

# *How to respond to COVID-19*

## Guidance to employers

COVID-19 and its threatening spread throughout Albania dictated the need for imposing immediate measures, including business shutdowns, blocking of entry in and out Albanian borders, ban on passenger air transport, etc., which are having a direct impact on many companies in the private sector, and consequently on employment.

In these turbulent times, the business community ought to comply with new legislation and normative acts, while ensuring the continuity of their business, where permissible.

As the issue evolves, business continuity and contingency plans must be put in place considering both the short term and long-term impact the COVID-19 outbreak will continue to have on the business. One of main items in the majority of businesses are employment and employment related costs, and the challenge of how to reduce such costs, while revenue decreases, is

becoming a rising concern for the business community.

Many companies have seen layoffs as the easiest and fastest solution to mitigate financial exposure, having no certainty how long the crisis will continue and when they will need employees back to work. Some of these layoffs are done ignoring statutory requirements and relevant notice terms under Albanian Labor Code.

Therefore, considering the uncertainty that associates COVID-19, employers may want to consider all the options that might allow them cutting the employees' related costs and retaining the quality and experienced staff, as set out below:

### 1. Working time reduction

If your employees are not busy as before, a cost saving approach could be reducing the working time which will result in reduction of the employee's salary. If done correctly, this practice can achieve significant

cost savings without affecting the overall number of the employees. You should carefully consider such an option before implementing it as a reduction in salary and reduction in working time will both require consent of the employee(s).

## **2. Relocation and working from home solutions**

For businesses who are partially operating and are not closed as a result of any Government's COVID-19 related measures, another alternative to letting go employees would be to relocate them in a different location or business unit that complies with social distancing. This approach may keep the employees working but have several obstacles you have to consider such as travel restrictions and other lockdown measures but also employees' unwillingness or being unable to commute or relocate to a different workplace.

Another relocation alternative is work from home. As the Albanian Government has urged private employers to adopt working-from-home arrangements to minimize the risk of contamination, some employers should see that as an option to ensure business continuity. Work-from-home is recognized by the Albanian legislation as a type of employment arrangement; however, secondary legislation is expected to be enacted to introduce specific rules and obligations in this respect.

As a rule, work from home may not be imposed by employers but needs consent as the working place is one of the main elements of an employment contract. Thus, the companies opting for work from home have to introduce the amendment to the employment contract.

Furthermore, requesting employees to work from home is not so fancy as employers have obligations for ensuring that their technology can be adapted and also can be exposed to the risk of insufficient data protection obligations. Also, in the frame of occupational health and safety legislation, employers have the duty to take care of the health and safety of all employees. It is recommended that employees are informed about ergonomic requirements for the workplace and receive general information about physical health risks as well as psychological aspects such as creating a healthy work-life balance and deal with isolation effects caused by remote working. For such reasons, it is advisable to reach a mutual agreement with the employee and the works council, if applicable.

Where it is not possible to work from home (e.g. due to the nature of the business) employers should be vigilant to take precautionary measures and stay updated with the latest Government guidance on health and safety. The Albanian Public Health Institution has recently enacted a detailed instruction on H&S at work that

should be implemented by all operating businesses.

### 3. Paid and unpaid leaves

The approach of sending employees on leave is considered a reasonable solution. If the employees are not busy nowadays, they may be asked to take the leaves and be available when the situation is back to normal.

As a rule, any employer may oblige employees to take the annual paid leave during the COVID-19 outbreak provided the employer takes account of the employees' wishes and notifies them at least thirty days in advance. It is of course open to employees to waive the thirty days' notice period and take the annual leave on a voluntary or agreed basis.

Another alternative is inviting employees to take days of unpaid leave that haven't been used; however, it is recommended not to force employees to take the unpaid leave but seek the consent or stick to the voluntary waiver.

Other options that can be explored are facilitation of other types of paid or unpaid leaves to which employees are entitled to by the Albanian Labor Code or internal policies of the company.

### 4. Withholding wages

Before considering this option, it is important to check if the employment contract addresses the *force majeure* event. In case it is not addressed, Albanian Labor Code expressly provides the possibility for employers not to pay the employee, if the work is interrupted due to *force majeure* and as a consequence of such event the employee cannot be engaged. On this note, Albania has declared the state of natural disaster through the Decision of the Council of Ministers no. 243 dated 24.03.2020 "On the announcement of the state of natural disaster". Notwithstanding this and various interpretations of the *force majeure* by the Albanian courts in civil or criminal cases, it should be noted that the judicial system in Albania will encounter for the first-time labor disputes related to an event of this nature. It is, therefore, crucial that you carefully evaluate the impact of COVID-19 in your business activity. In the end, we will have to wait for the courts' rulings to have a consolidated practice on *force majeure* in labor disputes.

For further information on *force majeure* please click [here](#) to look at our previous Newsletter #8 – April 2020 titled "Covid-19 and force majeure: A comparative analysis."

### 5. Continued training programs

Re-skilling programs might bring benefits to both employees and employers for the future. This is

especially beneficial when there is a need to launch a new product that requires new skills or to the business that is looking to grow into a new sector. The existing employees might be trained to cover these new business requirements. Retraining and re-skilling the workforce with new skills and tools will enhance their performance, effectiveness and efficiency. This is a kind of investment and proactive thinking that will pay off once everything goes back to normal.

## 6. Reallocate and motivate

While you may find your employees with extra time on their hands as a result of the measures taken due to the pandemic, this could be the moment to reallocate your workforce to assist you in creating a stronger future for your company. Some examples could be:

- streamline your business processes and improve your standard operating practices
- re-evaluate your marketing strategy and new marketing techniques you can implement
- develop new business strategies
- revisit your internal policies on leaves, furlough, working time, benefits and compensation plans
- improve and reinforce your customer service department
- incorporate new technologies in your business to comply with social distancing measures
- re-group and revitalize assets for the near future.

As employees acknowledge changes to the business it is more important than ever to place a focus on their well-being. Policies on motivating your staff and having their safety as a priority during the current crisis are of great importance to succeed at this time.

As a final note, except for all the above options to respond to the pandemic crisis from the business side, it is worth mentioning that the Albanian Government has recently introduced various measures to help employers and employees cope with this unusual situation. Such measures include, *inter alia*, two main financial assistance packages that employers may use to ensure that their employees continue to obtain incomes, provided they fulfil the relevant requirements and criteria. Government's guidelines are changing frequently, therefore it is imperative that you check the most up to date advice and consult with your legal counsel before implementing any particular approach.