

What next when COVID-19 hits your global employee populations?

Updated as of March 6, 2020:

The worldwide spread of COVID-19 highlights differences between legal systems and cultures. Despite variances, employers have a universal duty to ensure the health and safety of the workforce – not to mention a general duty and desire to avoid harming customers while conducting business. Companies need to stay true to their ultimate goal of keeping people safe and adjust their tactics to keep pace with quickly changing local rules. The following provides some general guidance:

- **China, Taiwan, South Korea, and Singapore** have placed companies at the forefront of their coronavirus prevention efforts. There, companies are administering legally mandated (or government recommended) twice-daily temperature checks and collecting travel histories before admitting anyone to the worksite. In some countries you will be able to rely on the building management's ingress temperature checking procedures, but in some countries, for example, Singapore, companies are required to take temperatures of people coming on site regardless of whether the building management is already screening. Some countries, such as Taiwan, impose varying reporting obligations on companies as well as impacted individuals when there is a suspected COVID-19 case. Where the company is required or opts to do the temperature screening, they must consider who will be doing the screening and the steps that need to be taken to protect them. Employees may object to doing screenings and may have viable claims if they are unreasonably put in harm's way when doing screenings.
- In highly privacy-conscious jurisdictions (the **European Union, Japan, Australia**), the collection of personal data requires careful compliance with data protection laws and can trigger higher levels of data privacy protections applicable to sensitive and medical data. In these jurisdictions, privacy considerations must be carefully balanced with the coronavirus-related instructions coming from health authorities and the company's general duty of care and responsibility to provide a safe workplace. For example, if a staff member is suspected of having the coronavirus, asking for confirmation of the diagnosis may not be risk-free due to privacy and disability discrimination considerations. Additionally, in the EU, the GDPR generally puts severe limits on asking employees to identify all contacts they have had during the last 10 to 14 days. But it should be permissible to ask employees to confirm that they have not travelled to countries of high risk. Also, while it may be permissible for employers to ask employees to take temperature tests at the entrance of an office, local laws and contracts should first be considered and if temperature tests are taken, data regarding the temperatures should not be collected or otherwise retained, except in the case of a denied access and then only for as long as reasonably necessary.