

COVID-19 Weekly Report

18 – 24 May 2020

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1. Foreword

Liability issues remain a key concern for in-house counsel as lockdown restrictions continue to ease in most jurisdictions. Many companies are keen to return to business as usual in these highly unusual circumstances. However, reopening doors with COVID-19 still prevalent requires an unprecedented level of proactive management of regulatory and contractual risks.

In a commercial context, the full spectrum of the human response to the pandemic is on display and must be accounted for – from employees and customers with serious concerns over contamination to those who view the safety requirements as an unjustified restriction of their basic rights and livelihoods. Having experienced HR and employment law expertise close at hand has never been more crucial.

The next section summarises some of the most pressing legal issues faced by our in-house counsel audience over the past week.

We endeavour to develop and refine the content of these weekly reports over time to ensure utmost relevance and usefulness to readers' daily practice. As such, we invite you to send any feedback on how the scope of future editions can be improved to admin@internationallawoffice.com.

Make your voice heard – take our survey now!

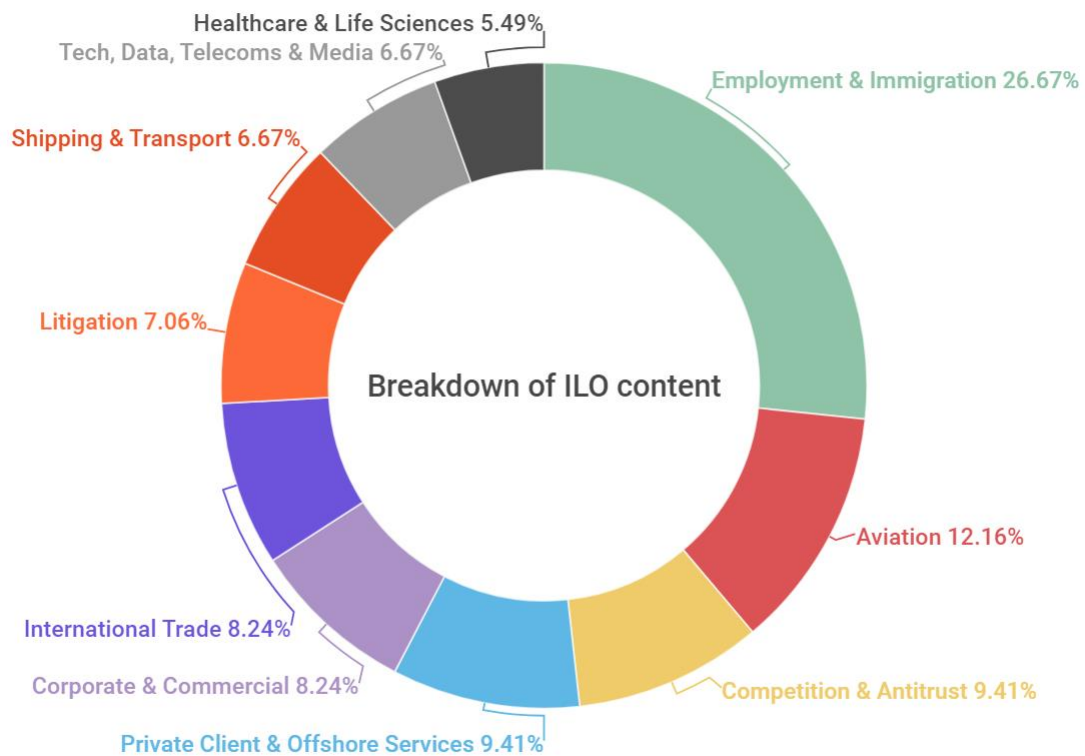
The aim of the survey is to better understand what corporate counsel need in terms of content and support around the COVID-19 pandemic, and to ensure that we continue to offer a high standard of legal information at this challenging time.

www.surveymonkey.co.uk/r/6DQ8JCG

2. Content snapshot

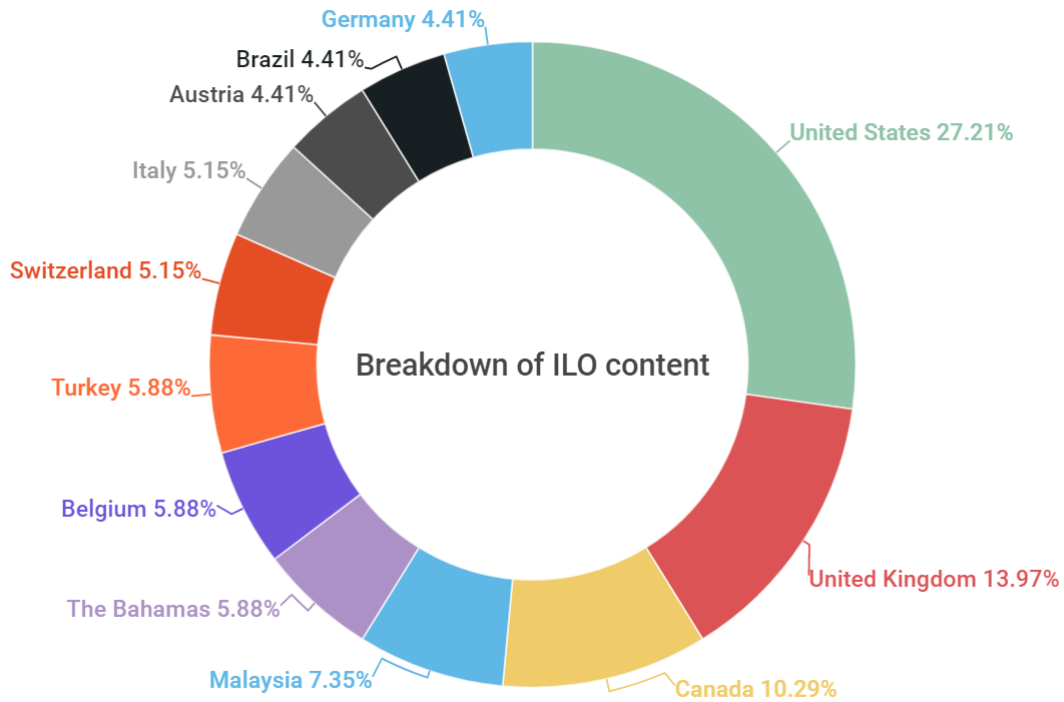
2.1. Chart 1: Work areas with most COVID-19 content published since 27 February 2020

Chart 1 provides a summary of the 10 ILO work areas with the most COVID-19 content published between 27 February and 24 May 2020. Employment & Immigration continues to have the most published content to date, followed by Aviation and Competition & Antitrust.



2.2. Chart 2: Jurisdictions with most COVID-19 content published since 27 February 2020

Chart 2 provides a summary of the 10 ILO jurisdictions with the most COVID-19 content published between 27 February and 24 May 2020. The United States and the United Kingdom have the most published content to date, which is unsurprising given that these countries have been two of the worst affected by the pandemic.



3. Key legal issues this week

1

EMPLOYEE TORT LITIGATION: With pandemic-related negligence claims continuing to rise, novel theories of employer liability for employee exposure to COVID-19 have come into focus. Close adherence to government recommendations may be the employer's best protection in this regard – courts tend to look to such government guidance when determining the standard of care, while up-to-date compliance will make it easier to refute such claims on grounds of causation.

2

LIMITING LIABILITY: While employers may be tempted to ask employees to sign waivers of liability for COVID-19 risks in the workplace as a condition for returning to work, these will likely be unenforceable or violate statutory obligations in many jurisdictions. As a more practical alternative, it may be wise to provide employees with clear and detailed notification of the risks and the steps taken to mitigate these.

3

POST-PANDEMIC CONTRACTS: As many companies begin to consider the practicalities of transacting business in the long term, *force majeure* clauses in future commercial contracts are likely to increase in length and complexity, in much the same way as arbitration clauses have done in the past few decades. Alongside this, there are growing calls for a flexible, mutually beneficial application of contract law principles – prioritising good-faith (re)negotiation in lieu of a zero-sum approach to resolving disputes and performance issues.

4. Expert commentary

Over the past seven days ILO's panel of expert international legal commentators have written about recent legislative and regulatory guidance. Produced in partnership with a team of specialised editors, ILO content provides readers with easy-to-digest insight into how COVID-19 is affecting a specific work area and jurisdiction from a single thought leader in each jurisdiction.

If you would like to submit a question to the ILO panel, please email admin@internationallawoffice.com.

4.1. Asia-Pacific

4.1.1. Construction



COVID-19: government issues SOP for construction sector

Malaysia - SKRINE

Following the prime minister's announcement on 1 May 2020 regarding the reopening of the economy, the construction industry is permitted to operate with effect from 4 May 2020. Such operations will be subject to compliance with the standard operating procedure for construction issued by the Ministry of Works.

Authors: Jocelyn Yean Tse Lim, Rachel Chiah

[Read more](#)

4.1.2. Litigation



Closing the GAP

Hong Kong - RPC

The general adjourned period, during which the courts in Hong Kong were closed save for urgent and essential court business, ended on 4 May 2020. From that date, the civil courts generally resumed normal business, although certain public health measures remain in place and it will take some time before the backlog of civil cases is cleared, particularly as the courts' resources were already stretched before COVID-19.

Authors: Antony Sassi, David Smyth

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4.2. Europe

4.2.1. Aviation



New regulation on right to refund for cancelled tickets

Spain - Augusta Abogados

The Spanish authorities have issued a number of measures to remedy the impact of COVID-19 on the Spanish aviation industry. This article focuses on a specific topic especially relevant in the current circumstances – namely, the provisions and regulations that the Spanish authorities have recently approved in relation to flight cancellations and ticket refunds.

Authors: Elena Coll, Anna Font

[Read more](#)

4.2.2. Competition & Antitrust



Impact of COVID-19 on Competition Authority operations

Bosnia and Herzegovina - Moravčević Vojnović and Partners in cooperation with Schoenherr

On 17 March 2020 the government declared a state of emergency due to the COVID-19 pandemic. Despite the state of emergency, Competition Authority operations have continued. However, as office access is not permitted, only postal filings and submissions are accepted (ie, in-person filings are not allowed) and face-to-face meetings cannot be held. For now, the Competition Authority's filing and review deadlines remain unaffected.

Authors: Srdjana Petronijević, Minela Šehović

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COVID-19: competition commission deadlines during and after state of emergency

Serbia - Moravčević Vojnović and Partners in cooperation with Schoenherr

The government recently lifted the state of emergency which had been declared due to the COVID-19 pandemic, allowing normal operations to gradually resume. As a result, all deadlines for the Commission for the Protection of Competition and parties to proceedings that ended between 24 March 2020 and 6 May 2020 are now deemed to end on 5 June 2020. This includes the submission of merger notifications, responses to requests for information, decisions and clearances.

Authors: Srdjana Petronijević, Danijel Stevanović

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4.2.3. Employment & Immigration



[Measures introduced to preserve employment during COVID-19 pandemic](#)

*Croatia - **Macesic & Partners***

A second package of government measures for mitigating the effects of the COVID-19 pandemic on the Croatian economy recently entered into force. The measures for reducing the rate of unemployment include subsidised salaries for employees in affected sectors, the discontinuation of existing employment and self-employment subsidies to secure additional funds to preserve employment in affected sectors and the extension of subsidies for permanent seasonal workers.

Authors: Anita Krizmanić, Ivana Manovelo

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[COVID-19: short-time work implemented – what now?](#)

*Germany - **Mayer Brown***

In light of the COVID-19 pandemic, more than half a million businesses in Germany have implemented short-time work. The temporary reduction of regular working time allows companies to reduce their personnel costs while maintaining their workforce and avoiding lay-offs. This article provides an overview of the practicable issues that employers must handle during short-time work periods.

Authors: Hagen Köckeritz, Hasine Azim, Marco Maurer

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[Legal implications of remote working – opportunity or threat?](#)

*Hungary - **Schoenherr***

What seemed hardly imaginable months ago has become a reality as a result of the COVID-19 pandemic: sizeable teams in various companies had to switch to remote working within a few days and have now been working remotely for several weeks. This article highlights some of the legal challenges caused by the sudden introduction of remote working.

Author: Dániel Gera

[Read more](#)



[Compensatory working under COVID-19 measures](#)

Turkey - *Gün + Partners*

The COVID-19 outbreak, which was declared a pandemic by the World Health Organisation on 11 March 2020, the date on which the first case in Turkey was discovered, has inevitably had a significant impact on economic life. The measures taken to minimise this impact eventually resulted in labour law having to be restructured according to the pandemic's circumstances. In this respect, the duration of compensatory working, which is stipulated under the Labour Act, has been increased.

Authors: Beril Yayla Sapan, Asena Aytuğ Keser

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4.2.4. Healthcare & Life Sciences



[Conducting clinical trials during COVID-19 crisis: FAQs](#)

European Union - *Eversheds Sutherland (International) LLP*

COVID-19 is having a significant impact on clinical trials due to its effects on EU healthcare systems, including limited or no patient contact, restricted access to trial sites and investigational medicinal product shortages. The pandemic is not only compromising effective patient treatment, it will also significantly affect ongoing and planned clinical trials, which are crucial for developing medicines and vaccines. Sponsors and investigators must therefore adapt their management of clinical trials.

Authors: Magdalena Kotyrba, Tobias Maier

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4.2.5. Litigation



[Suspension of judicial terms due to COVID-19 extended](#)

Turkey - *Gün + Partners*

Under Decision 2480 on the Extension of the Suspension of Terms for the Prevention of Losses of Judicial Rights, the suspension of terms stipulated in Law 7226, which aimed to prevent any loss of rights in regard to trials due to the measures taken to combat the COVID-19 outbreak, has been extended. However, this date will be re-evaluated if the risk of spreading the virus is eliminated before the extension expires.

Authors: Beril Yayla Sapan, Asena Aytuğ Keser

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4.3. Latin America and the Caribbean

4.3.1. Corporate & Commercial



[Use of digital contracts and electronic signatures](#)

Cayman Islands - Ogier

In light of the COVID-19 pandemic and with many people now working remotely, companies are increasingly considering the use of digital contracts and electronic signatures. To help minimise disruption and ensure business continuity, this article summarises the legal position in the Cayman Islands and provides practical advice on implementation.

Authors: James Heinicke, Cornelia Zhu

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4.3.2. Employment & Immigration



[Is COVID-19 a labour-related disease?](#)

Brazil - CGM Advogados

Article 29 of Provisional Measure 927, enacted on 22 March 2020, states that infection with COVID-19 is not considered a labour-related disease unless a relationship between the disease and the employee's job or occupation can be evidenced. Several institutions, especially political parties, have questioned the constitutionality of this provision before the Supreme Court.

Authors: Patricia Barboza, Poliana César

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4.3.3. Real Estate



[What impact could COVID-19 have on leases?](#)

Bahamas - Lennox Paton

The government recently announced an ambitious rental assistance programme to assist tenants who have been economically affected by COVID-19 and are unable to satisfy their contractual obligation to pay rent. However, many pundits have questioned the legality of rental assistance during a state of emergency.

Author: Ramonne Gardiner

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4.4. North America

4.4.1. Aviation



Trump announces that REAL ID compliance deadline is postponed due to COVID-19 pandemic

USA - *Cozen O'Connor*

President Trump has announced that the US Department of Homeland Security will delay the 1 October 2020 deadline for compliance with the REAL ID Act 2005 due to the COVID-19 pandemic. The postponement is welcome news for US airlines and the US travel industry, which had grown increasingly concerned (well before COVID-19) that a significant number of US nationals had not yet obtained a REAL ID.

Author: Rachel Welford

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4.4.2. Capital Markets



Debt buyback and liability management considerations

USA - *Shearman & Sterling LLP*

As the markets continue to react to the COVID-19 pandemic, the trading prices of many corporate loans and bonds have fallen dramatically. As a result, many companies (or their private equity sponsors) are looking at repurchasing their debt at a discount. In addition, many companies are concerned that the impact of the COVID-19 pandemic will result in covenant breaches or other defaults and are engaging in discussions with their lenders and investors to obtain needed modifications to their debt agreements.

Authors: Michael Chernick, Merritt Johnson

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4.4.3. Employment & Immigration



COVID-19: FAQs on practical considerations linked to working from home and privacy

USA - *McDermott Will & Emery*

With rapid developments in local, state and federal guidance and law, the appropriate approach for each employer in relation to COVID-19 will vary depending on the nature of their work, the industries served and their location and size, among other considerations. This article outlines the practical considerations linked to working from home and privacy that employers need to know.

Authors: Lindsay Ditlow, Carole Spink

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4.4.4. Insurance



Business interruption insurance resulting from COVID-19 pandemic: what your policy may cover

Canada - Theall Group LLP

In the fight against the COVID-19 pandemic, businesses are closing or restricting their operations across Canada. It is clear is that these measures, although necessary to protect public health, are causing lost revenue and increased expenses. This article provides information on business interruption insurance (BII), which is a common type of commercial property insurance. For many insureds, BII is the coverage most likely to respond to losses resulting from restrictions imposed to fight COVID-19.

Author: Dylan Cox

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4.4.5. Intellectual Property



COVID-19: CIPO deadlines extended until 1 June 2020

Canada - Smart & Biggar

In view of the ongoing COVID-19 pandemic, the Canadian Intellectual Property Office (CIPO) has further extended patent, trademark and industrial design deadlines fixed under the relevant legislation. Deadlines up to 29 May 2020 have now been extended until 1 June 2020. The CIPO may decide to extend deadlines further, depending on how circumstances evolve.

Author: David Schwartz

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4.5. United Kingdom and the Channel Islands

4.5.1. Employment & Immigration



Pandemic right to work checks procedures

United Kingdom - Lewis Silkin

Under the Home Office's current guidance for right to work (RTW) checks, it is possible to conduct a fully compliant initial or follow-up RTW check without seeing an individual face to face. Where this is impossible during the COVID-19 pandemic, the Home Office has instituted a temporary adjusted procedure, which must be backed up by retrospective checks in due course. This article summarises the options and procedures and highlights some general points to be aware of during the pandemic.

Authors: Andrew Osborne, Naomi Hanrahan-Soar

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Furlough scheme extended until end of October 2020

United Kingdom - Lewis Silkin

The Coronavirus Job Retention Scheme has been extended by a further four months until 31 October 2020. The furlough scheme will continue in its current form without any changes until 31 July 2020. However, new flexibility will be introduced from the beginning of August 2020, with the aim of getting employees back to work and boosting the economy. Employers should use the news of the furlough scheme extension to think proactively about the next stage of their business continuity plans.

Authors: Lucy Lewis, David Lyons

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4.5.2. Insolvency & Restructuring



COVID-19 restructuring and corporate recovery measures

Guernsey - Ogier

Many of the key emergency legislative measures put in place by the states of Guernsey to combat the effects of COVID-19 have been aimed at protecting the local economy, with the focus on the prevention of insolvency rather than insolvency itself. These measures include the introduction of a hardship fund, the Coronavirus Payroll Co-funding Scheme and a £3,000 grant for small businesses and the self-employed.

Authors: Christopher Jones, Mathew Newman

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Produced in partnership with a team of specialised editors, the ILO newsletters provide editorially-driven, high-quality legal news in the form of concise, regular updates from a single leader in their field.

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