



Q&A : Potential employment issues related to the Covid-19 under Swiss Law

Globally, at the beginning of March 2020, over 89,000 people are confirmed to have been infected with the new coronavirus (Covid-19). Of those, 3,045 are known to have died, 113 outside of mainland China. In Switzerland, according to the Federal Office of Public Health (FOPH), as of 1 March 2020 24 persons have been tested positive for the new coronavirus. All those infected have been isolated. Infections have been reported from the Cantons of Aargau, Basel Land, Basel Stadt, Berne, Fribourg, Geneva, Graubünden, Ticino, Vaud, Valais and Zurich. It is certain that further cases will occur in Switzerland. In case the situation worsens, we prepared a short Q&A covering potential employment issues related to the Covid-19 under Swiss Law.

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1. Can an employer forbid his employees to travel abroad?

Answer: No, an employer cannot dictate where employees travel in their free time. On the other hand, if an employee is stuck on-site by a quarantine measure and cannot return to work on time, he or she runs the risk of not being paid (see Q3).

2. Can an employer force an employee to travel to a region at risk?

Answer: As long as no restrictions have been issued by the Swiss authorities (FDFA) and the possibility of professional travel is provided for in the employment contract, the employer can oblige an employee to travel. If the employee refuses, he or she runs the risk of a warning or even immediate dismissal, depending on the circumstances. However, a case-by-case assessment is required.

3. If an employee is quarantined, does the employer still have to pay the salary?

Answer: No, unless the employee is also sick. Article 324a of the Swiss Code of Obligations is only applicable if the inability to work is due to a reason inherent in the person of the employee. However, epidemics and measures taken by governments are factors external to the employee. The employer is therefore not obliged to pay the salary in such situations. The employer and the employee are free to decide that these days will be considered as holidays. They may also provide that the employee will use this time to compensate accumulated overtime.

If the employee is also sick, normal salary (or insurance indemnities, if any) is payable during the incapacity, including fair compensation for lost benefits in kind, provided the employment relationship has lasted or was concluded for longer than three months. If the employee becomes sick after deciding to travel to a country affected by the virus when the Swiss authorities (Federal Department of Foreign Affairs, FDFA) have warned the population not to go, the employer is not required to pay the salary.

4. Can an employee refuse to come to work by fear of contamination?

Answer: As long as no instructions have been given by the authorities, this is an unfounded refusal to work. The employee has no right to have his or her employer continue to pay his or her salary. If the employee continues to refuse to go to work, the employer has – in exceptional cases – the right to dismiss the employee with immediate effect. He or she can even claim compensation from the employee (corresponding a quarter of the monthly salary) if the employee leaves his or her job or does not go to work without good reason.

If the employee's refusal to work is justified, e.g. because the employer does not comply with hygiene regulations or does not take appropriate measures to protect the employees' health, the employee may in principle refuse to work. In this case, the employer is obliged to continue to pay the salary.

5. Can an employer force an employee to work from home?

Answer: Yes, if this is in response to an identified risk and if work from home is reasonable from the employee's perspective. This depends on whether the employee already works from home from time to time and has the necessary infrastructure at home. Work from home is considered to be work time and must be paid (normal pay). In addition, the employer must pay for the employee's necessary expenses, if any.

6. Can an employer force an employee to stay home (without working)? If yes, does the employer have to pay the salary?

Answer: Yes. The employer can ask the employee to stay at home and release him temporarily from his obligation to perform work. In this case, the employer must continue the salary payments (100%). For their part, employees are not required to make up these hours at a later date (except in the case of very short closures).

7. Can an employer force the employees to take holidays on (very) short notice?

Answer: No. The employer is competent to determine the vacation periods, but holidays must be scheduled sufficiently early - at least three months in advance as a general rule - to allow the worker to plan them reasonably.

8. Can an employer force the employees to cancel their holidays on short notice? If yes, does the employer have to indemnify the employee?

Answer: If necessary, yes. The employer is competent to determine the vacation periods. However, he must take the employee's wishes into account to the extent compatible with the interests of the company. Holidays must be scheduled sufficiently early - at least three months in advance as a general rule - to allow the worker to plan them reasonably. Workers are only obliged to accept a short-term postponement of already fixed holidays in cases of necessity. The employer must compensate for the damage caused to the employee.

9. If the offices are closed preemptively by fear of the virus, does the employer still have to pay the salary?

Answer: Yes. In this case, the employer is obliged to continue to pay the wages to the employees concerned. For their part, the workers are not obliged to make up these hours at a later date (except in the case of very short closures). The employee must set off against his wages what he has saved as a result of the impossibility to work or what he has earned by performing other work, or what he has intentionally foregone.

10. Do employers have to take health and safety measures?

Answer: The FOPH may soon recommend that companies draw up a pandemic plan. The legal obligations and the division of competences between the Confederation, the cantons and companies are regulated in the following legal bases:

- Epidemics Act (Federal Act of 18 December 1970 on the Control of Communicable Diseases in Humans; RS 818.101);

- Labour law (Federal Act of 13 March 1964 on Work in Industry, Craft Trades and Commerce; RS 822.11);
- Hygiene Ordinance (Ordinance 3 of 18 August 1993 on the Labour Act; RS 822.113);
- Ordinance of 25 August 1999 on the protection of workers against the risks associated with micro-organisms (RS 832.321);
- The potential pandemic plans drawn up by the FOPH and the cantons;
- Federal Council decision of 28 February 2020 describing the current situation as a "special situation" within the meaning of the Epidemics Act and banning events involving more than 1,000 people. The ban enters into force with immediate effect and is valid until at least 15 March.

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