

Covid-19: Most Frequently Asked Questions by Luxembourg Employers



As the Covid-19 crisis unfolds, further to the declaration of the state of emergency on March 18, 2020, Luxembourg employers have many issues to handle in an ever evolving legal landscape.

In this brief guideline we have answered their most FAQs.

1. Can I force my employees to take annual leave?

No.

Employees are not obliged to take annual leave during the current lockdown period and employers cannot force them to do so. If employers require employees who cannot telework to stay

home, they must exclusively bear all the salary costs by:

- regularly paying their salary, or
- applying for short-time working.

2. If my employees have already requested to take annual leave and are unable to do so due to the cancellation of their travel arrangements, are they entitled to cancel their booked days of leave?

Usually, as soon as annual leave days have been fixed and registered, employers and employees should respect them. However, under exceptional circumstances, they can be reassessed on a case-by-case basis.

During the current Covid-19 crisis, although employers and employees can reach a mutual agreement on this issue, in our opinion employers are still entitled to refuse to cancel an employee's leave upon his/her request. The latter will particularly apply, if there is a downturn in activity.

3. If my employees are cross-border workers, how are they affected by teleworking in terms of taxation?

■ Teleworking from Belgium

According to existing treaties, Belgian cross-border workers can only telework 24 working days per calendar year in their country of residence (or in a third country). Under this threshold cross border workers residing in Belgium will continue to be entirely taxed in Luxembourg.

As the Belgian and Luxembourg authorities considered that the current coronavirus situation constitutes a case of force majeure, it has been decided to suspend the 24 day threshold until further notice.

■ Teleworking from France

According to existing treaties, French cross-border workers can only telework 29 working days per calendar year in the employee's country of residence (or in a third country).

As the French and Luxembourg authorities considered that the current coronavirus situation constitutes a case of force majeure, as of Saturday March 14, 2020, it has been decided to suspend 24 day threshold until further notice.



■ Teleworking from Germany

According to existing treaties, German cross-border workers can telework 19 working days per calendar year in the employee's country of residence (or in a third country).

As of today, no specific temporary rules for German cross-border workers have been issued. Nonetheless, considering the agreements reached with France and Belgium, the Luxembourg and German authorities should also reach an agreement soon. Developments in such aim will have to be monitored.

4. Do my employees have a right of withdrawal, if they are afraid about their health and safety?

Employees are entitled to use their withdrawal right in the event of serious, immediate, and unavoidable danger. If a serious and dangerous situation occurs, employees can refuse to execute their tasks. As soon as the right of withdrawal is justified, employees will be paid normally and should not be sanctioned (dismissed, warned, etc.).

It is important to bear in mind that employers must ensure the safety and health of their employees.

Therefore, employees who want to use their right of withdrawal should assess:

- how their tasks/work expose them to Covid-19,
- if the safety measures implemented by their employer are sufficient or not.

Consequently, an employee's withdrawal right must be evaluated on a case-by-case basis and take into account the working environment, the contacts between people, and the safety protections offered by employers.

5. How shall I handle newly hired employees whose start date is envisaged during the lockdown period?

Employers who have signed an employment contract with an employee before the coronavirus crisis and whose start date is foreseen in the next few days or weeks, cannot unilaterally withdraw from the contract nor postpone the employee's start date.

If the newly hired employee's start date is not materially possible (e.g. the whole company is teleworking and it is not

possible to set up teleworking for him/her), employers must ask the employee to stay home and pay him/her the agreed salary.

However, a mutual agreement could be reached between the parties but the newly hired employee's consent should be clearly stated in writing to avoid any further claims.

6. If I employ third-country nationals, how shall I handle the expiration of their residence/working permit documents?

The residence document of third-country national employees that expires as from March 1, 2020, shall automatically remain valid during the state of emergency period. The following documents held by any third-country national employees will automatically remain valid:

- short and long stay visas,
- temporary authorisations to stay,
- residence card, and
- residence permits.

Should you have any further questions, do not hesitate to contact us.

Your Contacts at Luther



Marie Sinniger

Avocat à la Cour, Partner
Luther S.A. Luxembourg
P +352 27484 681
marie.sinniger@luther-lawfirm.com



Anne-Laure Wach

Avocat à la Cour, Senior Associate
Luther S.A. Luxembourg
P +352 27484 657
anne-laure.wach@luther-lawfirm.com

