How to manage workforce issues (1)

Key points to assess and manage your people during the COVID-19 crisis

1. Business continuity

Home working

- Review your existing home-working policies and make sure employees are reminded of the continued applicability of confidentiality policies when working outside of the company's premises.

- Make sure your policies are aligned with the latest official guidance/regulations as most countries are now strongly recommending home working (if not imposing it).

- Provide support for staff who are remote/home working over a long period of time:
  - Remote/home working triggers potential new challenges, such as looking after mental health if an employee begins to suffer from 'cabin fever', providing additional equipment, and managing individual and team performance and discipline.

- You may also need to support all employees (not just those working remotely) as everyone is at risk of being overwhelmed by bad news and rumour.
  - Consider providing employees with the necessary hardware (laptop etc) and internet connection. If employees are using their own devices/connection, consider reimbursing their phone and data connection costs.
  - Consider what to do/say about benefits that are not accessible during sequences of home working (eg free meals, access to gym etc).
  - Consider extra support for those with family (eg young children).

- Ensure you clearly differentiate between extended (un)paid leave and home working (also paid, but with an obligation to work). Address overtime (allowed or not, and, if allowed, how to track it).

- Consider the situation of employees whose job cannot be done remotely and – because of public authority guidance/rules or personal reasons – are not able to work from the company's premises.

On-site adjustments

- If you have roles that do not suit home working - and assuming public authorities are still allowing people to be on site - consider other measures to limit the spread of the virus, including team segregation (in and out of the premises) and team rotation/shift arrangements to reduce contact and limit the number of people on site at any given time.

Travel policies

- Most travel restrictions are now imposed by public authorities but in countries where there is no formal ban, you will still need to consider your own travel restrictions to affected zones or beyond and what to do with planned business trips/group activities (eg conferences, offsites) if these are not already cancelled/postponed.

- Consider possible recommendations to employee on personal travel (and consent on tracking mechanism if any) and whether you can restrict these/what conditions you can impose (including self-solation)

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How to manage workforce issues (2)

Key points to assess and manage your people during the COVID-19 crisis

- Consider informing your employees about the consequences of self-declaration requirements (eg in Singapore, false declaration can lead to loss of work/residence permit)

Self-isolation/quarantine measures
- Make sure your recommendations and instructions comply with any quarantine/self-isolation or other health-related measures taken by authorities.
  - Do quarantine/self-isolation need to be treated as sick leave and paid as such? Can you refuse to treat the time as sick leave if the quarantine/self-isolation results from a private trip (eg holiday)?
  - Can you compel employee to work remotely during this period of time, assuming it is technically possible?

- Most employers have been flexible so far, and have – sometimes based on public authority guidance – treated these periods as sick leave. However you may want to differentiate between self-isolation/ quarantine resulting from work-related reasons or private ones (people keeping travelling for private reasons where it is discouraged).

Returning to the office
- When encouraging/requesting employees return to your premises, consider those who need to take care of their children because of delayed day care or school re-opening (or other family members).

- Check if you are under any local legal obligation to provide protective clothing and face masks to employees who return to the office.

- Consider that employees may not want to come back to the office because of fear of being infected – may you/do you want to compel them to do so?

- Re-check and adjust your travel policies.

Data protection
- Check whether you can compel any employee suspected of being sick or having been in contact with infected people to undergo a medical examination before returning to work.

- Be aware that additional data protection issues may be triggered if authorities ask you to collect and share employees' (and even their family's) and site visitors' health status and travel history. Most national Data Protection Authorities have issued guidance, some being more pragmatic than others.

- Consider seeking consent from employees to the use of travel data (business or personal).

- Consider being proportionate when collecting health and travel data from employees or visitors that enter your premises.

- Consider updating your record of processing activities and carry out data protection impact assessments when collecting health data

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How to manage workforce issues (3)

Key points to assess and manage your people during the COVID-19 crisis

Discrimination

- Do not discriminate against employees who are infected or stereotype/encourage xenophobia by taking unnecessary measures, for instance by asking certain groups of employees to be examined without any justified reason.

- Be careful when requiring and following up on medical tests as an employee might claim they are being discriminated against because of the results.

In addition...

- Check for any local incentives in the fight against the coronavirus as many governments have announced financial support measures to businesses (and/or employees), eg tax and social security reliefs, payment facilities, subsidies for no redundancies, etc.

- Check for any state-funded temporary unemployment benefit/subsidy wage scheme linked to the outbreak (eg qualification of the outbreak as a case for state partial unemployment in France and Netherlands, statutory sick pay in the UK).

- Check if your business insurance covers potential liability in case employees are infected at the workplace/during working time and they (or a third party) ask for compensation.

- Bear in mind that *force majeure* in employment relationships is often strictly regulated and does not work in the same way as in commercial contracts.

- Ensure consistency in your communication with employees while recognising that a one-size-fits-all approach is unlikely to work as regions are impacted differently and are at different stages of the crisis.

2. Managing employment costs
- The outbreak is causing a significant slowdown in many sectors and employers may be in need to manage headcount costs.

- Because of the many uncertainties, including around the depth and duration of the slowdown, and the need to protect the business and its talent in the long term, employers are likely to favour alternative measures to the classic redundancy.

- Alternatives measures may include some or all of the following, most of which require consent:
  - Hiring freeze
  - Withdrawing offers of employment to candidates
  - Reducing agency/temporary work
  - Cutting wages/salaries
  - Delaying or freezing salary increases
  - Freezing/stopping paid overtime
  - Reducing non-cash benefits
  - Suspending bonus plans
  - Changing pension arrangements
  - Changing the expense reimbursement policies
  - Asking employees to work fewer hours
  - Retraining/redeploying staff to unaffected or less affected areas of the business

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How to manage workforce issues (4)

Key points to assess and manage your people during the COVID-19 crisis

    o Offering employees sabbaticals or secondments

    o Asking employees to take unpaid leave

    o Sharing employees with other employers

- Implementing any of the above measures will trigger legal issues which should be carefully considered (including consent as noted above, and IC requirements as below)

3. Information and consultation requirements

- Consider the need to inform and possibly consult with employee representative bodies (such as works councils, trade unions, etc.) on some or all of the above measures – the law and best practice varies between jurisdictions.

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