

CORONAVIRUS – How Should Luxembourg Employers Legally React?



As the Coronavirus continues to drastically spread across Europe, employers should react quickly and take adequate and necessary measures. We have answered the most common legal related questions you may have.

1. What obligations must employers respect to guarantee the health and safety of their employees?

According to article L.312-1 of the labor code, employers must ensure the safety and health of their employees in all work-related aspects. They must, therefore, take into account all risks encountered by their employees and take all adequate measures.

It is also important to note employers are bound by an obligation of result.

2. Which concrete measures can employers adopt to deal with the coronavirus crisis?

i. Intensify Communication

Employers must keep up-to-date at all times by consulting official governmental websites to accurately track the spread of the virus, namely the affected geographical areas, the latest safety requirements, and instructions).

Luxembourg employers can consult the following websites:

- <https://sante.public.lu/fr/prevention/coronavirus-00/index.html>
- <https://msan.gouvernement.lu/fr/dossiers/2020/corona-virus.html>
- <https://www.who.int/fr/emergencies/diseases/novel-coronavirus-2019/advice-for-public/q-a-coronaviruses>

Employers must also timely communicate to their employees the most recent information on the virus's spread as well as the latest policies and rules applicable within their companies.

ii. Promote teleworking

Employers must implement teleworking as soon as there is a high safety risk.

All provisions and requirements set forth in the labor code will apply (i.e.: maintain and provide equipment to the concerned employees, provide any additional IT support, insurance covering damages on the equipment, etc.).

One critical issue concerns cross-border employees, since all national social security and tax provisions will remain applicable. For instance, Luxembourg with neighboring countries, Belgium, France, and Germany have agreed to a maximum number of days cross-border workers can telework before they are taxed in their country of residence in addition to being taxed in Luxembourg. However, at the time being, Belgium and Luxembourg have agreed that the usual threshold of 24 days will be suspended. Similar developments with France and Germany will have to be tracked.

iii. Implement safety and hygiene rules

Employers shall provide hydro-alcoholic solutions and shall also inform all their employees about the hygiene rules recommended by the authorities. Mass meetings shall be avoided such as for instance in the company canteens.

iv. Plan the worst case scenario

Employers should plan worst case scenarios to clearly determine how their business will continue to operate once employees will be on sick-leave or in quarantine. For example, some businesses have split their teams and dispatched them in several different premises, other businesses have established a back-up listing and informed and trained

the concerned employees, etc. In any case, ensure all your policies, job descriptions, duty descriptions are updated and available.

In any case, employers must implement these safety measures carefully to avoid discrimination amongst employees. Therefore, the measures must apply to all employees or an identified part of staff.

3. Can employers oblige their employees to report on their private travels in a risk-area?

No.

However, an employment agreement shall in principle be executed under good faith and with loyalty, therefore employers can request employees to keep them duly informed about any travel within a risky area or any suspicion.

4. Can employers force employees to cancel a private trip to a risk area or suspend their activities?

No.

Employers cannot request employees to cancel private trips, private activities, or any mass gathering events since those are part of employees' private life.

However, again communication will be the key. Employers can try to discourage employees by explaining the consequences



and the actions that will be taken by their company to avoid any risk (i.e.: forced quarantine, medical examination, etc.).

5. Can employers deny employees access to their premises?

Yes.

Since employers are responsible of their staff's health and safety, they can deny access to their company should there be any kind of risk (i.e.: return from a risk area, contact with an infected person, etc.).

Here again, all actions should of course be proportionate and no discrimination or harassment should be alleged against the company.

6. How can employers handle the case of employees who cannot telework due to their tasks and/or childcare?

Special leave will be granted to employees who cannot telework due to their tasks. They will stay at home without working and be paid normally. To be noted that such days off will not be deducted from their legal holidays.

On the other hand, employees who are parents of minors under the age of 13 and must look after their children further to the shutdown of all schools and nurseries, will be granted an extraordinary leave for family reasons.



This extraordinary leave may be taken by one of the parents, if there are no other child care options are available.

To benefit from this exceptional measure the concerned parent must:

- **Firstly, inform his/her employer** either orally or in writing,
- **Secondly**, fill in and sign a form that can be downloaded from the Luxembourg government's "[Certificate of leave for family reasons](#)",
- **At last**, send the form to Luxembourg's National Health Fund and to his/her employer.

It is important to point out that, as stated on the form, the leave for family reasons form is considered a medical certificate according to Articles L.234-53 and L.234-54. Therefore, during their leave, employees will be regularly remunerated and benefit from the protection against dismissal.

As a reminder and under normal circumstances, leaves for family reasons are granted as follows:

- 12 days of leave for children of less than 4 years of age,
- 18 days of leave for children between 4 years and 13 years of age,
- 5 days of leave for children between 13 and 18 years of age who are hospitalized.

These above thresholds, given to the current situation have been frozen by the Government.

The Luxembourg Government will determine how long this measure will be valid. At the time being an exact timing has not been determined.

7. What if employers face a drop in activity?

In case of a sudden decrease of employment activity, employers will be entitled to invoke the temporary unemployment measures.

Specific conditions shall however be given and only employees without any certificate of incapacity of work who can no longer work full time or work at all will be covered.

A form has been made available and can be downloaded on the following website: <https://guichet.public.lu/fr/actualites/2020/mars/10-chomage-partiel-coronavirus.html>

If an agreement is reached, the Employment Fund can then pay 80% of the normal wage (capped at 250% of the minimum social wage for an unskilled employee) for a maximum of 1,022 hours per employee per year.

8. On what grounds can employers be held liable?

Employers may be held criminally liable if employees are able to prove that they have breached one of their safety or/and health obligations.

Employers will thus have to keep records and documents of all the steps and actions implemented during the coronavirus crisis. Should a claim be launched by an employee, employers will have to prove that all appropriate and reasonable measures have been implemented.

Should you need any assistance from an employment law perspective, do not hesitate to contact us.

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