



CORONA VIRUS: THIS IS WHAT EMPLOYERS MUST BE AWARE OF

In light of the continuous development of the corona virus we have updated our newsletter. The Norwegian government has presented some changes, however these are not yet implemented. We will update the newsletter once the changes are implemented.

The spreading of the corona virus leads to many questions and legal issues for employers. This includes i.a. which measures the employer can implement in order to secure the operations, limit contamination and to ensure the interests of the company and the employees.

INTERNAL GUIDELINES – EMPLOYEE'S DUTY OF LOYALTY

All employees are subject to a general duty of loyalty towards their employer. A part of this duty is to follow the employers guidelines. Due to the corona virus situation, we have experienced that most employers have distributed internal guidelines on employee conduct in relation to the potential danger of infection. This includes for instance requesting employees that are suspected to be infected, or have been in contact with someone who is confirmed or suspected to be infected, to stay at home. It may also include arranging so that employees may work from home, and instructing employees to avoid travels and visits to cafeterias and other places that involve a danger of infection. Such guidelines may also instruct employees to provide the employer with any relevant information in order to assess whether the employee should be instructed to stay away from the office temporarily.

Employees will be in breach of their duty of loyalty if the employers guidelines are not followed. Such behavior can lead to disciplinary actions such as a warning, or in grave situations, termination.

In relation to holidays, it will most likely constitute a breach of the employment agreement and the duty of loyalty if employees choose to go on holiday to an area of widespread transmission of the corona virus and there is a high risk that he or she will be placed in quarantine upon their return.

HOLIDAY

Employees going on holiday are at risk of making themselves indisposed to employer. In this regard, employees are also exposing employers to the financial consequences their absence will imply for the company. In these situations, employers can deny employees to travel, even though the travel is in their free time and the travel destination is not

defined as an area of widespread transmission of the corona virus. The employer's access to give such instructions will depend on what position the employee has and the potential implications absence will have for the company.

Employees are obligated to arrange their holidays so that they are able to work upon their return. Therefore, many will have to cancel or postpone planned holidays at their own initiative. By travelling to areas of widespread transmission to subsequently be placed in quarantine, employees are as already mentioned potentially in breach of their duty of loyalty.

Furthermore, employers have an extended access to postpone private travels in these situations. Employers may postpone a planned holiday if the holiday would cause significant operating problems for the employer, which i.a. could be relevant where an employee is supposed to travel and will most likely be put in quarantine upon returning. This is especially relevant for employees holding key positions, but may also be relevant for other employees. The employer must in these situations be able to plan the operations on the basis that multiple employees are sick or in quarantine. Employees may as a main rule claim compensation for additional expenses in relation to postponing their holiday.

WORK RELATED TRAVEL

Employers should assess the necessity of work related travel. Employers may not require work related travels to areas with persistent danger of infection, and to destinations inconsistent with the authorities' travel advice. As a main rule, the employer may impose work related travel to other areas. We advise employers, if possible, to find alternative solutions if the employees are unwilling to travel. In case of quarantine after work related travel, the employer will have to pay normal salary to the employee for the whole quarantine period.

QUARANTINE

If one suspects a corona infection, and subject to a doctor's assessment, the doctor may issue a medical certificate. As a consequence, the employee will be entitled to sick pay. This will also apply during the so-called "employer period" (Nw: "arbeidsgiverperioden"). Suspicion of a corona infection will fulfil the medical requirement for being entitled to sick pay. Additionally, the other requirements for the entitlement to sick pay must be fulfilled. This means that if the work tasks can be arranged differently, i.a. by working from home, this may be a measure to avoid absence due to sickness.

Employers may want to impose quarantine for example on employees that have been travelling, had contact with infected people or others that are in quarantine, or as a general infection control measure. Subject to the employer's management prerogative, the employer may impose quarantine – also for employees who are not confirmed infected, ill or showing symptoms. The employer will have to pay full salary, unless the authorities have given guidance related to the quarantine and if the employee may present a medical certificate. In situations where the employer impose quarantine on the employees, the employer cannot instruct the employees to take out holidays or utilize self-certification sick leave.

CAN EMPLOYEES REFUSE TO STAY AWAY FROM WORK?

The employer may unilaterally decide that the employees shall stay away from work if this is objectively justified. Measures relating to infection control, if the corona virus infection risk is very high, will constitute such objectively justified basis. Travel to areas with persistent danger of infection, employees showing symptoms, employees that have had contact with others showing symptoms can i.e. be relevant circumstances that make the employers decision objectively justified. If an employee refuses to adhere to the employer's instruction to stay away from work, this will be regarded as insubordination and may lead to disciplinary action from the employer.

CAN EMPLOYEES REFUSE TO WORK DUE TO FEAR OF SUSPICION OF INFECTION?

In some situations, an employee may want to be in voluntary isolation or quarantine. This could be when the employee suspects to be infected, or is afraid of being infected. If neither the employer nor the authorities have imposed quarantine on the employee, mutual agreement is normally required. If the employee has a flexible position with the possibility of working from home, this can be arranged subject to the agreed conditions. For employees who do not have this flexibility, a voluntary isolation/quarantine may be considered as unlawful absence. Alternatively, employees who want to be in voluntary isolation, can take out holidays or other forms of time off in agreement with the employer. Employees are not entitled to sick pay in this situation.

CLOSING OF SCHOOLS AND KINDERGARTENS

Employees who have to stay home with their children due to closed schools and kindergartens are entitled to parental care benefits (Nw: "omsorgspenger") regardless of whether the child is sick or not. Parents are normally entitled to up to 10 days of benefits, but if the parent has more than one child, or cares for a child with a disability or chronic illness, the parent may be entitled to more than 10 days.

The employer covers the first 10 days of parental care benefits. After 10 days the employer may seek compensation from NAV for extra days.

MEASURES THAT LIMIT CONTAMINATION IN THE WORKPLACE

The employer must assess the risk of contamination in the workplace and act appropriately to prevent employees from becoming infected or posing a risk of contaminating others. The extent of such measures will depend, among other things, on the type of work and to what extent the employees are in contact with others in connection with their work.

On a general basis, all employers should make an overall evaluation on which preventive measures that are applicable in the workplace. For example, this could be to request or ask employees to work from home, more frequent cleaning, hand wash routines, placing disinfectants and paper towels near lifts etc. The employer may consider to instruct the employees to bring their laptops home every day in case the employer instructs the employee to work from home.

Under any circumstances, the employer should encourage employees to share relevant information related to activities that may expose them to the risk of contamination so that the employer is fully updated at all times.

TEMPORARY LAY-OFF

Temporary lay-off involve temporary annulment of the employee's duty to perform work as well as the employer's duty to pay salary. Temporary lay-off as a consequence of the corona virus can be related to interruption in operations.

Interruption in operations may occur due to the corona virus, i.a. due to lack of supply of goods. Orders and assignments can also be stopped or postponed, leading to a shortage of work tasks. As a starting point, such circumstances constitute legal basis for temporary lay-offs.

Further, lay-off of employees due to danger of infection is as a main rule not permitted. Fear of danger of infection does not automatically lead to shortage of work, which is a prerequisite for temporary lay-offs.

Notice period for temporary lay-offs is normally 14 days. However, temporary lay-off is caused by unforeseen circumstances has a notice period of 2 days. NAV has clarified that the applicable notice period is two days, and not 14 for temporary lay-offs due to a shortage of work affiliated to the corona virus.

As mentioned, the Norwegian government have announced that they will implement changes in the existing regulation on temporary lay-offs, based on the need of reducing the employer's duty to pay salary to the employee. We will publish a newsletter with these changes once the changes are announced.

Please note that the advice in this newsletter may change depending on the development of the corona virus. We advice to stay updated on information from the Norwegian Institute of Public Health and the Norwegian government.

We are working continuously with questions arising from the corona virus. Do not hesitate to contact our expert team of employment lawyers.

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