

COVID-19: TOP 15 MOST FREQUENTLY ASKED QUESTIONS

1. What is quarantine leave?

Quarantine Leave is a form of special leave which has been granted to those who have had to stay in quarantine for 14 days as explained below. It is additional to any other leave entitlement that an employee may avail of (not part of the vacation leave etc) and is to be fully paid by the employer (subject to any Government benefits being available) for a period, as ordered by the Superintendent of Public Health.

2. When is quarantine leave necessary?

The Superintendent of Public Health, through the introduction of Legal Notice 63 of 2020 titled Period of Quarantine (Extension of Countries) Order, declared that any person arriving in Malta from any country from the 12th March 2020, irrelevant of the number of active cases of COVID-19, must submit themselves to a fourteen (14) day period of quarantine immediately upon their arrival in Malta.

3. If a foreign employee is forced to self-isolate/quarantine and does so in their home country, are employers still entitled to pay quarantine leave?

No. This does not fall within the ambit of the Enforcement of Directions relating to Quarantine Regulations, 2020. The employer would have to agree with the employee to take said period from their vacation leave or any other way to resolve the matter.

4. If an employee is living with someone who is in quarantine or has contracted COVID-19, are they also entitled to quarantine leave?

The Law provides that individuals who are under a quarantine order following a travel ban are entitled to quarantine leave. This leave also extends to individuals who are living in the same residence. On the other hand, an employee who tests positive to COVID-19 is considered unfit for work and should remain in self-isolation, which is currently treated as sick

leave. Employees living with someone who tested positive to COVID-19 should also remain in self-isolation but cannot avail themselves of quarantine leave and if the employee is unable to work from home, sick leave should also be given to the latter if the employee is medically certified as unfit for work.

5. What should the employer pay during quarantine leave?

The employer is required to pay the employee's wage which means basic salary and government bonuses but does not include any payments based on performance or production.

6. What does the Government's announcement on the 26th March mean for employers?

From the 28th March 2020, employees identified as vulnerable persons would mandatorily be required to remain indoors (bar going out for essentials) for an indefinite period. These measures do not extend to any person living with any individual who is considered to be a vulnerable person according to government directives, as the government has clarified that those who live with vulnerable persons and who have to physically go to work, have an obligation to do so.

7. Which employees shall be identified as vulnerable individuals?

The group of individuals which this measure shall apply to are the following:

- Persons of 65 years or over;
- Pregnant women;
- Insulin dependent diabetics;
- Immunosuppressed patients;
- Patients undergoing any immunosuppressive treatment including but not limited to the use of biological agents and immunomodulators;
- Cancer patients undergoing chemotherapy or undergone chemotherapy within the last six (6) months;
- Patients on dialysis;
- Patients with respiratory problems who are to be/have been admitted to hospital within the last year needed treatment in last year;
- Patients with cardiac problems in last six months;
- Patients attending a heart failure clinic;
- Patients on oral steroids.

8. Are employees identified as vulnerable persons entitled to quarantine leave?

If an employee can work remotely, then such vulnerable person can receive the normal wage and work from home. In the event that a vulnerable person cannot perform the work remotely, then such person is not entitled to quarantine leave.

9. Are any employees exempt from the measures introduced through Legal Notice 111 of 2020?

Any employee identified as a vulnerable person who is either employed in the health services sector as a healthcare professional or any person occupying an essential headship position, shall be exempt from the measures imposed on vulnerable persons. The employee in question may however still choose to remain segregated in their premises if he wishes.

Other employees identified as vulnerable persons who do not fulfil these conditions shall be able to make a request to the Superintendent of Public Health to carry out essential work for a limited period.

10. Is the government offering any financial assistance to Employees in relation to this government order?

Vulnerable persons who cannot work remotely may also become eligible to government benefits announced by Malta Enterprise. For details on benefits please visit:

<https://ganadoadvocates.com/resources/publications/employment-related-benefits-malta/>

11. How should an employer deal with employees who cannot work remotely but are within the vulnerable persons list?

The employer should first try to make use of their accrued but unused leave, following which the employer may opt to place them on unpaid leave for them to claim benefits. In fact, vulnerable persons who are required to stay at home but cannot work remotely and as a result are not being paid by their employer during their absence from work shall be entitled to a Medical Benefit.

12. What options are available for employees who cannot work remotely but who still decide to stay home to take care of a child/dependant or a vulnerable person?

The benefits table referred to above, includes a section on assistance for parents that have to stay at home to mind for the children who are locked out of school. In case of persons who want to stay at home notwithstanding they don't have directions from Government to do so, such persons may be in breach of their contract of employment and may not get paid as a result. It is advisable for employers to implement a system whereby such employees are given priority to avail themselves of vacation leave (if any) or parental leave in order to assist them.

13. If a company providing non-essential services has been temporarily closed due to recent measures announced by the Government, should employees be placed on unpaid leave?

The employees who may not continue to work remotely would first be entitled to avail of vacation leave which they have already accrued. After such leave has been exhausted, the employer would be required to apply for authorisation from the DIER to apply unpaid leave to the employees for a temporary period. Be aware that the DIER may insist on a €400 payment over and above the COVID Wage Supplement, if applicable. If the employer is not in a position to pay this 'top up', it would need to make its case with the DIER.

Given the unprecedented situation, employers may also request the employees to temporarily carry out work that is not within their usual description in order to both help their employer's business keep running and to keep getting paid.

The employer in question may also be entitled to a COVID-19 wage supplement.

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14. What other measures can employers adopt in case of complete lock down or in the event that the volume of work has reduced? Do you need any permissions for these measures to be implemented?

The employer can impose a few measures, including requesting employees to work remotely, asking employees to temporarily carry out new roles, implement forced leave and wage freezes. Moreover, an employer may also choose to ask the DIER for permission to implement

one or more of the following measures in order to avoid redundancies, after an agreement with the workforce is reached:

- Reduce number of hours worked and no payment for the hours not worked (reduced hours or reduced working week);
- Reduction of salaries across the board (in limited cases only);
- Fixed allowances removal; or
- A wage increase freeze (DIER permission would be required if the employer previously promised a wage increase in any documentation issued prior to the outbreak).

Such permissions, also known as section 42 permissions, are granted for periods of 4 weeks but may be renewed.

15. Can employers impose remote working?

In normal circumstances, an employer would not be able to impose remote working on any employee unless it is done with the consent of the employee. However, in these exceptional circumstances, the employer may indeed impose remote working in the name of occupational and general health and safety. We recommend that a remote working policy and/or agreement is put in place in accordance with the Teleworking National Standard Order.

For further information on the requirements imposed by the Telework National Standard Order and their application during this period, please contact us for further information.

Additional Information re Courts and Tribunals

The Health Authorities have ordered the closure of all Courts and Tribunals which shall remain in force until further notice. The order shall suspend all ongoing hearings and any legal and judicial times and any other time limits including pre-emptory periods applicable to proceedings or other proceedings before the Industrial Tribunal, amongst others. The suspension shall last until seven (7) days following the lifting of the repeal of the order.

For more guidance on any of the matters discussed above please contact us on employment@ganadoadvocates.com.

This document is for information purposes only and should not be relied upon.

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