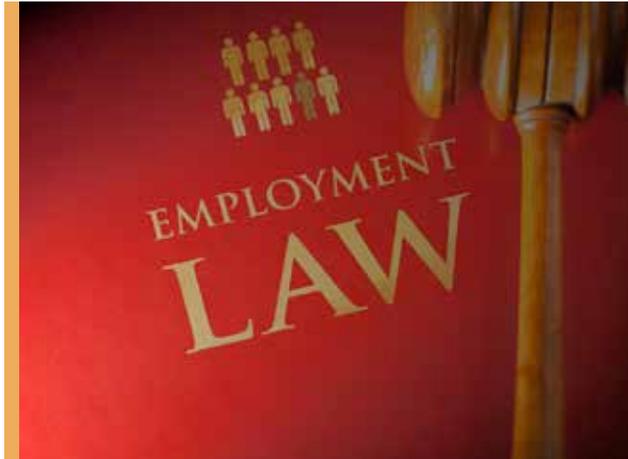


Newsletter



Employment Law Advice - COVID 19

During the COVID 19 pandemic there will be an increasing number of employers who will need to take certain measures in relation to their businesses. There will also be employees who will need to know their rights when such measures are taken. For this reason we have put together the article below to guide employers and employees on the current situation. If you have any questions or require further advice, please do not hesitate to contact me at sbarrington@websterlawbwi.com. I look forward to hearing from you. The relevant Anguilla legislation is the Anguilla Labour Relations Act, 2018, which I will refer to as "the Act".



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1. Self Isolation

1.1 An employer may ask an employee to self isolate in the following circumstances:

- i. If the person is considered a vulnerable person as defined in this pandemic (i.e. being over 70 and/or having an underlying health condition).
- ii. If there is a mandate from the government that people should self isolate. At the time of writing Anguilla has enacted Regulations in relation to which businesses may continue to operate and which must close.
- iii. If the person is displaying symptoms of COVID 19.

1.2 Ideally the employee would consent to the self-isolation, however it can also be mandatory.

1.3 For the period they are in isolation they would be entitled to full pay unless they are sick, in which case they are entitled to sick pay as detailed below.

2. Unilateral Self Isolation

If an employee decides to self isolate without having any of the 3 reasons outlined above, then this is a different story. The following guidelines can be considered in such a situation:

2.1 The employer could ask the employee why they have decided to self isolate. One possible reason is that they are afraid of being in work.

2.2 The employer will need to ensure that the work environment is safe for the employee and the employee should be asked to return to work.

2.3 Remote working can also be considered for the employee.

2.4 Providing distances from colleagues in the office may be a possibility.

2.5 The employer may also consider allowing the employee in question to use their holiday entitlement during this period.

2.6 If, after the employer has engaged in meaningful discussions with the employee, the employee continues to refuse to come to work and/or work from home, this may be construed as gross misconduct and disciplinary proceedings may ensue.

3. Health And Safety Obligations Under The Law

Under the Act, the employer has a duty to provide all employees with safe and healthy conditions at work. What does this mean in the current circumstances?

Employers cannot carry out temperature checks on employees, however they must adhere to government guidelines in relation to COVID 19. In the Public Health (Temporary Restrictions on Movement of People and Public Gatherings) Regulations, 2020, the government has mandated people to stay at home from 27th March 2020 to 10th April 2020 except as provided in the Regulations.

4. Employees' Privacy

If an employee contracts COVID 19, it is necessary to inform all employees about the risk of infection and also take appropriate precautions in the workplace. In order to protect the privacy of the employee in question, the identity of the individual should not be disclosed.

5. The Economic Impact on Businesses

5.1 Practical Advice

- i. Start reviewing your HR policies, in particular those in relation to sick leave.
- ii. Send out regular emails to your employees to keep them informed of what is happening, government guidelines and any steps you are taking to keep them safe.
- iii. Look at the possibility of remote working; which employees would this apply to, how would this work in practice?
- iv. What would happen if one or more of your employees caught the virus, would temporary employees need to be hired?
- v. If there is a downturn in business, will there be a need for redundancies or could the employees' contracts be varied by consent to take this into account?
- vi. Would there be a point where the business would need to temporarily cease to operate?

5.2 Legal Considerations

- i. Duty to inform employees

The Act has a section in relation to good faith in employment relationships which places an obligation on an employer proposing to make a decision which may have an adverse impact on the on the continuation of employment to provide the employee with timely access to relevant information.

ii. Temporary or substitute workers

Where an employee is temporarily absent from employment and the employer hires a person from outside of the business to perform the work until the employee returns, that person may be described as a temporary or substitute worker.

A temporary or substitute worker is not an employee of the business and can only hold the position up until the time when the employee resumes their employment.

A temporary or substitute worker shall only be hired using a fixed term contract.

iii. Relevant employment rights for permanent and fixed term employees.

All employees except casual employees are entitled to:

- medical or sick leave;
- redundancy (severance) pay;
- leave for emergency purposes, including when a dependant falls ill, is injured or there is an unexpected disruption or termination of arrangements for the care of a dependant.

iv. Payment where employee stopped or prevented from working full day or shift

Where an employee who is paid by the hour reports for work but is prevented from working by an act of God (force majeure) or is stopped from working by his employer then that employee shall be paid for the time worked using his basic rate of pay.

v. Employee on standby

Where an employer requires an employee to be on standby at the work place that employee remains on duty and shall be paid:

- Normal wages or overtime pay for the number of hours on stand by; or
- An allowance agreed to by the employer and the employee where that person is a permanent or fixed term employee.

vi. Sick leave

- a. An employee who due to illness is unfit for work, shall be eligible for sick leave with pay on the basis of one day for every 22 days worked, provided that he has worked for his employer for at least 110 days.
- b. An employee who due to illness is unfit for work shall be eligible for sick leave with pay for up to 2 normal working weeks per year, provided that he has worked for the employer for more than 12 months.
- c. An employee shall not be eligible for sick leave pay from his employer for any period of illness in respect of which:
 - he is entitled to be paid sick leave benefit under the Social Security Act or compensation under the Workmen's Compensation Act where such benefit is equal to the wages which

he would have received for the period of illness; or

- he fails to notify his employer within the first working day of his illness and if the period exceeds 3 days to furnish the employer with a certificate from a duly qualified medical practitioner, stating that he is unfit for work due to an illness specifying the period of unfitness for work.
- d. The minimum remuneration payable by an employer during any period of sick leave shall be the normal rate of wages less any amount to which the employee is entitled by virtue of the Social Security Act or the Workmen's Compensation Act.

vii. Dismissal whilst on sick leave

- In general, the employee cannot be given notice of dismissal while on leave. However, this is subject to dismissal for incapacity due to health conditions.
- Where an employee has been absent from work for 3 months or more because of incapacity due to health conditions and the employee has not submitted a medical report, the employer may request that the employee undergoes a medical examination and submits a medical report from a registered medical practitioner.
- Where an employee fails to undergo a medical examination and submit a medical report as requested by an employer the employer may take disciplinary action against the employee.
- An employer shall not dismiss an employee who has not exceeded 6 months of absence from work due to incapacity for health conditions.

viii. Termination of contract of employment other than dismissal.

In addition to dismissal, the contract of employment may be terminated by:

- Agreement or mutual consent;
- By operation of law or supervening event; and
- Redundancy.

ix. The relevant sections of the Act in relation to termination by operation of law or supervening event

The employment of an employee may be terminated by his employer without notice by the operation of law or by a supervening event when the:

- business goes into liquidation by way of bankruptcy or otherwise and the business ceases to operate as a result;
- employer's business has been permanently closed.

x. Termination due to redundancy

An employer has the right to terminate the contract of employment for reasons due to redundancy.

The following may be the relevant reasons for redundancy in relation to the COVID 19 pandemic. Redundancy may occur when an employer decides that the job performed by an employee has diminished or would no longer be available because:

- The employer has discontinued to carry on all or part of his business;
- The employer has reorganised or relocated his business to improve efficiency;
- The employer's need for employees in a particular category has ceased or diminished;
- It has become impossible or impracticable for the employer to carry on his business at its usual rate or level or at all due to a shortage of material, a mechanical breakdown, a force majeure or an act of God, or
- A reduced operation in the employer's business has been made necessary by economic conditions including a lack or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.

xi. Consultation with Commissioner

Where an employer is contemplating redundancy for 3 or more employees the employer must, before taking the decision, consult with the Commissioner.

xii. Selection of employees to be terminated due to redundancy

The employer in selecting employees for termination shall be guided primarily by the need for the efficient operation of the business and shall also consider the following criteria:

- Ability, experience, skill and occupational qualifications;
- Length of service;
- Age; or
- Other criteria as may be appropriate having regard to the circumstances.

xiii. Redundancy payment:

An employee whose contract of employment has been terminated due to redundancy is entitled to be paid wages which represent compensation for services rendered as follows:

- One week's pay for each completed year of service up to the first 5 years; or
- 2 weeks wages for each completed year of service in excess of 5 years;
- And accrued holiday pay plus any outstanding wages and benefits (if applicable).

xiv. Reemployment after redundancy

Where within 6 months after redundancy, an employer intends to re-instate a position that was the same or similar to the position held by an employee that was made redundant the employer shall provide the former employee with a reasonable opportunity to resume the position.

The aim of this article is to provide advice for employers and employees in relation to employment law during the period of the COVID 19 Pandemic. If you have any questions regarding anything I have written above, please do not hesitate to contact me on sbarrington@websterlawbwi.com. I will be happy to answer any questions you may have.