

FAQ – PRACTICAL ADVICE FOR EMPLOYERS TO DEAL WITH CORONAVIRUS – UPDATE 17 MARCH 2020

The government is constantly taking additional measures to contain the spread of the Coronavirus, and to try to alleviate the consequences for the economy. The latest important step is the decision to force some businesses to close down until 3 April 2020.

We have listed below an updated FAQ based on the questions we have received from clients and instructions issued by authorities (<https://www.lydian.be/en/news/faq-practical-advice-employers-deal-coronavirus>).

As the situation develops, we will update our FAQ on a regular basis.

Q1 - My business (restaurant, bar, ...) has to close down because of the decision of the Belgian government. What about my employees?

In case of a full lockdown, you are able to apply for temporary unemployment for force majeure. This means that the employee's employment contract is suspended and that you should not pay any salary. Employees will receive a temporary unemployment allowance. In principle, this equals 65% of a capped salary, but this has been increased to 70% (retroactively since 1 February, and currently until 30 June 2020).

For businesses that are forced to partially close (f.i. retail closed during weekends) or for those that can still deliver limited services (f.i. catering), a partial system of temporary unemployment for force majeure is allowed for all days that your staff cannot be employed.

If your business is not directly under a mandatory closure imposed by the government, but indirectly suffers from closure of other businesses and decides to close voluntarily (f.i. suppliers or subcontractors), this is strictly spoken no force majeure. However, the National Employment Office (RVA/ONEM) seems to adopt some flexibility in accepting unemployment for force majeure, especially sectors of industry (retail, catering, hotels, logistics). It is in any event recommended to file a request (awaiting the approval of a later request for unemployment for economic reasons, see *below*).

The filing can be done electronically with the NEO (www.rva.be (Dutch) and www.onem.be (French)).

The system is currently applicable until 3 April 2020.

The NEO updates its instructions constantly. See for the most recent instruction National Employment Office:
https://www.rva.be/sites/default/files/assets/chomage/FAQ/Faq_Corona_NL.pdf (Dutch) and
https://www.onem.be/sites/default/files/assets/chomage/FAQ/Faq_Corona_FR.pdf (French).

Q2 - My business is not under a mandatory measure to close, but suffers from loss of business and lower activity. Can I apply for the system of temporary unemployment allowances?

For **blue-collar workers** (mainly manual work), unemployment for economic reasons can easily be applied electronically through a notification to the local NEO office. Normally a notification period of 7 days applies, but NEO accepts shorter timings in case of sudden and serious drop in work volume.

For **white-collar workers**, the system is stricter. In three specific situations, you may apply economic unemployment for white-collar workers:

- (a) In the quarter before the notification of the unemployment for white-collar workers, unemployment for blue-collar workers has been used for at least 10% of the blue-collar workers; or
- (b) In the last completed quarter (currently Q4 2019), there has been a **drop in turnover, production or orders** of at least 10%. The decrease in turnover should be supported by attaching the VAT declarations. The decrease in orders or production may be supported by all relevant documents, such as accounting documents and reports; or
- (c) The company is **recognized by the Minister of Work** as a company in difficulties based on unforeseeable circumstances resulting in a substantial drop in turnover, production or orders within a short term.

Most companies will try to get the recognition by the Ministry of work (option c), as the other options are not applicable to the current situation. The NEO has issued a detailed instruction that sets the administrative formalities (see instruction National Employment Office under Q1).

The procedure to obtain such recognition takes in general 4 to 5 weeks. The RVA has already accepted requests for force majeure (see above) awaiting the approval of the unemployment for economic reasons. It may therefore be recommended to combine both strategies.

The Minister of Work will be flexible in recognizing companies in vulnerable industries (such as aviation, airline companies, travel agencies). For the other industries, this will likely depend on the duration and impact of the Coronavirus on the economy. Hence, we recommend to closely monitor the government communications in the coming days and week. Taking into account the saying "hope for the best, prepare for the worst", we strongly recommend to prepare already a file and justification arguments and to introduce as soon as possible your application.

We can of course assist you in this application procedure.

Q3 - What is the financial position of employees in temporary unemployment (force majeure or economic reasons)?

Employees will receive a temporary unemployment allowance equal to 70 % of a capped monthly salary of EUR 2.754,76 (percentage has temporarily been increased from 65 % to 70 % from 1 February until 30 June 2020). The employee must therefore file a request (form C.3.2.A).

For some industries, employers are required to pay an extra amount on top of the unemployment benefits (based on an industry collective bargaining agreement). In some industries, a Sector Fund pays the complements instead of the employers. Please check the specific situation in your industry.

Finally, employers may voluntarily decide to pay an extra amount on top of mandatory payments. Such amount is not subject to (both employer and employee) social security contributions.

Q4 - Are there any other support measures when I have financial problems caused by COVID-19?

The Belgian government has announced some support measures for companies affected by the spread of COVID-19. These support measures must provide financial breathing space and allow companies to bridge their temporary financial difficulties, insofar they apply for the system and are able to demonstrate the economic consequences (e.g. a drop in turnover, a significant drop in orders and/or reservations, consequences of a "chain reaction" with partner companies, etc.).

The following measures have been announced (details not yet known):

- payment plan (postpone payments) for employer's social security contributions and company taxes;
- exemption from interest on arrears or a waiver of fines for non-payment of debts in social security contributions, withholding tax, corporate tax, VAT, etc.

- temporary exemption of social security contributions for certain categories of employers / industries;
- Non-application of the special contribution for employers that make substantial use of temporary unemployment for economic reasons.

Additional measures may apply depending on the region where the business is located.

Q5 - Can the employer force its employees to work from home?

Yes, the Government has urged all companies to introduce as much as possible work from home or remote work. We believe this is a sound argument for employers to oblige employees to remote working (insofar of course they are able to perform their job from home) as a necessary and exceptional measure. We believe employees can therefore not reasonably refuse this instruction.

We recommend in any case informing employees in writing with clear instructions, including duration of the temporary remote work, practical modalities, tools made available, periods during which the employees should be available for work, expenses related to homework,... It is good practice to inform and consult with the employee representatives.

If the employer has a remote work policy in place already, you could refer to the individual employment contract and the company's remote work policy.

If the employer does not have a homework policy in place yet, we recommend implementing a policy or arrangement as a temporary measure. Such policy can easily be implemented by informing the employees by e-mail, and asking them a return confirmation for approval.

Obviously, the employer must provide necessary tools to employees working remotely to carry out their job (laptop, access to information and documents, etc.) and an arrangement for costs associated with remote work is best provided.

Q6 - Am I entitled to temporary unemployment benefits if I am obliged to self-isolate?

Yes, this will be possible in case a company doctor decides that an employee must self-isolate at home waiting for a test, or in case an employee, although not being ill, provides the employer with a certificate from his/her doctor that denies him/her permission to work. This is confirmed on the website of the National Employment Office. The procedure of force majeure applies.

Q7 - Can the employer force its employees to do health screenings?

The employer may ask employees to undergo a medical examination (e.g. temperature check), but not on a general or systematic basis and only when health and safety require so (e.g. for employees returning from risk areas). The company doctor should do the screenings at the employer's expense. The employer should best liaise with its internal and/or external health & safety provider.

The Belgian Data Protection Authority issued a recommendation on the processing of personal data due to the Coronavirus. The employer should bear in mind that processing employees' health data is sensitive personal data and ensure he complies with its data protection obligations (the processing may be allowed under the exception of "public interest in the area of public health"). Therefore, an employer may not oblige its employees to fill out a medical Q&A. It is therefore preferable to simply ask employees who do not feel well with cold or flu-like symptoms to stay at home. We believe employees cannot reasonably refuse this instruction.

Employers are not allowed to diffuse names/ identity of infected employees.

see: <https://www.gegevensbeschermingsautoriteit.be/covid-19-en-de-verwerking-van-persoonsgegevens-op-de-werkvloer> (Dutch) and <https://www.autoriteprotectiondonnees.be/covid-19-et-traitement-de-donn%C3%A9es-%C3%A0-caract%C3%A8re-personnel-sur-le-lieu-de-travail> (French).

Q8 - Are employees entitled to stay at home when the school of their children is closed because of Covid-19?

An employee who needs to stay at home to care for his/her children will in principle not be entitled to temporary unemployment benefits, unless he/she could clearly prove there is no day care available (because the school is not materially able to provide so) and there is not an alternative (no remote work, no other help except grandparents) (see instruction NEO under Q1).

Employer and employee can agree to use outstanding vacation rights, overtime or compensatory rest, but this requires the employee's consent.

The employee might take up outstanding rights to unpaid leave for family reasons (maximum 10 days per year for a full time employee), apply for parental leave or ask for occasional work at home. The government is currently examining the possibility to apply temporary unemployment benefits for these employees, but this system has not been put in place yet (situation on 16 March 2020).

Q9 - I receive a medical certificate from my employee. I believe the employee is able to work, but might have issued the certificate to take care of his/her child. What can I do?

In principle, the medical certificate cannot be contested. This is only possible by sending a control doctor who could verify the incapacity. In practice, this will not be feasible, as we understand that control doctors do not perform these check-ups any longer.

You should best inform employees about the other existing options, such as unpaid leave for family reasons, parental leave, etc.

We organize a webinar in Dutch on Coronavirus and the impact on your business on **19 March 2020 at 12h00**. To register: see <https://www.lydian.be/nl/webinar-coronavirus-qa>.

Other useful links from the Belgian government (in Dutch or French):

- <https://www.info-coronavirus.be/nl/faqs/> (Dutch) <https://www.info-coronavirus.be/fr/> (French)
- Ministry of Health: <https://www.health.belgium.be/nl> (Dutch) <https://www.health.belgium.be/fr> (French)
- Ministry of Employment: <https://werk.belgie.be/nl/nieuws/coronavirus-preventiemaatregelen-en-arbeidsrechtelijke-gevolgen> (Dutch) <https://emploi.belgique.be/fr/actualites/coronavirus-mesures-de-prevention-et-consequences-sur-le-plan-du-droit-du-travail> (French)