and safety in the workplace. An employer shall protect the health and life of employees by ensuring safe and healthy working conditions using developments in science and technology. Therefore, the employer is also obliged to comply with the general conditions for the observance of Covid-19-related hygiene measures at the workplace. In particular, the employer must also provide disinfectants, gloves and masks to ensure compliance with these hygiene rules in the workplace.

i) Can an employer force employees to work in open-plan or shared offices?

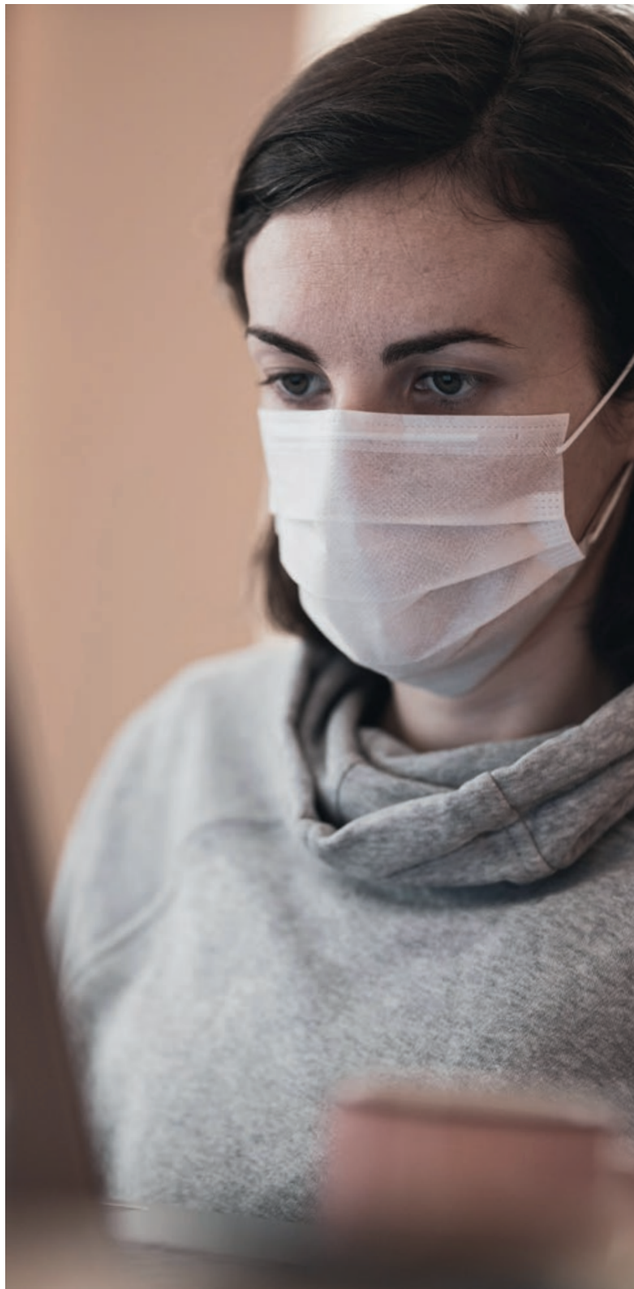
The regulations do not forbid the above alternatives. The employer is obliged to ensure all possible health and safety in the workplace, especially maintaining adequate safe distances between workstations, regular and adequate ventilation of the work areas, and requiring employees to comply with protective measures.

j) Are employers allowed to have their employees' temperature measured daily before starting work?

It depends on the kind of workplaces, jobs and specific work conditions. It is not proportional and purposeful in all situations.

k) Are employers allowed to arrange face-to-face meetings, although telephone or video conferencing may be used?

In a pandemic situation it is recommended to reduce face-to-face meetings to a necessary minimum. It is preferred to use telephone or video conferencing, but face-to-face meetings are not forbidden. The employer should use all possible safety measures during the meeting to protect the employees. In particular they should use safety masks, ensure safe distancing etc.



ROMANIA.

RALUCA ANDREI
BDO Legal Romania

+40 755 633 856
raluca.andrei@tudor-andrei.ro

EDUARD IOSIF
BDO Legal Romania

+40 740 045 524
eduard.iosif@tudor-andrei.ro

1. LEGAL FRAMEWORK

Processing of employee's personal data in view of prevention or investigation measures against the Covid-19 pandemic is subject to ccompliance with the EU General Data Protection Regulation (GDPR) - in principal with the provisions of Article 9 corroborated with Articles 6, 13, 14 et. seq. -, and with the Law no. 190/2018 regarding the implementation of GDPR. Although the supervisory authority has not issued secondary regulations on GDPR, the Ministry of Health has recently issued Orders no. 831 and no. 832 which extend the protection of employees considering the COVID-19 pandemic, with some impact on the processing on their personal data.

2. STATEMENTS FROM THE SUPERVISORY AUTHORITY

The National Supervisory Authority For Personal Data Processing has issued a recommendation to all controllers, stating that the processing of personal health data should be made in accordance with GDPR (*controllers having the obligation to inform the data subjects, to take all necessary security measures and not to reveal the name and health condition of a data subject without prior consent*) at https://www.dataprotection.ro/?page=Prelucrarea_datelor_privind_starea_de_sanatate&lang=ro and has quoted on the official website the statement issued on 19 March 2020 by the European Data Protection Board at https://www.dataprotection.ro/servlet/ViewDocument?id=1859.

3. QUESTIONS

a) Can employers collect and process information on whether an employee was on holiday in a risk area?

Order no. 831/2020 of the Ministry of Health establishes specific obligations of the employers such as to identify the contamination risks and to update the assessment regarding the health and safety of employees to the new working conditions in order to take the necessary measures of combating the spread of Covid-19. In this context, as well as in order to fulfil their general and continuous obligation of ensuring the necessary measures to protect the employees' health (as per the Labour Code and Law no. 319/2006 regarding occupational security and health and other laws in the field of labour), it can be accepted that employers may collect information on whether an employee was on holiday in a risk area based on Article 6 of the GDPR, if such information is necessary to combat/limit the spread of Covid-19.

b) Can employers regularly ask their employees if they had direct contact with a sick person who had Covid-19 symptoms?

Based on the same previously mentioned legal grounds, it can be accepted that employers may ask such questions regularly, if such information is necessary to combat/limit the spread of Covid-19 and in order to ensure the protection of other employees.

c) Are employers allowed to inform employees that a certain employee suffers from Covid-19 by mentioning the specific name?

As recommended by the European Data Protection Board and subsequently by the National Supervisory Authority for Personal Data Processing, employers should inform staff about Covid-19 cases and take safeguarding measures but should not disclose more information than necessary. Where the disclosing of the person's name is absolutely required for prevention purposes, the respective employee shall be informed in advance and their dignity and integrity shall be protected.

d) Must employers inform health authorities if there is the risk that an employee is suffering from Covid-19?

Employers in the hospitality industry (e.g. hotels, restaurants, bars, etc.) must inform the health authorities in case of a confirmed infection, but this obligation does not exist in other industries. Nevertheless, according to Order no. 831/2020 of the Ministry of Health, all employers must continuously communicate with the company doctor and monitor the health status of employees. Furthermore, all employees with Covid-19 symptoms must immediately contact the company doctor/family doctor or, in case of serious health condition and aggravated symptoms, call the public emergency services.

e) Are employees allowed to refuse a business trip to a country with high Covid-19 infection rates?

There are opinions according to which an employee could refuse a task with the potential to endanger their health, however according to the Labour Code and considering the employer's prerogative in regard to the tasks assigned to employees, a business trip cannot be refused as such a decision pertains exclusively to the employer. Nevertheless, as per Order no. 831/2020 of the Ministry of Health the employer has a general obligation to instruct and train all employees regarding safety measures to protect against infection with Covid-19 (e.g. social distancing, hygiene of hands and face, etc.).

f) Quarantine due to Covid-19: Are employees entitled to continued payment of wages?

In the case of quarantine, the employment agreement is suspended. Quarantined employees with suspended employment agreements benefit from an allowance equivalent to 100% of their average monthly gross income from the previous 6 months, up to a maximum of 12x the stipulated national minimum gross monthly wage. This allowance is paid after the quarantine period ends.

g) Suspected infection with Covid-19: Are employees who stay at home entitled to continued payment of wages?

In the case of a suspected infection where there is an inability for the employee to work remotely from home, the employment agreement must be suspended. Stay at home employees with suspended employment agreements are entitled to the previously mentioned allowance, subject to the same terms. The allowance is paid after the stay at home period ceases, on the basis of a medical certificate issued by the family doctor.

h) Does the employer have to provide disinfectants, gloves and masks for employees to perform their activities?

According to Order no. 831/2020 of the Ministry of Health, employers must provide disinfectant dispensers at the entrance to the premises as well as in each department/sector of activity. Employers may provide gloves and masks for employees if advised by the company's occupational health and safety department and if the activity requires the same.

i) Can an employer force employees to work in open-plan or shared offices?

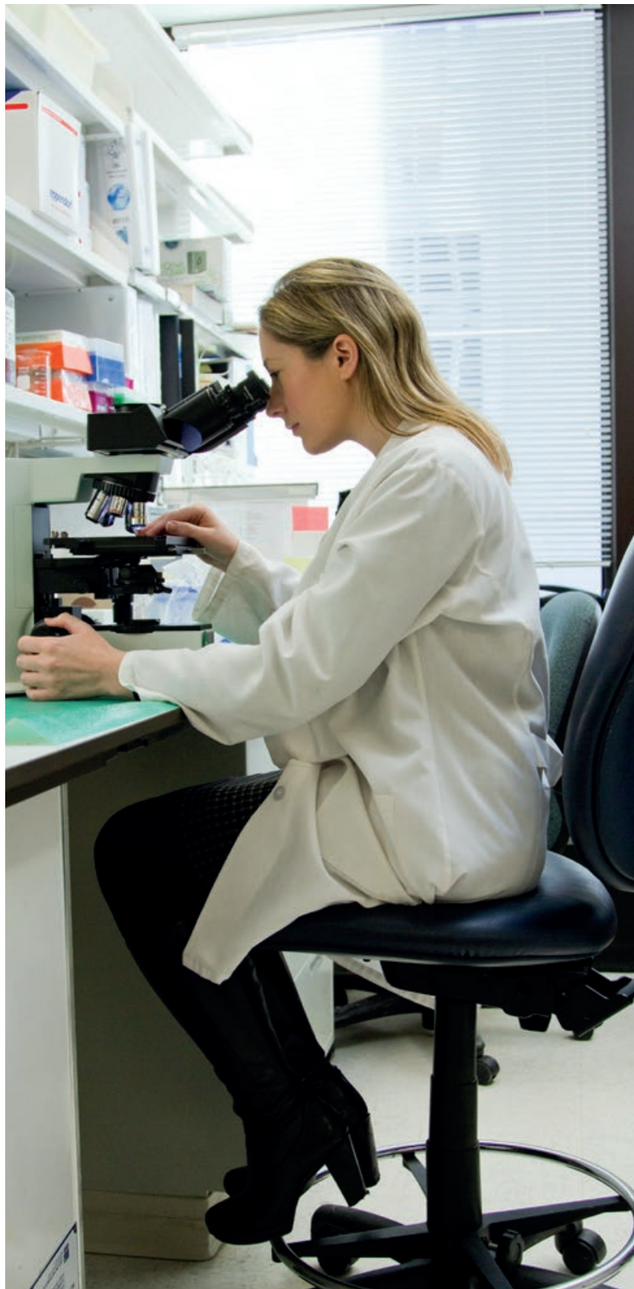
If the activity cannot be conducted remotely and the employer does not decide otherwise, as per Order no. 832/2020 of the Ministry of Health, employees working in the company's shared offices must wear face masks that cover both the mouth and the nose and must keep a distance of at least 1.5 metres from the other employees.

j) Are employers allowed to have their employees' temperature measured daily before starting work?

As per Order no. 832/2020 of the Ministry of Health, employers shall measure the employees' temperature daily with non-contact (infrared) thermometers, upon entrance to the company premises. Employees with a temperature above 37.3ºC must be sent home, being advised to consult the family doctor.

k) Are employers allowed to arrange face-to-face meetings, although telephone or video conferencing may be used?

There is no specific interdiction in this respect; however, there is a general recommendation that, to the extent possible, meetings should be arranged remotely, via telephone or video conferencing. In case a face-to-face meeting is necessary, participants should take all protection measures (i.e. sufficient distancing between participants and the wearing of masks).



SPAIN.

DAVID MOLINA
BDO Legal Spain

+34 676 587 589
david.molina@bdo.es

NIEVES ARIAS
BDO Legal Spain

+34 680 552 244
marianieves.arias@bdo.es

1. LEGAL FRAMEWORK

The processing of Spanish employees' personal data is regulated by the EU General Data Protection Regulation (GDPR) and the Spanish Constitutional Act 3/2018 of 5 December on Personal Data Protection and Digital Rights Guarantee. The Royal Legislative Decree 2/2015 of 23 October, approving the consolidated text of the Law on the Status of Workers and the Law 31/1995 of 8 November on the prevention of occupational hazards are also applicable.

2. STATEMENTS FROM THE SUPERVISORY AUTHORITY

The Spanish Data Protection Authority has issued several statements regarding the processing of personal data related to the Covid-19 crisis. More information can be found at https://www.aepd.es/es/areas-de-actuacion/proteccion-datos-y-coronavirus.

3. QUESTIONS

a) Can employers collect and process information on whether an employee was on holiday in a risk area?

Yes, but with some limitations. Employers have the legal obligation to protect the health of their employees and to maintain the place of work free from health hazards. However, requesting information from employees about symptoms or risk factors without the need to ask for their explicit consent shall be legally justified. The information to be requested should follow the data protection principles of proportionality and purpose limitation and be limited to asking employees who are not working from home about their visits to countries with a high prevalence of Covid-19 and about visits within the Covid-19 incubation time that have taken place in the last 2 weeks, or to inquiring if the worker has suffered from any Covid-19 symptoms. The use of extensive and detailed health questionnaires or questionnaires that include questions not related to Covid-19 would be contrary to the principle of data minimisation.

b) Can employers regularly ask their employees if they had direct contact with a sick person who had Covid-19 symptoms?

Yes, employers can ask their employees about personal information related to Covid-19, such as the existence of symptoms, in order to implement protection and prevention measures in the area of occupational safety and health risks or, where appropriate, the occupational risks' prevention service.

Even though the possibility of employers regularly asking their employees if they have had direct contact with a person exhibiting Covid-19 symptoms has not been specified, it has to be interpreted as a feasible option if the employee is not working from home.

To reach that conclusion, different Spanish Data Protection Authority's declarations have been taken into account. On one hand, it states that the data protection regulation should not be used as an obstacle or a limitation for adopting measures to prevent the vital interests of the data subject or other natural persons, the public interest in the field of public health, or the compliance with legal obligations in the employment law field, including the processing of health data without the consent of the interested party. In any case, regarding GDPR principles, particularly the principle of data minimisation, the principle of purpose limitation (in this case, safeguarding vital/essential interests of natural persons), and the minimisation of the storing of data.

On the other hand, it states that all employees must immediately inform their employers in the case of suspected contact with Covid-19 in order to safeguard, in addition to their own health, that of other workers in the workplace, so that appropriate measures can be taken.

c) Are employers allowed to inform employees that a certain employee suffers from Covid-19 by mentioning the specific name?

Employers should try to avoid revealing the identity of a specific employee who is infected with Covid-19. However, at the request of the competent authorities (notably the health authorities), this information could be communicated to other employees, but always with due respect to the data protection principles of purpose limitation and proportionality and always within the provisions of the recommendations or directions issued by the competent authorities.

As a matter of example, if it is possible to achieve the purpose of protecting employees' health by reporting the existence of a contagion, without specifying the identity of the infected person, employers should proceed in this way. However, when that objective cannot be achieved through the provision of partial information, or the practice is discouraged by the competent authorities, the health and identifying information could be provided.

d) Must employers inform health authorities if there is the risk that an employee is suffering from Covid-19?

Only the laboratories authorised in Spain to carry out Covid-19 diagnostic tests are compelled to inform the health authorities about the identity and contact details of those who test positive for Covid-19. Therefore, if an employer requests that their employees take the tests, they are not obliged to inform the public authorities about the employees who test positive, it is rather the responsibility of the laboratories to do this.

e) Are employees allowed to refuse a business trip to a country with high Covid-19 infection rates?

Generally speaking, employees cannot refuse to follow their employers' instructions relating to work. However, if employees are in an at-risk group, if the risk in the country in question is particularly high or even if the need to undertake the trip could be questioned, the employee could file a complaint against the company in order to obtain a Court order to cancel the trip based on the grounds of occupational health and safety.

f) Quarantine due to Covid-19: Are employees entitled to continued payment of wages?

In this case the abovementioned professional sick leave is also applicable. Both situations, i.e. quarantine and suspected infection, have the same legal treatment in Spain in terms of sick leave and wage payment.

g) Suspected infection with Covid-19: Are employees who stay at home entitled to continued payment of wages?

Specific sick leave has been considered for these situations by the Spanish authorities. It is considered to be a professional leave in terms of the public benefit amount that employees are entitled to receive. However, it would be necessary to check the applicable collective bargaining agreement in each company in order to state if the employee is entitled to perceive additional wage payments or not during the sick leave.

h) Does the employer have to provide disinfectants, gloves and masks for employees to perform their activities?

All employers are responsible for ensuring the labour conditions of their staff in order to protect their health and safety. This is a general obligation, applicable in all cases and not only Covid-19-related. Consequently, the employer is obliged to provide their employees with the corresponding protective equipment, which could be different depending on each activity, each position and the risks associated with the same.

i) Can an employer force employees to work in open-plan or shared offices?

The Spanish Government stated a general preference for smart working until August, but this is just a preference, so each employer has to analyse their situation and the safety and protection measures that they can establish in their facilities to decide when employees could return and under which conditions and with which protection elements/measures.

j) Are employers allowed to have their employees' temperature measured daily before starting work?

The Spanish public authorities have not prohibited the taking of employees' temperature, but since this entails a control over protected data, it is necessary to set the conditions to ensure that the measuring is private and to balance the convenience of this measure against other, less intrusive ones.

k) Are employers allowed to arrange face-to-face meetings, although telephone or video conferencing may be used?

As mentioned above, the Government stated a general preference for smart working until August, but this is just a preference, so each employer should analyse their situation and the safety and protection measures that they can establish in their facilities to define when the employees could return and under which conditions. Anyhow, in case of face-to-face meetings, the employer will be obliged to guarantee protection measures for their employees (i.e. social distancing, disinfectant gel, masks, or other material, depending on each case).

SWITZERLAND.

KLAUS KROHMANN
BDO Legal Switzerland
+41 44 444 36 25
klaus.krohmann@bdo.ch

MANUELA ROGGER
BDO Legal Switzerland
+41 44 444 59 51
manuela.rogger@bdo.ch

1. LEGAL FRAMEWORK

In Switzerland, from a data protection perspective, the EU General Data Protection Regulation (GDPR) may only be applicable indirectly as Switzerland is not part of the European Union. In Switzerland, data protection matters are regulated by the Swiss Data Protection Act, which is currently under revision. The revised bill of the Swiss Data Protection Act is expected to be enacted in autumn 2020. In regard to the employment law questions, the Swiss national legislation in employment law is applicable as well as international treaties such as the ILO Employment Law Conventions. Further regulations derive from the Swiss Epidemics Act.

2. STATEMENTS FROM THE SUPERVISORY AUTHORITY

The statements of the Swiss Federal Data Protection and Information Commissioner in regard to data protection during the Covid-19-crisis are available here:

- German: https://www.edoeb.admin.ch/edoeb/de/home/aktuell/aktuell_news.html#-796881893
- English: https://www.edoeb.admin.ch/edoeb/en/home/latest-news/aktuell_news.html#964113395

3. QUESTIONS

a) Can employers collect and process information on whether an employee was on holiday in a risk area?

The information on whether an employee was on holiday in a risk area may in our view from a employment law and data protection perspective be collected by the employer.

According to the Swiss Data Protection supervisory authority - the Federal Data Protection and Information Commissioner - the collection and transfer of employee's personal data must be voluntary. There shall be no indirect or direct pressure to deliver personal data like with services or advantages that are tied to providing personal data. If personal data of employees in regard to Covid-19-measures are collected under direct or indirect pressure, as a rule, this constitutes a breach of privacy and the right to information self-determination.

Insofar as private parties, in particular employers, are concerned, the processing of personal data to combat the pandemic must be carried out in compliance with the principles set out in Article 4 of the Federal Data Protection Act:

- Health data are particularly worthy of protection and, as a matter of principle, may not be obtained by private parties against the will of the persons concerned.
- Moreover, processing of health data by private parties must be purpose-related and proportionate. This means that they must be necessary and suitable with a view to preventing further infections and must not go beyond what is necessary to achieve this goal.
- Wherever possible, appropriate data on flu symptoms such as fever should be collected and passed on by those affected themselves.
- The collection and further processing of health data by private third parties must be disclosed to the data subjects so that the latter understand the purpose and scope of the processing as well as its content and time frame.

b) Can employers regularly ask their employees if they had direct contact with a sick person who had Covid-19 symptoms?

In our view and from a Swiss perspective, it is admissible in regard to employment law and Data Protection law that the employer regularly asks their employees if they had direct contact with a sick person who had Covid-19 symptoms, if the answer is given on a voluntary basis. This means that an employee should not have to fear any disadvantages in not answering the question. However, the employee can refuse to answer the question. The name of the sick person shall not be requested. Extensive questions about the state of health of the employee to non-medical persons proves to be inappropriate and disproportionate and forbidden in consequence.

c) Are employers allowed to inform employees that a certain employee suffers from Covid-19 by mentioning the specific name?

No, in our view and from a Swiss perspective, it is normally not admissible that the employer discloses the name of a specific employee who suffers from Covid-19. The case might be different, if it is not possible to protect the health of the other employees without mentioning the name.

d) Must employers inform health authorities if there is the risk that an employee is suffering from Covid-19?

No, there is no legal obligation in Switzerland that employers inform health authorities if there is a risk that an employee suffers from Covid-19. Informing health authorities about cases of suspected Covid-19-infection or cases of illness shall be interpreted as transmission without legal basis.

e) Are employees allowed to refuse a business trip to a country with high Covid-19 infection rates?

This very much depends on the concrete situation at hand. Employees are allowed to refuse a business trip to a country with high Covid-19 infection rates if the employer cannot guarantee with appropriate technical and organisational measures the protection of the employee's health.

f) Quarantine due to Covid-19: Are employees entitled to continued payment of wages?

This depends on how exactly quarantine is defined and what is placed under quarantine - a person, a region or a company. The question has not been legally decided in Switzerland yet. Switzerland has not yet had an entire lockdown or quarantine during this crisis. In our view, if a whole region were placed under quarantine and therefore employees could not work (working from home is not possible), this would not be imputable to the employer, meaning, there is no entitlement to continued payment of wages. The specific case at hand would have to be looked at in detail.

g) Suspected infection with Covid-19: Are employees who stay at home entitled to continued payment of wages?

The employee is in our view entitled to continued payment of wages for a limited period of time in case of **suspected** Covid-19-infection ("self isolation" and "self quarantine"). The Swiss state grants income compensation payments for employees for a period of ten days if the employee has a medical attestation or an authoritative order/decision.

h) Does the employer have to provide disinfectants, gloves and masks for employees to perform their activities?

The employer has to take appropriate measures to protect the health of the employees. Where there is a risk of infection the employer has to work out a protection concept which includes protective measures for employees and customers. The protection concept may involve disinfectants, gloves and masks. However, this depends on each situation. There is no specific legal obligation to provide disinfectants, gloves and masks for employees but only the general obligation of the employer of duty of care and to protect the health of employees.

i) Can an employer force employees to work in open-plan or shared offices?

In our view, the employee is as per private law obliged to work in open-plan and shared offices according to employment law if their health is adequately protected by appropriate technical and organisational measures by the employer. However, this would have to be evaluated in detail for each case at hand. To force someone to work is not possible, as forced labour is prohibited by international conventions (ILO Forced Labour Convention).

j) Are employers allowed to have their employees' temperature measured daily before starting work?

It is admissible that the employer has the employees' temperature measured daily before starting work. In any case, this data collection has to be reduced to the minimum. The storage of such data will typically not be appropriate. Furthermore, the data may only in exceptional cases be obtained against the will of the persons concerned. The affected employees must be informed about the collection of such data in advance.

k) Are employers allowed to arrange face-to-face meetings, although telephone or video conferencing may be used?

There is no general right of the employee to have a home office or to work from home in Switzerland. The employer has to fulfil its duty to protect the personality and the health of the employees. If the employees' health is adequately protected, the employer has a right to instruction, which covers the calling in for a face-to-face meeting.

BACK-TO-WORK LEGAL COMPLIANCE HEALTHCHECK.

COVID-19 & EMPLOYEES' RETURN TO WORK

1. Do you have **SPECIFIC GUIDELINES** for **remote** or **teleworking**?
2. Do you **MONITOR AND DOCUMENT** working time and **rest periods** in case you were to have an inspection?
3. Have you checked if your **DIGITAL DISCONNECTION POLICY** meets regulatory requirements?
4. Do you regulate **EMPLOYEES' USE OF COMPANY DIGITAL DEVICES**?
5. Have you **UPDATED YOUR SOCIAL MEDIA USE POLICY** in view of recent events?
6. Do you have a **CONTINGENCY PLAN** for a possible **second wave** of infections?
7. Have you prepared guidelines on **HOW TO PROCEED** in case an employee **tests positive at work**?
8. Are you keeping up-to-date with restrictions on **GLOBAL EMPLOYEE MOBILITY**?
9. Are any employees currently working in countries different from their usual place of work affected by the **EUROPEAN POSTED WORKERS DIRECTIVE**?

COVID-19 & DATA PROTECTION FOR EMPLOYEE HEALTH INFORMATION

1. Have you **informed your employees** of how their COVID-19 related **HEALTH DATA** will be processed?
2. Have you reviewed the applicable **SECURITY MEASURES**?
3. Do you have a **contractual relationship** with your **DATA PROCESSOR**?
4. Do you know which **DATA TRANSFERS should be authorised**?
5. Have you checked if **INTERNATIONAL DATA TRANSFERS** are affected?
6. Are you prepared for **DATA SUBJECT REQUESTS**?
7. Have you **updated your record of PROCESSING ACTIVITIES**?
8. Have you **INFORMED YOUR DPO**?
9. Have you taken into account the mandatory **DATA RETENTION** periods?

BDO LEGAL

LOCAL EXPERTS, GLOBAL TEAM
Protect your interests, wherever you are

In the current economic climate, requirements change fast. **Our highly-trained lawyers keep track of the latest legislation and regulation, on both a national and global level**, so you can stay focused on business.

Proximity. Strong client relationships are key to our approach. We see ourselves as strategic partners, providing bespoke legal support to help you design and implement your projects.

Breadth. We offer multidisciplinary advice. Our lawyers work closely with BDO specialists in audit, tax and advisory divisions.

Reach. Our international network offers industry and legislative knowledge at a country level. Which is why multinational clients hire us to handle complex cross-border transactions.

ABOUT BDO

BDO GLOBAL STATISTICS 2019

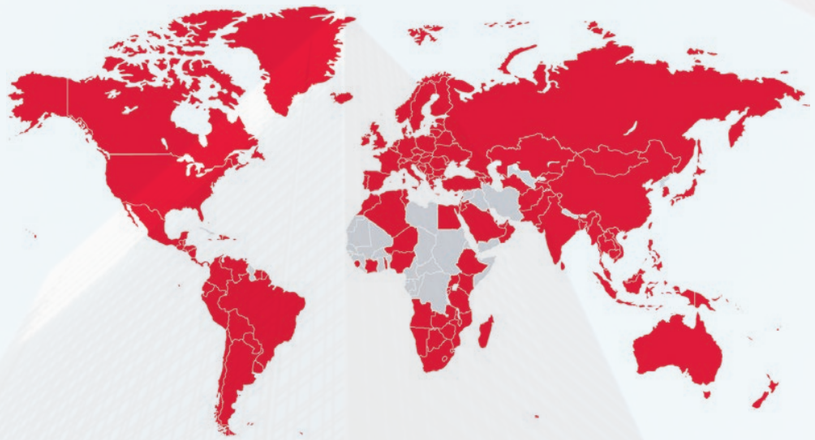
US$ | € | US$ 6.9% | € 12.8%

9.6 | 8.5 billion

A YEAR ON YEAR INCREASE OF **10,1%**

167 Countries | **1,617** Offices | **88,120** Staff

PARTNER TO STAFF RATIO **1** TO **10**



FOR MORE INFORMATION:

CAROLINE MACDONALD
COORDINATOR – LEGAL SERVICES

T: +34 686 339 922
caroline.macdonald@bdo.global

www.bdo.global