

Back to Business: Checklist for Multinational Employers

As global jurisdictions begin to ease lockdown arrangements, employers face a new reality, one in which businesses must transform and evolve to adapt to the economic and worksite challenges that the novel pandemic known as COVID-19 has created.

This checklist looks at the steps employers across the world should be starting to take now to prepare for a partial or full return to work and highlights the likely short-term and long-term business issues and challenges and opportunities for change.

Not every item listed will be applicable to all employers in all jurisdictions. However, we hope that this checklist will provide employers with a framework for prioritizing their next steps and preparing for the lockdowns to be eased further and/or lifted.

01. START YOUR PLANNING NOW

- Keep tabs on available assistance from the government, such as wage subsidies, and incorporate such assistance into your plan, particularly the timeline for the cessation of any assistance/subsidy (which may be extended). Early planning will help minimize the risk of having to make decisions in a hurry.
- Plan communications with your workforce. Individual employees may have different challenges arising from a return to work (e.g., if furloughed) or from a return to the workplace (e.g., if working from home) and the process of getting employees back to work will require careful thought.
- Organize, as far as possible, a thoughtful and efficient return to work. Being ahead of the curve may be critical in enabling businesses to survive or potentially thrive at the expense of competitors.
- Consider in advance how you will address return-to-work concerns raised by employees with special health circumstances (e.g., employees who have been identified as being at higher risk for contracting the virus) and employees with childcare issues (e.g., to the extent schools and camps do not reopen).
- Review and rethink policies regarding mobile workers, cross-border assignments, and travel. Near-term issues will include how to phase in international travel when the potential for new travel restrictions, if the virus resurges, remains unpredictable.

- Review employer-sponsored benefit plans to determine whether any amendments or changes in operation are necessary or desirable given changes in applicable law and employer considerations (e.g., cost saving measures).
- In the US, liberalized deadlines for employee action under benefit programs, as well as other changes in law, make it imperative that employers review and update certain employee communications, such as US COBRA notices and documentation relating to ERISA plan claims and appeals procedures, to reflect such changes, as well as any additional amendments made by the employer.

02. SHORT-TERM STAFF PLANNING

- Consider the issues which may arise on a transitional basis as employees return to work:
 - Staff who had or may have COVID-19: Identify those who have been infected and determine when it is safe for them to return to the office. Potential discrimination issues may arise, alongside data protection issues (e.g., under the General Data Protection Regulation (“GDPR”) or local data protection legislation). Careful planning and messaging will be required.
 - Dividing/rotating staff: Investigate whether it is possible to divide employees into teams and rotate teams in and out of the requirement to come into the office to work. This will not work for all businesses, but, if feasible, we recommend it as a transitional step that employees likely will view favorably as well. It also may reduce the risk that an entire department or floor contracts the virus at the same time.
 - Underused staff: Following your analysis of the business, you may wish to retain staff in certain categories, even though they are underused initially. Make this clear to the employees concerned, otherwise there is a risk that the staff who stay are disengaged or will be more likely to leave for employers with clearer statements about the future.
- Overworked staff: There may be certain areas in the business’ workforce that are extremely busy as the business gets back up to speed again. This should be addressed with careful messaging to the overworked staff so they understand it is a part of the transition process.
- Annual leave/vacation/PTO (Paid Time Off in the US): Assess how best to handle annual leave for your business. Subject to local laws, employers who do not take any steps to encourage or require employees to take holiday during this lockdown period may be faced with an influx of requests to use annual leave during the remainder of the calendar year. Consider approaching annual leave on a company-wide basis by setting out clear communications about the employer’s expectations and how you are going to address competing demands for holiday/vacation fairly to ensure an effective return to work.
- All short-term proposals: Explain all proposals carefully to staff, e.g., why the employer has taken this approach, how it will work and whether there will be exceptions to the rule. This will require careful consideration and cannot be done in haste.

03. SHORT-TERM BUSINESS ISSUES

- There are short-term business issues that directly affect staff and on which employers should be focusing now so that effective guidance and consultation can take place in short order. For example:
 - Health and safety: Given an employer's health and safety obligations, there will be a number of issues that must be considered, e.g., adapting the office layout to comply with social distancing directives and otherwise reduce the risks of infection; changing office etiquette to avoid unnecessary in-person meetings; introducing health screening procedures (e.g., temperature screenings) and/or the wearing of masks for the workforce; and increasing daily cleaning and disinfecting activities.
 - Marketing strategies: The old assumption that client entertainment must entail face-to-face meetings will likely need to change. In the short-term, consider reviewing these policies to ensure you comply with obligations regarding employee health and safety.
 - Business travel: All business travel will need to be reviewed, even if governmental and/or company travel restrictions are lifted and the aviation industry is fully operational again. Consider who will be authorized to decide whether travel is required/essential and what factors should be considered.
 - Hosting meetings in the employer's offices: Review your policy for visitor access to your offices and consider whether large-scale meetings need to be authorized in advance. Consider whether discussions are necessary with landlords and tenants about entrance procedures and restrictions.
 - Second wave: Assess the implications of a potential resurgence of this pandemic later in 2020. Identify areas where operations were robust during lockdown and areas where matters could be improved, e.g., by the acquisition of more technology or by changing working practices. This will help facilitate the transition to more normal working patterns.
 - Business requirements: When planning for the relaxation of lockdown arrangements and the resumption of more normal business life, examine the work you are requiring employees to do. For example, is there a genuine business requirement for the timing of certain processes (e.g., annual staff reviews)? Can the work involved be deferred without doing undue harm and help free up appropriate resources?

04. LONG-TERM DECISIONS AFFECTING STAFF

- In close coordination with your finance team, assess your realistic future long-term staffing needs. The world economy is set to contract and, once any wage subsidy or other governmental financial support has ended, many businesses may need to consider redundancies as well as longer-term reduction in remuneration or benefits costs.

POTENTIAL HEADCOUNT REDUCTIONS

- Take time to analyze the requirements of the business when considering any headcount reduction. Key questions relating to the post-lockdown business will include the following:
 - What is the likely position in the foreseeable future regarding key customers and key markets?
 - Will key customers and key markets be generating anywhere near the same level of demand for products or services?
 - Is the business likely to be constrained by a lack of supplies?
- In analyzing potential headcount reductions, assess whether contemplated redundancies disproportionately impact certain groups within the employee population more than others to ensure that you are not violating any applicable discrimination laws.
- Subject to local law relating to headcount reductions and the terms of any government support scheme to assist with wage costs, take steps to plan for consultation with employees, trade unions, works councils and/or employee representatives. Consultation processes can take time to conduct in accordance with the necessary legal requirements. Early planning will help minimise additional costs to the business.

- Be mindful that employees made redundant before or shortly after the end of the lockdown period may need support. The prospects of finding alternative employment, for many, may be bleak. Consider how the process can be handled appropriately and what support could be provided (e.g., outplacement, counselling).
- Consider whether, as an alternative to redundancies, you wish to scale back hours so that employees move onto shorter working weeks with a consequent reduction in salary. Employers may not have the power to force through a cut in hours without the consent of employees and/or employee representatives. Careful planning and preparation will be required.

EXPLORE WIDER OPPORTUNITIES

- Consider potential opportunities in the current environment gained by being ahead of the curve. If you wish, for example, to develop an area of your operations, consider whether to carry out strategic hiring now or immediately after the end of the lockdown. Assess what areas in the business's operations can be strengthened and/or expanded, and where the recruitment would come from (e.g., external recruitment, internal promotion, retraining employees, etc.).

UNDERTAKE POLICY REVIEWS

- Review staff policies to see how well they apply to remote working and whether the policies can be operated remotely, given the likely need for increased homeworking/teleworking. For example:
 - Recruitment, grievance and disciplinary policies: Do these and other key policies envisage personal contact? Can such processes take place remotely? If yes, do the policies need to be updated to reflect that?

- Sick pay and leave of absence schemes: Employers may have had far greater employee use of these schemes than previously experienced, particularly in light of new COVID-19 sick leave laws in certain jurisdictions. Employers should revisit existing policies to account for such use and for potential adjustments to policies going forward. Should coverage be extended or changed? Do the requirements for medical evidence need to be adapted?
- Homeworking/teleworking policies: Review whether you need to rebalance the split between office working and homeworking/teleworking. Consider the future requirements of the business and the likely issues arising from extending homeworking/teleworking (see further below).

HOMWORKING/TELEWORKING ARRANGEMENTS

- Review whether homeworking/teleworking during the lockdown was as efficient as it could have been. If it was, does the business wish to increase homeworking/teleworking, with consequent savings, e.g., on office space and support?
- Review employment contracts. Is there an express clause entitling the employer to direct where employees work? Subject to local law, any permanent change requiring an employee to work at home may require employee consent. Assess the implications of this change and consider whether any wider consultation obligations are triggered.
- If homeworking/teleworking is likely to feature long-term in your business arrangements, review any guidance you provide on effective homeworking/teleworking for staff and managers.
- If you had excluded certain categories of staff from homeworking/teleworking, is this still appropriate? What is the evidence from the lockdown period?
- Confirm that you have complied with any local expense reimbursement laws with respect to the tools and equipment necessary for employees to perform their work from home (e.g., internet, phone use, etc.) with respect to the period in which employees were homeworking/teleworking during the lockdown period and ensure that your expense reimbursement policies comply with applicable expense reimbursement requirements going forward. In assessing your expense reimbursement policy, consider whether there is a cost-effective manner to structure the policy in light of the potential likelihood of increased homeworking/teleworking in the future.
- Visa amendments or registrations: Review the requirements to notify immigration authorities of changes to worksites, schedules and working conditions of visa holders. Employers should also anticipate the fact that remote working may become more fluid, as office rotational programs or shifts in governmental policies affect worksite arrangements.
- Review your policies relating to the handling of employee medical information and ensure that your policies comply with the most up-to-date data protection laws.

05. COMMUNICATION, COMMUNICATION, COMMUNICATION

- Maintain effective communication with the workforce. Employers looking at permanent pay cuts, headcount reductions and other compulsory alterations to employment terms and conditions may need to engage in a consultation process. In many cases, making wholesale changes will likely require a collective consultation process with either a recognized union, works council or elected employee representative.
- If you do not have a pre-existing employee consultation committee (whether it is legally required or voluntarily established) consider setting one up now (even on a temporary basis and even if not legally required to do so). This may not be appropriate for all employers and you will need to consider your particular circumstances. However, an avenue for employees to provide feedback can be a valuable resource for employers, obviously for matters where consultation is legally required, but it may also help achieve buy-in, for example, if you plan to change long-standing practices.
- Consider whether staff should be surveyed either shortly before or after their return to work to identify what could be done better and what worked well, etc.
- Recognize the importance of direct communications with staff. Some communications will need to be companywide, but others may need to be targeted to particular groups of employees (e.g., furloughed staff). All communications should be handled carefully, particularly where discrimination and/or data protection issues may arise in relation to staff who may have, or have had, COVID-19.
- Ensure that employees know that you will be liaising with medical experts and other respected sources to monitor the wider health position closely. Reassure employees that the health and safety of the workforce is a paramount concern.
- Consider how to handle the likely issues that will be raised by individual employees in relation to the end of the lockdown period. It is impossible to anticipate all queries but key issues are likely to relate to employees' concerns about their own health or the health of another within their home; childcare and/or eldercare arrangements; commuting to and from the office; social distancing in the office and wanting to know whether colleagues have become ill with the virus. Many issues will be governed by local law and guidance.

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