

Rödl & Partner

NEWSLETTER LATVIA

SETTING ACCENTS

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Covid-19: topical issues for the employer

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→ Certain aspects of employment in the case of Covid-19

DO EMPLOYEES HAVE A RIGHT TO REFUSE TO WORK IF COLLEAGUES ARE ILL OR CUSTOMER TRAFFIC INCREASES THE RISK OF ILLNESS?

Employees are only allowed not to attend work only if the absence is justified, but are not allowed to stay away from work for general and non-justified fear of a contagion risk.

According to the information published by the Center for Disease Prevention and Control of the Republic of Latvia (CDPC), as well as the Order of the Cabinet of Ministers (Cabinet) No. 103 of 12 March 2020 "On the Declaration of Emergency Situation" and its amendments, hereinafter – Order, people returning from abroad shall obey certain restrictive control measures, such as:

- Self-isolation at home (home quarantine) for 14 days after returning from abroad;
- Inspecting own health, including also to check (measure) body temperature twice a day (in the morning and in the evening) for 14 days;
- In case of noticing any signs on potential respiratory infection - to immediately contact State Emergency Medical Service (SEMS) and to inform doctor about symptoms as well as the travel to abroad;

To the extent possible, avoid contacting other persons, visiting public places, welcoming guests, using public transportation.

All of the above currently applies to any person returning from abroad - risk areas* are no longer separately identified.

**As of March 13, 2020, according to CDPC, the risk areas were - Italy, Japan, Singapore, South Korea, Iran, China, Spain, France, Germany, Switzerland, Austria, Netherlands, Great Britain, Sweden, Norway, Belgium, Denmark, USA, Greece, Iceland.*

CAN EMPLOYEE REFUSE TO GO ON A BUSINESS TRIP ORDERED BY THE EMPLOYER DUE TO HEALTH RISKS?

Although Labour Law does not specifically provide for an opportunity to refuse going on business trips due to the risk of contracting the virus, it should be noted that according to Labour Law, orders that adversely (negatively) affect the employee's legal status contrary to the applicable laws are not enforceable.

Considering that Labour Protection Law specifically requires employees to take care of their safety and health, it can be concluded that employees should be able to refuse to go on a business trip to the so-called risk areas due to safety and health concerns as travelling to a risk area would expose an employee to great safety and health risks, incl. the risk of being quarantined abroad, the risk of contracting the virus, etc.

Moreover, it should be noted that in case an employee is ordered to go on a business trip for work purposes and, during such business trip, would contract the virus, such accident would be interpreted as a workplace accident (accident at work), thus making the employer responsible.

ARE EMPLOYEES ENTITLED TO WORK IN THE HOME OFFICE OR CAN HOME OFFICES BE ARRANGED?

Under Labour Law, it is required to stipulate the workplace in the employment agreement. The Labour Law also stipulates that the employee shall perform work at the undertaking (i.e., employer's office), unless the parties have agreed otherwise. If the particular employment agreement states that employee shall perform work either at employer's office (factory, branch, etc.) or at another place if ordered by the employer, then the employer may issue an order requesting the employee to perform work from home. If, however, the employment agreement does not provide for such possibility, then work from distance should be agreed to by and between the employer and employee. Consequently, if the employment agreement does not provide for an opportunity (right) to work from home, employee is not entitled to decide on working from home at his own discretion. In such case, work from home is permissible if either:

- The employment agreement states that employer may order the employee to work from distance (e.g., from home) and the employer has issued such order; or
- Employee and employer have reached a mutual agreement on such arrangement.

DO EMPLOYEES HAVE TO GO TO WORK WHEN THE TRAIN (LOCAL TRANSPORT) STOPS RUNNING?

Yes, employees have to go to work even if a train (or any other mean of local transportation) stops

running because it is the duty of the employee to get to work in time and to perform his or her duties as stipulated in the employment agreement.

WHAT HAPPENS IF EMPLOYEES HAVE CHILDREN WHO NEED CARE BECAUSE THE SCHOOL AND / OR KINDERGARTEN REMAINS CLOSED?

If a school or kindergarten is closed and/or remains closed, it does not affect the duty of the employee to perform his or her work obligations as it is the duty of the employee to ensure that his or her children are taken care of and looked after.

In any case - it would be advisable for the employee and employer to discuss and agree on mutually acceptable solutions, which could be:

- To reach a mutual agreement on work from home for the time period during which the educational institution is closed;
- To reach a mutual agreement that the employee will go on annual paid leave, if the employee has accrued unused days of paid leave;
- For the employee - to ask the employer to grant an unpaid leave. In such case, it is up to the employer to decide on whether or not to grant such unpaid leave to the employee, however, it shall be noted that the employer can't decide on granting unpaid leave at his own initiative.

It should also be noted that due to most recent developments, certain adjustments have been made to the order for issuing sick-leave certificates. In case a child under the age of 7 or one of the family members of such child returns from risk area, or in case the child has been in contact with a person that has contracted the virus or other contact person, such child shall stay at home quarantine and shall not return to educational institution for a period of 14 days from the day of leaving the foreign country (or from last day of contact with ill person/contact person). If necessary, in such case, one of his/her parents will be granted sick leave certificate B for the entire 14 day period for the purpose of monitoring the health of his/her child, including also to measure temperature. In such case, the sick-leave will be entirely paid for by the state.

ARE THERE ANY OBLIGATIONS ON THE EMPLOYER TO ACT BASED ON THE CURRENT RISK OF INFECTION? DO EMPLOYEES HAVE TO FOLLOW PRESCRIBED PROTECTIVE MEASURES?

In addition to the restrictions set forth in the Order, employers and employees are also advised to

follow the guidelines issued by the CDPC. These guidelines include, among others:

- Recommendation not to send employees on business trips, and to carefully assess the necessity of any business trips;
- If possible, to arrange that employees returning from abroad work from distance (e.g., home-office);
- To have discussions with employees in order to advise employees not to travel, including also during vacation;
- To instruct employees on proper hygiene measures and to ensure that employees follow proper hygiene norms.

WHAT OPTIONS DO EMPLOYERS HAVE TO REDUCE ANY ECONOMIC CONSEQUENCES?

If possible, employers should ensure that at-risk employees (for example, those returning from abroad) are able to perform work from home, ensuring that the normal operation of the company is maintained. However, this depends on the nature and scope of the employer's activities. Employers should also reconsider the necessity for employees to go on business trips or to meet clients in order to limit contact with other persons and to avoid visiting public places.

Considering that first 10 days of sick leave (sick-leave certificate A) are paid for by the employer (except for situations where children must be monitored), the employers are specifically advised to follow the recommendations issued by CDPC (see answer to previous question), including - to avoid sending employees on business trips, to limit or cancel meetings, advise employees not to travel during vacations, and instruct employees on proper hygiene measures in order to mitigate the risks of contracting the virus.

In case an employee has returned from abroad and decides not to follow the self-quarantine requirement and not to work from home during incubation period, the employer may suspend the employee from work if his or her presence causes risk to the safety and health of other employees and/or third persons, and/or the legitimate interests of employer or third persons.

ARE EMPLOYEES ENTITLED TO CONTINUED PAYMENT IN THE EVENT OF A TEMPORARY CLOSURE?

Yes, at the moment, in case a company would be temporarily closed due to an order from an official authority or due to the decision of the employer itself (so-called idle-time), the employees would be entitled to continue receiving payment (salary).

As mentioned in the answer to next question, the official authorities and government of the Republic of Latvia is currently discussing possible reimbursement/support mechanisms for businesses affected by the virus, however - no specific decisions have been made by March 16, 2020.

WHAT HAPPENS IN THE OFFICIALLY ORDERED QUARANTINE CASE? DO EMPLOYEES CONTINUE TO RECEIVE THEIR SALARIES? WHO REIMBURSES THESE COSTS TO THE EMPLOYER?

N.B. The authorities of the Republic of Latvia are currently discussing possible solutions/mechanisms for employers to use in cases of downtime caused by quarantine. The government is also considering possible mechanisms for how to reimburse losses incurred as a result of quarantine/employee illness, but such mechanisms would be most likely tended to help institutions directly affected by the virus (medical facilities and their personnel, educational institutions and teachers), however, as of March 16, 2020, no binding decisions have been made.

The Latvian national authorities are also discussing possible solutions for cases where employees have decided to travel to the so-called risk areas ignoring the recommendations and as a result have contracted the virus to limit the employer's duty to pay for the first 10 calendar days due to sickness of employee, thus minimizing the burden of employers.

In any case - if an employee gets sick and the doctor issues sick-leave certificate A, for the the first 10 (ten) calendar days of sick leave the salary is paid for by the employer. In case doctors conclude that the symptoms are gone and that the employee is healthy and can return to work, the sick-leave certificate A can be closed sooner (e.g., after 3 days of sick leave). If the doctors conclude that the employee has not recovered within the first 10 days, the doctor can issue sick-leave Certificate B for the 11th day of sickness and onwards, which is then paid (covered) by the state.

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