



# Managing Your Workforce

## COVID-19 Egypt Employment Update

August 2020

COVID-19 is a public health emergency. Business continuity and contingency planning have to date been centered around the IT sector but now COVID-19 attacks our most important resource, our people. This time, the key concern is health & safety and how to continue to operate whilst protecting our employees and, critically, avoid and/or minimize redundancies and dismissals.

Business owners and executives around the world have faced many challenges to sustain the stability and the continuity of their operations during the turbulences caused by COVID-19. The two main challenges have been centered around (i) crisis management in finding the balance between employee retention and cutting costs whilst establishing a sustainable work-from-home policy that protects the rights of the employer and the employee alike and (ii) risk management in planning a return to the workplace in a safe way.

Having struggled through the first challenge and as more businesses in Egypt are reopening, employers must plan how a return to the workplace can be achieved in a way that protects their employees and safeguards their health and safety.

In the public sector, the government issued various decisions to regulate employment policies in government agencies, such as reduced working hours, shift systems, working from home, paid time off for vulnerable employees, and other related decisions addressing the measures aiming at social distancing. The government issued very limited regulations addressing the private sector. In this vacuum of legislation, an employer still has a duty of care towards his employees and must take adequate measures and steps to protect them. However, there is more room for each business to establish its own policies and measures that are not necessarily enforced by the government.

## CRISIS MANAGEMENT

Businesses are dealing with the crisis in different ways. The objective always being finding a balance between employee retention and cutting costs. The uncertainty and lack of clarity are driving businesses to reduce spending and operating costs, whilst preserving employee retention to sustain business operations and ensure sufficient staffing levels for the future.

Below we cover some key aspects of human resources management under Egyptian law:

- **Paid and unpaid leave**

Under Egyptian law, the employer decides when the employee is entitled to take annual leave. Once annual leave is exhausted, the consent of employees is necessary to impose unpaid leave on them, thereby waiving their salary wholly or partially. Even when employees provide written consent, they can challenge this consent later, and a court of law will decide whether the waiver is void or not.

- **Salary and benefits adjustments**

Except in cases permitted under the law, an employee must consent to any salary reduction. Without such consent, the reduction by the employer will be considered null and void. The law allows salary reductions/redundancies without consent in the following circumstances:

- **force majeure** when it is impossible for the employee to go to work for reasons outside the control of the employer; and
- **ongoing onerous economic conditions** when the economic consequences of the pandemic can be invoked to permit the employer to reduce the salary to avoid shutdown.

- **Shutdown and suspension of employment contracts**

Under Egyptian Law, shutdowns are not permitted for "temporary" economic difficulties. However, permanent shutdowns

are possible, whether partial or total, when long term and ongoing economic difficulties exist. In this case, an employer may be permitted to shut down and dismiss all or part of the workforce, subject to obtaining the required committee approvals and paying a reduced compensation to the employees.

In addition, suspension of employment contracts under Egyptian Law is only allowed in certain regulated circumstances and subject to specific conditions. An employer will not be able to unilaterally suspend the employment contract simply because of the pandemic.

- **Termination of contracts**

It is extremely difficult under Egyptian Law to terminate an employment contract without such termination being viewed by the courts as wrongful termination and, consequently, holding the employer liable for compensation. In general, an employer cannot dismiss an employee unless the employee has committed a fundamental breach as listed under the labour law. As an exception, Egyptian labour law regulates redundancy for economic reasons. The law gives the employer the right to close or downsize its business and this can lead to termination of employment contracts driven by economic necessity.

- **Transitioning employees to work from home**

Currently, there are no regulations addressing working from home and no constraints on working from home. Generally, there is nothing that prevents the onboarding of a new employee virtually. However, under the labour law, there are certain obligations which will require the employee to be physically present at the beginning of employment.

The labour law does not explicitly oblige the employer to cover expenses incurred by the employee during the performance of his duties. However, it is common for employers to cover expenses incurred to carry out the work. There are no clear guidelines and custom may vary from one industry to another. It is customary to cover transportation expenses of the employee to the workplace, but rare to cover the cost of broadband incurred by an employee working from home.

In relation to existing employees, working from home raises different issues relating to potential variations to the contract and budgeting expenses. While the law does not specifically address these, it gives a fairly wide discretion to employers to organize the workplace in the way they want to. If working from home is introduced by a policy, the employee may have an argument that this is a substantial change to the employment contract, which has an effect on the employee's financial rights and may result in the coverage of expenses.

- **Procedural considerations when managing a crisis**

- **Potential government incentives are tied to employee rights**

Law 24/2020 on Financial Measures to Handle Implications of COVID-19 ("Law 24"), applicable to the private sector may have some implications on decisions taken in relation to employees. The law allows the Prime Minister to provide grace periods and installment facilities in relation to taxes and other financial obligations owed to the State for companies operating in aggravated sectors, provided that such companies do not discharge any employees or reduce their basic salaries on the basis of COVID-19. In order to benefit from Law 24, an eligible company in a pre-determined sector must not have dismissed any of its employees nor have decreased their basic salaries because of COVID-19, since April 2020. To date, the Prime Minister has not issued substantial measures under Law 24. It is difficult to see how these potential measures would outweigh the pressing need for cost-cutting and downsizing for companies that are struggling.

- **Consultation requirements**

Except in the context of a dispute or contract, the law does not impose a duty to consult with trade unions as a pre-condition for implementing any of the measures above. However, employers may be forced to engage with different levels of trade unions or in collective negotiation, if the employees initiate such a process. This is typical in establishments that have their own labour syndicates and should be addressed with care on a case-by-case basis.

## RISK MANAGEMENT

Employers returning to the workplace with full or partial capacity need to assess their workplace environment, as well as the measures they need to take and policies they need to establish and implement in order to protect their people, clients, and business.



- **Returning to work**

Employers must ensure that all appropriate personal protective tools and equipment are provided to the employees in the workplace (face masks, first aid boxes, medical gloves, etc.) and that normal general health and safety precautions against COVID-19 inside the premises are followed. Since mid-May, masks have been compulsory inside business premises. The penalty for violation is a fine of up to EGP 4,000.

Employees cannot refuse to return to work, although they do have the right to organize a strike against the decision provided that they acquire approval from the relevant trade union and follow the required process and timeline.

- **Enforcing Health & Safety measures and guidelines**

While health and safety obligations imposed by the labour law do not stipulate express

obligations regarding COVID-19 or indeed in relation to similar viruses unconnected with an occupational disease, an employer is under a general duty to provide a safe environment to its employees. Failure to do so will be deemed a breach by the employer of his obligations and may give rise to a claim for compensation by the employee.

- **Duty to report infected employees**

There is a duty to report any person who has contracted or is suspected of having contracted COVID-19 to the Public Health Doctor. The duty to report applies to several persons, including the employer. There is no obligation on an employer to report employees working from home. The duty only applies if the disease is discovered while the employee is in the workplace. It relates only to the employee and not to the employees' family. The penalty for breach has been recently increased to up to EGP 50'000.

The powers of the Ministry of Health officers are far-reaching. They apply to both residential premises and work environments. They have the power to enter and inspect any premises suspected of containing an infected person; they can order the isolation of patients and their contacts; they can order/conduct disinfection; and may order the destruction of matter that is impossible to disinfect.

- **Practical steps for returning to the workplace**

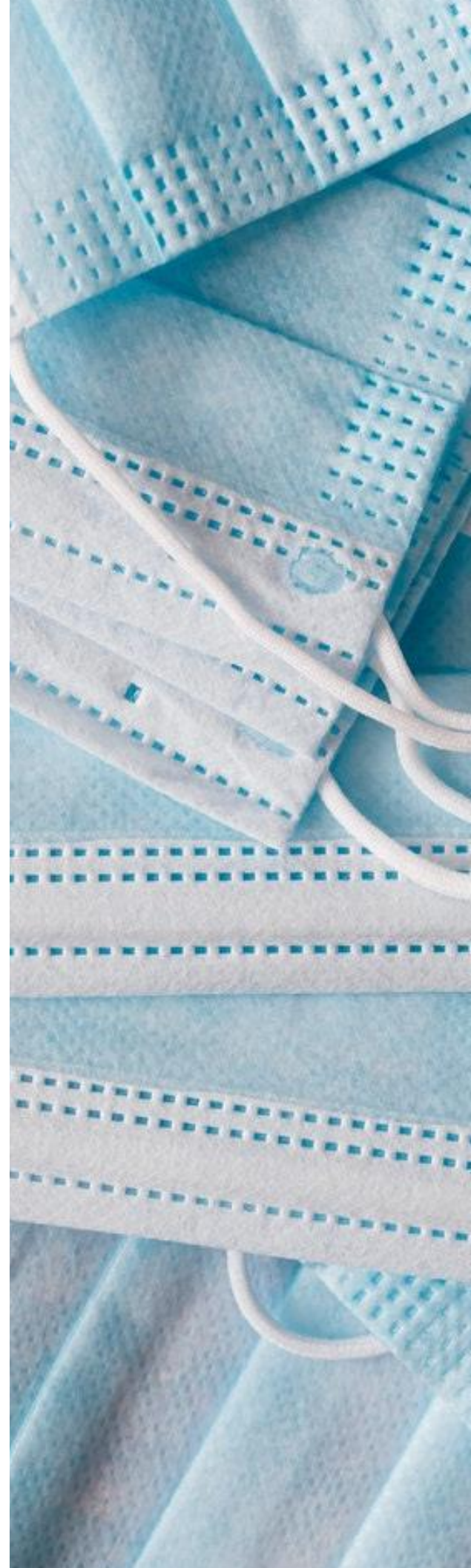
- **Work from home**

Employers should continue to encourage employees to work from home whenever possible, in particular, vulnerable employees. There are no special regulations that apply to vulnerable employees. Normal civil liability applies. This means that a vulnerable employee may have a claim for compensation against the employer if the employer unreasonably/abusively exposes the employee to danger and the employee suffers harm as a result. An employer is expected to take into consideration the needs/concerns of vulnerable employees in its internal office policies and implement appropriate measures to keep such employees safe.

It is advisable that employers help and assist employees to work from home in the most productive manner. This may mean ensuring that employees have enhanced remote access to work systems and enhanced IT support.

- **At the workplace**

Transmission risk must be managed as much as possible. Employees are required by law to wear masks in the workplace. Employers can consider several additional strategies including, social distancing and working in shifts to avoid overcrowding, especially in common areas, such as kitchens, washrooms, coffee stations, and lifts.



- **Hygiene measures**

Developing cleaning procedures and taking appropriate hygiene measures can include encouraging employees to wash their hands frequently, providing hand sanitizer around the office, increasing the frequency of office cleaning with the use of virus-killing products, improving ventilation (if windows do not open consider the use of portable fans), enforce the use of masks when appropriate.

- **Testing an infected employee**

Unlike in other jurisdictions, in Egypt, an employer is entitled to disclose the identity of an infected employee to colleagues. An employer is also entitled to demand that employees are tested for COVID-19 and that the result of the test is disclosed by such an employee. The employee will need to provide the employer with a valid medical certificate in order to justify time off.

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We are here to help. Feel free to reach out to our Employment Team if you have any questions or need assistance in navigating these difficult times.



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