

Starting Point Employment Law Guide: responding to the coronavirus

Service area / [Employment, Pensions and Incentives](#)

Location / [Guernsey, Jersey](#)

Date / [March 2020](#)

The coronavirus outbreak (COVID-19) was declared a Public Health Emergency of International Concern by the World Health Organisation in January of this year. The situation continues to develop rapidly.

Whilst Channel Islands businesses are very much in the same position as those in mainland jurisdictions such as the UK, there are additional features specific to small island communities which may also be worth considering; our workforce is probably more likely to travel internationally (particularly by air) and employers tend on average to be smaller than their mainland counterparts, meaning that there may be fewer resources to be able to deal with any large scale absences from work.

Additionally, Channel Islands workplaces may be more vulnerable to 'involuntary absences' where schools or nurseries close and employees are obliged to take leave for childcare purposes.

Channel Islands businesses should generally consider the following:

- **Keep monitoring:** the coronavirus situation is dynamic and continues to develop at a rapid pace. Ensuring that your business is getting information from a reliable source is critical to being able to respond appropriately and proportionally to the situation. As well as the official guidance issued by the [States of Guernsey](#) and the [Government of Jersey](#), from an employment perspective it is worth checking in with the [Acas guidance](#) in relation to the UK which is aimed specifically at employers and offers sensible, practical guidance. The UK Government coronavirus Action Plan can be accessed [here](#).

- **Get the right stakeholders involved:** Channel Islands businesses should ensure that someone within their business has overall responsibility for coronavirus issues. This may be a team of people from across the business and (in the case of a multinational business) may be in multiple locations. You will need to involve:
 - a. **Management** at a sufficiently senior level to be able to issue appropriate communications to employees. From an employment law perspective, this team should be able to issue direct instructions to employees of the business which take into account the guidance as it evolves, so as to ensure the business has appropriate regard to health and safety issues at all times. The management must also be able to make decisions about counterparties and other third parties.
 - b. **HR** in order to ensure that there is appropriate access to relevant employee information.
 - c. **Marketing/communications personnel** in order to advise on appropriate internal and external communications.
 - d. **Compliance** where there are any regulatory and/or outsourcing issues such as ensuring adequate 'four eyes' or compliance with substance requirements.
 - e. **Data protection** to deal with any privacy issues.
 - f. **IT** to manage business continuity systems and remote access.
 - g. **Legal** to advise on the legal risks where liability may be of concern in relation to non-performance of contracts or where there are staff health and safety or welfare concerns.
 - h. **Occupational health** can provide guidance on communicable diseases. If you have occupational health

OFFSHORE LAW SPECIALISTS

advice available, then you should consider making contact.

- **Understand your legal obligations:** the primary focus of health and safety law in most jurisdictions (including the Channel Islands) is to require every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all the employer's employees. While employers will be judged by reference to the official guidance, in the event of an issue the courts and tribunals may have regard also to what other employers have done. Businesses will also need to think about the health and safety of clients, customers and counterparties, particularly where such individuals visit business premises. Employers will also have contractual, employment law and privacy obligations to employees which must be complied with.
- **Talk to your employees:** make sure that you communicate regularly with your employees and make sure that you update them as circumstances and policies change.
- **Look at your contracts:** a serious outbreak may interrupt the supply of goods and services to business and at the same time make it more difficult for your business to provide its goods and services to customers and clients. Looking at your contracts now and thinking about how you will deal with such issues may pay dividends in future.
- **Check your regulatory position:** regulated financial services businesses will be expected to have documented business continuity and other contingency plans if disruption to business is likely. These should be checked now and updated if necessary. If your business or activity is caught by the new economic substance requirements, you should consider whether you have sufficient local directors able to meet on the island in order to demonstrate compliance with this regime and potentially consider appointing alternate directors if off island directors were to be affected by travel restrictions or similar.
- **Think about your outsourced services:** the ability of outsourcing service providers to provide services may be compromised in certain circumstances. The GFSC and JFSC impose obligations on regulated businesses to think about contingency plans in order to ensure that these will enable the business to respond appropriately to unusual conditions or if there is significant interruption. Such plans should be reviewed and updated where necessary.
- **Look at business continuity plans:** most business continuity plans are geared to responding to natural disasters. The outbreak of disease is less often thought about but may engage business continuity issues.
- **Check insurances:** you should ensure that you understand your insurance position, both from a business perspective and for employees, i.e. health insurance.
- **Plan your response:** maintaining normal operations may be a challenge, depending on the severity of any outbreak and where it occurs, so preparing now may pay dividends.

Workplace measures

Assess the risk

Channel Islands businesses should consider undertaking a risk assessment in relation to the coronavirus (or updating their existing risk assessment) and then putting in place appropriate measures to deal the risks identified. This will involve thinking about:

- The location of employees
- How much travel (both personal and business) they are likely to be undertaking and how much of that travel could be cancelled, postponed or replaced by other forms of communication such as video or tele-conferencing
- Any particularly vulnerable employees, such as those who are pregnant, elderly or who you are aware may be immuno-compromised in some fashion. So that you can demonstrate you are taking reasonable steps to ensure health and safety, this may involve inviting employees to tell you if they have any health issues which may make them more vulnerable and thereafter considering whether or not any special measures are required for those employees to protect against any enhanced risk posed to them
- The risk arising in the locations in which employees are based or to which they are travelling
- The potential risk of transmission in the workplace (and outside it) and measures which might be put in place to deal with those risks.

Inform your managers

Managers will be a critical first line of response for your business both internally and externally. Making sure that they understand the situation and how they should be communicating with employees, clients and (where applicable) is very important.

Talk to your employees

Make sure that you communicate regularly with your employees and make sure that you update them as circumstances change.

Try to point employees towards reliable sources of information (such as the relevant States' websites and the [advice from the NHS](#)) rather than relying on potentially unreliable (or positively unsafe) material on social media.

If you are going to ask employees to self-isolate or work from home, make sure that this is properly understood and appropriately resourced. Recording the instruction in writing is advisable as this avoids any confusion or misunderstanding over the terms of your instruction.

Think about contracts and policies

In the event of a serious outbreak, you may need to ask employees to perform other duties (or no duties) or to remain at home or otherwise work remotely. You should ensure that you are aware of your contractual and commercial position ahead of time.

Continued

Channel Islands employers should check policies relating to:

- Sick pay
- Sick leave and other types of special leave (particularly in the case of employees with childcare or other dependant issues)
- Private health and other insurances
- Remote working
- Medical suspension (if employees are unwilling to remain at home voluntarily or are in a vulnerable group).

Where there is a need to depart from published policies and procedures, ensure that an explanation is recorded appropriately.

This may particularly apply to sick pay where employees have exhausted entitlements.

There is a risk that employees in such circumstances may, despite being potentially infected and/or actually unwell, be incentivised (or otherwise feel compelled) to struggle into work. Avoiding such a scenario should be a priority.

Focus on business travel

If your business involves employees undertaking significant amounts of travel (particularly to areas where the coronavirus is known to be active), you should be thinking about alternatives such as teleconference, webinar, or videoconferencing.

If travel is unavoidable, then you should have contingency plans should medical treatment and/or quarantine become necessary.

Should you wish to discuss anything in connection with your legal or regulatory obligations in relation to the coronavirus, please do get in contact with us.



FIND US

Carey Olsen (Guernsey) LLP
PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272
E guernsey@careyolsen.com

Carey Olsen Jersey LLP
47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900
E jerseyco@careyolsen.com



FOLLOW US

Visit our employment, pensions and incentives team at careyolsen.com



PLEASE NOTE

This briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen 2020