

COVID-19: How and where to work

Guide for International Employers

COVID-19 is not going away any time soon, but there is now hope in the form of vaccination. We take a look at how this changes the picture and look at whether you can mandate testing for coronavirus or require vaccination, how to handle a refusal or inability for someone to be vaccinated - and in all this, what data privacy issues arise. We also think about the growing questions around remote working and take a special look at what an employer's responsibilities are if, for example, someone works from another country. This can potentially throw up a raft of issues, including tax, social security, immigration, local employment law, data privacy, health and safety measures – and even the possibility of inadvertently creating a permanent establishment for the business in the country concerned, with all the hurdles and liabilities that could lead to.

Our specialist employment lawyers from across the world have put together this Guide on 'How and Where to Work' to help international employers navigate these key issues.



We take a detailed look at the following topics across the countries in our alliance of law firms:

Our list of topics is:

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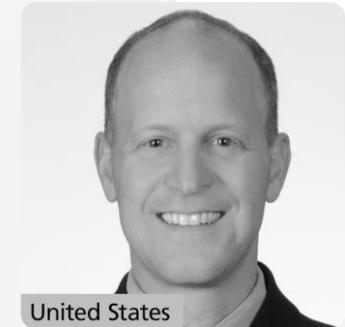
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Our Global Taskforce

Get in touch with our coronavirus team for all queries about employment and the coronavirus in any of our 59 countries. The team can put you directly in touch with partners in the countries you need to know about.

Note that we make every effort to keep this document up to date, but the landscape is changing rapidly. Before you take action based on anything we say here, please verify it with a specialist employment lawyer. There are plenty to choose from – at the end of each country's text you will find contact details.

You can also visit our [Coronavirus Resource Page](#) and find the information and tools you need to help you manage your international workforce in the wake of COVID-19.

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Kazakhstan

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1. Government support for employers

To support business, the state is maintaining its programme of tax advantages and credits with reduced rates.

2. Testing and Vaccination

2.1 COVID-19 testing

To avoid any threat to life and health of coworkers, an employee must warn an employer if s/he has any symptoms of COVID-19. The employee must also immediately inform the employer if his or her health condition deteriorates.

Employers can send employees for medical check-ups.

However, an employer cannot compel an employee to take a COVID-19 test if the employee does not provide his or her consent. In case an employee is suspected to be infected, an employer may limit his or her presence in the work premises and ask him or her to isolate at home. An employer is obliged to exercise internal control over labour safety and health.

Information, which includes personal data, may only be transferred with the owner's consent and is protected by law. You cannot obtain any information about an employee's movements or activities (during off-duty hours) without his or her

consent. Any illegal use of personal data entails administrative and criminal liability.

2.2 Vaccination and vaccination status in the workplace

As of 18 January 2021, vaccination against COVID-19 is voluntary in Kazakhstan. Kazakhstan citizens have the right to give informed consent to, or to refuse, treatment and other medical interventions, including preventive vaccinations (subparagraph 18 of paragraph 1 of Article 77 of the Health Code). Therefore, employers cannot make vaccination against COVID-19 a mandatory health and safety requirement and cannot require employees to disclose their vaccination status. According to official statements, the government itself as the largest employer in the healthcare system is not making vaccination mandatory. We do not exclude that the legal requirements may change in the future when the vaccine becomes available free of charge to all segments of population.

2.3 Incentives for vaccination

If an employee voluntarily agrees to get the vaccine against COVID-19, an employer has the right to pay for the vaccination at its discretion. Employers are not prohibited from offering incentives to employees for getting vaccinated.

2.4 Dealing with refusal or inability to get vaccinated

The Labour Code contains an exhaustive list of 25 grounds, under which an employment contract can be terminated at the initiative of an employer. An employer cannot dismiss an employee who refuses to be vaccinated and cannot prevent an employee who has not been vaccinated from coming to work, change his or her duties, or otherwise alter his or her working conditions.

2.5 Vaccination and data privacy

Personal data relating to vaccination and containing information about health of an individual and medical services provided, which are recorded on electronic, paper or other tangible media, are considered as medical personal data under Kazakhstan legislation. An individual is the owner of medical personal data. Medical personal data may be transferred to third parties subject to consent of an individual. The specifics of protection of electronic information resources containing medical personal data are regulated by Kazakhstan legislation on digital information.

2.6 Vaccination and posted workers

There are no special provisions related to testing or vaccination for posted workers. The conditions for sending workers on business trips are determined by labour law, collective agreements or in the

employer's internal rules. There are special requirements for industrial plants and production facilities, including those working on a rotational basis, for the period of introduction of restrictive measures, including quarantine. Posted workers arriving in Kazakhstan by international air flights must have a COVID-19 test certificate with a negative result. Without this certificate, foreign citizens will not be allowed to board an aircraft, and Kazakhstan citizens, once they arrive in Kazakhstan, are sent for a seven-day quarantine unless they have obtained a negative test result.

3. How to keep workers safe in the office

3.1 Setting up the workplace

The sanitary norms provide for individual requirements for certain types of activities, which become stricter, depending on the risk of employees contracting COVID-19. There are requirements, which must be complied with by employers, and employees must also wear masks, use sanitisers and comply with social distancing requirements.

3.2 Vulnerable groups

There are no separate rules for vulnerable employees. According to the general rules, individuals older than 65 are not recommended to go outside unless there is an urgent need to do so.

3.3 Back in the office

An employer can require an employee to come back to work if the place of work specified in an employment contract is the employer's office and the employer's activities are permitted and carried out in accordance with sanitary requirements.

3.4 Suspected cases

In the event an employee is suspected to be infected, s/he must be isolated at home quarantine, and stays isolated until s/he receives a negative COVID-19 test result. If an employee has any symptoms of COVID-19, an employer may send him or her for a medical examination. If the employee is admitted to work based on these medical examination results, the employer has no right to interfere with the employee's performance of his or her working duties.

No official form of a notice is stipulated where there is a suspected or confirmed COVID-19 case; employers should apply to a medical organisation (hospital, doctor) or to the sanitary and epidemiological control authority. Employers can communicate information about an infection at the organisation as long as they ensure the personal data of the infected employees are kept confidential.

3.5 Return to work after recovery

An employee can be readmitted to work if s/he has a 'closed' medical sick leave

certificate from a medical organisation, which confirms that the s/he has completely recovered.

4. Where to work

4.1 How to organise homeworking for the long term

In order to organise homeworking, Kazakhstan legislation provides for a remote work regime. Where remote work is introduced, an employer must provide an employee with communication facilities and bear the expenses associated with the installation and maintenance of these facilities. In the event the employee uses his or her own communication facilities on a permanent basis, the employer must reimburse the employee for these costs: the amount and payment procedure should be established by an agreement between the parties. If agreed upon between the parties, the employee can be compensated for other expenses associated with working for his or her employer (electrical energy, water supply and other costs).

The procedure for compliance with labour safety and health requirements by remote employees, as well as for ensuring safe performance of working duties, is determined by the employer's internal rules.

Please note that neither an employee, nor an employer can compel the other to start using remote work. Transition to a

remote work regime is reached by way of a bilateral agreement executed as a supplementary agreement to an employment contract. The rights and obligations of the parties are similar to those under the normal on-site working regime, however, with certain specific differences.

Where the employer's activities are permitted and carried out in strict compliance with the sanitary rules, an employee cannot demand to continue to work remotely. However, this is allowed subject to the parties' agreement. Employees will not automatically acquire the right to work from home if they have done so for a certain time during the COVID-19 pandemic: this is only allowed if agreed upon with an employer.

4.2 Working from another country

The place of work should be specified in an employment contract, and it cannot be changed unilaterally. As a general rule, employees in Kazakhstan are hired to work in Kazakhstan. Unlike the EU, it is rare for a Kazakhstan employer to have business in other countries. Therefore, in most cases, the employer cannot satisfy an employee's desire to work in a different country for objective reasons. Even if the employer has an opportunity to send the employee to work in a different country, the employer is not obliged to do so. In this case, the employee can be sent to work in a different country at the discretion and with consent of the employer.

According to recent amendments to the Labour Code, the Code covers employees, employees of a sending party, employers and a host party located in Kazakhstan, including branches and/or representative offices of foreign legal entities that underwent record registration, unless otherwise provided for by the Kazakhstan legislation and international treaties ratified by Kazakhstan. If an employee is 'stuck' outside Kazakhstan as a result of the COVID-19 pandemic, it will be necessary to analyse each specific situation taking into account the citizenship of the employee, country where s/he is carrying out activities and other legally important specifics to determine whether Kazakhstan legislation or international treaties ratified by Kazakhstan will apply to the regulation of labor relations with this employee.

Personal data should be mainly stored in Kazakhstan in any form and on any medium. Personal data may be transferred to other states subject to compliance with requirements on personal data database localization, ensuring appropriate personal data protection and obtaining the consent of individuals with respect to personal data transfer (including cross-border transfer) and distribution. The Kazakhstan legislation provides for administrative and criminal liability for violation of personal data protection measures, as well as for illegal personal data processing. An individual is considered as a non-resident if s/he is stays in Kazakhstan for

less than 183 calendar days over any consecutive 12-month period ending in the current tax period. In this case, the Kazakhstan employer must only withhold from the salary of employee individual income tax.

An individual is recognised as a resident (permanently residing in Kazakhstan) for a current tax period, if s/he stays in Kazakhstan for at least 183 calendar days over any consecutive 12-month period ending in the current tax period. In this case the Kazakhstan employer must withhold from the salary of employee individual income tax, mandatory medical insurance contributions and deductions stipulated by Kazakhstan legislation.

Employment contracts with Kazakhstan non-residents are not allowed to be executed (with certain exceptions) until the non-resident obtains a work permit, independent job placement permit or labor immigrant permit issued by internal affairs authorities.

Foreign nationals temporarily staying in Kazakhstan must leave the country before expiration of their visas. The term of temporary stay of foreigners arriving in Kazakhstan under the visa-free regime cannot exceed 30 (90 for citizens of Eurasian Economic Union states) calendar days from the date of crossing the Kazakhstan state border unless any other procedure is established by international treaties or by the Kazakhstan Government (e.g. for working citizens of Eurasian Economic Union

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member states, according to the Eurasian Economic Union Treaty, the term of temporary stay is determined by the term of an employment contract or civil agreement).

Immigrants with executed temporary residence permits must leave Kazakhstan before the term of the permit expires. In exceptional cases (emergency situations of social, natural or man-made nature, or the announcement of a state of emergency in connection with a clear threat of a natural disaster or a large-scale accident with interruptions to transport) the term of stay is extended for the period needed to organise departure, but for no more than 30 calendar days.

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