

# COVID-19 Weekly Report

4 – 10 May 2020

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## 1. Foreword

As various jurisdictions begin to relax their lockdown measures, companies and their counsel remain focused on when and how they can reopen their businesses. Even in places where reopening is legally permitted, the requirements around physical distancing (to which employees are expected to adhere both while travelling to and from the workplace and once they get there) have left many unsure as to what this would look like in practice. Further, employer liability in the event that an employee contracts COVID-19 in the workplace remains a serious concern, with emerging case law (eg, the Court of Versailles' recent Amazon ruling) suggesting that the courts will take a strict approach to employers' obligations in this regard.

Similarly, customer safety is a key barrier to reopening retail and leisure businesses, all of which are essential for reviving the economy. Certain US states, such as California and Michigan, have introduced phased exits from their lockdowns, with retailers which are able to offer delivery or kerbside pick-up set to reopen their doors first. As the world attempts to get back to work, businesses which are able to adapt how they offer their goods and services while paying heed to the myriad government restrictions are likely to see a swifter recovery.

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](mailto: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](https://www.surveymonkey.co.uk/r/6DQ8JCG)

## 2. Content snapshot

### 2.1. Charts 1 and 2: ILO work areas with most COVID-19-related content

Chart 1 provides a summary of the top 10 most popular ILO work areas between 27 February and 10 May 2020. Employment & Immigration has the most published content to date, followed by Aviation and Competition & Antitrust.

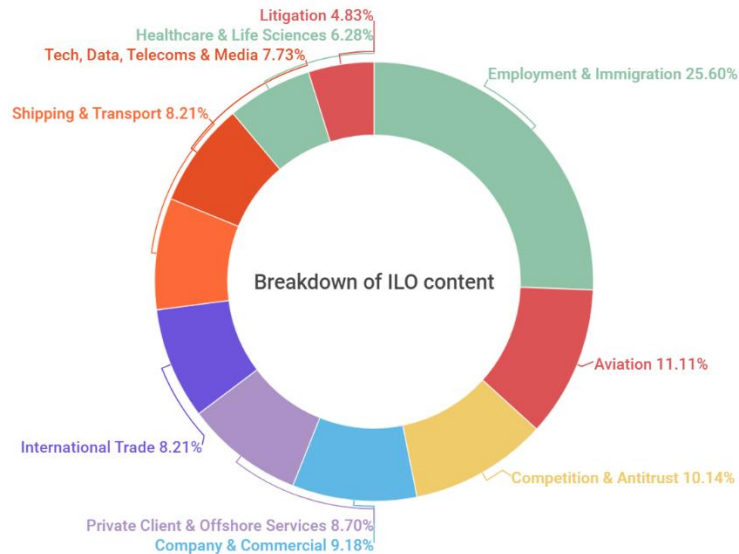
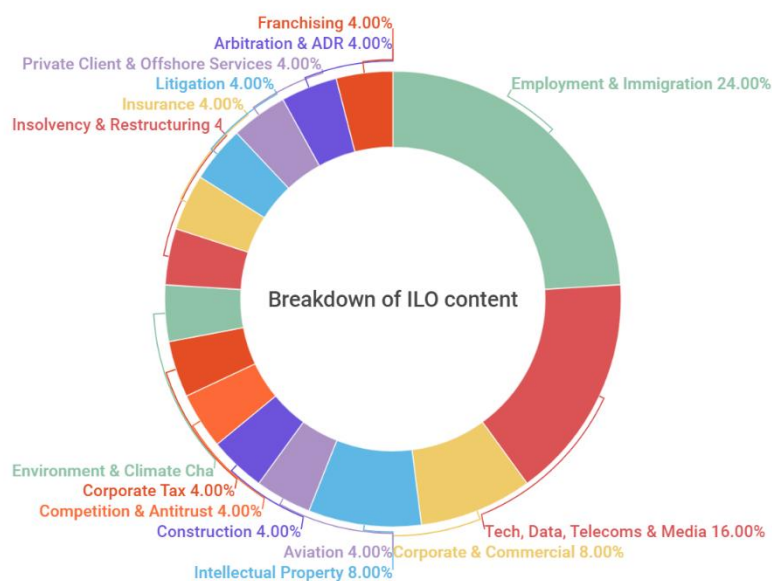


Chart 2 provides a summary of ILO work areas which published between 4 May and 10 May 2020. Employment & Immigration and Tech, Data, Telecoms & Media had the most published content this week, most likely as countries review their laws on the collection and processing of personal data based on public health reasons.



### 3. Key legal issues this week

1

**INSOLVENCY REGIMES:** Multiple governments have announced changes to their insolvency regimes in order to assist companies to work through post-COVID-19 solvency issues and, in doing so, support their jurisdiction's economic recovery. However, directors of businesses that were in financial distress prior to the COVID-19 outbreak should note that emergency changes to their jurisdiction's insolvency regime are unlikely to be relevant to them.

2

**AGE DISCRIMINATION:** The European Commission has predicted that Europe is facing a recession on par with the Great Depression. On the one hand, concerns are mounting over youth unemployment rates, while on the other hand, governments are facing mounting allegations that measures taken to tackle the pandemic have discriminated against senior citizens. Employers will need to ensure that they avoid allegations of age discrimination in both their hiring and firing practices – particularly if mass redundancies are necessary.

3

**CONTACT TRACING:** Many jurisdictions are pairing relaxed lockdown restrictions with contact tracing apps which alert individuals if they have been in the vicinity of someone infected with COVID-19. While many countries have opted to use the API being developed by Apple and Google – which will enable public health authorities to create a decentralised contract tracing system – some countries, such as the United Kingdom, are opting for a centralised system that will store the population's data in a single database. This has led to serious concerns over data protection, as well as allegations of mass surveillance.

## 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](mailto:admin@internationallawoffice.com).

### 4.1. Africa & the Middle East

#### 4.1.1. Intellectual Property



#### **Patent rights for vaccines and research against COVID-19** *South Africa - KISCH IP*

As the COVID-19 pandemic spreads across the globe, companies are scrambling to find a cure and be the first to own patent rights to a vaccine against the virus. In South Africa, the Patents Act does not define an invention but rather lists a number of exclusions as to what could constitute a patentable invention. In particular, the act specifies that a scientific discovery is not an invention, which raises the question of whether the genetic sequence of COVID-19 could be patented in South Africa.

**Author:** Ursula Baravalle

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### 4.2. Asia Pacific

#### 4.2.1. Aviation



#### **Staying airborne during COVID-19 pandemic** *Malaysia - SKRINE*

The Malaysian Aviation Commission (MAVCOM) recently reported a bleak outlook in 2020 for the Malaysian aviation services market due to the COVID-19 pandemic. MAVCOM foresees that the significant decline in tourist arrivals and receipts, passenger traffic and revenue due to lower air travel demand could be made worse if the pandemic proves hard to contain, leading to prolonged travel restrictions. This article outlines government initiatives to support the aviation industry.

**Author:** Sharon Chong

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## 4.2.2. Construction



### [COVID-19: Ministry of Works FAQs for construction industry](#) *Malaysia - SKRINE*

In relation to the Movement Control Order (MCO) regarding COVID-19, the Ministry of Works, among others, issued a series of frequently asked questions to clarify some of the issues affecting the construction industry. The Ministry of Works has since confirmed that all works at construction sites are not permitted under the MCO and must therefore be stopped during the relevant period, except for 'critical works'.

**Authors:** Jocelyn Yean Tse Lim, Rachel Chiah

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## 4.2.3. Tech, Data, Telecoms & Media



### [NISSTC seeks comments on personal information security guidelines for apps](#) *China - AnJie Law Firm*

The National Information Security Standardisation Technical Committee recently released the Network Security Standard Practice Guidelines – Guidelines for Personal Information Security Protection by Apps for public consultation. Based on the statistics released by certain assessment tools and the typical issues which have come to light due to the COVID-19 pandemic, the guidelines summarise 10 activities which app operators should avoid.

**Authors:** Samuel Yang, Yang Chen

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### [Data protection exemptions due to COVID-19](#) *Macau - Rato, Ling, Lei & Cortés Advogados*

Although several entities have collected and processed personal data since the early stages of the COVID-19 outbreak based on genuine public health reasons, such activity lacked sufficient legal grounds in light of the obligation to notify the Office for Personal Data Protection (OPDP). In order to remedy this situation, the OPDP has published three authorisations which exempt entities that process personal data from the requirement to notify it of such processing.

**Authors:** Pedro Cortés, José Filipe Salreta

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## 4.3. Europe

### 4.3.1. Competition & Antitrust



#### [COVID-19: competition law considerations for businesses](#)

*Hungary - Schoenherr*

The government recently declared a state of emergency in connection with the COVID-19 pandemic and issued a special legal order. To date, no provision has been adopted under the special legal order allowing for a special exemption from the rules of competition law. Affected undertakings must therefore continue to pay attention to competition compliance. This article aims to help companies meet these requirements in view of the European Competition Network's recommendations.

**Authors:** Anna Turi, Márk Kovács

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### 4.3.2. Corporate & Commercial



#### [COVID-19 – emergency measures to relax rules around annual accounts approval process](#)

*France - Hughes Hubbard & Reed LLP*

As part of a range of emergency measures to help businesses meet the challenges posed by the COVID-19 pandemic, the government adopted Ordinance 2020-318 on 25 March 2020. The measures temporarily extend deadlines in the financial reporting and accounts approval process of listed and unlisted companies alike. In addition to commercial and civil companies, the new rules apply to partnerships, cooperatives, mutual companies, charities and foundations.

**Authors:** Rhidian David, Agnes Braka-Calas

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#### [Crisis management checklist for CFOs](#)

*Slovenia - Schoenherr*

The world is entering a period of financial uncertainty due to COVID-19. In this context, the two questions most frequently asked by managers of companies are what are their duties under Slovenian law in the context of general financial uncertainty and what are their options under Slovenian law in terms of adjustment and restructuring of financial liabilities?

**Authors:** Vid Kobe, Jurij Lampič, Peter Gorše

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### 4.3.3. Corporate Tax



#### **COVID-19 and corporate tax considerations**

*Switzerland - Walder Wyss*

Due to the COVID-19 pandemic, a number of tax return deadlines have been extended for legal entities; however, numerous questions concerning corporate tax requirements for the 2019 and 2020 fiscal years and contentious legal proceedings in tax matters remain. This article examines some of the most salient questions in this regard.

**Authors:** Stephan Neidhardt, Robert Desax, Ursina Gremminger, Dina Spörri

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### 4.3.4. Employment & Immigration



#### **COVID-19: short-time work**

*Austria - Graf & Pitkowitz Rechtsanwälte GmbH*

Austria pioneered short-time work schemes. Introduced in 1949 and overhauled in 2008 and 2009 during the financial crisis, the Austrian short-time work scheme has recently been further adapted to the particular needs of the COVID-19 crisis. This article examines who is eligible for the short-time work scheme and what subsidies are available.

**Author:** Jakob Widner

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#### **Employment contracts and COVID-19**

*Hungary - Schoenherr*

COVID-19 has created completely new challenges in the employment sector. As there is significant uncertainty and a need for detailed information about the situation, this article provides a timeline of employment-related measures that have been introduced to combat COVID-19 in Hungary.

**Authors:** Dániel Gera, Dorottya Gindl, Alexandra Bognár

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### [Employer responsibilities and possibilities with respect to COVID-19 outbreak](#) *Sweden - **Wistrand***

As in every other part of the world, the COVID-19 outbreak is affecting Swedish society in numerous ways. This article presents a selection of Swedish employment law-related responsibilities and possibilities for employers to be aware of in view of the effects of COVID-19, particularly with regard to their work environment responsibilities and the Short-Time Work Allowance Act.

**Authors:** Jörgen Larsson, Viktoria Hybbinette

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#### 4.3.5. Environment & Climate Change



### [Implications of COVID-19 for legal procedures under Austrian Environmental Law](#) *Austria - **Schoenherr***

In the context of local and personal COVID-19 quarantine measures – and the associated absences of officials and affected persons – a federal law (COVID-19-VwBG) was passed setting out special procedural regulations for administrative authorities, administrative courts, the Supreme Administrative Court and the Constitutional Court. This article discusses the implications for the legal procedures set out in the Environmental Law resulting from the new temporary COVID-19-VwBG.

**Author:** Andreas Lopatka

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#### 4.3.6. Insolvency & Restructuring



### [Is my business automatically protected against creditors during COVID-19 crisis?](#) *Belgium - **ALTIUS***

Due to the lockdown measures and other restrictions imposed by the government to fight the COVID-19 pandemic, many companies are dealing with revenue losses while having the same level of (fixed) costs. Royal Decree No 15, which recently entered into force, implements new temporary measures to protect businesses that had not ceased payment before or on 18 March 2020 but found themselves in difficulty afterwards due to the COVID-19 crisis. These measures will last until 17 May 2020, unless extended.

**Author:** Bart Heynickx

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#### 4.3.7. Insurance



##### **Business shutdown insurance in case of business interruption during COVID-19 crisis**

*Germany - Arnecke Sibeth Dabelstein*

One of the biggest risks for companies is business interruption. Companies can insure this risk under so-called 'business interruption' insurance policies; however, these policies generally provide cover only if the business interruption is the result of an insured property loss. The situation is completely different with so-called 'business shutdown' insurance, which is – at least so far – uncommon.

**Authors:** Quirin Verghe, Philipp Schneider

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#### 4.3.8. Litigation



##### **Impact of COVID-19 on contractual obligations: force majeure and case law**

*Luxembourg - Luther SA*

Due to the unprecedented health crisis brought about by COVID-19, many economic actors are facing the impossibility of fulfilling their contractual obligations or do not wish to honour them because they are no longer commercially viable. In the absence of specific material adverse change clauses, one possibility offered by Luxembourg law is the legal concept of force majeure. This article looks at the lessons which can be learned from the available case law in this respect.

**Authors:** Mathieu Laurent, Marie Romero, Robert Goerend

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#### 4.3.9. Tech, Data, Telecoms & Media



##### **Third COVID-19 Act: lawfulness of processing employee health data**

*Austria - Schoenherr*

Parliament recently enacted the Third, Fourth and Fifth COVID-19 Acts. Although these laws have significantly changed the Austrian legal framework, none of them include data protection provisions. Thus, the legislature appears to have overlooked a significant data protection issue arising from the new law – namely, the conflict of interests between the amended Social Insurance Act and the EU General Data Protection Regulation.

**Author:** Günther Leissler

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## COVID-19 and data protection

Switzerland - *Walder Wyss*

Data protection laws continue to apply as they did prior to the COVID-19 crisis. However, the Swiss data protection authority, the Federal Data Protection and Information Commissioner, will be aware of the particular challenges and constraints that employers face at present. This article provides an overview of some of the data protection issues that employers face.

**Authors:** Jürg Schneider, David Vasella

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### 4.4. Latin America & the Caribbean

#### 4.4.1. Private Client & Offshore Services



## Putting a will in place during the COVID-19 pandemic

Cayman Islands - *Ogier*

Among myriad other things, the COVID-19 situation demonstrates the importance of having an up-to-date, valid will. Luckily, those who are not frontline or essential workers but are spending their time in lockdown or self-isolation may now have time to catch up on this life admin task. However, due to the current restrictions, making a will is likely to take a different format to normal.

**Authors:** Anthony Partridge, Fraser Allister

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### 4.5. North America

#### 4.5.1. Arbitration & ADR



## COVID-19: AAA-ICDR's approach to arbitration

USA - *Norton Rose Fulbright*

Existing dispute resolution proceedings are inevitably experiencing the impact of the COVID-19 outbreak. Where possible, hearings have been delayed or relocated. However, with many lockdowns extended for the foreseeable future, some hearings will still need to be held. Notably, the American Arbitration Association acknowledges that these are appropriate times to permit (and indeed require) the use of viable alternatives to in-person hearings.

**Authors:** Paul Stothard, Clinton Slogrove

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#### 4.5.2. Employment & Immigration



##### [COVID-19: FAQs on employees experiencing symptoms and employee absences](#) *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 what employers need to know about employees experiencing symptoms and employee absences.

**Authors:** Michelle Strowhiro, Carole Spink

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#### 4.5.3. Intellectual Property



##### [CIPO deadlines further extended](#) *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 15 May 2020 are now extended until 19 May 2020 (18 May 2020 being Victoria Day, when the CIPO is closed to the public).

**Author:** David Schwartz

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#### 4.5.4. International Trade



##### [DDTC announces COVID-19-related regulatory relief](#) *USA - Arent Fox LLP*

Like many other US government agencies, the State Department, Directorate of Defence Trade Controls (DDTC) has announced certain measures, effective immediately, to alleviate burdens caused by COVID-19 in relation to compliance with the International Traffic in Arms Regulations. The changes affect registration, compliance, licensing and outreach to the DDTC.

**Authors:** Marwa M Hassoun, Regan K Alberda, Sylvia G Costelloe

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## 4.6. United Kingdom

### 4.6.1. Employment & Immigration



#### [Guide to immigration implications of COVID-19 for employers](#)

*United Kingdom - Lewis Silkin*

This article sets out the main immigration law issues and Home Office guidance of which employers need to be aware so that they can consider the implications of the COVID-19 pandemic for their business. It summarises the latest updates and provides further details on issues ranging from logistical considerations to Tier 2 and prevention of illegal working requirements.

**Authors:** Andrew Osborne, Joanna Hunt, Naomi Hanrahan-Soar, Stephen O'Flaherty

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#### [Business as \(un\)usual: how to manage a return to business after COVID-19](#)

*United Kingdom - Lewis Silkin*

The United Kingdom's current lockdown extends until at least 7 May 2020, after which there is likely to be a further extension. When it eventually begins to be lifted, measures for a gradual and phased return to the workplace are likely to be imposed, with physical distancing measures remaining in place. Pending formal publication of detailed guidelines by the government, employers should start thinking ahead about how to manage the process. This article looks at the practical issues to consider.

**Author:** Richard Miskella

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### 4.6.2. Franchising



#### [Proposed changes to insolvency regime and what they mean for franchisors and suppliers](#)

*United Kingdom - Fieldfisher LLP*

In response to the COVID-19 crisis, the government has stated that new tools will be added to the UK insolvency framework, including a moratorium for companies to give them "breathing space from creditors enforcing their debts while they seek a rescue or restructure". The government is also expected to introduce a moratorium provision, introduce an exclusion of *ipso facto* clauses and suspend temporarily wrongful trading provisions. This article considers what the changes would mean for franchisors.

**Author:** Gordon Drakes

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ILO content is generated in collaboration with over 500 of the world's leading experts and covers more than 100 jurisdictions.

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