

Employment and compensation

1. Are employees obliged to disclose themselves as a "risk-factor" to the employer?

Yes. Pursuant to the national health emergency declared on March 12, 2020, in Colombia employees have to notify employers if they have COVID-19 symptoms. Employees should also inform employers if they have been in contact with an individual who has been confirmed as having COVID-19.

2. Can the employer demand employees to disclose themselves as being a "risk-factor"?

Yes. Circular 18 of 2020 from the Ministry of Work established such a disclosure is an obligation of employees.

3. Can the employer issue an instruction (or a policy) requiring employees to report co-workers with flu-like symptoms (i.e., fever, cough, difficulty breathing, pain in the muscles, tiredness) to the employer?

Yes. However, employers should justify the instruction as being related to the sanitary emergency as well as health and safety of its employees and clarify that the instruction is for the well-being of the community.

4. Can employees refuse to come to work?

No. Employees can only stop rendering services if there is an order from a doctor (a sick leave certificate) or from local authorities (a quarantine order).

5. Can employees refuse to attend meetings or to travel?

No. There is no legal right established for employees to refuse an employer's instructions. However, such meetings cannot have more attendees than the number of persons authorized to be present per meeting according to applicable regulations. In addition, please consider that currently no transportation to other cities or countries is allowed unless it is required for essential services for the sanitary emergency. Also that there is a general national curfew ordered by the Central Government and employees working for excepted activities or with the ability to work from home should be working. Also, travel that is not essential for the business is not advisable.

6. Can the employer send employees on suspension from work?

Suspension can be achieved: (i) by mutual consent between the employer and the employee (safest scenario upon eventual claims); or (ii) unilaterally by the employer, event in which the Ministry of Work should be notified if suspended due to force majeure or requires prior authorization from the same Ministry if suspended due to the suspension of activities for 120 days.

Bear in mind that the employer may be able to allege a force majeure event, pursuant to which employees would not receive paid leave. Also, employers can request authorization

before the Ministry of Work to suspend their activities for 120 days and suspend employment agreements unilaterally within such period. Government has openly shared that they are not expecting that employees will suspend the employment agreements and have announce strict surveillance and verification of circumstances and procedures.

7. When is the employer forced to shut down its operations?

Currently, we are under curfew. Our law established some exceptions for the curfew depending on the activities developed. Therefore, employers may continue operating or not. It depends on their activities and the employee's functions. In general, if business operations have stopped and there is a true inability or limitation of the employer to continue operating, force majeure can be invoked by the employer. Employment agreements can be suspended in this situation and once suspended, the employer will not be required to pay the employee's salary and other employment accruals. However, the employer will have to continue to make contributions to the social security system on behalf of their employees. The admissibility of alleging force majeure needs to be reviewed on a case-by-case basis, and as mentioned the Ministry of Work should be informed so they can verify the circumstances.

8. Does the employer have the obligation to report infections occurring in the business to the health authorities?

Yes.

9. Can the employer require an employee to see a doctor?

Yes. In general, employers are responsible for employees' health and safety during their working hours, and in these specific circumstances, employers are responsible for preventing the spread of COVID-19 among their employees. Given that, employers can require an employee to see a doctor.

10. If employees are sent on suspension from work, or refuse to come to work, or if an operation is being shut down, do the employees still need to be paid?

It depends on how the employer handles the situation and the impact of COVID-19 on the employer's business.

- If the leave is granted by the decision of the employer, the employee leave must be paid.
- If the leave is upon consent or the request of the employee, the employee leave will not be paid, unless otherwise agreed.
- If the employment agreement is suspended because of a force majeure event, (and the employer can prove the same) or with the prior authorization from the Ministry of Work, the employee's leave is not required to be paid.

11. If kindergartens and schools are being closed and employees need to stay home and cannot work, does the employer need to pay them, and if so, for how long?

Having to take care of children is not, without more, a valid reason to stay at home without remotely working. If, however, the situation can be qualified as personal calamity, an employee can stay at home, not work, and still receive pay.

For employees who are not suffering a personal calamity but cannot render services remotely from home, an employer has several options, including granting the employee vacation, agreeing to paid or unpaid leave, agreeing the suspension of the employment agreement, modifying the working hours and the salary, or unilaterally suspending the employment agreement. Without an agreement with the employee or the formal suspension of the employment agreement, fulfilling all the procedure of before the Ministry of Work, the salary would have to be paid.

12. Can we require employees to work from home?

Yes, employers can require employees to work from home as long as employees can do so without inconvenience (from a technical and business standpoint). Currently, under curfew all employees who can render services remotely have to work from their homes. To formalize this, we recommend the employer to deliver a letter to the employee explaining that in order to protect the employee's health and to avoid any potential risk in light of the COVID-19 outbreak and according to the provisions of the Ministry of Work, the employer requires them to work from home. This letter should clarify that this work will not be considered under the legal definition of "teleworking" of Law 1221 of 2008 and therefore, its benefits will not be accrued.

13. What if an employee can't practically carry out their work from home – can they be required to take paid leave? Do we have to pay their salary anyway?

Yes, if the employee cannot work from home, the employer can notify the employee that as of a certain date, they will be on remunerated/paid leave. Additional options can be considered (vacation, suspension, non-remunerated leave).

14. Are employees who self-isolate entitled to be paid as usual?

Yes. If the employee is self-isolating due to a doctor's recommendation (and has a sick leave certificate issued by the doctor), the employer is obligated to pay the sick leave allowance in accordance with the percentages established by law. The general rule is that employees receive 66.6% of their salary until the 90th day of sick leave leave (or the percentage established by their extra-legal benefit plan or collective bargaining agreement).

15. Health checks / medical testing: can we require our employees to have their temperatures checked or run other health checks?

No. Employers cannot force employees to take any medical test without their prior consent. However, employers can establish that no individual will enter its facilities without having its temperature checked.

16. What are my obligations around maintaining a safe working environment?

The Ministry of Work issued Circulars establishing certain employer obligations in connection with COVID-19, among which are the following:

- Adjusting their Health and Safety Management System, including the COVID-19 risk
- Establishing communication channels to notify possible cases of COVID-19
- Providing information to the Ministry of Health and other authorities immediately
- Applying and following procedures established by the Ministry of Health in case of a COVID-19 outbreak

- Publishing official information regarding the virus in Colombia to its employees and contractors
- Following the recommendations established by the Labor Risks Administrator
- Providing personal protection elements to employees according to the recommendations issued by the Ministry of Health
- Maintain clean and disinfected facilities, phones, computers and other work areas used by employees
- Request that employees not share their personal protection elements

In addition, employers must comply with the regular health and safety obligations.

We also have a complete [Global Employer Guide](#) covering each of the regions where Baker McKenzie offers its services.

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