



Labour law and COVID-19

The Swiss Federal Council entered the Ordinance on the Control of Coronavirus (COVID-19) of 28 February 2020 into force and the effects on the Swiss economy were felt immediately. Contractual relations are particularly affected and various questions have arisen in the area of labour law. In addition to the operational measures that are necessary, the most important questions regarding the employment contract are briefly summarised below.

I. Recommended measures by the employer

Although there is currently no reference applicable in the event of a pandemic, we believe that the following measures are appropriate in the context of the employer's duty of care and health protection:

1. Employee Information regarding the rules of conduct of the Federal Office of Public Health (News FOPH) and instructions regarding compliance with these rules (Poster Rules of Conduct)
 - a. Wash your hands thoroughly.
 - b. Cough and sneeze into a tissue or the crook of your arm.
 - c. Dispose of used paper tissues in a sealed waste bin.
 - d. Avoid shaking hands.
 - e. Stay at home if you have fever and a cough.
 - f. Always call ahead before going to the doctor's office or the emergency room.
2. Obligation of the employee to report any signs of infection or when travelling to risk areas (Travel Recommendations)
3. Operational measures
 - a. Provision of sanitizers and disinfectants.
 - b. Waiving business trips to risk areas.
 - c. Preliminary clarification regarding appropriate further measures, e.g. in the event of plant closure, i.e. ensuring IT access for home office, making resources available for applications for short-time work compensation, drawing up an emergency pandemic plan, etc.

II. Continuation of payment

In principle, wages are only owed if the work is also performed. This principle does not apply without exception. The following exceptions can be defined in general and in a simplified way:

Initial situation	Wage is owed	No wage
1. The reason why the work cannot be performed is within the employer's sphere of risk.	✓	
2. The employee is considered to be prevented from performing his work through no fault of his own (illness, accident, legal obligations such as custodial duties) or the employer is in default of acceptance.	✓	
3. The employee cannot perform the work through no fault of his own, but the reason for the prevention of work is not within the risk area of one of the parties or the employer.		✓
4. It is currently unclear whether or not an official measure involving or entailing the closure of a business, or the closure of a business due to the employer's duty of care (e.g. in the case of a large number of employees who fall ill), constitutes an obligation to continue to pay wages.	?	?

The following examples can be used to illustrate these principles with regard to COVID-19:

Examples	Wage is owed	No wage
Voluntary closure of operations (Section 1.).	✓	
Employer fails to take the appropriate measures within the scope of the duty of care (Section 1) and the employee refuses to perform the work.	✓	
The employee is infected or suspected of being infected (Section 2.) and stays away from work.	✓	
The employee is unable to attend work due to travel restrictions, but is healthy (Section 3.).		✓
The employee does not want to come to work for fear of an infection despite appropriate measures taken by the employer.		✓
Officially ordered closure of a business or closure of a business due to a large number of sick employees (Section 4.)	?	?

III. Further questions

Due to the continuing developments and the various situation, we recommend that you contact us to address your specific legal questions.

Kontaktpersonen



Raffael Steger
Attorney at law
raffael.steger@krlaw.ch

Profil page for Raffael Steger

Visit us at:



Andrea Meule
Attorney at law | Notary Public
IEMBA
andrea.meule@krlaw.ch

Profil page for Andrea Meule

Kaufmann Rüedi Rechtsanwälte AG
Kanzlei Luzern: Alpenquai 28a | CH-6005 Luzern
Kanzlei Zug: Lindenstrasse 16 | CH-6340 Baar
Tel. +41 41 417 10 70 | Fax +41 41 417 10 77
krlaw@krlaw.ch | www.krlaw.ch

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