



Coronavirus COVID-19 in Denmark – answers to the many employment-related legal issues



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Coronavirus COVID-19 has spread rapidly across the globe over the last couple of months and weeks. In Denmark at present, more than 615* people have been infected and more than 1,366* people are in isolation – and these numbers are expected to rise. This also means that the fear of the virus spreading has become imminent, prompting businesses to be well-prepared and take precautions in this unprecedented situation – particularly if the work performed by the employees of the business involves business travel abroad.

Employers are, under the Danish Working Environment Act, obliged to ensure that employees can perform their work in a safe and healthy environment. This means that, in light of the current situation and risk of spread, employers must keep up to date with the guidance provided by the authorities and prepare guidelines for their employees addressing the most obvious issues and questions arising in this connection.

Moreover, employers are recommended to ensure that all employees are briefed about the ongoing information provided by the authorities and keep up to date with the situation as it changes.

Below are some suggestions of issues we feel would be relevant to address in these guidelines as well as suggestions for communication to employees.

Are employees entitled to pay if they are off sick with coronavirus?

Employees who are usually entitled to sick pay will also be entitled to sick pay if they are infected and off sick with coronavirus.

Is an employee entitled to pay if he/she has been asked to self-isolate as a precaution?

If the employee is not infected, but is in self-isolation as a precaution, that will probably, from a purely employment-law perspective, not be deemed lawful absence entitling the employee to pay.

However, if, in such a situation, the employee makes it clear to his/her employer that the employee is prepared to work, the situation will probably be that the employer must, considering its obligation to ensure the health and safety of its other staff members, accept that the employee is to receive pay during the self-isolation period. At this stage, we are talking about 14 days' self-isolation as a precaution. The employer is recommended to consider the option of the employee working remotely or to find any other practical solution that will work for both parties. In that respect, instructions from the authorities should also be complied with.

Can an employee refuse to go on a business trip?

As a general rule, an employee cannot refuse to go on a business trip if that forms part of the employee's job. If the destination is a country to which the Danish Ministry of Foreign Affairs advises against all but essential travel, or if there is a specific risk of danger to the employee's life or health, the employee may refuse to go without that resulting in any disciplinary action against the employee.

Is an employer obliged to pay salary/wages to an employee who is prevented from travelling home from a business trip due to the coronavirus outbreak?

If, in connection with a business trip, an employee is prevented from travelling home due to the coronavirus outbreak, the employer will be obliged to pay salary/wages to the employee as well as reasonable expenses during the extended stay.

Is an employer entitled to ask whether an employee has been travelling abroad – or is planning to do so?

Yes, an employer may inquire about an employee's travel plans.

Can an employer refuse an employee private travel to a risk area?

An employer cannot prevent an employee from travelling to a risk area. If an employee nevertheless travels to an area to which the Danish Ministry of Foreign Affairs advises against all but essential travel and the employee falls ill with COVID-19, the illness will, as a general rule, be self-inflicted and the employee will not be entitled to sick pay. Another implication may be that the employer will be entitled to dismiss the employee due to unlawful

absence. That will, however, depend on a specific assessment of the circumstances. The employer may, however, also agree with the employee that he/she takes holiday or time off in lieu, etc.

Is an employer obliged to pay salary/wages to an employee who is prevented from travelling home from holiday due to the coronavirus outbreak?

An employee travels at his/her own risk when travelling on holiday. As a result, the employee is not to be paid salary/wages during his/her extended absence if the local authorities abroad prevent the employee from travelling home due to the coronavirus outbreak. If the employee falls ill while abroad, that will be deemed ordinary sickness absence and the general rules on sickness absence will apply.

Is an employee entitled to demand to work remotely?

No, an employee is not entitled to demand to work remotely unless an agreement in this respect has been made with the employer.

Is an employer entitled to require that an employee showing symptoms or having potentially been in contact with corona-infected people be in self-isolation at home?

An employer can always decide to send an employee home from work for a period of time. In this case, the employee will, during this period, be entitled to his/her usual pay.

Is an employer allowed to inform other staff members that a colleague is infected with coronavirus?

As a general rule, an employer is not entitled to explain a reason for home isolation or illness, in that this involves registration and disclosure of health data.

According to the Danish Data Protection Agency, registration and disclosure that an employee has been infected with coronavirus could, based on the circumstances, be justified, because the legitimate interests could be that the management and colleagues can take the necessary precautions. It is recommended that, in any case, the employer obtain the employee's express consent.

Can an employee refuse to come in to work due to fear of infection?

In general, an employee must come in to work, and it will be deemed refusal to work if the employee does not come in, entailing the potential dismissal of the employee. However, the employee may, in qualified cases, rely upon the principle that work should be stopped due to the doctrine on "life, honour, and welfare". In such cases, a business should seek further clarification of the matters - if necessary with assistance from the authorities in order for any disciplinary action to be assessed.

In this connection, please note that an employer has a duty to provide all relevant protective equipment, depending on the job and the danger of infection.

What if an employee is unable to have his/her children looked after in the event that the relevant school or day-care centre is closed due to the coronavirus outbreak?

Any employee is under an obligation to come in to work even though the employee has no childcare possibility for his/her child/children. It is for the employee to find alternative childcare solutions in order for the employee to come in to work.

However, it is possible for an employer and an employee to agree on remote work, time off in lieu, or holiday, etc., but an employee is not entitled to these options.

More information

It is generally recommended that all employers and employees keep themselves updated on the recommendations issued by the Danish Health Authority and the Danish Ministry of Foreign Affairs. Read the recommendations (in Danish) from the Danish Health Authority [here](#).

DLA Piper's team of highly experienced employment lawyers are ready to advise on the wording of internal guidelines and to deal with the large number of specific issues, which continue to arise concerning coronavirus and COVID-19.

You can read more about the coronavirus and COVID-19 on our global website [here](#).

*The figures are based on an article (in Danish) published by DR (Danish Broadcasting Corporation) on 12 March 2020. Find it [here](#).

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