

Responding to the coronavirus in Bermuda

Service area / [Employment, Pensions and Incentives](#)

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The coronavirus outbreak (COVID-19), which originated in Wuhan, in China in December 2019 was declared a Public Health Emergency of International Concern by the World Health Organisation in January of this year. The situation continues to develop rapidly. Given the transient nature of the Bermuda workforce Bermuda-based employers should consider taking steps now to manage risks both proportionately and sensibly. We set out the below guidance for Bermuda employers to address some of the key queries and concerns.

Bermuda based employers should generally consider the following:

- **Keep monitoring:** The coronavirus situation is dynamic and continues to develop at a rapid pace. Ensuring that your business is getting information from a reliable source is critical to being able to respond appropriately and proportionately to the situation. Official guidance issued by the Government of Bermuda and updates on the coronavirus and Bermuda can be found on the [Government of Bermuda's website](#). The UK Government has also published guidance for employers and business which can be found on its website [here](#). Guidance is also available from the [Centres for Disease Control and Prevention 2020](#).
- **Get the right stakeholders involved:** Bermuda-based employers should ensure that someone within their business has overall responsibility for coronavirus issues. This may be a team of people from across the business and (in the case of a multinational business) may be in multiple locations. You will need to involve:
 - a. **Management** at a sufficiently senior level to be able to issue appropriate communications to employees. From an employment law perspective, this team should be able to issue direct instructions to employees of the business which take into account the guidance as it evolves, so as to ensure the business has appropriate regard to health and safety issues at all times. The management must also be able to make decisions about counterparties and other third parties.
 - b. **HR** in order to ensure that there is appropriate access to relevant employee information.
 - c. **Marketing/communications personnel** in order to advise on appropriate internal and external communications.
 - d. **Compliance** where there are any regulatory and/or outsourcing issues such as ensuring adequate 'four eyes' or compliance with substance requirements.
 - e. **Data protection** to deal with any privacy issues.
 - f. **IT** to manage business continuity systems and remote access.
 - g. **Legal** to advise on the legal risks where liability may be of concern in relation to non-performance of contracts or where there are staff health and safety or welfare concerns.
 - h. **Occupational health** can provide guidance on communicable diseases. If you have occupational health advice available, then you should consider making contact.
- **Understand your legal obligations:** The primary focus of occupational health and safety legislation in Bermuda requires every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all the employer's employees. While employers will be judged by reference to the official guidance, in the event of an issue

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the courts and tribunals may have regard also to what other employers have done. Bermuda based employers will also need to think about the health and safety of clients, customers and counterparties, particularly where such individuals visit business premises. Employers will also have contractual, employment law and privacy obligations to employees which must be complied with.

- **Talk to your employees:** Make sure that you communicate regularly with your employees and make sure that you update them as circumstances and policies change.
- **Look at your contracts:** A serious outbreak may interrupt the supply of goods and services to businesses and at the same time make it more difficult for your business to provide its goods and services to customers and clients. Looking at your contracts now and thinking about how you will deal with such issues may pay dividends in future.
- **Check your regulatory position:** Regulated financial services businesses will be expected to have documented business continuity and other contingency plans if disruption to business is likely. These should be checked now and updated if necessary. If your business or activity is caught by the new economic substance requirements, you should consider whether you have sufficient local directors able to meet on the island in order to demonstrate compliance with this regime and potentially consider appointing alternate directors if off-island directors may be affected by travel restrictions or similar.
- **Think about your outsourced services:** The ability of outsourcing service providers to provide services may be compromised in certain circumstances.
- **Look at business continuity plans:** Most business continuity plans are geared to responding to natural disasters. The outbreak of disease is less often thought about but may engage business continuity issues.
- **Check insurances:** You should ensure that you understand your insurance position, both from a business perspective and for employees, i.e. health insurance.
- **Plan your response:** Maintaining normal operations may be a challenge, depending on the severity of any outbreak and where it occurs, so preparing now may pay dividends.
- **Consider Directors' Duties:** Under Bermuda law every Director is required to act honestly in good faith with a view to the best interest of the company and exercise the care, diligence and skills that a reasonably prudent person would exercise in comparable circumstances. As a result, Directors should have regard towards the interests of its company employees. Therefore the Board of Directors will need to show that they acted in the best interests of the company, honestly and in good faith when dealing with any response to a coronavirus outbreak by considering the steps identified above.

Workplace measures

Assess the risk

Bermuda based employers should consider undertaking a risk assessment in relation to the coronavirus (or updating their

existing risk assessment) and then putting in place appropriate measures to deal with the risks identified. This will involve thinking about:

- The location of employees
- How much travel (both personal and business) they are likely to undertake and how much of that travel could be cancelled, postponed or replaced by other forms of communication such as video or tele-conferencing
- Any particularly vulnerable employees, such as those who are pregnant, elderly or who you are aware may be immuno-compromised in some fashion. So that you can demonstrate you are taking reasonable steps to ensure health and safety, this may involve inviting employees to tell you if they have any health issues which may make them more vulnerable and thereafter considering whether or not any special measures are required for those employees to protect against any enhanced risk posed to them
- The risk arising in the locations in which employees are based or to which they are travelling
- The potential risk of transmission in the workplace (and outside it) and measures which might be put in place to deal with those risks.

Inform your managers

Managers will be a critical first line of response for your business both internally and externally. Making sure that they understand the situation and how they should be communicating with employees, clients and third parties (where applicable) is very important.

Talk to your employees

Make sure that you communicate regularly with your employees and make sure that you update them as circumstances change.

Try to point employees towards reliable sources of information rather than relying on potentially unreliable (or positively unsafe) material on social media.

If you are going to ask employees to self-isolate or work from home, make sure that this is properly understood and appropriately resourced. Recording the instruction in writing is advisable as this avoids any confusion or misunderstanding over the terms of your instruction.

Think about contracts and policies

In the event of a serious outbreak, you may need to ask employees to perform other duties (or no duties) or to remain at home or otherwise work remotely. You should ensure that you are aware of your contractual and commercial position ahead of time.

Bermuda based employers should check policies relating to:

- Sick pay;
- Sick leave and other types of special leave (particularly in the case of employees with childcare or other dependant issues);

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- Private health and other insurances;
- Remote working; and
- Medical suspension (if employees are unwilling to remain at home voluntarily or are in a vulnerable group).

Where there is a need to depart from published policies and procedures, ensure that an explanation is recorded appropriately.

This may particularly apply to sick pay where employees have exhausted entitlements.

There is a risk that employees in such circumstances may, despite being potentially infected and/or actually unwell, be incentivised (or otherwise feel compelled) to struggle into work. Avoiding such a scenario should be a priority.

An employee has a right to refuse dangerous work. In such circumstances an employee who believes that the condition of a place of employment presents an imminent and serious danger to his/her health or life has a right to refuse to work. It is doubtful that such a provision will be relied on in the case of a coronavirus outbreak in Bermuda but it is a provision that all employers should be mindful of. In addition, employees are protected from unjust disciplinary measures taken by an employer against an employee for exercising his/her rights under Bermuda's occupational health and safety legislation. An employee will also be considered to be unfairly dismissed if he/she is dismissed as a result of removing himself or herself from a work situation which he/she reasonably believed presented an imminent and serious danger to life or health.

Employers should be mindful that they do not discriminate against another person because of his/her race, place of origin, colour, or ethnic or national origins. All policies and procedures implemented by an employer as a result of coronavirus should treat everyone equally across the board regardless of their nationality or ethnicity.

Focus on business travel

If your business involves employees undertaking significant amounts of travel (particularly to areas where the coronavirus is known to be active), you should be thinking about alternatives such as teleconference, webinar, or videoconferencing.

If travel is unavoidable, then you should have contingency plans should medical treatment and/or quarantine become necessary.

Should you wish to discuss anything in connection with your legal or regulatory obligations in relation to the coronavirus, please do get in contact with us.



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