

CORONAVIRUS: EMPLOYMENT TIPS FOR CORPORATES FROM SWISS LAW FIRMS

Posted on 13 March 2020



Category: [Focus](#)

Tags: [Baker McKenzie](#), [Coronavirus](#), [Froriep](#), [Homburger](#), [Joachim G. Frick](#), [Slider](#), [WalderWyss](#)



From quarantines and closed schools to financial markets collapse and travel bans, the coronavirus pandemic [is disrupting normal habits](#) around the globe. In general, it tackles different issues in the legal field, first of all to calm anxious clients, then to ensure deadlines are met and, finally, avoid the fact that a slip-up due to outbreak will turn into a malpractice suit.

Locally, each company has to deal with national measures affecting employment. It becomes crucial to know rights and obligations at the workplace for both sides – and the terms of contracts – bearing in mind that the situation is evolving daily and the federal and cantonal authorities may issue further directives to limit the spread of Covid-19. We have collected online [four explanation from four Swiss law firms](#).

Homburger [had published a bulletin](#) before the World's Health Organization talked of **pandemic**. It explains how employers can tackle effectively the situation when different scenarios are arising: when to pay the salary and, for example, what to apply to the employees in quarantine. In this last specific case, the law firm writes that "if the employee is quarantined and cannot work remotely, the

employer's obligation to pay the salary during a quarantine period depends on whether the employee is – or not – responsible for his or her incapacity to work". However, if the employer has taken the necessary measures to protect collective health and given the appropriate instructions, the employee is required to comply with the instructions and continue working, at the workplace or at home.

[According to Froriep](#) the labour law principle "no work, no pay" applies. "If an employee is absent from work without an excusable reason (for example, an unjustified refusal to work by the employee or an inability to work for which the employee is responsible), the employee loses his or her entitlement to salary payments", the law firm writes. Not to mention the fact that an unjustified refusal to work may also result in disciplinary action for the employee. At the same time, Froriep specifies that employers have a statutory duty of care requiring to take all necessary and reasonable measures to protect safety and health of their employees, also in the case they suspect to have contracted the coronavirus but do not show any symptoms.

When an employee fears to contract the virus and so decide to stay home, **WalderWyss** [explains in a blog](#) that this refusal, "without any instructions by the authorities or being justified because the employer does not comply with hygiene regulations or does not take sufficient protective measures, is qualified as an unfounded refusal to work and therefore, the employee has no right to have the employer continue to pay his/her salary". However, it is important to notice that the employer is obliged to continue to pay the salary if the employee refuses to come to work because health duty of care is not fulfilled or no sufficient measures are taken to protect the employees' health.

A part from employment, coronavirus is affecting contracts. An interesting aspect [has been analyzed by Professor Joachim G. Frick](#), **Baker McKenzie** partner in Zurich: contracts including "Force Majeure" clauses. Even though this term is not defined in the Swiss statutory law, "the concept of force majeure is recognized in the Swiss legal doctrine and case law and is frequently used in international commercial contracts" he writes. This kind of clauses provide remedies to the parties in the case the contract becomes impossible, difficult or onerous to perform due to events outside the affected party's control. "If the parties have not agreed on a clause dealing with impossibility or delay of performance due to force majeure, the discretionary provisions of Swiss law apply", he specifies.