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Coronavirus | Frequently asked questions by employers in Belgium

The covid-19 virus, also known as the coronavirus, continues to spread across the globe. Recently the virus arrived in Belgium as well, with the number of confirmed cases expected to rise exponentially. Employers should be prepared to take measures to ensure a healthy and safe workplace for their employees.

This FAQ document answers a series of questions that have been raised by our clients - employers in Belgium.

1. WHAT IF MY ORGANISATION NEEDS TO TAKE OPERATIONAL MEASURES DUE TO THE CORONAVIRUS AND FEWER EMPLOYEES ARE REQUIRED IN ORDER TO PURSUE THE ACTIVITIES?

The employer is authorised to adopt the regime of temporary unemployment (*tijdelijke werkloosheid / chômage temporaire*) for (part of) his employees based on:

- force majeure (*overmacht / force majeure*) if, for instance, the business is contingent on products from China which are no longer delivered due to the coronavirus; or
- economic reasons if there has been a decrease of orders due to the coronavirus.

The possibility to invoke temporary unemployment based on force majeure and/or economic reasons due to the coronavirus has been expressly confirmed by the National Employment Office (*Rijksdienst voor Arbeidsvoorziening / Office National de l'Emploi; NEO*) on 28 February 2020.

The employer must comply with several formalities which differ for blue- and white-collar employees and he must submit an electronic declaration to the local branch of the NEO. The employer must mention the coronavirus as force majeure and/or economic reason and provide details to demonstrate that temporary unemployment is caused by said virus.

In case of a successful application, the employer will be authorised to (partially) suspend the payment of salaries and the employees concerned will be entitled to an unemployment allowance.

The possibility to apply for a suspension of the employment contract due to force majeure also exists for employers employing employees who (i) have been ordered into quarantine by authorities abroad, (ii) have been ordered into quarantine by the Belgian authorities after repatriation to Belgium or (iii) have a medical certificate confirming a quarantine without actually certifying the incapacity to work (**See, question No. 5**).

2. CAN THE EMPLOYER REQUIRE EMPLOYEES TO REPORT POTENTIAL OR ACTUAL EXPOSURE TO THE CORONAVIRUS RELATING TO THEMSELVES AND/OR INDIVIDUALS THEY HAVE COME INTO CONTACT WITH?

In light of the legal obligation of employers to safeguard health and safety in the workplace and the duty of employees to cooperate with the employer in this respect, the latter is allowed to require employees to report if they may have been exposed to a coronavirus infection.

From a practical perspective, employers may therefore ask an employee, for example via a risk assessment form, to voluntarily confirm whether he/she travelled to a risk area and/or came into contact with an infected individual in the last two months. They may, however, not ask whether an employee suffers from any symptoms related to the coronavirus. Employers may not ask employees either to confirm that they are not infected and/or request a medical certificate in this respect (**See, question No. 4**).

When collecting this information, employers should ensure that the applicable data protection requirements are complied with (e.g., transparency, data minimisation) and should put in place the appropriate policy in this respect. This policy must provide inter alia information to the employees about the purpose of the processing of their personal data, the retention period and their rights as data subjects.

In addition, the employer should avoid any unlawful discrimination (for example, by only imposing the duty to report on travels in the last two months to employees with Chinese nationality).

3. CAN THE EMPLOYER IMPOSE QUARANTINE ON EMPLOYEES IN CASE OF SUSPICION OF CORONAVIRUS INFECTION RELATING TO THEMSELVES AND/OR INDIVIDUALS THEY HAVE COME INTO CONTACT WITH?

The employer cannot exclude an employee from the workplace as long as the coronavirus infection has not been confirmed by a medical certificate from a medical practitioner or the prevention advisor-occupational practitioner at the workplace (**See, question No. 4**).

That being said, the employer and the employees are free to mutually agree on any measures to safeguard the health and safety in the workplace, such as occasional teleworking and/or (un)paid vacation days for a certain period of time (e.g., the incubation period of 14 days). In practice, as a preventive measure, it is recommended to adopt a regime of occasional teleworking where possible.

4. CAN THE EMPLOYER IMPOSE MEDICAL TESTS ON EMPLOYEES IN CASE OF SUSPICION OF CORONAVIRUS INFECTION?

The employer cannot impose any medical tests on employees or request them to provide a medical certificate demonstrating that they are not infected by the virus (**See, question No. 2**).

The employer can only advise the employees to consult a medical practitioner or request the assistance of the prevention advisor-occupational practitioner on the workforce. The latter will subsequently be free to request a medical test. The refusal of an employee to undergo a medical test requested by the prevention advisor-occupational practitioner may result in that employee being excluded from the workplace.

5. IF EMPLOYEES CANNOT ATTEND WORK DUE TO CORONAVIRUS (POTENTIAL) INFECTION, ARE THEY ENTITLED TO THEIR SALARY?

This will depend on the reason for the non-attendance.

Employees who cannot attend work because they are actually infected with the coronavirus and who can provide the required medical certificate in this respect, will be subject to the normal rules applying to incapacity at work, including the payment of the guaranteed salary by the employer during the first thirty days of sick leave for white-collar employees.

Employees who cannot come to work because of quarantine imposed by the authorities abroad or by the Belgian authorities after repatriation to Belgium must inform their employer as soon as possible to avoid any unjustified absence. The employer subsequently will be authorised to invoke force majeure in order to adopt temporary unemployment for such employees (**See, question No. 1**).

The position of employees who cannot attend work due to medically advised quarantine as a result of a suspicion or a threat of coronavirus infection without having a medical certificate certifying the actual incapacity to work is more uncertain. According to recent guidelines from the National Institute for Health and Disability Insurance (*Rijksinstituut voor ziekte- en invaliditeitsverzekering / Institut national d'assurance maladie-invalidité*), in the absence of a medical certificate actually certifying the incapacity to work but only confirming a quarantine, the employee's absence (although medically advised) cannot be recognised as an incapacity to work. As a result, employees are not entitled to the payment of the guaranteed salary or sick pay but the employer may request temporary unemployment based on force majeure for such employees (**See, question No. 1**).

Finally, what about employees who refuse to come to work without a medical certificate to avoid the risk of becoming infected? They could be considered by their employer as absent without justification and thus not entitled to the payment of their salary for these days of absence, in line with the relevant provisions of the employer's work rules.

6. ARE ANY OTHER MEASURES REQUIRED?

Yes. Employers are responsible for health and safety in the workplace and, therefore, should adopt sufficient safeguards to mitigate the risks of contamination, for example:

- ensure that the workplace is clean and hygienic by means of a regular disinfection (e.g., desk tabletops, keyboards);
- ensure sufficient access to disinfecting soap;
- advise the employees to stay at home if they have symptoms such as coughing and/or fever (**See, question No. 3**);
- adopt occasional teleworking for employees who have returned from a risk area and/or have come in contact with potentially infected individuals (**See, question No. 3**); and/or
- provide guidance to employees who suspect they suffer from coronavirus (including a reminder of their right to visit the prevention advisor-occupational practitioner).

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7. HOW CAN VAN BAEL & BELLIS ASSIST YOU?

Van Bael & Bellis' employment law team can assist you to take the appropriate preventive measures and/or deal with all kinds of questions related to the impact of the coronavirus in the workplace.

In particular, we can help you to adopt temporary unemployment and/or prepare the appropriate documentation in terms of occasional teleworking and/or questionnaires to collect information about employees who potentially have been exposed to the coronavirus.
