As a complement to our frequently asked questions (FAQ) for U.S. employers, below are some answers to frequently asked questions (FAQs) about the latest developments on the virus, guidance from applicable public health authorities outside the United States, and managing COVID-19 responses across multiple jurisdictions worldwide. For terminology purposes, these FAQs use the term “COVID-19” generally to refer to the illness that is the subject of the World Health Organization’s (WHO) pandemic declaration.

These FAQs reference the WHO guidance and illustrative examples from other jurisdictions and is not comprehensive on a country-by-country basis. We have also
kept some Centers for Disease Control and Prevention (CDC) references for companies headquartered in the United States or with substantial U.S. operations, and our U.S. FAQs may still be informative for those countries. Employers will need to cross-check applicable country laws and seek guidance accordingly. Employers may also need to consult with applicable employee representative bodies or Works Councils in certain jurisdictions.

This general guidance references WHO guidance on COVID-19, as of March 19, 2020, as well as U.S. CDC guidance which applies to U.S. companies. Local laws may apply, and medical assessments may change, resulting in different conclusions. None of this guidance should be considered epidemiological or medical, nor does anything in this FAQ imply that a particular measure is likely or not likely to reduce transmission of COVID-19.

General Guidance for all Workers and Employers

Question 1. In implementing a COVID-19 response, what general principles apply outside the United States that may not apply within the United States?

- Answer 1. U.S.-based employer with non-U.S. headquarters should keep in mind the following issues that may differentiate the U.S. response from a response in other jurisdictions:

  (1) Employment At Will

  At-will employment is unique to the United States—this means that, outside the United States, employees have contractual rights, and the general principle (absent limited exceptions) is that employers cannot adjust contract terms adversely to the employee without the employee’s consent. If the employer does so (depending on the jurisdiction), employees can resign and raise a claim for “constructive dismissal,” which may entail severance and notice payments, unfair-dismissal damages, and even reinstatement with the previous terms.

  (2) Collective Bargaining Agreements

  Many countries operate with collective bargaining agreements that are industry-wide or apply to a certain category of employees even without a specifically-negotiated agreement with the union (e.g., Australia’s modern awards and many European and Latin American countries). Employees outside the United States often have the absolute right to form a union, and management does not have the right to oppose it through a campaign and election process the way union formation occurs in the United States. Finally, even nonunionized workplaces outside the United States, have some sort of employee representation in the form of a Works Council (which are used in Europe) or other elected employee representatives or representative bodies (which are used in China, Korea, Japan).

  (3) Leaves of Absence
In addition to emergency COVID-19 measures, different countries have different statutory leaves that often extend beyond U.S. requirements and importantly, require separate accrual for annual leave and sick leave (making paid time off (PTO) risky or difficult to administer).

(4) Reductions in Force

When employees are conducting a reduction in force, many countries have specific protocols that must be followed as it relates to selection criteria and severance. These processes may involve notice periods and contact with the local labor authorities.

(5) Data Privacy

While many global companies apply General Data Protection Regulation (GDPR) standards as a worldwide minimum—and any Privacy-Shield-certified countries must consider this when making U.S. decisions—employers should be aware of local privacy statutes that may differ from GDPR in various ways. See also our Privacy FAQ (forthcoming).

The WHO’s “Getting your workplace ready for COVID-19” guidance of 3 March 2020, recommends that employers assess the working environment for cleanliness and display prominent posters regarding hand washing and good respiratory hygiene. Employers should also ensure that workplaces have a good supply of tissues, soap and hand sanitizer with over 60 percent alcohol content.

Government Closures / Border Restrictions

Q2. What should employers know about government-imposed closures, shutdowns, quarantines, and shelter-in-place orders?

• A2. As in the United States, many countries have issued shelter-in-place or similar orders affecting local businesses, particularly in Europe. Exemptions from these orders vary by jurisdiction, and local guidance is required.

Q3. What should employers know about border restrictions?

• A3. Many countries are closing borders altogether or imposing strict 14-day quarantines on individuals who enter. Employers that sponsor immigration authorization for employees and/or their dependents must pay close attention to the changes and employer requirements, and should advise employees accordingly as some governments (e.g., Singapore’s) have imposed bans on employer sponsorships as a result of overstays or lack of compliance with stay-at-home notices. Please see our Cross-Border Mobility FAQ, forthcoming.

Sending Employees Home; Excluding Employees From Workplaces; Returning Employees to Work

Q4. May an employer involuntarily send home an employee who has or is exhibiting symptoms of COVID-19?
A4. Yes. Many countries’ workplace health and safety laws impose a duty on employers to take reasonable steps to protect employees’ health and safety. Some countries require employers to form a health and safety committee that must be consulted in connection with relevant measures. The WHO’s guidance advises employers to tell employees that they need to stay home “even if they have just mild symptoms of COVID-19.”

The WHO’s Q&A on COVID-19 (as of 9 March, 2020) lists the most common symptoms as “fever, tiredness, and dry cough,” and continues that “[s]ome patients may have aches and pains, nasal congestion, runny nose, sore throat or diarrhea.” The WHO defines fever as 37.3 degrees Celsius or 99.1 degrees Fahrenheit, which is lower than the United States Centers for Disease Control and Prevention’s (CDC) guidance (as of 26 February 2020) of 100.4 degrees Fahrenheit or 37.8 degrees Celsius, using an oral thermometer.

Of course, employers should apply this type of policy uniformly, reasonably, and in a manner that does not discriminate based on any protected characteristic (e.g., national origin, gender, race, etc.). Some countries have set specific rules or guidelines—for example, in the United Kingdom, even those exhibiting mild symptoms (regardless of where they may have recently travelled to or from) must self-isolate for a minimum of seven days (updated 18 March 2020), and the severity of the illness will dictate how long the individual should remain off work beyond the seven-day minimum. (Self-isolation for this purpose means not going into work and avoiding any form of social interaction whatsoever.) Employers in countries that have Works Councils and/or health & safety committees may need to consult with those representative bodies on general approaches or in particular cases.

Q5. May an employer send home or require to work from home an asymptomatic employee who has been in close contact with someone with COVID-19 (e.g., a family member, close friend, etc.)?

A5. Yes, the employer can send an employee home if the employer can draw a reasonable conclusion based on applicable public health authority guidance that the person has a high enough risk of exposure. The WHO’s Q&A on coronaviruses (COVID-19) (dated 9 March 2020) acknowledges that some individuals with COVID-19 neither exhibit symptoms nor feel unwell. Employers should consult the applicable public-health authority guidance before excluding an asymptomatic individual without his or her consent. Employers who take this course of action also may face discrimination claims or employees feelings of stigma for excluding asymptomatic individuals without a reason grounded in current public health authority guidance. Employers should balance these issues against their responsibility to protect the health and safety of their workforces. In the current climate, it is unlikely that an employer would be criticized for taking a cautious approach, provided it is handled in the correct manner. Employers considering actions beyond local public health authority guidance (e.g., additional go-home or work-from-home requirements) may want to consider the basis for those and consult with legal counsel.
Q6. May an employer require an asymptomatic individual with no known exposure to COVID-19 to telework from home for a certain period of time as a preventive or precautionary measure?

- A6. Generally yes, as long as the employee can perform his or her duties while teleworking. Employers should continue consulting public health authorities in their applicable jurisdictions for additional recommendations and assessments as the virus spreads and situations change. As of March 16, 2020, the UK government has stated that all employees should work from home where possible. This approach has already been adopted in many European Union countries such as Germany and France as well.

Q7. When may an employee who was sent home for exhibiting symptoms (subjective or measured, including fever, cough, and difficulty breathing) return to work?

- A7. The WHO’s “Getting your workplace ready for COVID-19” guidance specifies that, in general business settings, employees should self-isolate for 14 days if they experience COVID-19 symptoms and should consult a healthcare professional before returning to work.

The return-to-work standards and time periods may be different for an individual with a confirmed COVID-19 diagnosis and may vary by jurisdiction. Employers should consult the relevant local public health authorities’ guidance for further information on this point.

Employers considering implementation of policies beyond a local health authority’s guidance (e.g., a longer return-to-work time period) should consider the basis for those and consult with legal counsel.

An employer may want to meet with any returning employees to remind them to practice good respiratory etiquette and hand hygiene, avoid close contact with certain individuals, and stay home if they begin to feel sick, for the health and safety of those employees and their coworkers, as well as the continued operations of the employer.

Q8. If an employee does not feel well enough to return to work at least 24 hours after no longer having a fever or exhibiting signs of a fever (without the aid of fever-reducing medications) or other symptoms, may he or she remain out of work?

- A8. Yes. Employers should follow current guidance from the WHO and local public health authorities as they are updated. If an employee is given specific restrictions or instructions by a public health authority or a medical provider, it may prove helpful for the health of the workplace for employers to make all reasonable efforts to accommodate those instructions, including by providing additional leave as necessary.
Second, employers should continue to exercise sound discretion in taking proactive steps to minimize the risk of spreading the virus at work, such as the consideration of accommodating reasonable employee requests for additional time off from work.

Q9. May an employer require a return-to-work doctor's note for an employee to return to work after recovering from COVID-19 symptoms?

- A9. Probably, but requiring such a note may burden the medical system—a course of action that many public health authorities have advised against. The WHO’s “Getting your workplace ready for COVID-19” guidance specifies that employees with COVID-19 symptoms should consult a medical professional before returning to work but does not specify that a doctor’s note should be a prerequisite for returning to work. While not directly applicable outside the United States, employers with U.S. operations may also refer to the CDC’s guide to businesses and employers, which specifies “Do not require a healthcare provider’s note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way.” Employers should consult local public health authority guidance on this point. Employers may need to be flexible around paperwork requirements that would place a high burden on local healthcare systems and appreciate that, given the novel circumstances, medical facilities may not be able to provide documentation in a timely fashion.

Q10. If an employee says he or she is ready to return to work and has a doctor’s return-to-work note, but the employer is concerned the employee will not be able to safely perform his or her duties, may an employer refuse to allow the employee to return to work?

- A10. Yes, if the employee would create an unsafe or unhealthy work environment or is a direct threat to him or herself or others, the employer may refuse to allow the employees’ return. Often, having a one-on-one conversation with the employee will reveal the reason for his or her desire to return to work (e.g., he or she has exhausted all paid leave, has an important project to finish, etc.) and perhaps result in a shared conclusion that he or she is or is not ready to return to work.

Vacation, Paid Time Off, and Paid Sick Leave

Q11. May an employer require an employee with COVID-19 to use his or her vacation time and/or other paid time off for the absence?

- A11. Employers should seek guidance on this point, as the rules across jurisdictions will vary widely. As most non-U.S. employees have employment
contracts, employees whose contractual terms do not contemplate this type of leave use likely have a claim that employers cannot require this use of leave. In some jurisdictions (e.g., the United Kingdom and Singapore) governments have introduced emergency legislation to increase compulsory COVID-19-related paid time off allotments to allow workers to more effectively self-isolate and help control the spread of COVID-19. In some jurisdictions like Korea, requiring employees to take annual leave for COVID-19-related absences has been deemed a potential criminal offense.

Q12. May an employer require an employee who is not exhibiting COVID-19 symptoms but who has been in contact with an individual with COVID-19 or is in a potential incubation period (e.g., after returning from travel to an area of risk, as noted by the WHO) to use his or her vacation time and/or other PTO for the absence?

- A12. As with the answer to question 9, employers should seek local guidance on this point as the rules across jurisdictions will vary widely. In addition, employers may want to check their employment contracts. If the contracts do not include a provision requiring use of leave in these circumstances, employers would likely need consent (and again, this is subject to local law, which may prohibit this practice). Employers should carefully consider the employee-relations implications of such a policy, regardless.

Q13. May an employer advance any vacation time and/or paid time off to employees to cover COVID-19 absences?

- A13. Employers can likely advance vacation or paid time off to employees provided that the law allows employees to use vacation time for COVID-19 absences. Employers should seek local guidance on this point as the rules across jurisdictions will vary widely. For example, in the Philippines, the Department of Labor and Employment (DOLE) has announced on March 15, 2020, that it will subsidize employees who must be absent due to COVID-19 if they have already exhausted their PTO hours.

Q14. May an employer set up a plan to excuse or otherwise not count absences related to COVID-19, whether for an actual illness or a quarantine period?

- A14. Yes. The WHO’s “Getting your workplace ready for COVID-19” guidance suggests that employers should be prepared to deviate from their normal policies to prevent the spread of COVID-19. Employers should ensure that any such policy deviation is consistently applied across the workforce and may want to seek guidance if they are in any doubt as to the legality of a policy change.

Q15. May an employer opt to pay an asymptomatic employee who has been quarantined, even if the employer’s policy does
Q15. Yes. The WHO’s “Getting your workplace ready for COVID-19” guidance suggests that employers should instruct employees who have a risk of infection to self-isolate for 14 days. Employers should keep up to date with any local emergency schemes that allow for access to pay or benefits for quarantined employees and should assist employees to access these as well. Employers should carefully consider the adverse workplace relations implications of enforcing quarantine on employees without pay. Employers should ensure any pay is applied in a nondiscriminatory fashion.

Q16. Are COVID-19 absences covered by local paid sick leave laws?

Q17. May an employer count an employee’s time away from work due to COVID-19 against the employee in terms of the employer’s attendance policy?

Attendance
Q18. Should an employer discipline employees who are away from work because of COVID-19 for violating its attendance policy?

- A18. No. In some jurisdictions, an employer’s power to impose discipline is limited to specific violations that the employer can tie to a policy (in Japan, for example). Thus, any policy provision that would authorize this sort of discipline would likely be subject to legal challenges given the unprecedented nature of the global situation. Additionally, employers may want to refrain from disciplining employees because of the potentially-large number of employees whose attendance records will be adversely impacted. Having a large percentage of the workforce subject to discipline and possible termination because of attendance issues would be extremely disruptive to an employer’s continued business operations and would have a negative effect on employee relations. In addition such disciplinary policies may result in a challenge from a Works Council (or similar employee representative body), union, or individual employee or group of employees. Additionally, applying discipline for taking time away from work because of COVID-19 might encourage employees who already have attendance issues not to reveal their COVID-19 symptoms rather than risk termination.

Q19. Does an employer’s waiver of strict compliance with its attendance policy regarding COVID-19 set a negative precedent, opening the door for employees with other serious illnesses to argue that their absences should not be counted against them in terms of the attendance policy?

- A19. Yes, a waiver might have this effect unless it is consistently applied to all COVID-19 absences and to COVID-19 absences only. As non-U.S. employees in many locations may successfully argue that they have “acquired rights” based on precedent as to themselves or other employees, employers should take care to make any deviation from its attendance policies related to COVID-19 clear. If employers make clear to employees that the waiver of strict compliance with the attendance policy is for COVID-19 only, employers should be able to distinguish between an absence related to COVID-19 and any other type of absence, based on the serious, widespread, non-recurrent nature of the current COVID-19 global outbreak.

Personal Data Privacy

Q20. Is an employer’s knowledge that an employee has COVID-19 subject to privacy restrictions?

- A20. Yes. The answer to this question depends on a number of data privacy issues. Ogletree Deakins will prepare a thorough analysis of these issues in upcoming guidance shortly.

Workplace Safety
Q21. May an employee refuse to come to work due to a fear of becoming infected with COVID-19?

- A21. Generally, no, provided that the employer’s requirement that the employee report to the workplace is consistent with his or her individual employment contracts and that the employer is complying with workplace-safety requirements under local law. Employers outside the U.S. must generally obtain consent to modify an employee's contract. So to the extent the employee’s duties may involve different tasks in response to COVID-19, the employer must obtain employee consent to those duties. (If the modification is for a COVID-19-related economic reason, see the Furloughs section below). If the situation involves more than one employee, consultation with employee representatives may be required. While each situation is different, and a generalized fear of contracting COVID-19 is not likely to justify a work refusal in most jurisdictions, employers may want to conduct a thorough review of the facts before any disciplinary action is taken against an employee who refuses to perform his or her job for fear of exposure to COVID-19.

Employers will also need to consult their internal disciplinary regulations and employment contracts and seek guidance on this point as the rules across jurisdictions will vary widely. The answer may also vary if the employee cites a disability or personal circumstance that makes transmission high risk or if the work requirements involve travel.

Q22. May an employer refuse an employee’s request to wear self-provided respiratory protection and/or gloves?

- A22. Yes, an employer may refuse such a request if such measures are not otherwise required by the local workplace safety authority’s rules and standards or if the employer determines that the employee’s use of respiratory protection or gloves in and of themselves presents a hazard to the employee (e.g., if they interfere with the employee’s ability to work safely).

The CDC, U.S. Surgeon General, and UK National Health Service Guidance all state that respirators are not required and are not protective for the general public working in non-healthcare settings.

Note that in some jurisdictions, the use of masks and gloves is commonplace (even before COVID-19 became an issue). Thus, a one-size-fits-all global approach to request to wear gloves and masks is generally not appropriate.

Travel and Immigration

Q23. May an employer send home or require to work from home an asymptomatic employee returning from travel to an area of local transmission?

- A23. Employers may probably do this provided that local public health authority guidance supports this practice and the employer applies consistent guidelines
tied to public health authority guidance or government requirements, which are not arbitrary or discriminatory. Since the WHO declared a global pandemic, many countries have closed their borders entirely or imposed restrictions that include a period of quarantine (including Israel, Germany, Singapore, and a number of other countries). The CDC has updated its travel advisories to include the globe as a “Level 2” travel advisory. The WHO’s “Getting your workplace ready for COVID-19” guidance recommends that employers stay up to date with local public health authorities’ advice on COVID-19 hotspots. Global employers can stay up to date on the WHO’s situation reports and publications on workplace guidance. The WHO’s publication “Getting your workplace ready for COVID-19” states that “[e]mployees who have returned from an area where COVID-19 is spreading should monitor themselves for symptoms for 14 days and take their temperature twice a day.” Employers in most jurisdictions have moved away from monitoring global hot spots and advocate a symptoms-based approach or self-isolation upon return from any travel.

Q24. What can I require of my employees in connection with cross-border business travel?

- A24. Most health authorities have asked employers to cancel non-essential business travel. If an employee must engage in cross-border travel for work, employers should avoid requiring any employee to do so. Employers should also be advised that employees may be subject to local arrival requirements (such as a 14-day quarantine) and may even become stranded in the jurisdiction.

Q25. How does COVID-19 affect my expatriate workforce?

- Employers should be aware of countries’ border restrictions, proof of work authorization requirements, and requirements on employers sponsoring expatriates.

Remote Work / Telework

Q26. What unique issues arise in connection with remote working / telework outside the United States?

- A26. In most countries, telework is strongly encouraged as a means to minimize the risk of workplace transmission. Some countries have specific teleworking laws either before or in response to COVID-19. Absent that, employers should consult collective bargaining agreements, individual employment contracts, “rules of employment,” and standalone policies. For employees that are payrolled in one country and teleworking in another, employers should be aware of tax, employment law, and payroll implications, though authorities are more likely to be lenient on those issues if the employee’s reason for working remotely relates to COVID-19.

Furloughs, Reduced Hours, Layoffs, Other Economic Measures

Q27. May an employer outside the United States put employees
on furlough without pay?

- A27. Possibly, depending on government response measures and the employer’s existing policies and contract terms. Usually, unpaid furloughs are not a realistic option in many jurisdictions outside the United States absent employee consent and/or consultation. In many jurisdictions, governments have instituted specific options in response to COVID-19. Employers may want to seek guidance for such options.

Q28. Short of a reduction-in-force, what options does an employer have to reduce costs as a result of a COVID-19-related work shortage?

- A28. Depending on the country, cost-saving options may include: (1) requiring employees to use vacation time (often called “collective vacation”); (2) reducing hours and/or pay (sometimes referred to as “short-time work”); and (3) adjusting contract duties. Most such measures require employee consultation and/or consent absent a specific government-imposed directive.

Q29. If an employer needs to reduce headcount globally or regionally (outside the United States), of what requirements and processes does the employer need to be aware?

- A29. Most countries’ employment laws impose notice and/or severance requirements on employers that terminate employment. Many also require specific economic criteria to be met before a unilateral redundancy. A redundancy is a “reduction in force” outside the United States. “Retrenchment” is another common term used to mean a reduction in force in jurisdictions like Singapore and India).

Employers should look out for (1) “mass redundancy” procedural requirements if a significant percentage of the workforce is affected; (2) applicable government notifications required; (3) selection criteria, often forbidding employers from selecting individuals based on performance; and (4) any immigration-related requirements with repatriating employees.

Q30. If an employer is reducing headcount both within and outside the United States as a result of COVID-19, should the employer include non-U.S. employees in the U.S. disclosures under the Older Workers Benefit Protection Act (OWBPA)?

- A30. No, absent exceptional circumstances, which employers should avoid if at all possible, employers should not include non-U.S. employees in OWBPA disclosures. Because the laws of other countries differ from the United States as to required selection criteria, process, and entitlements on termination, selection for a U.S. reduction in force is inherently separate even if the actual reductions will occur beyond the United States, meaning that the relevant category for purposes of OWBPA disclosures is “all United States employees.” If
this category definition is impracticable, employers may want to seek local guidance.