



CRISIS PRACTICE

# Coronavirus

MARCH 17, 2020

For more information,  
contact:

Jules Quinn  
+44 20 7551 2135  
[jmquinn@kslaw.com](mailto:jmquinn@kslaw.com)

Kim Roberts  
+44 20 7551 2133  
[kroberts@kslaw.com](mailto:kroberts@kslaw.com)

Layla D'Monte  
+44 20 7551 7504  
[ldmonte@kslaw.com](mailto:ldmonte@kslaw.com)

---

King & Spalding

London  
LLP  
125 Old Broad Street  
London EC2N 1AR  
Tel: +44 20 7551 7500

## COVID-19: Safeguarding the workforce in the UK

---

The unprecedented spread of the COVID-19, or coronavirus, outbreak around the world has resulted in many organisations in the UK facing continued challenges, raising several key business and legal considerations. One of the most critical aspects is how employers should treat their employees and how the ongoing situation is affecting the workforce.

### DUTY OF CARE

Employers have a duty to protect the health and safety of their employees, including the duty to provide a safe and secure working environment. As part of this, during the pandemic an employer will need to assess whether employees are at an increased risk of infection. This may be achieved by requiring employees to confirm whether they have spent time in a high-risk area or if they have been in contact with a confirmed or suspected case.

Employers should approach this carefully, as they will need to be attuned to the employee's privacy. Employers are required to identify a lawful ground for processing any sensitive personal data. In light of this, employers need to be aware of their obligations under GDPR and the UK Data Protection Act 2018 when asking an employee for this type of information. They will need to consider both the lawful basis on which they rely to subsequently process that information and other privacy law principles such as proportionality when processing sensitive health information.

Generally, an employer can require an employee to seek medical advice from NHS 111 if it believes that the employee is at an increased risk of infection. However, the employer may not be contractually entitled to



require employees to confirm that they are not infected or to provide medical certification to that effect.

Employers should carry out a risk assessment and consider whether employees may be susceptible to infection. A first response for an employer should be to circulate guidance on good hygiene practices and alerting employees to guidance, either from Public Health England, the NHS or the WHO. Employers should also ensure that they have systems in place to keep updated with advice from the government.

### WFH AND SELF-ISOLATION

Depending on the wording of the contract, employers may have a contractual right to ask an employee to work from home or not attend the workplace. If this right does not exist, it may be a reasonable and legitimate instruction to instruct an employee to work from home (if appropriate) or to not attend work.

The UK government does not advise closure of the workplace if there has been a confirmed case. There is also no requirement on employers to inform the NHS or Public Health England of infections in the workplace. Instead, Public Health England will contact the employer and advise on the next steps. However, in circumstances where there has been confirmed cases in the workplace and employees have the capability to work remotely, it may be prudent to do so.

There are tangential risks inherent in this option as it brings about issues with cybersecurity risk management. Businesses should therefore ensure that they have robust systems in place to counter any cyber threat, for example, by implementing two-factor authentication for those employees working remotely or encrypting laptops and mobile devices. By rolling out these measures now, businesses could safeguard against other potential threats in the future, as well as ensuring that they maintain their workforce through similar difficult periods.

### ABSENTEEISM BECAUSE OF COVID-19

There is a likelihood that some employees may refuse to attend work, citing the spread of COVID-19 as a reason. In general, employees do not have a right to do so, however, an employer should speak to its employees to understand their concerns. In particular, some groups, for example those with auto-immune disease, pre-existing respiratory conditions or pregnant women, are at higher-risk if infected. Employers should therefore be careful to ensure that they consider discrimination and health and safety laws in relation to high-risk groups.

When considering the risk of absenteeism in the context of the outbreak, there is an opportunity for employers to rethink workplace culture and policies. Businesses could benefit by implementing and advertising a well thought out sickness policy that encourages infected employees to stay away. This in turn could foster an environment that reassures healthy employees that the workplace is safe.

Employers should be aware of staff who may need time to take care of dependants. There is a risk that care may become unavailable during a pandemic and statutory rights to dependency leave are limited.

### PAY ISSUES

The obligations around payment of employees will depend on the circumstances for absence. If possible, employers can instruct employees to work from home. Any employees that are displaying symptoms can be treated as being on sick leave and will therefore be entitled to sick pay. Employees asked not to attend work, who are able and willing but cannot work remotely, are entitled to be paid their usual salary. In situations where an employee has been advised to self-isolate by a doctor or NHS 111, it seems they would be deemed incapable of working and therefore they should receive any statutory sick pay due to them.

### MEETINGS AND EVENTS



Consideration should be had as to the risk of holding or planning events until there is more certainty around the spread of COVID-19. While it is understandable that the level of activity may suffer if there is not a concerted effort to continue to pitch for new business by hosting events, there are also dangers that extend further than the spread of the virus.

There is a very real risk that attendances of events could be severely hampered, as potential attendees decide to stay away, resulting in a waste of resources directed towards that event. Even if the event is well attended, an outbreak of the virus that can be traced back to that gathering could create a PR disaster with the subsequent bad press that may be published. However, the main consideration should always be the health and safety of those attending and an appropriate risk assessment should be conducted.

When making any decision on whether to cancel or postpone an event be sure to review contracts with premises providers and suppliers, as well as any event cancellation insurance policies and what actions to take to mitigate any losses a business may suffer, and ensure prompt notice is provided to counterparties as required. Thinking creatively may mean that a planned event can be salvaged without requiring a large gathering of people, for example in some circumstances it may be possible to host the event as a webinar.

## CONCLUSION

Employers and employees face an uncertain few weeks and months ahead as the COVID-19 pandemic develops. Certain industries – such as the airline sector or hospitality – are already seeing a slowdown and warnings of job losses, while potential lockdowns or temporary closures of business are likely to cause even further problems.

It is important not to lose sight of the human costs of the outbreak. Likewise, ensuring that the workforce is adequately protected will bring some stability and peace-of-mind. Organisations should establish contingency plans, which may include certain short-term, temporary provisions, to help with the ambiguity and anxiousness around the outbreak. This will improve the chances that businesses and their workers can get through these difficult times.

---

## ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,100 lawyers in 21 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.” View our [Privacy Notice](#).

ABU DHABI	BRUSSELS	DUBAI	HOUSTON	MOSCOW	RIYADH	SINGAPORE
ATLANTA	CHARLOTTE	FRANKFURT	LONDON	NEW YORK	SAN FRANCISCO	TOKYO
AUSTIN	CHICAGO	GENEVA	LOS ANGELES	PARIS	SILICON VALLEY	WASHINGTON, D.C.