

COVID-19

What is a Coronavirus (COVID-19)?

Coronaviruses are a large family of viruses that are known to cause illness ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS).

EMPLOYMENT LAW GUIDANCE TO EMPLOYERS: COVID 19 PANDEMIC

With the current unfolding COVID 19 situation, Prime Minister Andrew Holness announced on March 13, 2020 that the entire island of Jamaica is declared "A Disaster Zone" under the powers given by Section 26 (2) of the Disaster Risk Management Act 2015. The effect of these measures has implications for the operations of all branches of economic activities. The following data is being provided as generic guidance to employers on how to treat employment related issues:

This information is not legal advice; should you require legal advice, please contact Karene N. Stanley at knsjones@knscolaw.com or Carla-Anne Harris-Roper at chroper@knscolaw.com

1. LAY OFF:

Section 5A of the (**Employment Termination and Redundancy Payments Act - ETRPA**) makes provisions for a lay off. Lay off is a temporary measure to be utilized in cases where there is temporary closure of operations. This allows employers flexibility to maintain employment relationship, while managing the unfolding situation.

However note the following:

- The maximum period of lay off is 120 days
- Lay off is without pay and employees are still considered as employees
- Persons may still be laid off without pay even if they receive some pay or work for limited times (not necessarily with the employer).
- After 120 days lay off the employee may elect to be regarded as being dismissed because of redundancy
 - o The effective date of dismissal must be not less than 14 days and not more than 60 days after the date of the notice itself.
 - o If the employee is then offered alternative employment in accordance with **Sections 6(3) and 6(4) of the ETRPA** no redundancy is payable.
- Lay off claim for redundancy is available only at the option of the employee.

2. REDUCED PAY:

It may be an option (with the agreement of the staff) to stay off the job and receive a reduced rate of pay for an agreed period - thirty (30) day could be considered with constant revision of the circumstances. This must however be mutually agreed; It cannot be imposed unilaterally.

3. TAKING VACATION LEAVE:

The employees may choose to access their paid vacation leave entitlement as an interim measure as provided by their contract or the minimum legal standard under the **Holiday with Pay Order 1973**. The employer cannot however force an employee to take vacation leave notwithstanding the unique situation now being faced. This must be mutually agreed, and the employee would have to make the requisite applications for leave.

4. STAFF ROTATIONS:

When there is a downturn in operations, there is a system of rotation of employees which could generally be considered so that they maintain some level of employment. This could assist in maintaining business continuity, pending full operations being restored.

5. FLEXIBLE WORK ARRANGEMENTS (REMOTE WORK):

The employer can also consider flexible working arrangements or remote work where the circumstances allow. **The Employment (Flexible Work Arrangements) (Miscellaneous Provisions) Act, 2014** has provided a platform in law to facilitate this. Employers should examine the employee's role and make an assessment of whether it can operate off site. In such cases, the employee would be paid for work done remotely.

6. SAFETY AND HEALTH:

The employer has a duty of care to their employees to provide a safe place of work and a safe system of working. Dependent on the business, the risk to the employees may be relatively high and it could expose the employer to liability if it is proved that the employee contracts the virus while undertaking work. The employer therefore has a duty to remove any employee who may be exhibiting symptoms from the workplace to protect both themselves and other employees.

7. SICK LEAVE:

If an employee contracts the virus and becomes ill, they would be entitled to paid time off, in accordance with their entitlement under their contract or the minimum legal standard under the **Holiday with Pay Order 1973**. The employee should notify the employer and provide doctor's certificates within appropriate timeframes. The Ministry of Labour has encouraged employers to provide employees more time off over and above the statutory minimum, if the employee needs to be quarantined or absent by virtue of illness. The employer is not however required by law to do so.

8. MANDATORY QUARANTINE/IMPOSED ISOLATION:

Where the government imposes mandatory quarantine or places persons in isolation under medical observation in designated facilities, employees will not be allowed to leave the area to come to work or will not be allowed to leave the medical facilities. The employee is expected to advise their employer. If employees can work remotely, this should be considered. If this is not available, the employer is not obliged by law to pay the employee's salary. However if they can afford to pay the employee as a "special leave" they are encouraged to do the so.

9. SELF-QUARANTINE/ SELF-IMPOSED ISOLATION:

Some employees may wish to stay at home because they have an underlying health condition or because of their age they are more susceptible to contracting the virus. This decision should not be made unilaterally by the employee. Instead the employee should advise the employer of their concern and seek consensus on how to proceed. If the employer can facilitate remote working arrangements this should be considered. If the employer is not in agreement with the employee's position, the employee may seek "No pay leave" or apply for vacation leave if available. The employer is however not obliged by law to pay the employee's salary in these circumstances.

10. TERMINATION OF EMPLOYMENT: REDUNDANCY:

If the employer has a reduction in the work required by the business or if they have to entirely cease operations, under by **Section 5 (1) of the ETRPA** there may be a Redundancy situation. Termination of employment on the grounds of redundancy should be the last resort while acknowledging that it may well become necessary. Such a decision is an economic one and must be carefully examined before taking the decision. A full record of what issues were taken into consideration must be kept. The **Labour Relations Code (Paragraphs 11 and 19)** requires "consultation" with the affected employees or their representatives and job loss mitigation strategies should be considered as far as possible to reduce the possibility of the dismissals to avoid a claim for unjustifiable dismissal.