

- Update (09 June 2020) -

# An employer's guide to navigating COVID-19 workforce issues in key jurisdictions in Europe

**Belgium, Germany, France and the UK**

09 June 2020

Employers are facing many employment law issues as restrictions begin to be eased and more employees can come back to work. Travel restrictions, home office workers, employees being placed on quarantine or self-isolating or forced leave of absence, excess or imbalanced workforces remain continuing challenges over the coming weeks and months. We want to play our part in helping you, your business and your employees to move past them..

Here are some of these questions and issues, and how employers can tackle them across Belgium, Germany, France and the UK

**Note:** In workplaces with a Works Council or similar employee representative body in place, certain information, consultation and /or co-determination rights may have to be observed in relation to some of the measures discussed below.

## I. Issues relating to Pay

### **1. Do you have to pay employees who are off sick with diagnosed Coronavirus?**

#### **France**

Employees are entitled to statutory sick pay and additional statutory sick pay and/or continued salary from the employer, if provided for in the applicable collective agreements. The government has temporarily removed waiting periods for entitlement to sick pay and removed conditions for entitlement (such as length of service). These exceptional measures will apply until 10 October 2020 inclusive.

#### **United Kingdom**

Employees will be entitled to statutory sick pay (currently £94.25 per week) and the employer's enhanced sick leave and pay provisions (if any in place). The three-day waiting period for statutory sick pay is removed temporarily.

#### **Germany**

Employees are entitled to statutory sick pay (up to six weeks). Statutory sick pay is payable at the full remuneration level.

#### **Belgium**

Yes, but during a limited period. If an employee is unable to work due to illness (whether due to Coronavirus or otherwise), the employer will have to pay guaranteed wages (a) with respect to white-collar employees during the first month of incapacity and (b) with

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Employers with fewer than 250 employees will be reimbursed by the Government for Coronavirus-related statutory sick pay they pay to employees for the first two weeks of sickness.

respect to blue-collar employees during the first 7 days of incapacity, followed by a decreasing percentage of the normal wages during the rest of the first month. After this initial period and if the same illness continues, the employee shall claim benefits under the social security scheme (up to 70%).

### **2. Do we have to pay employees who are off sick with Coronavirus symptoms, but who have not been diagnosed?**

#### **France**

If the employee is signed off sick without a note delivered by the ARS (Agence régionale de santé) regarding coronavirus, they will receive pay in the usual way as provided for by law and the applicable collective agreements. However, the conditions for the maintenance of wages by the employer, in addition to the daily social security allowances, no longer provide for a minimum seniority of the employee in the company. These exceptional measures will cease to apply as of 10 July 2020, the date on which the state of health emergency determined by the Government ends.

#### **United Kingdom**

Yes, if the employee has symptoms which mean they are too unwell to come to work they will be entitled to the employer's usual sick leave and pay provisions, including statutory sick pay.

#### **Germany**

Yes, employees are entitled to statutory sick pay if they are unable to perform their duties due to sickness. Employees need to submit a doctor's certificate if they are absent from work for more than 3 days. The regulation (applied until 31 May 2020), that sickness can also be certified by a doctor over the phone, was not extended because the risk of infection was classified as "low", so that employees must now go to the doctor if they are sick for more than 3 days and require a certificate from the doctor.

#### **Belgium**

Yes. Employees shall promptly notify the employer when unable to perform their work and, in accordance with collective employment agreements or upon the employer's request, provide a doctor's certificate. Since Coronavirus diagnosis tests are not easily accessible in Belgium, doctor's certificates are issued on a remote basis, with a reference to a potential "Coronavirus risk".

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### **3. Do we have to pay employees if we ask them not to attend work?**

#### **France**

Without the provisions regarding partial activity status applying, employers will have to pay employees full salary. Employees who benefit from partial activity, after authorisation from the French labour administration, will receive a salary equal to 70% of their gross salary, paid in full by the State (except in special cases). The government has announced a reduction in the amount of this compensation paid by the State (up to 85% of the compensation paid to the employee instead of 100% today). Only certain sectors of activity that have been severely affected will continue to benefit from the current conditions.

Employers may also unilaterally modify or impose the taking of paid leave for employees.

#### **United Kingdom**

If an employee is not sick but their employer tells them not to come to work, they should be paid their usual pay (but see for state support further below). If an employee is asked not to attend work because they are sick, they will be entitled to the employer's usual sick leave and pay provisions, including statutory sick pay. The three-day waiting period for statutory sick pay is removed temporarily.

#### **Germany**

Yes, employers have to pay full salary if they ask an employee to stay away from work provided the employee is ready and fit for work.

#### **Belgium**

Yes. The Belgian government has urged all companies to introduce remote working as much as possible. For positions which are not suitable for remote working and for which social distancing and general health and safety obligations cannot be respected, the employer shall ask employees not to attend work. In any event the employer shall continue payment of the usual wages. However, the system of "temporary unemployment due to force majeure" or "due to economic reasons" is available (see *infra*) and may enable the employer to avoid future payments.

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### **4. Do we have to pay employees who just refuse to come into work because they're scared?**

#### **France**

In theory, no. Employees cannot refuse to attend work on the basis that they are scared of being contaminated. It is for the employer to put in place preventative measures recommended by the government, and impose homeworking for all employees where possible, to enable a maximum level of health and safety. Employees' "right of retreat", which enables an employee to receive full pay whilst not attending work, will not be triggered if the employer has put everything in place to avoid contamination.

#### **United Kingdom**

The government announced on 11 May 2020 that workers should continue to work from home wherever possible. As of 13 May 2020, all workers in England who cannot do this should travel to work (if the workplace is open). This means that employers should only be allowing employees to attend work where it is not possible to work from home. If the employee raises some health and safety concerns about returning to the office, they will be protected from detriment and dismissal as a whistleblower.

#### **Germany**

No. Employees do not have a general right to stay away from work during an outbreak of illness such as COVID-19. Employees would only be entitled to refuse to work if they cannot reasonably be required to perform their work. The condition of unreasonableness is met if, for example, the work poses a significant objective risk to the employee's health, or if there are at least objective grounds for a serious suspicion that such a risk exists. The mere fact that colleagues have a cough, without further objective grounds for suspicion or indications that a risk exists, will probably not be sufficient to meet this condition.

It is, however, possible to agree with the employee to work from home. He/she would then be paid as usual.

#### **Belgium**

No, subject to exceptions.

The Belgian federal government has urged all companies to introduce working from home or remote working as much as possible. For positions which are not suitable for remote working and for which social distancing and general health and safety obligations cannot be implemented (exceptions apply), the workplace shall be temporarily closed.

In light of the above, and as a general rule, employees cannot refuse to attend the workplace or perform their job due to fear of contamination. If the employee refuses without sufficient grounds such a behaviour can qualify as unilateral contract termination, where the

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employer is no longer obliged to pay the wages.

Only exceptionally, where the employee can evidence that the employer has created a situation where there is a real risk of contamination, and provided that the employer refuses to address such a situation, may such employee invoke the exception of contractual non-performance and thereby refuse to work. In such a case, payment of the salary is due.

### **5. Do we have to pay employees if we decide to close the workplace?**

#### **France**

The temporary closure of a workplace during a pandemic allows employers to resort to partial unemployment measures. This ensures that employees continue to receive their salaries during the closure, the costs of which are covered by the state. In practice, employers pay salaries in the usual way (subject to a cap), and are then reimbursed by the state. The government has already simplified the procedure (including the requirement to consult employee representative bodies) and allows more advantageous wage payments during partial activity, to the benefit of both employees and employers.

#### **United Kingdom**

If an employer decides to close the workplace for a temporary period, they will usually need to keep paying their employees full pay. In many cases employees may be able to continue working remotely. If not, the employees who are unable to work would still be entitled to full pay, as they are able and

#### **Germany**

Yes. With regard to the payment of salaries, the employer is still obliged to pay remuneration if the employees are able and willing to work.

However, the employer may order company holidays or short-time work if the conditions are met.

#### **Belgium**

The Belgian Federal Government has temporarily closed many non-essential business (e.g. retail other than food, restaurants, bars, cinemas, culture, etc.). Only pharmacies, food and pet food stores, banks, post office, petrol stations, bookshops and night shops (until 10pm) are allowed to stay open.

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willing to work but the employer is not providing them with work. The exception to this is lay-off. Laying off employees means providing them with no work or pay for a period of time. Some employers may have contracts of employment which allow them to lay-off employees, but this is not common. Unless the employer has a clear contractual right to lay-off or the clear consent of employees could be obtained (which is unlikely), an employer imposing a lay-off would face potential claims for unlawful deduction from wages, breach of contract and constructive dismissal.

Employers in certain sectors have also been ordered to close, including pubs, restaurants, cinemas, theatres and most retail outlets. This is enforced by the [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#) which require all listed businesses to close. If closure is compulsory, meaning it would be illegal for the employees to continue at work, there is an argument that the affected employees are not entitled to be paid. However, the government Job Retention Scheme (JRS) is available to employers to avoid redundancies and employees going without any pay (see further below for details).

However, delivery services are still possible and many businesses remain open on their websites. The employer remains liable to pay the wages if the employee is able and willing to work.

In case of unemployment due to force majeure or due to economic reasons, the following unemployment schemes apply:

### Temporarily unemployment due to force majeure

The National Employment Office (NEO) has formally acknowledged the Coronavirus as a force majeure-event, guaranteeing the introduction of temporary unemployment due to force majeure until 30 June 2020. This system allows employers to temporarily suspend the employment agreement of (some of) their employees if it's no longer possible for the employer to put these employees to work as a direct consequence of the outbreak. During such a suspension no wages are due by the employer and the employees are entitled to unemployment benefits from the NEO. These benefits have been temporarily (retroactively since 1 February and until 30 June 2020) increased to 70% of the gross monthly wages (capped at 2.754,76 EUR).

Only in case of unemployment due to force majeure, an amount of 5.63 EUR per day (150 EUR per month) will be added to the unemployment benefit, at the expense of the NEO.

Finally, the employer is also allowed to pay an extra amount in addition to the unemployment benefit to his employee provided that the total amount received



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by the employee does not exceed his normal net wages.

Businesses such as bars and restaurants that have been forced to fully or partially close, as well as businesses that voluntarily close down can apply for the system of temporary unemployment due to force majeure for their affected staff.

The NEO shall take its decision within 3 days of receipt of a complete file.

### Temporarily unemployment due to economic reasons

The scheme of temporary unemployment for economic reasons apply when the companies can still employ their workers but are hit by a reduction of their customer base, production, turnover, etc. The conditions for this scheme are stricter than the ones for force majeure (see *supra*).

This scheme was initially designed for blue-collar employees, and afterwards extended. With respect to white-collar employees the business shall be acknowledged as an undertaking in difficulty.

The procedure may last up to 6 weeks.

For some industries employers (or sometimes industry funds) are required to pay an extra amount on top of the unemployment benefits, based on a collective bargaining agreement. For both schemes the employer is entitled on a voluntary basis to pay a supplement on top of the unemployment benefits.

Specific conditions apply with respect to social security and withholding on these amounts.

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### 6. What are employers' obligations where offices are partially or fully closed?

#### France

If workplaces are partially closed, the employer must implement measures imposed by the government regarding the protection of employees, such as making necessary arrangements to the workstation of an employee who has been in contact with an infected person, taking measures for employees who are in contact with members of the public (wearing masks and gloves, washing hands regularly, minimum distance to be kept between customers, etc). In the case of a total temporary workplace closure, the employer must rely on provisions relating to partial unemployment, in order to avoid permanent closure of the workplace. Employment contracts will be put on hold. No restrictions on potential dismissal measures have so far been taken by the Government.

#### United Kingdom

Employers in certain sectors have been ordered to close, including pubs, restaurants, cinemas, theatres and most retail outlets. This is enforced by the [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#) which require all listed businesses to close. If closure is compulsory, meaning it would be illegal for the employees to continue at work, there is an argument that the affected employees are not entitled to be paid. However, the government Job Retention Scheme (JRS) is available to employers to avoid redundancies and employee's going without any pay (see further below for details).

#### Germany

Employers have a duty of care for their employees. If a COVID-19 infection occurs, the employer must inform staff so that people, who have been in contact with the affected person, can be identified. Employees keep their salary entitlement during a temporary closure of businesses premises.

#### Belgium

Employers shall wherever possible promote remote working and provide *ad hoc* tools to employees working remotely.

Employers claiming the benefit of the temporary unemployment measures (see supra) shall file a declaration with their local NEO offices. Administrative (simplified) formalities apply: as of 6 April 2020, there is no longer a requirement to provide documents justifying that the unemployment status is the consequence of a force majeure event.



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### 7. Do we need to pay staff in a compulsory government lockdown situation where they can't work from home?

#### France

All workplaces which have been closed as a result of a compulsory measure are eligible for partial unemployment pay, and will have to make a declaration to the state within 30 days. The state will then cover the costs of salaries during the closure, according to the conditions laid out in statute (70% of gross remuneration, up to a maximum of 4.5 times the legal minimum wage).

As mentioned above, the government has announced a reduction in the amount of this compensation paid by the State (up to 85% of the compensation paid to the employee instead of 100% today). Only certain sectors of activity that have been severely affected will continue to benefit from the current conditions.

#### United Kingdom

If staff are unable to work from home, employers may need to lay-off these staff members until the lockdown is over. If there's a lay-off clause in their contracts, staff would only need to be paid the statutory guarantee pay – currently £29 a day, increasing to £30 a day from 6 April 2020. This is limited to 5 days in any 3-month period - so a maximum of £145.

If employees do not have a lay-off clause in their contracts, staff must be paid in full. This also applies if there is no work to be done because of a potential lockdown's impact on business. Note that as of 13 May 2020, all workers who cannot work from

#### Germany

Generally, the employer has to bear all operational risks and continue to pay the full salary.

In addition, the employer has various possibilities to mitigate the financial impact:

- Ordering holiday in accordance with the employee's holiday wishes (transferred holiday leave from 2019 and pro rata for 2020).
- Ordering of company holiday up to a maximum of 3/5 of the annual holiday leave under observance of a reasonable notice.
- Order of short-time work and application for short-time work compensation at the German job centre ("Agentur für Arbeit").

#### Belgium

Yes. Any business which has been forced to close temporarily shall pay its staff, even if they cannot work from home.

However, the temporary unemployment schemes apply (see *supra*).

Furthermore for business which are allowed to offer limited services (e.g. a restaurant offering catering service) or for businesses which are forced to close on week-ends, temporary unemployment due to force majeure is available.

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home should travel to work, if the workplace is open.

### 8. What state support is available to secure jobs and avoid redundancies?

#### France

The State has mainly improved the partial activity scheme in order to make it more attractive and to enable a very large proportion of companies to benefit from it, under more advantageous conditions than the existing system.

Several measures have also been taken in order to limit financial costs for employers, to maintain an attractive level of remuneration for employees during the crisis, and to allow a quicker return to normal.

For example:

- the benefit of an exceptional purchasing power bonus has been introduced and extended, totally exempt from social security charges and income tax.
- the possibility for employers to unilaterally modify and impose the taking of paid holidays for employees.
- the postponement of payment of profit-sharing bonuses.

#### Germany

The German Government has adopted the following facilitations by various acts/ordinances (Act on the temporary crisis-related improvement of the regulations for short-time work compensation; Social protection package):

- Short-time work can already be applied for if 10% of the employees are affected by short-time work (previously it was 30%). In addition, the Federal Employment Agency, which pays the short-time work allowance, now also reimburses the portion of social security contributions that previously had to be borne exclusively by the employer. These subsidies are designed to relieve the financial situation of companies and do not have to be paid back at a later stage.
- In addition, the government has agreed on an increase of the short-time work benefits (previously 60% and 67% for parents) in order to mitigate the consequences of the corona crisis for employees who are particularly affected. According to this agreement, employees will receive 70% of the net pay difference (or 77% for parents) from the 4th month of short-time work, and from the 7th month even 80% of the net pay difference (or 87% for parents). The prerequisite, however, is that the working time has been reduced up to

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50 %. This regulation is limited in time until the end of 2020.

- During short-time, employees can take up secondary employment in the systemically important areas (agriculture and medical services) without a reduction of short-time subsidies.
- Employees have a right to compensation for a loss of earnings caused by the official closure of schools, kindergartens or nurseries to contain the current pandemic. According to the act, employees who have children up to the age of 12 or disabled children are entitled to compensation for loss of earnings in the amount of 67% of their net salary if they have to look after their children themselves and are therefore unable to pursue their work during the closure of schools or child care facilities. The prerequisite is that the employees cannot organise any other reasonable care (e.g. by the other parent or emergency care in special facilities). Risk groups such as the child's grandparents do not need to be involved.

The compensation in the amount of 67% of the net salary is granted for up to six weeks and is limited to a maximum amount of 2,016 euros per month. The government is currently initiating to extend this period up to ten weeks respectively twenty weeks for single parents. The bill has only to be approved by the "Bundesrat".

The employer has to pay this compensation and submit an application for reimbursement to the

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competent authority. The claim does cover periods of regular school or kindergarten holidays, and is limited until the end of 2020.

In addition, the social protection package offers a number of options for quick and easier access to social protection during the crisis caused by COVID-19.

### United Kingdom

The UK Government has announced the Coronavirus Job Retention Scheme (JRS) to provide UK employers with support for paying wages of staff who would otherwise have been laid off as a result of Coronavirus.

The scheme is available to all UK employers, of any size and in any sector.

It involves “furloughing” designated workers. This will involve keeping those workers on the payroll instead of dismissing them as redundant or putting them on unpaid lay-off. The change of status to “furloughed worker” requires employee consent (no unilateral right of employers to impose this status change).

HM Revenue & Customs (HMRC) will reimburse 80% of furloughed workers’ wage costs, up to a cap of £2,500 per worker per month. As of 1 July and until 31 October, when the CJRS scheme ends, the government contribution will gradually decrease to 60%, but employees will remain entitled to 80% of their salary.

Note: workers cannot do any work for an employer that has furloughed them (which means it is not typically a suitable scheme where the employer

### Belgium

On 6 March 2020, the Belgian Government adopted several measures in support of businesses: the temporary unemployment schemes (see *supra*), the possibility for employers to obtain a payment plan for their social security contributions, VAT, withholding tax, personal income tax/corporate tax.

Furthermore, self-employed persons have the possibility to apply for a reduction of tax prepayment, for a postponement of or exemption from payment of social security contributions or for a replacement income (bridging right).

Taxpayers have also the possibility to apply for an exemption from interest on arrears and for the postponement of fines for non-payment of tax.

Companies and self-employed persons who are forced to close down partially/completely because of the coronavirus crisis can in addition apply for the corona compensation premium and the additional closure premium. The compensation premium varies depending on the region, and whether it is a partial or complete closure, but is between 2,000 and 5,000 EUR.

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requires the employee to just work fewer hours or days over a period of time unless the employer rotates groups of employees in and out of this status). As of 1 July 2020, furloughed employees will be able to return to work on a part-time basis. Employers will pay in full days worked, and will be able to claim under the scheme for days not worked.

The employer can top-up the 80% HMRC payment but does not have to do so as a condition of State support. Any UK organisation with employees can apply, including:

- businesses
- charities
- recruitment agencies (agency workers paid through PAYE)
- public authorities

They must have created and started a PAYE payroll scheme on or before 19 March 2020 and have a UK bank account. The scheme continues to 31 October 2020. However, the scheme will close to new entrants from 30 June. From this point onwards, employers will only be able to furlough employees that they have furloughed for a full 3 week period prior to 30 June.

This means that the final date by which an employer can furlough an employee for the first time will be 10 June, in order for the current 3 week furlough period to be completed by 30 June. Employers will have until 31 July to make any claims in respect of the period to 30 June.

Further details are available [here](#).

Finally, in order to protect companies from bankruptcy impacted by the current crisis, a Royal Decree has been adopted (published on 24 April 2020) in order for any company whose difficulties derive from the measures taken to combat the pandemic, to be protected as a debtor against protective and executive attachments, bankruptcy and judicial dissolution. This period of protection for companies with difficulties started on 24 April 2020 until 17 June 2020 (see also question 16).

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### **9. Do we have to let employees have (paid) time off to care for a dependent who is sick? Or if a school has closed?**

#### **France**

The government has made it possible to cover the cost of an employee ceasing to work to care for a sick family member or to look after his children. He will thus be compensated for his period of "absence". Employers should also check collective agreements which often provide for time off to care for a sick child.

Employees on leave for childcare automatically benefited to the partial activity scheme as of 1 May 2020, in order to be able to benefit from better compensation. As of June 1, 2020, they will have to provide a certificate from the school stating that it is impossible to take in the children, in order to continue to benefit from the scheme.

#### **United Kingdom**

Only if it is a contractual right.

Otherwise staff have a statutory (and limited) right to unpaid time off.

Employers should check contracts and policies. Some employers offer paid leave for employees who have to deal with emergencies concerning dependents.

As of 1 June 2020, some schools in England have reopened for certain years, with schools in Wales set to reopen on 29 June. Schools in Scotland and Northern Ireland are not set to reopen until August.

#### **Germany**

No, if the time off exceeds a "reasonable" time period, generally believed to be 5 to 10 days. If it is less, care for close relatives who become sick (children) will have to be paid for by the employer. Employees who have to stay at home and care for their children due to school and nursery shut downs can take holiday leave or request unpaid leave. In addition, the German government has adopted an act under which employees are entitled to compensation under certain conditions if they are unable to work because of school closures and the options outlined above are not feasible. See also above for details of the Government's Job Retention Scheme.

#### **Belgium**

As a general rule employees may ask for (unpaid) time off (of maximum 10 days) for an imperious reason, including the sickness of a relative. If they have a child in hospital, the employee may ask for two weeks' unpaid leave. There are no specific rules applicable to Coronavirus at this stage. An employee who needs to stay at home to care for their children will in principle not be entitled to temporary unemployment benefits, unless they can provide evidence that there is no childcare available and there is no other alternative. On the other hand employer and employee can agree to use outstanding holiday entitlement, overtime or compensatory rest, subject to the employee's consent (see *infra*).



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### **II. Measures to help businesses survive the economic hardship caused by the pandemic**

For most employers, this will present significant economic hardship: if the business is forced to close and cut off revenue, but also required to continue paying employees then it is easy to see how this could potentially lead to permanent closures, insolvency and redundancies.

#### **10. Can employers implement a temporary reduction in pay and benefits?**

##### **France**

The government wants to safeguard French businesses. At this stage, resorting to partial unemployment is the best alternative. The economic impact should enable employers to agree collective agreements to increase working time and/or reduce salaries. In certain sectors of activity, it is also now possible to derogate from the legal provisions on maximum working hours and weekly and daily rest periods. In addition, the rules on Sunday work have been considerably relaxed.

##### **United Kingdom**

Consulting with employees and trade unions or other representative bodies and trying to agree a temporary reduction in pay and benefits for the duration of the crisis. Under normal circumstances, employees and their representatives would be unlikely to agree to such measures. However, where the alternative is closure and job losses, there may be more of an appetite to reach an agreement. See also above for details of the Government's Job Retention Scheme.

##### **Germany**

Not possible unilaterally.

Yes, if the employee consents.

##### **Belgium**

Unilateral reductions in pay and benefits are not allowed. Agreement on temporary reductions, provided that these do not fall below the minima set by Collective Bargaining Commissions, are possible, but unlikely. At a later stage, employers and trade unions may negotiate changes in working time or minimum wage. To date the employer may mitigate the impact of the Coronavirus virus by claiming the benefit of temporary unemployment.

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### **11. Can employers implement short-time working?**

Short-time working means providing employees with less work (and less pay) for a period while retaining them as employees

#### **France**

Short time working will effectively be in place if employers implement partial unemployment. It is not possible to impose on employees a reduction of working time.

#### **Germany**

Possible with the consent of the employee or on the basis of an agreement with the workers' representation ("Betriebsrat").

Entitlement to a state subsidy ("Kurzarbeitergeld") under certain conditions.

The German government has taken measures to provide easier access to short-time subsidies in order to secure employments during this crisis. See also above for details of the Government's Job Retention Scheme.

#### **United Kingdom**

Short-time working means providing employees with less work (and less pay) for a period while retaining them as employees.

If employees are put on short-time working in circumstances where the employer does not have the contractual right to do so then the employer will be in fundamental breach of contract entitling the employee to resign and claim constructive dismissal.

As of 1 July, employers will be able to put employees who were previously furloughed under the JRS back onto part time working. The employees must have been furloughed on or before 10 June 2020.

#### **Belgium**

The NEO accepts temporary unemployment when the workplace only needs to close down during a limited part of the week (e.g. business not allowed to open on weekends) or affected by a partial closure (e.g., restaurants having to close down, but entitled to offer catering services). Exceptionally, under this scheme, days of unemployment may alternate with working days.

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### **12. Can employers choose to lay-off employees?**

Laying off employees means that the employer provides employees with no work (and no pay) for a period while retaining them as employees

#### **France**

Dismissals should, at this stage, not be necessary thanks to partial unemployment measures. Should it prove necessary, redundancies may have to take place. Currently, employers remain free to make redundancies provided they respect the applicable laws and regulations.

#### **United Kingdom**

If employees are laid-off in circumstances where the employer does not have the contractual right to do so then the employer will be in fundamental breach of contract entitling the employee to resign and claim constructive dismissal.

#### **Germany**

No lay-offs in Germany.

#### **Belgium**

Lay-offs are not allowed, since the system allows for temporary unemployment. Individual and/or collective redundancies (i.e. termination of employment agreements) are possible according to and subject to the conditions of the applicable law.

### **13. Can employers give notice to staff to take paid holiday?**

#### **France**

The employer may impose paid holidays, if a collective agreement so provides, for a maximum of 6 days and with a notice period of one day.

In the absence of a collective agreement (concluded with trade unions or elected representatives and/or employees of the company), the employer may however impose rest days (different from and in addition to paid holidays), up to a maximum of 10 days, with a notice period of one day. The period of leave imposed or modified may not extend beyond 31 December 2020.

#### **Germany**

Employers may instruct employees to take an appropriate portion of their annual holiday leave if not contrary to legitimate interests of the employee. Further employees may only be eligible for short-time subsidies if they have taken an adequate portion of their annual leave to mitigate the work loss.

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### **United Kingdom**

Employers are entitled to give notice to workers to take statutory annual leave, provided there is no contrary contractual right.

### **Belgium**

No. Employer and employee can agree to use outstanding holiday entitlement, but this requires the employee's consent.

Some consider that the employer could impose overtime or compensatory rest on employees.

## **14. Can employers seek volunteers to take unpaid leave?**

### **France**

It is possible to ask employees to take unpaid leave, but this cannot be imposed unilaterally and the consent of employees must be obtained.

### **Germany**

That is possible but depending on the employees' consent.

### **United Kingdom**

Employee consent is required but this is a potentially effective way of achieving cost-cuts may (albeit hugely unpopular). Where employers consider this, they should offer to spread the salary cut over a period of time (1 month off work combined with 5 months with reduced salary by 20% or a similar approach).

### **Belgium**

Employers cannot force employees to take unpaid leave. The consent of the employee is always required.

## **15. Can employers change terms and conditions of employment?**

### **France**

Any change to the contract must be agreed to by employees, unless there is a specific company agreement with the trade unions or the employee representative body which allows for modification of specific contractual terms (such as working time or remuneration).

### **Germany**

Changing terms and conditions can be done by mutual agreements. Employers could also give notice with an option to continue the employment with different terms and conditions after expiry of applicable notice periods ("Änderungskündigung"). This is, however, time consuming and triggers significant legal risks regarding unfair dismissal protection.

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### **United Kingdom**

Where compulsion is necessary, if 20 or more redundancies or forced changes to terms and conditions are proposed at one establishment within a period of 90 days or less, the employer is obliged to inform and consult collectively beforehand for a minimum 30-day period with appropriate representatives of affected employees.

### **Belgium**

Any material change to the employment agreement must be agreed by both parties. Imposing remote working on a temporary basis due to the current circumstances will not be considered as constituting a material change.

## **16. Can employers make redundancies?**

### **France**

Collective redundancies are still possible, provided employers comply with the law (consultation of employee representatives, specific procedure, etc).

### **Germany**

Redundancies may be possible if the pandemic means that it will no longer be possible to continue the employment on the long run, e.g. in case of a closure of the business or a necessary head-count reduction in line with reduced business.

### **United Kingdom**

If the longer-term impact of the pandemic is likely to mean that a reduced headcount will be required even when the business reopens, then the employer may need to consider redundancies.

### **Belgium**

The Coronavirus outbreak will most probably generate bankruptcies in Belgian companies. Alternatively, companies will file for judicial reorganisation, in order to transfer part of their assets (and staff) to a new entity. However, the Belgian insolvency framework did not pass the ECJ's test (*Plessers vs. Prefaco*, ECJ, 16 May 2019): the option to take over only a portion of a company's staff as part of (court-supervised) reorganisation proceedings was declared contrary to the EU Transfer of Undertakings Directive (2001/23/EC). Parties will thus probably be more reluctant to organise a transfer of assets (and staff) in the framework of such reorganisation proceedings,

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which may increase the number of bankrupt companies.

On Friday 24 April 2020, a Royal Decree no. 15 was published in the Belgian State Gazette which provides for a temporary moratorium for all companies whose continuity is threatened by the many crisis measures against the spread of the COVID-19 virus and who were not in a cessation of payments situation on 18 March 2020, the day on which the lock-down measures took effect.

In practice, this means that, for a period from 24 April (date of publication of the Royal Decree) to 17 May 2020, any company whose difficulties derive from the measures taken to combat the pandemic will, in principle, be protected as a debtor against protective and executive attachments, bankruptcy and judicial dissolution.

By Royal Decree of 13 May 2020, the moratorium provided for in Royal Decree no. 15 was extended by one month, until 17 June 2020.

At ebl, we advise many of our clients on issues relating to COVID-19. With questions and queries wide-ranging, we are here to provide answers to your questions, to act as a sounding board for the decisions you're planning to make and to help you make the key decisions that will protect your business and your communities in the weeks ahead.

Whilst our offices are in "virtual mode" now, we remain fully operational and committed to providing an ongoing service to our clients across all areas of our business.

Please reach out to your local employment contact by email if you wish to discuss any of the issues in this note or any other employment issues impacting on your operations in Europe further. Alternatively, just contact any of the country lead employment partners listed below for support.



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