

Latest Practical Guidance for Belgian Employers in respect of COVID-19

April 13, 2021

Latest guidance

Since March 18, 2020, the Belgian federal and regional governments imposed a set of restrictive measures for the entire country to address the COVID-19 crisis.

As of March 27, 2021, reinforced restrictive measures have been put in place due to a new spike of infections in Belgium. The current measures are expected to remain in place until at least April 19, subject to possible extension.

Key measures currently in place

The measures currently in place can be summarized as follows:

1. **Citizens are free to travel around in Belgium** and are still allowed, amongst others, to go to work (subject to the rules on teleworking and other restrictions set forth below), to do groceries, go shopping or to exercise outdoors but subject to specific restrictions. A curfew applies **between midnight and 5 am in the Flanders and Walloon Regions and between 10 pm and 6 am in the Brussels Region**. During these times, everyone must remain indoors, except in case of essential, non-deferrable travel such as for urgent medical reasons, to provide assistance to elderly people or when commuting to or from work. Except in case of urgent medical travel, the reason for travel should be demonstrated upon request of the police. It is therefore advisable that workers who perform night-time work have a certificate from their employer at hand in the event of a police check.

These measures are subject to frequent reassessment and might be limited or (partly) lifted at a later stage depending on the evolution of the pandemic. All activities remain subject to social distancing rules (keeping at least 1.5m of distance between individuals). When going outside, wearing a mask that covers nose and mouth is strongly recommended and, in certain cities and regions (including Brussels) mandatory. Wearing a mask is mandatory in any event for everyone above the age of 12 on public transport, in entry areas to train and bus stations, in a store, in a public or religious building, at crowded places, at outdoor markets and whenever it is otherwise impossible to comply with the social distancing rules.

We have a COVID-19 Task Force within Cleary Gottlieb that is acting as a repository for practical solutions, best practice and issue-spotting to help our clients by sharing market experience, insight and advice from across our global presence.

If you have any questions concerning this memorandum or COVID-19 more broadly, please reach out to us on Global-Cleary Covid-19 Taskforce@cgsh.com or the following author:

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2. **Social gatherings are restricted** as individuals are allowed to meet at most 4 other individuals (not including children under the age of 12) outside, respecting the social distancing rules. Each member of a household may maintain a permanent close contact (*i.e.*, no social distancing) with 1 other individual per 6 weeks, not counting children under the age of 12 and individuals living under the same roof.
3. **Bars and restaurants are closed**, except for take-away non-alcoholic drinks and meals until 10 pm. Establishments belonging to the cultural, recreational and events sectors are closed, including wellnesses, banquet halls and cinemas, save for some exceptions.
4. **Stores** can remain **open** to the public only so far as they offer **essential goods**, including, *inter alia*, grocery stores, stores for care and hygiene products, pharmacies, pet food shops, newspaper and book stores, and gas stations. All other stores (which are considered non-essential) can only be frequented upon prior appointment. **Access to stores remains strictly regulated**, with, *inter alia*, a requirement to put appropriate preventive measures in place based on the guidelines for the commercial sector (*see* point 6 below). Outdoor markets are allowed under certain conditions and are subject to regulation by the municipal authorities.
5. **Travel outside Belgium is prohibited**, except for journeys which are considered as essential (*i.e.*, travel for professional reasons, diplomacy, compelling family reasons, study abroad, humanitarian reasons, *etc.*). All individuals returning to Belgium (or individuals travelling through Belgium and staying at least 48 hours) after a stay abroad must complete a [Public Health Passenger Locator Form](#) (the “Form”). Non-essential travel to Belgium is forbidden. Travellers from and to Belgium need a sworn statement to justify the purpose of their voyage. Current travel information can be consulted [here](#).
6. **Companies** - irrespective of their size - **are obliged to organize teleworking** for every job position where this is possible and with respect

for the continuity of business operations, activities and services.

For those employees whose job does not allow for teleworking, social distancing rules should be strictly respected (*i.e.*, at least 1.5m of distance between employees at all times). The social distancing rules apply both to the performance of the work and to transport organized by the employer. Employers should provide their employees who are unable to perform teleworking with a certificate or any other proof confirming the need for their presence in the workplace. Teambuilding events which require physical presence are prohibited.

More in particular, **companies who cannot organize teleworking**, must take appropriate preventive measures to ensure **compliance with social distancing** requirements to the maximum extent possible, including by **amending their working procedures** based on the rules set out in the General Guide (“*generieke gids*”/“*guide générale*”), version of December 14, 2020, approved by representatives of employers and employees at the level of the so-called Group of 10. The guide has been further implemented with specific procedures at sector and industry level. In case those procedures do not guarantee respect of the social distancing rules at all times, for example because that is not physically possible in confined spaces at work, employers should place **collective protective equipment** such as screens or walls to compartmentalize workplaces, and **take organizational measures**, such as spreading working hours and breaks, using a flexible time schedule, working in shifts and adjusting the order of work assignments. The number of employees working in the same space at the same time should be limited to the maximum extent possible. If social distancing between employees cannot be respected, and after exhaustion of the collective protective equipment and organizational measures, employees may need to wear a **mask covering their mouth and nose** (to be provided by the employer), together with **other preventive measures** to be taken by the employer such as disinfecting the workspace (*e.g.*, desks, keyboards), providing hand sanitizers in visible places to ensure the application of good hand

hygiene by employees, ensuring the use of paper handkerchiefs in case of coughing and sneezing, proper ventilation of the workspaces, informing employees that they should not come to work when experiencing symptoms and providing instructions in case someone becomes ill. The employer must inform the employees in a timely manner about the preventive measures in force in his undertaking and provide them with appropriate training in that respect.

In the case of transport organized by the employer, the **largest possible distance between each person** should be maintained during **transport**. If possible, the number of persons in the vehicle should be limited and/or partitions (in sufficiently flexible material with attention to visibility and safety) and additional mouth masks should be used. The ventilation systems should be maintained properly and particular attention should be paid to the hygiene inside vehicles that are being used by different people.

Pursuant to the General Guide, employers whose employees perform telework should highlight the importance of breaks and discuss the welfare aspects associated with working from home with their employees, including the work-related psychosocial aspects.

For the commercial sector (including retail stores, outdoor markets and other sectors with no physical contact), additional rules were laid down in the Guide for the retail sector ("*Gids voor de handel*")/ ("*Guide pour les commerces*") of November 2, 2020.

Employers, employees and third parties must **comply** with the **social distancing and preventive measures in force** in the company. The inspection services of the Control of Wellbeing at Work are in charge of informing employers and their employees, and ensure compliance with the rules in force in the company. Other inspection services (e.g., with the National Social Security Office, the National Employment Office, etc.) will monitor compliance with the rules taken in the context of the fight against COVID-19 as part of their regular inspection, and carry out targeted inspections in that respect. If a company fails to

comply with these measures, **criminal and administrative fines** can be imposed by the authorities (as provided by the Social Criminal Code).

As per March 27, 2021, **control on teleworking** is tightened. All employees should work from home, unless the nature of the function exercised or the continuity of the services, activities or operations foreclose remote working. In that case, the employer will need to register on a newly launched platform made available on socialsecurity.be, per establishment and per month, the number of employees engaged on the first business day of that month, and the number of them who find themselves in such situation which precludes teleworking. The information should be filed at the latest on the sixth calendar day of each month.

The aforementioned restrictions on companies and the General Guide are not mandatory for certain key sectors and essential services, as exhaustively listed in the relevant governmental regulations, or to the suppliers or contractors whose products or services are strictly necessary for those key sectors and essential services to operate.

As of March 18, 2021, the list includes healthcare related sectors, media, key government functions (police, security, justice and crisis management), universities, fuel and food supply (including agriculture), hotels, postal services, the chemical and nuclear industry, the financial sector (banks, payment services and financial services), the packaging industry, producers of medical instruments, ports, airports and utilities (energy, gas, water and similar supply, transmission and distribution services). For the non-public sector, the scope of key sectors and essential services is tied to an exhaustive list of applicable joint committees ("*commissions paritaires*")/ ("*paritaire comités*").

Companies qualifying as part of a key sector or that provide an essential service will however still need to ensure that the rules on social distancing are complied with as much as possible (for which they can rely on the General Guide as "an inspiration" by analogy with non-essential

companies) and, if that is not possible, will need to provide their employees with masks covering their mouth and nose.

Finally, the basic hygiene measures at work remain applicable (e.g., in relation to frequently washing hands, staying home in case of illness, and maintaining a clean work place).

Furthermore, Parliament has approved the extension of the short leave regime to absences of employees for the purpose of their **vaccination**. Employees can, during working hours, get their vaccine without loss of income. When an employee requests a short leave to be vaccinated, an employer may demand only the information strictly necessary to verify the reason (vaccination against Covid-19) and the time of the appointment. Therefore, the employer may ask to show the confirmation of vaccination appointment.

Main points of attention for Belgian employers in case of a partial or full closure of a site or when dealing with decreased workloads due to COVID-19

7. As from October 1, 2020 until June 30, 2021, a flexible application of the concept of force majeure is accepted and all situations of temporary unemployment related to COVID-19 will be considered as temporary unemployment for reasons of force majeure, even if, for example, it is still possible to work on certain days. In practice, in case of a partial or full closure imposed by the authorities or a decrease in workload for the employees due to COVID-19, the legal regime of **temporary unemployment** which applies to the employer is based on **force majeure** only (even if such decrease in workload is due to direct or indirect economic reasons, such as supply chain disruption). This regime applied to all companies as from March 13, 2020 until August 31, 2020, and was initially extended until December 31, 2020 for the sectors and companies that are particularly affected by the pandemic only. However, early November, the government decided to retroactively reintroduce the simplified procedure for all companies. Consequently, from October 1, 2020 onwards, the National

Employment Office (“**NEO**”) will accept the qualification of temporary unemployment due to the coronavirus pandemic as unemployment due to force majeure, even if the underlying causes are economic. Employers who already sent a notice of temporary unemployment for economic reasons can switch to the temporary unemployment scheme for force majeure (reason: “coronavirus”) without having to complete any further formalities, even if some employees can still work or if it is still possible to work on certain days. That regime is extended until June 30, 2021.

8. Given the numerous requests for temporary unemployment on grounds of force majeure, the procedures for introducing temporary unemployment have been significantly simplified for both employers and employees. The employer who places the employee on temporary unemployment must make an electronic declaration with the NEO of the hours of temporary unemployment during the month in question. He can choose between two communication channels: either via a web application on the social security portal site (“DRS Scenario 5”), or by sending a structured batch file (mainly via a payroll agency or a service provider). Employers who made the declaration and are under the temporary unemployment regime for force majeure must no longer pay the salary of the concerned employees. Those employees will instead receive unemployment allowances from the NEO corresponding to 70% their average salary with a ceiling (set at €2,754.76 (gross) per month) increased by €5.63 per day. The National Social Security Office (“**NSSO**”) has confirmed that it is possible for employers to grant a supplement on top of the unemployment allowance to bridge the gap for employees with their normal salary without social security contributions being due, provided that (i) the supplement cannot exceed the unemployment benefit itself and (ii) the sum of the unemployment allowance and the supplement do not result in the employee receiving a higher net amount than when he or she actually works.

The NSSO states in its instructions to employers that it is preferable to use the respective gross

taxable amounts as the starting point for this calculation. The NSSO also specifies that the employer must treat all workers in the same category equally (either by compensating up to a certain percentage of the net remuneration or by paying each of them a lump sum).

9. Temporary unemployment for force majeure is also available for employees who are not sick but are ordered into quarantine by foreign or Belgian authorities. This applies, for example, in the event that an employee returns to Belgium after a stay abroad in one of the red travel zones (as determined by the Federal Public Service for Foreign Affairs Office) and is ordered into quarantine. In such case, employees should notify their employer immediately and provide him, at his request, with a medical certificate confirming the order into quarantine. The medical certificate should be drawn up in accordance with the legal formalities. The employer is not obliged to pay the employee in quarantine if the latter cannot perform his work by using teleworking. It is the NEO which shall indemnify the employee unless he travelled to a region which was already included in the red zone for non-essential travel (same unemployment allowance in case of temporary unemployment for force majeure).
10. Employees who need to take off to **take care of a child as a result of the closure of the school, nursery or institution for people with disabilities** due to the pandemic can benefit from the system of **temporary unemployment due to force majeure**. The employee must immediately inform his employer by submitting an executed certificate received from the school, nursery or institution (a [template](#) of such certificate can be found on the NEO's website). Employers cannot refuse this temporary unemployment. In case of a full or partial closure of the school based on a general measure applicable to all schools of a Community, the school must only issue the certificate of closure corona at the request of the employee (because the employer requests it). As from October 1, 2020 until June 30, 2021, the regime can also be invoked by employees who are unable to work because of the care of a child that is in quarantine (a [template](#) of the relevant certificate can be found on the NEO's website).

This regime is extended for the period between April 4 and April 18, 2021 because of the total or partial cancellation of Easter holiday camps or because the child does not attend the kindergarten or day care centre.

The employee who is temporarily unemployed because of the child care receives 70% of his (capped) salary, with a deduction of 15% withholding tax. Until June 30, 2021, such employee will receive a supplement of 5.63 euros per day on top of his unemployment allowance. The receipt of the allowance may be subject to certain conditions such as the ability of the employee to work.

11. Employers should **refrain from having the work that should normally have been done by the employee during the period of suspension of performance of the employment agreement due to temporary force majeure, performed by third parties or students**. However, employers can have the work carried out by third parties or students, if the performance of the employment contract is suspended as a result of the employee being ordered into quarantine. Employers failing to comply with the prohibition are obliged to **pay the normal wage** to their employee for the days during which the work was carried out by a third party or student.
12. Employers who wish to invoke the temporary suspension of employment agreements due to force majeure, should comply with a number of formalities. **Each employee should be notified individually** of the partial or full suspension of the employment agreement, at the latest on the day preceding the effective date of the temporary suspension and prior to the transfer of the employee to the work place. The notification should mention the period of suspension and the (number of) days during which the employee is temporarily unemployed (and the days on which he or she is expected to come to work in case of partial suspension). The decision to increase the number of days of temporary unemployment or to convert a partial suspension into a full suspension should be notified in the same manner. Employers can notify their employees **collectively if the temporary suspension applies to more than**

one employee at the same time, provided that it is clear for each employee individually to which arrangements he or she is subject. Employers failing to comply with these formalities, are held to pay the employee's normal wages to be paid for the period prior to the completion of these formalities. Employers who invoke the temporary suspension must inform the works council, or in the absence thereof, the trade union delegation in their company. In addition, employers are responsible for informing their temporary unemployed employees about the formalities they must complete to receive an allowance.

13. A temporary regime has been put in place to support the **transition** from the regime of temporary unemployment due to force majeure (which could initially be requested by any company as from March 13, 2020 until August 31, 2020) **to the traditional regime of unemployment due to economic reasons** for blue- and white collar employees. The transitional regime was scheduled to apply from September 1, 2020 until December 31, 2020 for the sectors and companies that are not particularly affected by the pandemic. As mentioned above, as from October 1, 2020, the simplified procedure was reintroduced for all employers and employees, and subsequently extended to June 30, 2021. However, if employers wish to continue to make use of the temporary unemployment for economic reasons and indicate “economic causes” as a reason for temporary unemployment in the ASR scenario 5 (by specifying the code “nature of the day” 5.1), the transitional regime of temporary unemployment for economic reasons and the existing procedures will be maintained.

The transitional system of unemployment due to economic reasons includes a few deviations from the traditional regime. For example, for white-collar workers, the employer will have to demonstrate a decrease in turnover or production of at least 10% during the quarter preceding the introduction of temporary unemployment (compared to the same quarter in 2019), he must offer two training days per month of unemployment and he should be bound by a collective labour agreement or business plan (to be submitted with the Federal Public Service for

Employment, Labour and Social Dialogue) concluded for the period from September 1, 2020 until December 31, 2020. The latter condition does not apply in the event that a sectoral collective labour agreement applies. In that respect, a new collective labour agreement (n°148) has been concluded as a safety net if no industry-level agreement is available (meaning that employers can use this agreement to apply for temporary unemployment for economic reasons without having to conclude a company-level collective labour agreement or draft a business plan to this effect).

The regime allows employers to request a full suspension of the employment agreement for 24 weeks (instead of 16 weeks) or to apply for a system of part-time work for 34 weeks (instead of 26 weeks) with a minimum of 2 working days per week. Employers must use the C106A-Corona transitional scheme (which can be found on the NEO's [website](#)). For workers, employers can request a full suspension of the employment agreement to 8 weeks (instead of 4 weeks). Employers can introduce a system of major suspension, including that there are less than 3 working days per week or less than one working week in 2 weeks, for a total duration of 18 weeks (instead of 3 months). Employers can also opt for a system of short suspension, including that there are less than 3 working days per week or less than one working week in 2 weeks, for a total duration of 12 months. In any of the different scenarios, if the maximum duration of the suspension is reached, the employer is obliged to reintroduce the full employment system for a full week before he can request a new suspension. If there is a different sectoral regulation that provides for longer periods, these will continue to apply. Workers will receive an allowance equal to 70% of their capped gross wages.

14. Companies in difficulty or under restructuring may **temporarily reduce the working time** until they can resume their normal activities in order to compensate the decrease in workload and to avoid dismissals. The working time can be reduced by means of a collective reduction in working time by one quarter or one fifth (possibly to be combined with the introduction of a four-day

work week). The collective reduction of working time can be imposed for a maximum period of one year. Companies may apply a **corona time credit** with payment of allowances to employees who reduce their working time for a period of up to six months, in order to partially compensate for the loss of income. Companies may also introduce an **end of career time credit** for older employees (with benefits for employees at the age of or over 55) through a part-time or one-fifth time credit regime, with a minimum duration reduced to one month and with payment of an allocation. For the purposes of applying the aforementioned measures, **a company can be recognized as facing difficulty or undergoing restructuring without the mandatory conclusion of a collective labour agreement** in the context of unemployment with company top-up.

15. **Employers may reimburse the costs incurred by their employees who perform telework** as a result of the COVID-19 measures. Employers can grant a lump sum allowance of up to 127 euros, which, as a result of indexation, is increased to a maximum of 129.50 euros per month. The lump sum may only be granted to employees who regularly and structurally perform telework, *i.e.*, at least 5 working days per month, and who consequently have to furnish a space in their home where they perform the work. The allowance is intended to cover office expenses, *i.e.*, the costs related to the furnishing and use (including rent and possible depreciation) of a desk, printer and computer equipment, office supplies, utilities such as water, electricity and heating, maintenance, insurance, property tax, *etc.*, in the employee's home. The allowance can be granted free of social security contributions to all employees who perform telework, including employees who did not perform telework before the COVID-19 measures, and therefore also without a formal telework agreement between the employer and employee. No distinction should be made between different job categories. All employees who regularly and structurally perform telework can receive the same allowance. If a part-time worker effectively meets the conditions to receive the allowance, the employer may grant the maximum allowance, regardless of

the number of hours of the employment agreement. The allowance is a non-taxable reimbursement of the employer's own costs under certain modalities. In addition, employers can grant an allowance of up to 40 euros per month for the use of a private internet connection and subscription (maximum 20 euros) and a private computer (maximum 20 euros). Employers do not receive any compensation from the government for these amounts.

16. **Suspension of notice period.** On June 22, 2020, a law suspending the notice period for dismissals given before or during the temporary suspension period of the employment agreement due to force majeure as a result of the COVID-19 outbreak, was published in the Belgian Official Gazette. If a notice is given by an employee, then the notice period shall continue to run during the period of temporary unemployment. On the contrary, if a notice is given by an employer, then the notice period will be suspended during the period of temporary unemployment, save for the situation where the notice period had commenced to run before March 1, 2020. The law entered into force on the day of its publication. This implies that the notice period will only be suspended for the days of temporary unemployment for reasons of force majeure as from the publication of the law. If the notice period commenced on or at a date later than March 1 and ended before June 22, there is no suspension and the employment agreement has irrevocably terminated. However, if such notice period was still running on June 22, then it will be suspended as of that day and for the remaining part of the notice. For a notice given by an employer as from June 22 until the end of the period of temporary unemployment due to force majeure as a result of the COVID-19 outbreak, the notice period will not run.
17. The hospitality sector, the sectors of recreational, cultural, festive and sports activities, as well as shops and businesses that were affected by a compulsory closure were automatically entitled to postpone the payment of the social security contribution due to the NSSO for the first and second quarter of 2020, until December 15, 2020. This measure was extended to (i) companies that have decided themselves to close down

completely (cessation of production and sales) and (ii) companies that are not closed down completely but saw their economic activity sharply reduced (reduction of at least 65% in turnover or in salary mass declared to the NSSO in the 2nd quarter of 2020). In addition, employers who experienced social security payment difficulties due to the COVID-19 crisis could request a **clearance plan** for the first and second quarters of 2020 in order to allow them to **spread monthly payments over a period of up to 24 months**. This measure has been extended for the third and fourth quarters of 2020. More specifically, these employers were able to request amicable instalments for the contributions for the third and fourth quarters 2020 and for the rectifications of contributions that have lapsed and this until February 28, 2021, with the exception of the contributions determined *ex officio* by the NSSO (in case of incomplete or incorrect declarations). Any lump-sum reimbursements, advances and interests will not be charged when and to the extent that the established payment methods are strictly complied with. The sanction for failing to comply with the obligation to pay advances will not apply. This regime has been extended for the contributions for the first and second quarters of 2021, for the contributions for annual holidays (holiday service year 2020) and for the rectifications of contributions that have lapsed and this until September 30, 2021. The law regulating the topic applies retroactively as from January 1, 2021. Businesses which are affected by the health crisis will be able to benefit from this measure on the basis of a self-declaration to be introduced on the NSSO [website](#).

Main points of attention for Belgian employers who are not (or no longer) in lockdown and who keep personnel on site

18. As from March 27, **teleworking** is again compulsory for every job position where this is possible and with respect for the continuity of business operations, activities and services. For those positions for which teleworking is not feasible, the number of employees working in the same space at the same time should be limited to

the maximum extent possible. Companies should **amend their working procedures** based on guidelines set out in the **General Guide** (“*generieke gids*”/“*guide générique*”) at the national level, implemented in more detail at sector and industry level. These sectoral guides or protocols drawn up by the joint committees are published on the website of the Federal Public Service for Employment, Labour and Social Dialogue.

For employers for whom the organization of teleworking is not possible for all personnel or who choose to allow a limited number of employees to come to work again, and who thus keep personnel on site, the **social distancing obligations** apply both to the performance of the work and to transport organized by the employer. A prevention advisor or occupational physician can assist to determine the best way to achieve that result. If constituted, the Committee for Prevention and Protection at Work should be involved in this assessment (by telephone conference to the extent possible). In the absence of a formal employee representative body, clear and transparent communication to employees about the guidance and requirements is key. Employers should organize the workspace in such a way that social distancing is respected to the maximum extent for those present. Sufficient distance between workstations should be created. If this is not possible, the workstation should be placed in such a way that sufficient distance can be kept, for example by using only certain desks in open-plan offices. Employers should place **collective protective equipment** such as screens or walls to compartmentalize workplaces, place markings, ribbons or physical barriers to delineate zones or places.

Employers should also **take organizational measures**, such as spreading working hours and breaks, using a flexible time schedule, working in shifts and adjusting the order of work assignments.

If social distancing rules between employees cannot be respected, and after exhaustion of the collective protective equipment and organizational measures, employees may need to

wear a **mask covering their mouth and nose** (to be provided by the employer), together with **other preventive measures** to be taken by the employer such as disinfecting the workspace (e.g., desks, keyboards), providing hand sanitizers in visible places to ensure the application of good hand hygiene by employees, ensuring the use of paper handkerchiefs in case of coughing and sneezing, proper ventilation of the workspaces, informing employees that they should not come to work when experiencing symptoms and providing instructions in case someone becomes ill. The employer must inform the employees in a timely manner about the preventive measures in force in his undertaking and provide them with appropriate training in that respect.

19. The Workplace Welfare Code provides for the possibility for a worker to move away from his or her workstation in the event of “serious and immediate danger” that cannot be avoided. The same Code prohibits the employer, except in duly substantiated exceptions, from asking workers to come to work if he is unable to put an end to the situation of serious and immediate danger. Can the risk of contamination by COVID-19 be considered a serious and immediate danger that cannot be avoided? This will not be the case if the employer has put in place adequate preventive measures.
20. Employers should also continue to promote the World Health Organization’s more specific guidelines for measures at the work place to the extent applicable.
21. Under Belgian law, employers are under a continuing **obligation to safeguard the health and safety in the work place** at all times and take preventive measures if appropriate. The employees have a duty to cooperate in that respect and should therefore be encouraged to report their potential or actual exposure to COVID-19.

However, due to applicable privacy laws, absent a specific legal obligation or government order, the **employer cannot require employees to complete health-questionnaires or submit employees to mandatory testing for COVID-19**. Similarly, employers cannot require employees to get vaccinated. In the event of a

short absence by an employee to be vaccinated, **the employer may only request the information that is strictly necessary to check the reason of absence (vaccination against the coronavirus) and the time**. The employer may therefore ask the employee to show the confirmation of the vaccination appointment. However, the employer may not take a copy of this confirmation, nor may he keep a record of which employees were vaccinated at which time.

Instead, employees should be made aware of the risks posed by COVID-19 and should be strongly encouraged to voluntarily self-report any symptoms/diagnosis or any high-risk travel, other activities or contact with other people who develop symptoms or are diagnosed.

The Belgian data protection authority issued guidance on the topic and clarified that it is allowed to measure temperatures of all individuals who want to enter a workplace, provided that the results are not stored or otherwise processed in combination with any personal data. In other words, it would be allowed for an employer to refuse individuals access to premises based on a temperature measurement using a **conventional thermometer** (no digital scanners, camera systems or other sophisticated means) indicating a (severe) fever. However, an employer cannot keep a log of individuals whose temperature has been measured and cannot inform others of the fact that a certain individual has a fever (except, under certain circumstances, the occupational physician, see the next point below).

22. **Strictly speaking, employers cannot order an employee to stay at home** without their consent simply because they exhibit symptoms without a confirmed diagnosis. **Yet, if the employee exhibits clear symptoms of COVID-19** (coughing, sneezing, fever, muscle pain) and, in the opinion of the employer, thereby creates a clear and imminent health risk to other employees, the **employer must contact the relevant occupational physician**, who will decide whether or not the employee must be tested. If the occupational physician decides that testing is required, the employee must report to

the physician for testing and, in case they refuse and the occupational physician deems it necessary, can be required to stay at home in order to protect other employees.

23. **Voluntary self-reporting procedures put in place by the employer should ensure strict confidential treatment of the employee's health information.** Self-reporting should be directed to a designated person (or small group) in the HR department who treat the information as strictly confidential.

If an employee self-reports, the **employer may therefore not disclose the identity of the employee** to the other employees. This is also simply not necessary in most circumstances in order to properly address the risk and the employer may still notify the occupational physician of the identity of the self-reporting employee.

In order to be able to inform others (in light of the aforementioned obligation to take preventive measures), the employer may ask (but cannot order) the affected employee to provide a list of other personnel with whom the employee has come in contact for a specified period of time before having self-reported (*e.g.*, 7-14 days). In that case, the employer should also let the affected employee know that this is the purpose of asking for the list. If a list is provided, the employer may reach out (individually, not as a group, in order to guarantee confidentiality) to the individuals on this list and, if applicable, individuals who the employer should assume may also have been in contact with the affected employee during the relevant period of time by virtue of their role or the location of their working station, to inform them that they may have come into contact with a person who developed symptoms, was diagnosed or has other risk factors applying to them (travel, contact with symptomatic or diagnosed individuals), as applicable, but without divulging the identity of the affected employee.

As to those contacted employees, the employer may strongly encourage them to stay at home or agree with them to put in place other appropriate preventive measures (such as teleworking).

Finally, once information collected (including self-reported) about an employee's health-status is no longer needed for the purposes mentioned above, the information should be deleted and may no longer be used by the employer.

24. Employers who **temporarily employ foreign workers or self-employed individuals to carry out work in Belgium in the construction, cleaning or agriculture sector**, are obliged to maintain an **up-to-date register**, including the name, date of birth, identification number, address of residence in Belgium and telephone number of the foreign individual. This obligation applies from the start of the work until (and including) the fourteenth day after the end date of the work.
25. As from March 30, 2021, employers can order *rapid lateral flow* or **RLF tests** through the company doctor. This will allow companies to actively monitor the risk of contamination in the workplace, if employees cannot work remotely. The company doctor needs to identify the need for such RLF testing on the basis of elements indicating a higher risk of transmission of the virus for certain employees. It is important to note that teleworking remains mandatory, and the availability of RLF tests at the company's premises does not change anything in that regard.

Specific socio-economic measures to support key sectors and companies providing essential services

26. The federal government has implemented several measures specifically tailored to provide economic relief and flexibility to companies active in a key sector or that provide essential services (as exhaustively listed in the aforementioned government regulations).

Current measures include a reimbursement of the costs incurred by teleworkers, a government warranty scheme for EUR 50 billion, amicable payment facilities, *etc.*

Previous measures included the corona time credit, an exemption from social security contributions and tax withholding for up to 220 hours of overtime between April 1 and June 30,

2020 (and without overtime extra pay), additional flexibility for the posting or secondment of employees, and exceptions to allow consecutive short-term employment contracts (without requalification in indefinite term contracts) and the non-inclusion of hours worked by a student in the second quarter of 2020 in the annual quota of 475 hours (with the aim of encouraging students to work in critical sectors).

Key employment related incentives and measures taken at the level of the Regions

27. Businesses who suffered a loss of turnover of at least 60% in the previous months can request a **support premium from the Flemish Protection Mechanism 5**. Businesses with a decrease in turnover of at least 60% during the period from 1 February 2021 to 28 February 2021, can request the aid [online](#) until April 30, 2021. Companies in sectors that have been obliged to close down are also eligible for this aid for the period of closure, without the requirement to prove a decrease in turnover. The aid amounts to 10% of the turnover excluding VAT during the same period in 2020, subject to a maximum of 40,000 euros depending on the amount of employees. Self-employed persons in secondary occupation receive 5% support. For enterprises that had not yet started in 2019, the decrease in turnover will be compared with the expected turnover as stated in the financial plan.

In parallel, the Flemish Government works on a new “globalization mechanism”: a support measure for companies with a turnover of at least 450,000 euros (excluding VAT) during the period from April 1, 2019 to December 31, 2019 and which have suffered (i) a decrease in turnover of at least 60% and (ii) an accounting loss due to the coronavirus measures during the period from April 1, 2020 to December 31, 2020. Such companies will be entitled to 10% of their turnover realized during the relevant period in 2019. The aid can be requested until September 30, 2021.

Furthermore, tailored support measures are in place for small retail and hospitality businesses (e.g. reboot loans) and the events sector.

As a result of the corona crisis, several **migrant workers** are unable to return to their home countries. Therefore, they are offered the possibility to extend their stay and continue to work in Belgium longer.

28. The **Walloon Region** has taken the decision, on February 4, 2021, to release a new envelope of more than 200 million euros to help the sectors still hard hit by the health crisis. This indemnity is intended to help **sectors that are still closed**, the hotel sector, B2B and certain specific sectors. The tourism sector and local authorities will also benefit from new support. The **compensation** will vary between 4,000 and 12,000 euros for companies closed since October 19, 2020, and between 3,250 and 9,750 euros for companies closed since November 2, 2020, depending on the size of the company.

This decision comes on top of earlier indemnity programs, which have already extinguished.

The government has also taken several decisions concerning educational leave and certain measures in favor of employment to limit the negative impact of the coronavirus crisis.

The measures relate *inter alia* to:

- support for the promotion of employment through the suspension of certain obligations related to unemployed job seekers for employers in the commercial and the non-commercial sector (A.P.E.; SESAM regime);
- support for integration enterprises;
- paid educational leave;
- service vouchers; and
- vocational training contracts and individual professional training.

29. The government of the **Brussels-Capital Region** has also announced a number of sector-specific measures, including for affected companies in the hotel, event and cultural sectors. Applications must be submitted with the Brussels Regional Public Service for Economy and Employment.

One of these is the “Tetra premium”, a **variable premium**, the amount of which will be determined based on the number of full-time

equivalents (FTE) of the company and the decrease in turnover between the last three quarters of 2019 and the same period in 2020, in one of the following four sectors:

- restaurants and cafes and their main suppliers;
- tourist accommodation, including hotels and guest rooms;
- enterprises in the events sector,
- culture and tourism sector; and nightclubs.

Such companies will have access to the premium for a 40% loss of turnover between these two periods. Those who have lost more than 60% of their sales will be eligible for an increased amount.

In addition, the Brussels Government has agreed in first reading on an **exceptional employment subsidy** to encourage employers to recruit unemployed individuals newly registered with the unemployment agency Actiris. This premium is valid for the recruitment of certain job seekers and is also limited to a maximum period of six months, for a maximum of 800 euros per month. Employers can avail themselves of the premium for contracts concluded between January 1 and December 31, 2021, at the latest.

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