

## COVID-19 – A Practical Guide for Employers

Following an Taoiseach Leo Varadkar's announcement on Friday, 27 March 2020 that people are now required to stay at home until Sunday, 12 April 2020, Deirdre Crowley, partner and Denise Moran, associate, consider the latest and most restrictive measures imposed by the Government in response to the COVID-19 pandemic, and what such measures mean for employers in Ireland.

This guidance is up-to-date as of 2 April 2020 and as the situation continues to develop at a rapid speed, we will continue to keep you informed.



### What was announced on Friday?

In what came as a surprise to many, the Irish Government announced that from midnight that Friday until Sunday, 12 April 2020, people would be required to stay at home except in the below specified exceptions. The Irish Government stated simply that staying at home would constitute: **"the best way to minimise the risk of COVID-19 to friends, families and communities"**.

The exceptions provided are exhaustive and make it abundantly clear that the threshold for deviating from the instruction to stay at home is very high. The permitted exceptions are as follows:

- to shop for essential food, beverage and household goods or to collect a meal;
- to attend medical appointments and collect medicines and other health products for either the person themselves, their family members or for someone who is vulnerable or cocooning;
- for vital family reasons including caring for children, the elderly or for vulnerable people. This expressly excludes social family visits;
- to travel to and from work where the work is considered an essential service. The list of essential services can be accessed [here](#) and we have also set out the details further below; and
- to take brief individual physical exercise within two kilometres of one's home, which may include with children from the household where the strict two metre social distancing measures are adhered to.



### What are employers required to do following this announcement?

Employers are required to determine, with reference to the guidance provided, whether or not their organisation is providing an essential service. It is not necessary to seek official authorisation in this regard, nor is there any available mechanism for businesses to seek confirmation from the Irish Government that their business is deemed to provide an essential service.

Where an employer determines that it is providing an essential service, in line with the guidance provided, the employees who are essential to the provision of that service should be identified and notified accordingly. This may or may not include all employees of the organisation and a review of all employee categories and their roles should be undertaken to identify which employees provide an essential service. The Irish Government has extended this to contractors who also provide essential services.

Employees who are identified as being essential are required, at all times when travelling to and from work, to carry either a work identification or a letter from the organisation outlining that he / she is an essential employee, as well as one other form of identification. It is important that employers notify employees of this requirement and provide them with a confirmation letter where they do not have a work identification.

The Irish Government has provided that all organisations who provide essential services should have business continuity and resilience plans in place and that these provide for the possibility that key workers or key facilities may be impacted by COVID-19. For all organisations deemed to be providing an essential service, latest public health guidance must be adhered to at all times. Where an organisation is not engaged in the provision of essential services, then its employees are not permitted to travel to and from work until these restrictions are lifted.

The Irish Government also announced a grace period until 6pm on Monday, 30 March for people who needed to make the necessary arrangements to wind down their activities in an orderly way but that should, however, have been done in a way that minimised travel and personal interaction as much as possible. In exceptional circumstances, it is accepted that some extra time will be needed to effectively wind down the activity, or that it may be necessary for the site to continue to operate at a reduced level of activity, for example in complex manufacturing processes or very large construction projects.

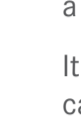


### What are the Essential Services?

The Irish Government has advised that, subject to compliance with the guidance issued, only employees in the essential services are permitted to travel to and from work. Even where essential services are being provided, the Government has requested that these be provided from home, where possible. The full list can be accessed [here](#) and we have set out below the details of the ones which will most likely pertain to our clients:



**Manufacturing:** Such includes the manufacture of food and beverage products; pharmaceutical products and pharmaceutical preparations; and products necessary for the supply chain of essential services.



**Repair and installation of Machinery and Equipment:** This provides for the supply, repair and installation of machinery and equipment and industrial machinery and equipment for essential services.



**Construction:** The only construction considered essential is that of essential health and related projects relevant to the COVID-19 crisis, and supplies necessary for such projects; the repair / construction of critical road and utility infrastructure; and the delivery of emergency services to businesses and homes on an emergency call-out basis in areas such as electrical, plumbing, glazing and roofing.



**Wholesale and Retail Trade:** This provides for takeaways and food delivery services, and also provides for the wholesale and distribution services necessary for the sale of food, beverages, fuel, medicines, medical products and devices and essential household products. An updated list of essential retail outlets has also been provided and we have detailed this further below.



**Financial and Legal Activities:** This provides for banking and financial services (including banks, credit unions and post offices). It also provides for accountancy, legal and insurance services necessary to support essential services and vulnerable people.



**Information and Communications:** This includes the publishing of newspapers, journals and periodicals as well as video, television programme production, sound recording, radio and television broadcasting; internet and cloud providers; and data centres and related services. This essential service is not linked to the support of other essential services and it is our view that this may be in recognition of the fact that communications infrastructure may need to be maintained so that, for example, the working from home Government direction can operate.



### What happens if a company does not comply?

This Irish Government guidance will be reflected in regulations under the **Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020** (which was signed into law on 20 March 2020) and will be enforced by An Garda Síochána. Although the regulations have not yet been published, compliance with the guidance is necessary to ensure compliance with law as it is expected that they will follow the guidance.

Any person, including a company, who does not comply with the guidance will be guilty of a criminal offence and subject to a fine. Any individual director, manager, secretary or other officer who is involved in non-compliance by a company may also be guilty of a criminal offence and also subject to a fine and / or imprisonment.

It is also very important for employers to be cognisant of the Irish public's united and positive response to the Government's call for the nation to work together to contain the spread of the virus. In this breath, it has been pertinent to note the learnings from organisations which have received negative media coverage in the last week where it has impacted that they have put the health and safety of their employees at risk. An organisation, when determining if it is within the list of essential service providers, may be open to media scrutiny where it is viewed as not being in line with the Government direction and the greater national call.



### What does the updated Essential Retail Outlets provide?

The National Public Health Emergency Team recommended that all non-essential retail outlets are to remain closed to members of the public, and all other retail outlets are to implement measures which ensure physical distancing.

The Irish Government provided the following list of Essential Retail Outlets:

- retail and wholesale sale of food, beverages and newspapers in non-specialised and specialised stores;
- retail sale of household consumer products necessary to maintain the safety and sanitation of residences and businesses;
- pharmacies / chemists and retailers providing pharmaceuticals, pharmaceutical or dispensing services;
- retail sale of selling medical and orthopaedic goods in specialised stores;
- fuel stations and heating fuel providers;
- retail sale of essential items for the health and welfare of animals;
- laundries and drycleaners;
- banks, post offices and credit unions; and
- retail sale of safety supply stores (work clothes, personal protective equipment, for example).

The following physical distancing measures must be implemented by Essential Retail Outlets:

- adequate physical distancing between customers and shop assistants, in line with public health guidelines, must be ensured;
- only small groups of people can be permitted to enter a store at any given time and spaces must not be crowded;
- queue control, both inside and outside the door, must be managed to maintain necessary physical distancing; and
- Essential Retail Outlets are encouraged to provide online services where possible and appropriate to minimise footfall.

In addition to the above list of Essential Retail Outlets, the Irish Government has recognised that emergency needs may arise in a number of areas, and outlined that the following retailers can continue to offer an emergency call-out or delivery service but on that basis only: opticians / optometrists; retailers involved in the repair of motor vehicles, motorcycles and bicycle repair and related facilities (tyre sales and repairs for example); hardware stores, builder's merchants and stores that provide hardware products necessary for home and business maintenance, sanitation and farm equipment, supplies and tools essential for gardening / farming / agriculture; retail sale of office products and services for individuals working from home and for businesses; and retailers providing electrical, IT and phone sales, repair and maintenance services for home.

In addition to these measures which were introduced, Leo Varadkar, in acknowledging that the economic impact of COVID-19 had **"been sudden and will be enormous"**, introduced additional financial supports for those impacted by COVID-19 last week. These are the enhanced rates of pay for the COVID-19 Illness Benefit and the COVID-19 Pandemic Unemployment Benefit and the introduction of the COVID-19 Wage Subsidy Scheme. The Taoiseach, in announcing these measures, stated that he strongly believed that maintaining a link between employers and employees will make the road to economic recovery much easier when this crisis is over.



### What are the details of the recently amended COVID-19 Illness Benefit?

Where an employee has received a positive COVID-19 diagnosis or where he / she is medically required to self-isolate, they can apply for an enhanced illness benefit payment of €350 per week for a maximum of 12 weeks of medically required self-isolation, or for the full duration of his / her absence from work due to a confirmed COVID-19 diagnosis.

The Department of Employment Affairs and Social Protection ("DEASP") will provide income support to people affected by COVID-19, the details of which are as follows:

- the current six day waiting period for ordinary illness benefit will not apply to anyone who has COVID-19 or is medically required to self-isolate;
- COVID-19 related illness benefit will be paid at a rate of €350 per week (an increase from the ordinary illness benefit of €203 per week, and an increase from the rate of €305 which was initially introduced last week as part of the emergency measures); and
- the normal social insurance contribution conditions for ordinary illness benefit have been amended.

Where a person has already applied or is already in receipt of this payment before the announcement of the increased rate, the employee does not need to do anything. The next payment will be automatically paid at the increased rate.

The Government has urged all employers to support the national public health objectives by continuing to pay employees the difference between the COVID-19 illness benefit and their normal wages in circumstances where an employee cannot attend work due to COVID-19 illness or medically required self-isolation, ie employers are being encouraged to top up employees' pay in such circumstances. There is no statutory obligation to do so. Where an employee is absent from work due to a positive COVID-19 diagnosis or where they are unfit to attend for work due to illness, then the company's illness absence policy will apply and any discretionary sick pay policy which is in place will be triggered. Typically, where employers have a sick pay policy in place, they reserve the right to be reimbursed for any state illness benefit which may apply.



### Are there any limitations imposed on applying for this COVID-19 illness benefit?

Eligibility for this payment is restricted to persons confined to their home or a medical facility. In practice, however, this will be very difficult to enforce.

Further, as part of the application process, a doctor needs to complete a medical certificate on an employee's behalf which is then sent to the DEASP. It is likely, however, that many employees will seek to avail of this entitlement and that certification from a doctor that the employee is required to self-isolate because they are showing symptoms will not be difficult to get in these exceptional circumstances where the public is being encouraged to take all precautionary measures available.



### What is the COVID-19 Pandemic Unemployment Benefit?

In recognition of the fact that many employees have already lost their jobs and many more may find themselves in a similar position, the Taoiseach announced that the COVID-19 Pandemic Unemployment Payment will be paid at the increased rate of €350 per week for the duration of the crisis (an increase from the €203 which was initially put in place). This payment will be available to all employees and self-employed persons who have lost their jobs due to the COVID-19 pandemic.

Persons can apply for the COVID-19 Pandemic Unemployment Payment if they are an employee or if they are self-employed; aged between 18 and 66 years old; live in the Republic of Ireland; have lost their job due to the COVID-19 pandemic; or have ceased trading due to the pandemic where that person is self-employed. The DEASP has confirmed that this payment applies to non EU / EEA employees and students who have lost employment due to the pandemic and to part-time employees.

The eligibility criteria has been updated following last Friday's announcement and now also specifically applies to employees who have been **"temporarily laid off, asked to stay at home or who are not getting any money"** from their employer.



### What is the COVID-19 Wage Subsidy Scheme?

The COVID-19 Wage Subsidy Scheme, ("Scheme") was introduced by the Irish Government to provide financial support to Irish employees and companies affected by the crisis.

This Scheme is provided for under the **Emergency Measures in the Public Interest (Covid-19) Act 2020**.

It is important to note that the Irish Revenue is issuing regular updates on the Scheme and how it will operate in practice. Any employer engaging with the Scheme should consult all updated Irish Revenue guidance.

This Scheme aims to put employers in a position to continue to pay their employees during the current pandemic. It is a condition of the Scheme that employees are retained on the payroll for the duration of the crisis. The Scheme is confined to employees who were on the employer's payroll as of 29 February 2020. Further, the Scheme is also available where employees had been placed on a period of lay-off as a result of COVID-19. These employees can be taken back onto the payroll and will qualify for the subsidy if they were on payroll at the end of February.

Where an employer self-declares to the Irish Revenue that it has experienced significant negative economic disruption due to COVID-19, with a minimum of 25% decline in turnover or customer sales, an inability to pay employees' normal wages and other outgoings, that employer will be able to claim a refund of 70% of its employees' net wages, up to a maximum of €410 per employee per week. This amounts to 70% of an employee's net weekly income on an annual salary of €38,000. The Scheme will provide support to employees in receipt of annual salaries up to €76,000, but the refund will be capped at a net weekly payment of €350 for employees' incomes between €38,000 and €76,000. The Irish Revenue has stated that this self-declaration by the employer is not a declaration of insolvency.

The Scheme will run for 12 weeks from 26 March 2020. However, the Irish Revenue will initially refund employers up to a maximum of €410 per employee regardless of the employee's income. This is being referred to as Phase 1. However, Phase 2 will commence no later than 20 April 2020 and from the commencement of Phase 2, the Revenue will move to the subsidy payment as outlined above, ie based on 70% of the weekly average net pay for each qualifying employee up to the maximum amount of €410, where employee earns up to €38,000, and €350 for employees in receipt of annual salaries between €38,000 and €76,000. Therefore, for the initial payments of Phase 1, employees may receive in excess of 70% of their normal weekly net pay. The Irish Revenue indicates that where the €410 Revenue payment in Phase 1 exceeds the maximum subsidy amount due in respect of that employee using the Phase 2 metrics (e.g. because it exceeds 70% the average net weekly pay for that employee), the excess is refundable by the employer to the Irish Revenue. Further guidance from the Irish Revenue is expected in this regard.

The Scheme applies to employers who top up employees' wages and those who are not in a position to do so. The Irish Government has called on employers to maintain, as close as possible, employees' wages at their current level of earnings for the subsidised period. In an effort to encourage employers to do so, the Irish Revenue has confirmed that PRSI, Income Tax or USC will not be deducted from the subsidy provided under the Scheme. Employee PRSI will also not apply to the top up payment made by the employer, and employee PRSI will be reduced from 10.5% to 0.5% on any top up payment made. However, the subsidy will be liable to income tax and USC on review at the end of the year.

The Irish Revenue has also outlined that where an employer has been hit by a significant decline in business but has strong cash reserves, that are not required to fund debt, that employer will still qualify for this Scheme but the Irish Government expects the employer to continue to pay a significant proportion of its employees' wages.

A very important consideration for employers is the fact that, after the Scheme has expired, the names of all employees operating this Scheme will be published on the Irish Revenue's website. It is also important to note that the Irish Government has outlined that there will be severe penalties for any abuse of the Scheme.

Employers must not operate this Scheme for any employee who is making a claim for duplicate support, ie the COVID-19 illness benefit.

This Scheme replaces the Employer Refund Scheme which was initially introduced, and companies which received refunds under that scheme do not need to reapply. The Irish Revenue will contact such organisations directly to confirm that they meet the conditions for this new Scheme.



### Are employers obligated to continue paying their employees where there is a Government mandated shut-down?

There is an important distinction to be made between employees who are in a position to work remotely and those who, because of the nature of their role for example, are not in a position to do so.

Where employees are not in a position to work remotely because of the nature of their role for example, the consideration around pay is a more acute concern. These decisions may be challenged before the Workplace Relations Commission ("WRC") or the courts so employers need to consider how best to position themselves to defend any such matters.

It is to be reiterated that there is no statutory entitlement to employee pay in circumstances where an employee who is fit to work but who cannot, due to the nature of the role for example, work remotely and who cannot now attend for work due to the Government mandated shut-down. However, the Irish Government's position of expressly calling on employers to protect employee income and the unprecedented financial supports recently introduced are an important consideration for employers to consider when determining if they will continue or cease to pay its employees who are not in a position to work from home.

Consequently, prudent employers may provide their employees with a suite of flexible options to discuss and explore together, in advance of making any decision regarding employee pay. Below are examples of such a range, which are in line with the government's recommended approach of showing employee support for employees through flexible arrangements:

- allowing employees to avail of their annual leave entitlements;
- allowing employees to 'work-up' any time taken at a future date;
- allowing employees take parental leave or unpaid leave; or
- placing employees on a period of temporary lay-off (as detailed further below).

The key to these discussions being effective lies in the communication between the employer and the employees. Taking a reasonable and flexible approach to employee before any decision is communicated regarding employee pay would likely stand the employer in good stead before the WRC should any such claim arise.

However, where an employer meets the conditions of the Scheme, as outlined above, it may seek to rely on the financial resources made available by the State in ensuring that its employees receive their wages, or a portion thereof. Lastly, and as also detailed above, the COVID-19 Pandemic Unemployment Payment is available to employees and self-employed persons who have lost employment due to a downturn in economic activity caused by the pandemic, including due to the Government mandated shut-down.



### Can we insist on employees taking annual leave during this period of government mandated closure?

The Government initially included the option of allowing employees to take annual leave as one of the options available to employers to support their workforce. An employer and employee may be considering this option where this option would be crucial and employees would need to be specifically advised that where they are considering taking this option, their entitlement will diminish commensurate to the days taken, as annual leave entitlements are exhaustive.

However, the Organisation of Working Time Act ("OWTA") requires that account be taken of the **"opportunities for rest and recreation available"** and the need for an employee **"to reconcile work and any family responsibilities"** when granting employee annual leave. There is a risk that an employee may claim that annual leave taken in these circumstances does not meet these requirements. Further, employers are required to consult with employees (for the trade union of which they are a member) no later than one month before the day on which the employee's annual leave is due to commence. Given the timing of the Government's responses, employers will likely not be in a position to provide this requisite notice. Ideally, employers would seek agreement from employees to waive such notice but it is our view that given the emergency circumstances we are in, a court is unlikely to take a hard-line approach to this one month notice requirement.

It is to be noted, however, that any employee claims which may arise will more likely be in respect of a breach of the employer's requirement to take account of "opportunities for rest and recreation" on the basis that the current situation does not meet this stipulation.

The key to mitigating exposure to such claims for breaches of the OWTA lies in effectively communicating with employees.



### We are not eligible for the Scheme but we do not have work for our employees to do because of the effect COVID-19 is having on our business, can we place our employees on a period of lay-off?

Yes, an employee may be placed on a period of lay-off where, subject to the satisfaction of the conditions set out in the Redundancy Payments Acts 1967 to 2014 ("RPA"), his/her employer is unable to provide the work for which the employee is paid to do, and it is reasonable in the circumstances that the employer believes that the cessation of employment will not be permanent and the employer gives notice to the employee prior to the cessation. There is no statutory minimum timeframe in relation to such notice but we suggest that an employer gives as much notice as is reasonably possible in the circumstances.

There is also the option of placing employees on short-time, which occurs where there is a shortage of work (but not a complete cessation of work). The RPA provides that an employee is deemed to be on short-time where his / her hours of work or remuneration are less than half of their normal weekly amount by reason of a reduction in the work provided for the employee by the employer. The employer must give notice to the employee prior to the diminution and the employer must have a reasonable belief that the diminution will be temporary.



### Are employers obligated to pay employees for periods of lay-off or short-time?

There is no general right under Irish employment law to lay-off employees or put employees on a period of short-time without pay. Accordingly, in the absence of an express clause permitting lay-off or short-time without pay or in the absence of an implied right established by way of custom and practice, prior agreement from the employees should ideally be obtained in order to lawfully withhold wages during any such period. Where no such consent is obtained, there is a risk that the employees could take a claim for unlawful deduction of wages under the Payment of Wages Act 1991 ("PWA") or a claim for constructive dismissal.

While this is the legal position as it currently stands, it is of course open to an employer to proceed to lay-off / short-time in the absence of a clause and without pay where, for instance, the employer believes the risk of insolvency is higher than the risk of a number of employee claims, and it is prepared to take the employee-side risk. It is likely that the many employers who have already placed their employees on temporary lay-off over the last number of days and weeks, have taken this risk.

These are uncharted waters and in these exceptional circumstances of a Government mandated shut-down, and in the absence of an express or implied right to withhold pay for lay-off or short-time, an employer may be able to succeed in an argument that, where it cannot provide work for reasons completely outside of its control, it is impliedly agreed that it is not reasonable for employees to be entitled to be given work and paid for it, particularly where this would jeopardise the future viability of the business.

During the recession, the inability to pay argument was an argument often put forward by unions or other stakeholders that the point of inability to pay has been reached, this is a difficult argument for employers to succeed with. Cogent, detailed, objective expert evidence that is contemporaneous with the inability to pay is key to mount a defence of this kind. It is important in this situation that an employer obtains evidence around its financial position to mitigate the risk of employment-related claims.

Further, employers should take steps to engage with employees to mitigate employee-side risk, such as providing advance notice of the measure in question to employees, engaging with employees to seek their agreement (including advising them of the implications of the measure not being agreed to) or looking at alternative options such as different forms of paid leave, and obtains evidence around the financial position of the employer to mitigate the risk of employment-related claims.



### What State benefit is available to employees in circumstances of lay-off or short-time?

The Irish Government has updated its COVID-19 Pandemic Unemployment Benefit advice and makes it clear that where an employee is placed on a period of lay-off or where they cannot attend at their workplace, they are eligible for this income support.

Specifically, the Government has provided that **"employees who are laid off temporarily, without pay, due to a reduction in business activity, can apply for a COVID-19 Pandemic Unemployment Payment. This new payment quickly delivers income support to the unemployed (be they self-employed or employees) for a 12-week period"**. This webpage can be accessed [here](#).

Further, the Irish government has provided that **"all workers who cannot go to their place of work are eligible for the Pandemic Payment if they cannot work from home"**. This webpage can be accessed [here](#).

It is important to note that employees who are placed on a period of lay-off are not unemployed so their eligibility for this unemployment benefit is unusual (and the title of this benefit is misleading). Employees placed on a period of short-time or lay-off are still employees of the company; they remain on its payroll and their length of service continues to accrue.



### Can employees claim an entitlement to a statutory redundancy payment where they are placed on a period of lay-off or short-time?

The RPA specifically provides that if an employee has been laid off or put on short-time for four or more consecutive weeks; or, six or more weeks within a 13-week period (of which not more than three are consecutive), the employee may notify their employer in writing of his / her intention to claim a statutory redundancy payment.

The employee must satisfy the qualifying criteria for eligibility for a statutory redundancy payment, including having at least two years' continuous service with the employer. The notice must be given, at the latest, within four weeks after the laying-off or short-time has ended, and within seven days of the employee issuing this notice, the employer can give a counter notice contesting its liability to pay a redundancy payment. This applies if it is reasonable, in the circumstances, to expect that within four weeks of the employee's notice, the employer will provide the employee with work for at least 13 weeks without being placed on a period of lay-off or short-time for any week.

However, the Emergency Measures in the Public Interest (Covid-19) Act 2020 amends the RPA to suspend, for the duration of the emergency period which is defined for the purposes of this section as being from 13 March 2020 to 31 May 2020, the entitlement of an employee to make this notification to his / her employer. This is limited to circumstances where the employee has been placed on a period of lay-off or short-time due to the impact of the measures taken by his / her employer in compliance with or as a consequence of the Government's response to prevent, limit, minimise or slow the spread of COVID-19.



### Some employees are not in a position to attend for work because they are required to care for their children whose schools and crèches have closed / the childcare minder which we have engaged must now stay at home, are these employees entitled to be paid?

Following the Government's announcement that the closure of colleges, schools and childcare facilities will be extended until 19 April 2020 and following the announcement that the Irish public must **"stay at home"**, this is likely to be a question which employers will face. It is to be noted that there is no statutory entitlement to pay in such circumstances.

Further, and as a matter of contract, where an employee is not in a position to perform the duties required of him / her pursuant to their employment contract because they cannot attend for work at the company premises or work remotely, due to the fact that they are required to mind their children following the closure of childcare facilities and schools, then there is no corresponding obligation on employers to pay employees.

However, it is important to note that any such decision to withhold pay in consideration must also be viewed negatively in light of the Government's call to assist and support the national health objectives. Such circumstances may also be given the broader impact which the publicity of such a decision may have on the company's brand. In line with the Government's response, employers should explore the following options:

- allowing employees to avail of their annual leave entitlements (subject to our comments on annual leave);
- relaxing the rules around Force Majeure leave so that employees can take their full three year entitlement of five days in these exceptional circumstances (as opposed to their three day entitlement over a 12 month period);
- allowing flexible and agile working practices to accommodate childcare needs;
- offering discretionary pay, to be reviewed on an ongoing basis; and
- parental leave.

The most obvious leave option available in such circumstances is parental leave. However, parental leave is unpaid, unless there is a company policy to the contrary, and therefore does not provide employees with an attractive solution. There is a risk that insisting on employees taking unpaid parental leave, where the Government has mandated the closures of schools and childcare facilities, might present employee relations issues.

In that regard, we have seen some clients put in place a once-off, paid parental leave arrangement for a short duration to assist employees in these circumstances. If such an arrangement is used, we recommend that employers, particularly in light of the extension, make it clear that this arrangement is being implemented on an exceptional basis and solely at the discretion of the employer with a view to alleviating the pressure on working mothers and fathers.

The key takeaway is to ensure that, to the extent possible, employers review and consider measures with employees as far as this is possible to agree arrangements that ensure that employees are supported and that employers' business remain viable. Consultation with employees in this regard may be difficult in practice as employers are faced with making business-critical decisions on the basis of Government guidance with little or no notice. However, any form of consultation with employees about available options should increase the chances of buy-in from the employees for the more severe measures that need to be taken and, of course, assist in mitigating the risks associated with any challenges that may arise down the line.



### An employee has applied for force majeure leave due the school closures / Government mandated shut-down, is this type of leave applicable to these circumstances?

Force majeure leave is available to an employee where, **"for urgent family reasons, owing to an injury or the illness"** of the employee's child or adopted child, spouse or partner, parent or grandparent, brother or sister and in person to whom the employee is in loco parentis and where **"the immediate presence of the employee at the place where the person is, his home or at his or her home or elsewhere, is indispensable"**.

Such leave, therefore, only applies where the child (or indeed any other person included in the definition) falls ill with COVID-19 or is experiencing the symptoms. However, employees who face the very difficult position of having to ensure their children are cared for on such short notice are not entitled to force majeure leave.



### Are there any pension considerations which arise?

There are **practical first steps** which employers, together with scheme trustees, can take to minimise the impact of Covid-19 on their employee pension arrangements. The primary concerns for employers are summarised below.

**Prioritising matters with statutory and regulatory deadlines:** Examples of such matters include the remittance of pension contributions and the agreement and submission of funding proposals. Recent Pensions Authority guidance on Covid-19 reminded employers that failure to remit employee contributions that have been deducted to scheme trustees within statutory deadlines is a criminal offence, which the authority will pursue 'actively'.

**Liaising with service providers:** As with many areas of an employer's business, certain day to day functions in respect of pension scheme are carried out by third party service providers. Employers should be aware of service providers' contingency plans to ensure they will continue to offer an appropriate level of service in the current environment and to ensure their priorities are compatible with the employer's concerns and obligations. As an additional concern, employers should be aware of and review the force majeure provisions within service provider contracts,