

COVID-19 Middle East: Returning to work

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The economic impact of COVID-19 has not only caused a worldwide lockdown, but it has also affected companies globally. A substantial number have been forced to close or make mass redundancies.

Even for those fortunate enough to maintain their workforce, many have adopted alternative working arrangements by reducing salaries or placing employees on unpaid leave. This article considers the key issues Middle East employers need to be aware of when considering returning to work.

- **Is there any relief in sight?**

The UAE Authorities recently announced a slight relaxation of the lockdown restrictions coinciding with the holy month of Ramadan. On 22 April 2020, the Dubai Economic Department (**DED**) announced that certain industries such as construction, retail, transport and construction could reopen subject to compliance with various guidelines and protocols. Similarly, curfews in the major cities in KSA were relaxed during the day and Qatar's industrial area which was largely quarantined in early April has started opening on a road by road basis. Across the Middle East, we are now seeing Governments easing restrictions with a view to rebooting economic activity. With the resultant opening of a number of business sectors, there is a hope that the economic conditions will improve. Businesses should take care to ensure that the health and safety of employees is properly safeguarded during this period.

- **Are staff entitled to any specific notice prior to being required to return to work?**

There is no legal obligation to provide notice, however from an employee management perspective, we would recommend reasonable notice is given to employees so that they can make any necessary arrangements to return to work.

- **What happens if an employee refuses to return to work?**

Where an employee raises a legitimate concern in respect of returning to work, employers are encouraged to listen to employee's concerns and consider whether the company is able to accommodate the employee's request. Where an alternative arrangement is agreed, it should be documented in writing and signed by the employer and the employee.

Strictly speaking, if an employee refuses to return to work without a legitimate reason, this could amount to an unauthorised absence. Employees should be contacted regularly and advised that failure to return to work may amount to a disciplinary sanction. We would recommend that legal advice is sought on a case by case basis before any disciplinary action is taken.

- **During the lockdown, employees' salaries were reduced. Are staff entitled to be paid their original salary when they return to work?**

While there is no legal requirement to increase salaries upon an employee's return to work, this largely depends on what was agreed with the employee in respect of the salary reduction, whether this is in the context of the guidelines issued by a regional government or otherwise privately agreed between employer and employee.

If the employees were informed that the salary reduction would be temporary (for example as required by the guidelines in Qatar and Oman), then the salary reduction cannot be enforced permanently. However, subject always to employee agreement, the salary can remain at the reduced rate when returning to work.

- **Can employers require their staff to undergo temperature checks as a condition of entering its premises?**

The UAE and KSA authorities have recently passed a number of regulations that address non-government companies administering Covid-19 testing.

1. The UAE Ministry of Human Resources and Emiratisation (**MOHRE**) and the KSA Ministry of HR and Social Development have stated that employers should implement measures to protect the employees working at their premises, including the following:

- a. Provide screening devices on the premises to take employee temperature and check symptoms twice a day.
 - b. Suspected cases should be referred to the health authorities and should be prohibited from going to work or entering staff accommodation.
 - c. Put in place a mechanism for transporting their employees to and from work, ensuring that the number of transported workers does not exceed 25% of vehicle seating capacity.
 - d. Have reduced numbers of employees on the premises (30% in the UAE and 40% in KSA provided these are in branch offices and other establishments of the employer – for the moment attendance in the employer's main office or HQ is suspended).
2. The DED has also introduced a similar protocol for all businesses which includes a requirement to ensure that anyone entering a building or office including staff and guests must undergo temperature screening and checks.
 3. Whilst both the MOHRE and DED protocol may not directly apply to certain companies (for example, in respect of those who are based in a free zone), most free zone authorities are adopting similar measures and it is likely that a similar requirement will soon be implemented.

- **What happens if an employee refuses to consent to testing?**

Given that the requirement to test employees is a legal obligation imposed by the applicable UAE/KSA authorities, where an employee refuses to consent to testing, they should be refused entry.

• **What should employers be doing to protect its employees?**

Priority should be given to protecting staff. Given the need for physical distancing, consideration should be given to the following:

1. Identification of employees who are in high risk categories and/or those who have a direct family member with whom they live who may be in a high risk category;
2. Staggering break times so that communal areas are not crowded;
3. Staggering staff attendance e.g. days in the office or start and end times in the office;
4. Providing masks and gloves for employees to wear at work;
5. Clarifying the rules surrounding communal areas, for example the storage of food in the fridge;
6. Providing hand sanitisers, tissues, and washing facilities as well as disinfectant sprays so that desks can be wiped down;
7. Displaying signs regarding good hygiene practices and best practice re prevention of the spread of Covid-19;
8. Enhanced/Deep cleaning of premises and sanitisation of the office, workspaces and communal areas; and
9. Limiting the number of people in a lift at any one time.

• **Do we need to make any changes to our office?**

Consideration of a physical adjustment to office layout is important particularly if the office is open plan. In order to enhance preventative measures, employers may be minded to provide disposable mats or coverings which can be placed onto desks and used by employees on a daily basis. Some companies are re-examining air ventilation systems as part of a risk assessment of premises to ensure safety at work.

You may also want to consider marking the floor with stickers to indicate physical distancing especially in areas where employees are likely to congregate such as the reception, meeting rooms and other communal areas.

In compliance with the physical distancing requirements, we would recommend that any visitors are limited, with any attendance being recorded to ensure that capacity levels are carefully monitored.

• **What other guidance may affect the return to work?**

The UAE Supreme Committee of Crisis Disaster Management has confirmed that daily sterilisation of the workplace is mandatory and employees and guests should be provided with sanitisers at all times.

The UAE Communicable Diseases Law was recently updated to include Covid-19. The penalties under this Law relate to breach of the restrictions placed on someone with a communicable disease or who suspects that they may have. Breach of the law would be a criminal offence. Accordingly, failure to check employees' health could lead to breach of this law and there is a specific penalty for the direct supervisor of the employee. Similar measures have been adopted in Qatar and Oman in those countries' respective communicable/infectious disease laws.

• **What HR basics should be followed:**

1. Make sure everyone's contact numbers and emergency contact details are up to date;
2. Make sure all staff are aware of your response as an employer;
3. Appoint a coordinator or team to prepare plans and keep on top of official advice;
4. Continue to communicate as the situation changes;
5. Make sure managers know how to spot symptoms of coronavirus and are clear on any relevant processes, for example sickness reporting and sick pay, and procedures in case someone in the workplace develops the virus;
6. Ensure that all potential incidents are being reported to HR so they can understand the overall risk to the business;
7. HR policies and handbooks should be reviewed and updated in respect of any new procedures that are put into place; and
8. Ensure there is a designated place for people (with a closable door) should they fall ill at work.

While the relaxation in restrictions has been welcome news for most businesses, there are a number of legal and employee welfare considerations that businesses should be mindful of. Given the evolving nature of the laws and regulations governing the phased return to work, it is essential that businesses seek legal advice when resuming operations to ensure both compliance with the law as well as the health and safety of its employees.

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