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COVID-19: OPTIONS FOR WORKPLACE CLOSURES ACROSS EUROPE

SLAUGHTER AND MAY/

Contents

INTRODUCTION

The COVID-19 outbreak is developing so rapidly that many businesses are struggling to cope with its impact. Europe is now established as the epicentre of the pandemic, and employers across the continent are having to consider what this means for their workforce. As workplace closures become more widespread, national law and practices have developed in different ways and at different speeds.

This briefing provides an overview of the options for workplace closures in the listed jurisdictions. It considers the key legal and practical issues which arise on a workplace closure in the current climate, including the use of lay-off and short-time working, potential redundancies, and agreements with employees.

FINLAND

Jurisdiction	General position	Lay-off	Short-time working	Redundancies	Agreements with employees	Other
FINLAND *Roschier* *Janne Nurminen* *janne.nurminen@roschier.com*	If the workplace is to be closed or faces unusual circumstances, employees' right to pay needs to be assessed on a case-by-case basis. If working is prevented due to reasons relating to the employer, the employee is entitled to his/her salary. If, on the other hand, working is prevented due to an exceptional event facing the workplace that is beyond the employer's and employee's control, the employee would be entitled to receive his/her salary for the duration of the prevention, however not for a period of time longer than 14 days. The COVID-19 outbreak could cause such an event if, for example, the authorities order the workplace to be shut down entirely and no possibility for remote working exists. Due to theCOVID-19 outbreak, the Social Partners (the central organizations for employer and employee unions) have proposed changes to Finnish labour legislation on 18 March 2020. On 30 March 2020 the Finnish Parliament accepted the temporary measures aimed at easing the difficulties companies are facing during the COVID-19 outbreak. The following temporary changes to labor legislation came into force on 1 April 2020: • shortening the minimum consultation period regarding lay-offs to 5 days, shortening the	Lay-offs cause a temporary interruption of work and remuneration, but the employment relationships continue. Lay-offs can be implemented for a fixed period or indefinitely depending on the grounds for lay-offs. Laying off employees requires either having redundancy grounds or that the employer's ability to offer work has reduced temporarily (up to 90 days). Lay-offs are subject to provisions of the Employment Contracts Act (55/2001), and are potentially also subject to prior employee consultations under the Act on Co-operation within Undertakings (334/2007) if the company has at least 20 employees. Such consultations last 5 days (in accordance with the temporary amendments to the Act on Co-operation within Undertakings in force from 1 April 2020 to 30 June 2020). Consultations must be preceded by a 5-day invitation period. After consultations, the employer may lay off the employee after issuing a personal notice of lay-off no later than 5 days prior to the commencement of the lay-off (in accordance with the temporary amendments to the Employment Contracts Act in force from 1 April 2020 to	Lay-offs can also be executed as part-time lay-offs, where the employee's working time is reduced from regular working hours under the employment contract to the extent necessary for the purpose of the lay-off. The normal consultation obligations apply when laying off employees part-time. According to the Employment Contracts Act, the employer is also entitled to convert the employment relationship unilaterally into part-time employment if redundancy grounds exist and the notice period is observed. Where companies employ at least 20	The employment relationship can be terminated on redundancy grounds subject to the applicable notice period, which at maximum can be 6 months. The employer is obliged to pay the employee's salary for the notice period. Normal consultation obligations under the Act on Co-operation within Undertakings apply. Consultations last either 14 days (when considering to terminate the employment of less than ten employees) or 6 weeks (when considering to terminate the employment of at least ten employees). Consultations must be	During the employment relationship, the employer and the employee may agree a temporary lay-off when it is necessary for the employer's operations or due to the employer's financial situation. If the initiative to enter into such an agreement comes from the employee, it may affect the employee's entitlement to unemployment benefit. If the workplace faces closure as a result of theCOVID-19 outbreak, the employer and employee can agree that the employee uses his/her accrued vacation days. Parties can also agree to a temporary period of unpaid leave or	The employer can only order employees to use vacation days that have been accrued for the current holiday season. The summer holiday season begins on 2 May and ends on 30 September. The employer can unilaterally decide to allocate summer holidays only to that period. With full holiday accrual, the summer holiday is 4 weeks. Before the employer determines the timing of the holiday, the employee must be given the opportunity to voice his/her opinion. The timing of the holiday must be communicated to the employee as a starting point at least one month before the commencement of the holiday. If this is not possible, the communication must take place at the latest 2 weeks before the holiday begins. Until 30 April, the employee can be ordered to use their

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	lay-off notification period to 5 days and allowing lay-offs of fixed-term employees; • an employment relationship can be terminated with immediate effect on financial and production-related grounds during the probationary period; • obligations to re-hire employees made redundant on financial and production-related grounds during the term of the temporary legislation is extended to 9 months. The temporary legislation is in force until 30 June 2020 and it concerns only private sector. It should be noted that some of the changes have been adopted through some industry-specific collective bargaining agreements (CBAs). The employers who operate in these specific industries should apply the changes as agreed in the applicable CBA.	30 June 2020). According to the Act on Co-operation within Undertakings, the consultation obligation can be bypassed in extraordinary situations. This requires that unforeseeable, especially weighty reasons that cause damage to the employer company's financial situation, production or service operations prevent consultations. However, consultations need to be commenced immediately when those reasons no longer exist. Currently, the Social Partners have announced and the Government agreed that the coronavirus situation can be deemed to fulfil the criteria in certain companies. However, it is necessary to make an employer-specific assessment of the situation before deciding to delay the consultations. The employees are entitled to unemployment benefits when laid off.	employees, consultation obligations under the Act on Co-operation within Undertakings also apply to unilateral decisions to convert full-time employment to part-time employment.	preceded by a 5-day invitation period. In the current situation, due to the occupational health and safety requirements, the consultations can also be arranged by remote communication devices. However, it is important that if the consultations are held remotely they are still interactive and that employees or their representatives have access to all the necessary information.	change the employment into part-time employment. When entering any agreement, it is important that the employee gives his/her clear consent preferably in writing and that there is no inappropriate pressurizing.	winter holiday. This applies only to employees who have not yet used this season's winter holiday and whose winter holiday's timing has not yet been determined.

FRANCE

Jurisdiction	General position	Lay-off	Short-time working	Redundancies	Agreements with employees	Other
FRANCE *Bredin Prat* *Laetitia Tombarello* *laetitiatombarello@bredinprat.com*	As of today, the French Government is placing much emphasis on companies continuing their business activity as far as possible, which implies that employees must also in principle continue to work and to be fully paid. In practice, this means that: teleworking must be implemented for all positions when possible; and when teleworking is not possible, the employer must guarantee the safety of its employees by adapting working conditions. Under a decree of March 15th, companies carrying out certain non-essential business activities that are open to the public (restaurants, cafés, shops, etc.) are currently under an obligation to close. Those companies and for other companies whose activity is reduced due to the COVID-19 outbreak may benefit from the "partial activity scheme" (see the column on "*Lay-off*").	French companies facing a reduction of their business activity or a temporary closure as a result of the COVID-19 crisis can file a request to the French Labour Authorities ("DIRECCTE") to implement a "partial activity scheme". Within the context of the covid-19 special measures, the partial activity scheme can be implemented for a period of up to 12 months, as opposed to 6 months usually. Under the partial activity scheme, the loss of income suffered by employees as a result of hours not worked is partially compensated by the employer (*i.e.*, the employees concerned receive an allowance paid by their employer for each hour not worked which is at least equal to 70% of their gross hourly pay) and the employer receives a lump-sum compensation from the State equal to the minimum rate of the allowance paid by the employer to the employee (*i.e.*, 70% of the gross hourly pay of the employee, up to a maximum gross hourly pay of 45.7 euros).	There is no mechanism under French law, other than the "partial activity scheme", that allows the employer to maintain its operations at a reduced scale (see the column on "*Lay-off*").	The Government initially announced on mid-March that any redundancies as a result of COVID-19 would be prohibited, with the aim of maintaining economic activity as much as possible. For the time being, it is not however prohibited to terminate employment contracts. In any case, the COVID-19 pandemic does not constitute a case of "*force majeure*" (*i.e.*, it will not allow termination of employment contracts *per se*). The legal criteria for dismissal on economic grounds must still therefore be complied with. Also, the national French administration has issued an internal instruction to the "*DIRECCTE*" (*i.e.*, the regional administration in charge of the validation of redundancy plans) asking them to control with scrutiny any redundancy procedures that will be carried out in the coming weeks, in particular as to the proper conduct of information/consultation processes with employee representative bodies (*i.e.*, the use of audioconferencing or videoconferencing for this purpose has been facilitated by law but under certain conditions). Even if the partial activity scheme (described in the column "*Lay-off*") has been	Under French law, employees cannot be put on unpaid leave, whatever the circumstances. However, an order of March 25th, 2020 provides that the employer may: - require employees to use their credit of paid leave (up to a maximum of 6 days), subject to entering into a collective agreement and to consulting the works council, if any; and/or - unilaterally require employees to use their credit of "rest days" (*i.e.*, in particular, "days off for reduced working hours"/"*JRTT*"), up to a maximum of 10 days subject to works council consultation if any. These "rest days" are paid full remuneration.	

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				implemented, there are no particular restrictions on subsequent dismissals or redundancies. However, if another request to implement partial activity is filed within a subsequent 36 month-period, the company shall at that time take certain commitments, in particular concerning the safeguarding of employment, vocational training programmes or actions to restore the company's economic situation, pursuant to article R. 5122-9 of the French Labour code. The exact nature of the commitments is discussed with and determined on a case-by-case basis with the DIRECCTE.		

GERMANY

Jurisdiction	General position	Lay-off	Short-time working	Redundancies	Agreements with employees	Other
GERMANY *Hengeler Mueller* *Hendrik Bockenheimer* *Hendrik.bockenheimer@hengeler.com*	The German authorities have reacted to the COVID-19 pandemic with a series of measures which raise the question as to whether employees continue to be entitled to their salary even if they do not work or cannot work. These measures are listed below. Generally, the operational risks of the business lie with the employer(i.e., if the employee is capable of and willing to work, he/she is still entitled to his/her remuneration even if there is no work). There are good arguments that this principle also applies in the case where an employer receives an official order from German authorities to close his shop/operation due to COVID-19. The German Federal Ministry of Labor and Social Affairs holds the view that this also applies if employers are forced to close their business due to COVID-19-related staff and supply shortages. Currently, a series of restrictions in people's private lives are in force in Germany. However, people are still permitted to go to work. As long as this is the case, employees have no right to refuse to work and lose their right to receive their remuneration if they do so. In Germany, schools and nurseries are currently closed due to the COVID-19 pandemic and employees may need to stay home to take care of their children. The legal situation in this case is not entirely clear under German law. We think there are good arguments that employees are entitled to paid leave for a few days in this scenario, in particular in order to organize	Unilateral (forced) leave of an employee without termination of the employment relationship is not possible under German law, as the employees have a right to actually be provided with meaningful work (*Beschäftigungs-anspruch*). Leave and other measures can, however, be agreed on a voluntary basis. In this context, please refer to the column "agreements	Short-time work in Germany is the unilateral temporary reduction of working hours (whereby reduction can also mean reduction to zero working hours) and salary in the event of a temporary work shortage. Short-time work requires: (i) a legal basis (employment agreement or collective bargaining agreement); and (ii) if a works council (*Betriebsrat*) is in place, the consent of the works council. During short-time work, employees may be entitled to statutory short-time work allowances for a period of up to 12 months in the amount of 60% (or 67% for employees with children) of their adjusted (*pauschaliertes*) net income up to the contribution assessment ceiling (Beitragsbemessungsgrenze) (currently EUR 6,900 gross (in West Germany) or EUR 6,450 gross (in East Germany)). Short-time work allowance can be obtained under certain conditions and upon application by the employer. So far, these conditions include, *inter alia*,	With regard to redundancies, the general statutory provisions for the dismissal of employees in Germany apply. No facilitating provisions are in place or are planned due to the COVID-19 pandemic. In detail: Terminations for operational reasons (*betriebsbedingte Kündigungen*) are subject to fairly strict requirements and would only be possible if the short-fall of work is not only temporary. Termination of employment with offer for altered conditions (*Änderungskündigung* – e.g. in order to reduce working-time and/or salary) is also subject to very strict requirements and only possible in exceptional cases. If a works council exists, the works council must be involved when terminating employment relationships.	A number of voluntary measures to reduce costs and/or increase flexibility exist. In particular, the following possibilities should be considered: (i) unpaid leave/sabbaticals; (ii) voluntary waiver of parts of the employee's salary; (iii) part-time arrangements; (iv) working from home options; (v) set-up and/or use of working time accounts; and (vi) use of outstanding vacation. If a works council exists, the works council's co-determination rights need to be observed (e.g. the set-up of working-time accounts would require the works council's consent).	Under certain circumstances, employers can make deferred payments with respect to the employers' contribution to the employees' social security insurances.

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	childcare. According to the German Federal Ministry of Labor and Social Affairs, the entitlement to paid leave comprises 2 - 3 days. An employee who is personally subject to an officially ordered quarantine or a ban on work may be entitled to continued salary payments for six weeks and a statutory compensation payment thereafter. However, we think there are good arguments that the statutory rules on continued salary payments do not apply in the current situation of a world-wide pandemic. If the employee is not entitled to continued salary payments, the employee may have a claim for damages in the amount of his/her salary against the German state under the German Infection Protection Act. If the employee cannot work because he/she has COVID-19, he/she continues to receive his/her salary for a period of six weeks. Thereafter, he/she is entitled to statutory sick pay. If an employee's child or close relative has COVID-19 and the employee cannot work because he/she has to take care of the sick child/close relative, the employee is entitled to paid leave for 5 days. Additionally, employees may be entitled to 10 days (20 days for single parents) unpaid leave and statutory sick pay for their child.	with employees". In principle, the unilateral instruction by the employer to take vacation days or a unilateral arrangement for company holidays is not possible. Currently, it is unclear whether the COVID-19 situation would allow this for a certain period.	that at least one third of the workforce is affected by a loss of remuneration of more than 10%. Additionally, employees are required to use their working time accounts to intercept the situation. The German government already reacted to the COVID-19 pandemic and passed a new law to facilitate the conditions under which statutory short-time work allowance can be obtained. The new law provides for a lower bar of 10% of the affected workforce instead of one third of the affected workforce. Further, employees shall no longer be required to use their working time accounts to intercept the situation. Additionally, social security contributions to be paid by the employer shall be reimbursed and the scope of the short-time work allowance shall be extended to cover agency workers (*Leiharbeitnehmer*). The changes are expected to come into effect retroactively as of 1 March 2020 and apply for a fixed term until 31 December 2020.	Specifically, in the event of mass redundancies and closures, a compromise of interests and social plan must be negotiated with the works council. Terminating contracts with third party personnel (e.g. freelancers and employment agencies (*Leiharbeitsagenturen*), if any) is typically easier since third party personnel is not subject to the strict provisions of German termination protection law.		

ITALY

Jurisdiction	General position	Lay-off	Short-time working	Redundancies	Agreements with employees	Other
ITALY *BonelliErede* *Vittorio Pomarici* *vittorio.pomarici@belex.com* *Francesca Rovescala* *francesca.Rovescala@belex.com*	On 22 March, Italy's prime minister published a Decree providing for further emergency measures for the containment and management of the COVID-19 epidemic. These further measures strengthened the provisions already introduced over the past weeks. According to the Decree all business activities that are not essential (or related to them) are suspended until 13 April (note that, according to a further law decree issued on 25 March, this date may be extended, for periods of up to 30 days each, until 31 July 2020). Nevertheless, work related to non-essential production business can be performed remotely. On 7 April, the government announced a decree providing for State-guaranteed loans to companies, within certain limits (regarding, amongst others, the State-guarantee percentages, maximum loans amounts, maximum periods) and subject to certain conditions (amongst others, a company's commitment to	In relation to the suspension of business activities due to the COVID-19 epidemic, the government has extended to all employers the general lay-off system provided for by Italian law (ordinary and extraordinary wage supplementary funds, which allow employers to suspend employees - excluding those with the rank of executives (*dirigenti*) - without making them redundant), within certain national spending limits. Employers who suspend business activities may temporarily lay-off employees, provided certain procedures are followed (these will differ by sector, location and company size, and may include union consultation) for a maximum period of 9 weeks until August 2020. Employers do not pay the salary, and the suspended employees receive an allowance paid by INPS (the Italian Social Security Authority) equal to 80% of the total salary employees would have earned ordinarily, up to a monthly gross of: (a) EUR 998.18 for employees with a monthly salary of up to EUR 2,159.48; and (b) EUR 1,199.72 for employees with a monthly salary in excess of EUR 2,159.48. Once the above national spending limits are reached the COVID-19 extraordinary lay-off measures will no longer be accessible. Companies can then only benefit from the general, non-COVID-19 related lay-off system (applicable only	In relation to the reduction of business activities, the extraordinary lay-off measures also provide for a partial suspension of employment. Employers pay a salary to employees only for working hours actually performed, and the employees receive an allowance paid by INPS for the hours not worked (within the applicable maximum monthly amounts, prorated).	According to the measures introduced by the government, for 60 days as from 17 March employers cannot start collective redundancy procedures and, during the same period, pending procedures started after 23 February are suspended. During the same period employers cannot make individual redundancies. This provision (apparently) does not apply to employees with the rank of executives (*dirigenti*). After that period, unless the mentioned prohibitions are extended, employers will be able to make individual and collective redundancies. A collective consultation, which may last up to 75 days, is required when 5 or more redundancies are proposed at one establishment in a period of 120 days or less.	With reference to executives - who are excluded from the scope of the lay-off measures and could be made redundant - employers may opt for entering into individual agreements for temporary reductions in working hours and/or remuneration.	The extraordinary lay-off measures due to the COVID-19 epidemic, as well as the general lay-off system, do not apply to employees working remotely without any suspension of the businesses activities (even if the company's premises are closed). However, in the event of a reduction of business activities, employers may apply for relief under the extraordinary lay-off measures for a partial suspension of employment that covers employees working remotely. This will require, in all cases, an assessment of the circumstances.

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	manage employment levels through union agreements). In any case, irrespective of government measures, it is possible that some companies will temporarily suspend or shut down their business as a result of the COVID-19 epidemic. Depending on the reasons for the suspension of the business' activities, as well the individual circumstances in each case, the employee's remuneration may be suspended. Should the employer be forced to suspend business activities (for example, if an employer is forced to suspend its operations by way of an order issued by a public authority) in principle the employee's remuneration could be suspended, under certain conditions.	to certain companies and under certain conditions). However, the current national spending limits may be raised by the government.				

PORTUGAL

Jurisdiction	General position	Lay-off	Short-time working	Redundancies	Agreements with employees	Other
PORTUGAL *Uría Menéndez* *Andre Pestana Nascimento* *andre.pestana@uria.com*	If the workplace is to be closed, there are a number of different courses of action that employers could take. These include the following: - the company could try to apply the newly created "simplified" lay-off (enacted as an extraordinary measure to deal with the impacts of the Covid-19 pandemic). Further details of this measure may be found in the following column. - employers could carry-out a lay-off procedure and suspend some or all employment agreements, or reduce the regular working schedule of some employees (please refer to the next column), provided that these measures are essential to safeguard job positions and to ensure the company's viability; and - employers could opt to pay 75% of employees' salaries, if the closure of the business is due to force majeure, without having to follow any formal procedure, except informing the employees (in this case, no financial aid or social	A lay-off means that employment agreements are suspended or regular working hours are reduced for a given period (this period can range from six months to one year, depending on the relevant grounds for the lay-off, and is potentially renewable for another period of six months). Employees who are affected by a lay-off procedure are entitled to several rights, including a statutory guaranteed payment during the time the lay-off procedure is in place. The main differences between the regular lay-off provided for by the Portuguese Labour Code and the recently approved simplified lay-off are (i) grounds to be able to implement a lay-off (further described below); (ii) procedural requirements (which in the regular lay-off are more bureaucratic and may take up to 15 days, whereas the simplified one is dealt with in one single day); (iii) exemption from payment of social security contributions by the employer during the lay-off, which only applies in the simplified one and (iv) payment of an incentive for the normalisation of the activity, corresponding to EUR 635 per employee which will also apply only in the simplified procedure. Grounds to implement the lay-off: The regular lay-off needs to be grounded on market, structural or economic reasons,	Short-time working is a form of lay-off where the employee's regular working hours are reduced for a given period. Please refer to the previous column. By mutual agreement, the parties are also allowed to convert a full-time contract into a part-time agreement and reduce the employee's salary proportionally (please refer to the column "agreements with the employees").	For redundancies, employers will need to follow and observe a more onerous procedure as they are required to observe information and consultation duties owed to employees (this usually takes up to one month). Employers are also required to make severance compensation payments. The amounts of these payments vary between 30 and 12 days' salary per full year of service, depending on the type of contract and the date on which the employment agreement was executed. It should be noted that the Government has reinforced the Labour Inspectorate's powers in respect of dismissals, determining that this entity has the power to suspend the dismissal / termination if it	If an agreement can be reached with employees, unpaid leave is an option, as well as an agreed reduction of working time (part-time leave). This would require the employee's consent. In respect of holidays, as a general rule, they are agreed between the employer and the employee. Therefore, with the employee's consent, holidays may be scheduled at any time (although this will not, in most cases, be an attractive measure, considering that employees are not actually entitled to enjoy their holiday period).	In the absence of an agreement regarding the holiday schedule, the employer may unilaterally schedule the employees' vacations, after hearing the works council, the inter-trade union committee or the union committee representing the interested employees (if any). In small, medium and large companies (i.e. with 10 or more employees), the employer may unilaterally schedule the holiday period, but only between 1 May and 31 October (unless an applicable collective bargaining agreement allows for a different period). Companies with operations connected to tourism may schedule holidays during the entire year, provided that 25% of the holiday periods fall within the dates mentioned above. If holidays are already scheduled, changes to the schedule by the company will be limited to situations where there

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	security will be provided by the Government); Apart from these unilateral measures, there are other actions that could be taken, by mutual agreement with the employees (further described on the last columns). On 26 March, the Government enacted a Decree-Law implementing several immediate, extraordinary and temporary measures to deal with the impacts resulting from the Covid-19 outbreak. Under this statute, assuming that a company qualifies for the approved measures, it would be entitled to receive an incentive per employee, paid by the Social Security, corresponding approximately to 2/3 of the employee's gross salary. This incentive is capped at EUR 1,905 per employee and employers are exempt from paying social charges during the enforcement of the measure (for a maximum of one month, renewable for periods of one month up to a maximum of six months). Additionally, once the activity is normalised, the employer would receive additional compensation corresponding to	catastrophes or other events that have seriously affected the company's activity, and have to be essential to ensure the company's viability. In turn, the simplified lay-off measure is only admissible where the crisis results from the outbreak of COVID-19 and: (i) the company or establishment has been closed by order of the Government (in light of the state of emergency), civil protection authorities or health authorities; or (ii) there is a total stoppage of the company's or establishment's activity resulting from the disruption of global supply chains or the suspension or cancellation of orders; or (iii) there is an abrupt and sharp drop of, at least, 40% in invoicing in the last 30 days, with reference to the preceding two months or the homologous period of 2019, or, for companies which started their activity less than 12 months ago, the average of the period in which they have been active. A certification of the company's certified accountant will be needed to attest situations (ii) or (iii) above. During the lay-off, (either the regular or the simplified one),employees are entitled: in case of suspension, to receive 2/3 of their normal salary, subject to a minimum amount of EUR 635 and a maximum of EUR 1,905, of which 70% is supported by the Social Security and 30% by the employer; or in case of reduction of their regular working hours, employees are entitled to the proportioned		verifies the existence of signs of an unlawful dismissal. Moreover, collective dismissals and individual redundancies are forbidden for employers which resort to the simplified lay-off (during the period in which the lay-off is in force and until 60 days afterwards). If an employer who has resorted to the simplified lay-off financial aid dismisses employees during the period of financial aid (except if with cause), it shall be obliged to return any and all amounts received on account of the financial aid (expiry of fixed term agreements and terminations during the trial period are not considered dismissals for these purposes). It should also be noted that the Government has announced some credit lines for businesses in crisis		are legitimate business reasons, giving rise to the payment of compensation to employees affected by the decision for the losses suffered as a result of the rescheduling.

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	EUR 635 per employee subject to the measure. There are several details related to this scheme that are yet to be clarified by the Government.	amount of their salaries; however, if the reduced proportioned amount is inferior to 2/3 of the regular salary or to the national minimum wage (EUR 635), employees shall be entitled to these amounts, and the Social Security will only support 70% of the difference between the reduced proportioned salary and 2/3 of the regular salary (or the national minimum wage). However, if the reduced salary exceeds EUR 1,905, the employer will not have to ensure a minimum of 2/3 of the salary and no compensation will be paid by the Social Security.		(the details of which are pending publication of the relevant statute) and, according to the Government's communication of these measures, employers shall not qualify for these measures if they have dismissed employees.		

SPAIN

Jurisdiction	General position	Lay-off	Short-time working	Redundancies	Agreements with employees	Other
SPAIN *Uría Menéndez* *Juan Reyes Herreros* *juan.reyes@uria.com*	In addition to the existing statutory scheme (pre-outbreak), since the declaration of the state of emergency new labour and social security measures have been enacted to allow companies to deal with the COVID-19 situation (note that the state of emergency in Spain was declared by Royal Decree 463/2020 of 14 March ("**RD 463/2020**") and has been extended until 26 April 2020). The measures that can be taken are the following: (a) Teleworking from home. The government has passed Royal Decree-Law 8/2020 of 17 March on urgent and extraordinary measures to confront the economic and social impact of COVID-19 ("**RDL 8/2020**"). Its article 5 provides that teleworking should be given priority to avoid suspending contracts or reducing working time (TSEC and TRWT, as defined below), in those companies where it is technically and reasonably possible and provided that the effort required is proportional. In order to simplify its implementation in companies that had not previously implemented teleworking, RDL 8/2020 provides that, exceptionally, it will be deemed that the employer's obligation to carry out an occupational hazard assessment has been fulfilled by means of a self-assessment voluntarily carried out by the employees themselves. (b) Irregular distribution of working hours. Unless the applicable collective bargaining agreement or an	In order to implement a TSEC or TRWT to manage overstaffing during a temporary suspension/reduction of a company's activity caused by COVID-19, companies should follow the procedure for an "**ERTE**" (according to its Spanish acronym), which is governed by article 47 or by article 51(7) of the SW, depending on the grounds alleged. In essence, it could be said that there are two different types of ERTE: (i) ERTEs due to business reasons (i.e. economic, technical, organisational and production grounds); and (ii) ERTEs due to force majeure. The key difference between them is that in ERTEs based on business grounds, a consultation period with employee representatives must be held, whereas in force majeure ERTEs the labour authority takes a decision on whether the force majeure requirements are met based on the documents submitted by the company to justify the measure. The legislation enacted as a result of COVID-19 has interpreted and in some cases modified the ERTE regulations to adapt them to the current situation (e.g. by shortening the consultation period). Despite this, one of the points that has generated (and continues to generate) the most legal uncertainty is, precisely, the definition of		Under Spanish labour law, collective and individual redundancies are designed as employment measures to deal with structural and permanent issues within a company. Therefore, in principle, the outbreak could not (by itself and at this stage) justify such measures unless the current situation has permanent negative consequences for a company's business. This general principle has been confirmed by Royal Decree-law 9/2020 of 27 March adopting supplementary employment measures to mitigate the effects of COVID-19. In particular, article 2 of said regulation has established that it is not possible to justify dismissals by invoking the current force majeure situation or business reasons (economic, production,	Apart from the standard statutory measures (mainly, teleworking, irregular working time, ERTE), companies could reach individual agreements with their employees to deal with the COVID-19 situation. For example, companies could ask employees to take holidays now or offer them incentives to do so (e.g. by offering them a lump sum or additional days off). Employees could also be offered partially paid leave (receiving only a fraction of their salary, for instance).	• COVID-19 is considered a professional contingency, which means that the Social Security or mutual insurance companies will pay in full the statutory sick leave benefits of affected employees. • Discontinuous permanent employees and those who carry out periodic work on specific dates on a permanent basis who have had their contracts suspended because of the COVID-19 situation, and this suspension affects periods when they would normally have worked, may also claim unemployment benefits when they become legally unemployed again, for up to a maximum period of 90 days (these types of contracts are common in the tourism sector).

Jurisdiction	General position	Lay-off	Short-time working	Redundancies	Agreements with employees	Other
	agreement with employee representatives provides otherwise, the Statute of Workers ("**SW**") allows companies to distribute up to 10% of their employees' working hours irregularly during the year. Although it requires a case-by-case analysis and there are some limitations, this option would mean that a company could inform its employees (5 days in advance) that they do not have to work during the coming days or weeks (for a maximum period equal to 10% of the annual total working hours), but that these hours will have to be made up later on in the year. (c) Temporary suspension of employment contracts ("**TSEC**"; equivalent to a lay-off) or temporary reduction of working time ("**TRWT**"; equivalent to a partial lay-off) (*please see explanation in "Lay-off" and "Short-time working" sections*). (d) Alternative agreements with employees (*please see explanation in "Agreements with employees"*). (e) Mandatory recoverable paid leave: By virtue of article 2 of Royal Decree-Law 10/2020 of 29 March establishing recoverable paid leave for employees who do not provide essential services, in order to reduce population mobility in the context of the fight against COVID-19 ("**RDL 10/2020**") all employees are forbidden from attending their workplaces unless they provide "essential services". This measure is effective from 30 March 2020 until 9 April 2020 and during this period of time employees who cannot attend their workplace or telework will	force majeure. As a result, the decision to opt for an ERTE based on business reasons or one based on force majeure requires a case-by-case analysis that takes into account the specific circumstances of the company, its activity and the applicable regulations. This analysis is crucial because employees can always challenge the measures in court. The effects of a TSEC or TRWT for employees and companies are as follows: • Salaries: while contracts are suspended, salaries are not paid and extra-payments are not accrued (or paid/accrued in proportion to the reduction in working hours), unless the company decides otherwise. • Social security unemployment benefits: exceptionally during the COVID-19 situation, employees affected by a TSEC or TRWT are entitled to claim social security unemployment benefits, even if they have not met the standard requirements for entitlement, and anything they claim during the COVID-19 situation will not affect their entitlements afterwards; i.e. they will not "use up" their entitlements (article 25 of RDL 8/2020). They will initially be entitled to 70% of their social security contribution base and 50% if/when they reach 181 days of		organisational or technical) linked to the COVID-19 health crisis. That is to say, the current outbreak may entitle companies to carry out suspensions of employment contracts (ERTEs, as explained above), but not dismissals. In view of this, it would be possible to carry out terminations provided that they relate to disciplinary reasons or objective reasons not linked whatsoever to the current COVID-19 health crisis. Finally, note that the new regulation does not specify the consequence of infringing this restriction on dismissals. However, we understand that it should result in the qualification of the dismissal as unfair since according to Spanish labour law, if the reasons for a dismissal are not justified, the dismissal will be considered to be unfair		• Since this outbreak is an unprecedented and ongoing event, this analysis should be updated and reviewed as and when the government announces new measures.

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	be placed on recoverable paid leave. This means that such employees are not working but continue to receive their salary (base salary and complements); the hours not worked during this time will be recouped between 10 April 2020 and 31 December 2020. (f) Moratorium on social security contribution payments: By virtue of Royal Decree-Law 11/2020 of 31 March, the Social Security General Treasury is entitled to grant interest-free six-month moratoriums to any companies and self-employed workers who request them and meet the necessary requirements and conditions that will be established by a ministerial development order. Such moratoriums affect the payment of contributions the accrual period of which is between April and June 2020, in the case of companies and provided that their activities have not been suspended as a result of the state of emergency. However, as the approval of the ministerial development order is still pending, the requirements that a company must meet in order to benefit from the abovementioned moratorium are uncertain at this stage.	unemployment. Companies may supplement benefit payments. • Employer's social security contributions: pursuant to article 24(1) of RDL 8/2020, in ERTEs based on force majeure, companies may request a special exoneration from their obligation to pay: (i) 100% of their social security contributions if they had less than 50 employees on 29 February 2020; or (ii) 75% if they had 50 or more employees on that date. Companies must notify the Social Security Authority of the employees who have been laid off (or partially laid off), how long the lay-off/reduction is expected to last, and maintain their employment levels for at least six months after they fully resume their activities.		(which entails a severance payment) but not null and void (which would entail readmission plus backpay). In any case, under RD 463/2020, procedural terms have been suspended and all deadlines provided for in procedural laws for all courts have been suspended and interrupted. These terms will only resume upon the expiry of RD 463/2020 (or its extensions).		

SWEDEN

Jurisdiction	General position	Lay-off	Short-time working	Redundancies	Agreements with employees	Other
SWEDEN *Mannheimer Swartling* *Henric Diefke* *henric.diefke@msa.se*	If the workplace is to be closed, the rights of employees will depend on their individual contracts. In most cases, the employer will have no contractual right to withdraw work or pay, and doing so would therefore be a breach of contract. The correct approach would be to pay employees their full normal pay for the duration of the closure, even if they are not able to undertake any work. On March 16 2020, the Swedish Government introduced new emergency part-time furlough rules that will allow an employer to temporarily shorten its employees' working hours up to 60 per cent., while the state covers 75 per cent. of the employees' furlough salary (based on a monthly salary of up to SEK 44,000). This way, an employer may	There are no rules concerning lay-offs in Sweden (other than temporary part-time furloughs and redundancies).	New rules regarding temporary part-time furloughs of employees will formally enter into force on April 7, 2020, but will be given retroactive effect as of March 16, 2020, and will remain in force for the rest of 2020. Under the new temporary part-time furlough rules, an employee's working time and salary may be decreased, while the state will cover 75 per cent. of the costs for such furlough (based on a monthly salary of up to SEK 44,000). As a result of the temporary rules, an employer will be able to cut the employment costs in half for salary parts up to SEK 44,000 per month employee (without making any staff redundant), while the employee will continue to receive more than 90 per cent of his/her salary. The rules include three different levels of part-time furlough that may not be deviated from. They include a reduction in working hours of:(i) 20 per cent.; (ii) 40 per cent.; and (iii) 60 per cent. The employee will – depending on the level – reduce his or her salary with: (i) 4 per cent.; (ii) 6 per cent.; or (iii) 7.5 per cent. The reduced costs for the employer will – again, depending on the level – amount to: (i) 19 per cent.; (ii) 36 per cent.; or (iii) 53 per cent. (up to a salary level of SEK 44,000 per month). The financial support will not cover salary portions exceeding SEK 44,000 per month. Consequently, for any employees with salaries exceeding SEK 44,000 per month, the state's share of the salary cost for furloughed time will be based on a salary of SEK 44,000. The part of the (reduced) salary that exceeds SEK 44,000 per month will be fully paid by the employer.	An employer can also reduce its work force and personnel costs by terminating employees according to ordinary rules on termination due to redundancy. That includes having to consult with the trade unions, notifying the Swedish Public Employment Agency if five employees or more are made redundant, and providing statutory (or contractual, if longer) notice periods to the employees. During the notice period, the employees are entitled to full salary and benefits even if there is no work to be carried out (unless subject to temporary part-time furlough rules during the notice period). The employees will be permanently terminated, but will have a preferential right to re-employment if the employer would decide to start hiring during the notice	If temporary part-time furloughs with state support is not an option the most attractive option may be for employers to seek employees' agreement to a temporary period of unpaid leave, paid leave (such as the use of saved vacation days or parental leave), or part-time working. Employees and employers can agree to a temporary period of unpaid leave, paid leave (such as the use of saved vacation days or parental leave) or part-time working (and may well do so if the employee is aware that the alternative is likely to be redundancy), but this would require clear consent in writing from the individual and there would be no financial	It is not possible to direct employees to take annual leave during their notice periods unless the notice periods exceed six months. In addition, even if an employer may otherwise ultimately override an employee's vacation requests, if the parties cannot agree when to allocate vacation employees are entitled to: (i) get four weeks of continuous vacation during the months June-August; and (ii) two months' notice (one month is possible under exigent circumstances) of the employer's allocation decision. While it is possible to deviate from the requirement under (i) because the employer needs the employees to work during the summer months (e.g. due to an extraordinary and unforeseen surge in workload or lack of manpower), it is typically not possible to deviate from the requirement under (i) because the employer does not need the

Jurisdiction	General position	Lay-off	Short-time working	Redundancies	Agreements with employees	Other
	be able to reduce the personnel costs (for salary costs up to SEK 44,000 per month per employee) by more than 50 per cent. The new rules will apply through the end of 2020. If the employer is covered by a collective bargaining agreement, the furlough must be approved by the relevant trade union at the national level and regulated in detail at local level (or, if there are no local unions, at national level). If no collective bargaining agreement applies, the furloughed employees must approve the furlough and at least 70 per cent. of the employees at the relevant workplace need to be subject to the furlough.		Financial support may be provided to an employer after an approval from the Swedish Agency for Economic and Regional Growth (Sw: *Tillväxtverket*). Such an approval may only be granted if: • the employer is experiencing temporary and serious financial difficulties; • the financial difficulties have been caused by circumstances beyond the employer's control; • the financial difficulties could not reasonably have been avoided; and • the employer has used other available measures to reduce its labour costs (excluding termination of permanent employments). Employers that are distributing profits to shareholders as dividends will generally not fulfil the first requirement. As a general rule, any applicable national and local collective bargaining agreement must allow and regulate the temporary furloughs in question. The relevant trade union(s) must thus agree to the furloughs and the details thereof before they can be implemented. Employers who are not covered by any collective bargaining agreement(s) must enter into a written agreement with the relevant employees regarding the temporary furlough before it can be executed. In addition, at least 70 per cent. of the employees in any given workplace must be furloughed during the relevant support month. A workplace is defined as a geographical location, such as an office or a factory.	period and nine months thereafter. This option has the disadvantage that it will take longer for the business to return to normal, unless it is able to quickly re-engage the workforce it needs. There is no legal requirement that consultation meetings with the trade unions take place face-to-face. Although this is sometimes requested by the unions, and is the preferable approach where circumstances allow, there is also an established practice of using phone or video conference for consultation meetings in certain circumstances.	support from the state. Furthermore, it may not be in breach of any applicable collective bargaining agreement.	employees to work at other times of the year, for example if business is slow.

THE NETHERLANDS

Jurisdiction	General position	Lay-off	Short-time working	Redundancies	Agreements with employees	Other
THE NETHERLANDS *De Brauw Blackstone Westbroek* *Barbara Kloppert* *barbara.kloppert@debrauw.com* *Janneke van der Kroon* *Janneke.vanderKroon@debrauw.com* *Mirjam Kerkhof* *mirjam.kerkhof@debrauw.com*	On 31 March, the Dutch government published a temporary scheme of emergency salary subsidies ("NOW"). Under NOW, the government will provide a subsidy to employers, big or small, of up to 90% of salary costs, in proportion to the reduction in the employer's revenue of at least 20% due to COVID-19 prevention measures. For example, if the employer expects a 60% reduction, the subsidy will be set at 54% (90% of 60%). In order to establish the level of revenue loss for NOW, the employer's revenue for accounting purposes over a period of three consecutive calendar months, starting on 1 March, 1 April or 1 May 2020, will be offset against the reference revenue. That reference revenue is 25% of the employer's annual revenue in 2019, as published in its annual accounts for 2019. The revenue of a group of legal entities as defined in article 2:24b of the Dutch Civil Code will be aggregated, and a subsidiary and a parent company as defined in Article 2:24a of the Dutch Civil Code will be	Under Dutch law, there is no specific statutory lay-off scheme. Therefore, the NOW regime mentioned in the "General position" column regarding salary payment applies in cases of lay-off. If the workplace is to be closed and employees are therefore required to work from home, those employees remain entitled to their full normal salary for the duration of the closure, even if they work less efficiently. Employees who are not able to work from home most likely also remain entitled to their normal salary, at least for limited period of time. We believe the current situation qualifies as an emergency under the Dutch Work and Care Act, so employees remain entitled to their salary over at least the first few days, since this emergency leave is intended to help an employee deal with a sudden emergency. Afterwards, employees are entitled to continue receiving salary payments if the reason for the non-performance falls within the employer's risk. The Dutch government is of the opinion	Short-time working gives rise to the same issues mentioned in relation to lay-off.	If an employer intends to terminate an employment agreement due to economic reasons, the mandatory route is to file for a dismissal permit at the governmental labour authority UWV stating that there is a reasonable, statutory ground (i.e. redundancy) for dismissal. The UWV procedure to obtain a dismissal permit requires the employer to substantiate the economic reasons for the dismissal. It follows from the NOW explanations from the Dutch Ministry of Social Affairs and Employment that UWV will also review	The legislation and regulations applicable in the Netherlands do not provide for the current extraordinary situation. If the employer intends to take measures involving agreements with employees, the works council and trade unions will play an important role in most cases. In light of the scale of the current situation and its effects, it seems less logical to come to individual agreements with employees.	Employers must enable their employees to take the annual holiday leave that they are entitled to. As a general rule, employers cannot oblige their employees to take holiday leave because: (i) there is less work as a result of COVID-19; (ii) staying at home is made mandatory by the government or the employer but they cannot work from home; (iii) they have to stay home due to a lack of day-care for their children; or (iv) they can only work fewer hours and/or less efficiently in view of day-care circumstances. An employer can however request employees to take holiday or unpaid leave, but there is no legal obligation for employees to consent to this. An employer can only deviate from the aforementioned general rule and designate mandatory holiday leave if the determination of a holiday is stipulated in a written agreement, a collective labour agreement or by law. To see if they can designate any mandatory holiday in the coming period, employers are advised to check: (i) the applicable collective labour agreement; (ii) the employment agreement, including any applicable employee terms and benefits; and (iii) holiday regulations. An employee's

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	considered as a group of companies. Each employer within the group will have to submit a separate request for subsidy under NOW. It is not possible to apply for subsidies as a group. The salary costs that may be eligible for reimbursement under NOW are capped at EUR 9,538 gross per individual employee. The Dutch government is aiming for a light preliminary review in order to facilitate swift pay-outs. After the term of the subsidy has ended, a full review will be conducted retroactively. Each employer will have to demonstrate its own actual reduction in revenue. Larger companies need to provide an auditor's report. The employer does not need to demonstrate a causal link between the revenue loss and the coronavirus. By receiving a subsidy under NOW, an employer will commit to the following material obligations, non-compliance of which may affect the amount of the subsidy: **(i)** the employer maintains salary costs at the same level "as much as possible" during the period for which it will receive a subsidy, **(ii)** the employer	that the coronavirus crisis is at the employer's risk. This is explicitly mentioned in the NOW-regulation. According to the government, employees are entitled to receiving their full salary payment as long as their employment agreement continues, even if they do not work due to the measures taken. Although the government's opinion would be important in court proceedings, it is ultimately up to the courts to decide if and for how long article 7:628 DCC requires an employer to continue paying salaries during this crisis. It is likely that the courts will rule that at least part of the coronavirus crisis should come at the employer's risk and expense. But what part? That is up to the courts to decide and will depend on the specific facts and circumstances, such as (i) the duration and impact of restrictions, (ii) the eligibility for NOW salary subsidy, (iii) the measures taken by the employer to enable employee to work and (iv) the financial situation for employer and employee.		dismissal applications during the NOW subsidy period in the usual manner, so a dismissal is still possible. As mentioned in the "General position" column, one of the conditions to be eligible for NOW is that the employer commits not to submit a request for dismissal on economic grounds during the period for which the subsidy has been awarded. If the employer opts for dismissal due to redundancy, the salary basis for the NOW subsidy will be reduced by 150% of the salary of the employees for whom a dismissal permit has been requested.		entitlement to the statutory minimum amount of holiday will lapse six months after the last day of the calendar year in which the entitlement was obtained, unless the employee has not reasonably been able to take holiday leave. The COVID-19 outbreak will not generally affect the lapse, as of 1 July 2020, of statutory holiday accrued in 2019. Employees, with some exceptions such as chronically ill employees, will reasonably have been able to use their statutory holiday leave throughout 2019 and up to the COVID-19 outbreak. This may be different when it comes to the lapse of statutory holiday as of 1 July 2021. If the emergency measures relating to COVID-19 last substantially longer, there may be a turning point. It is currently hard to predict when this will be. This could, for instance, be when employees are unable to go on holiday in the summer of 2020 because foreign travel is not possible and hotels and restaurants are still closed.

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	does not submit a request for dismissal on economic grounds during the period for which the subsidy has been awarded, (iii) the employer uses the subsidy exclusively for the payment of salaries and (iv) the employer informs the works council, employee representation or employees about awarded subsidies. The NOW subsidy will be available for three months, and the government will decide before 1 June 2020 whether it will extend the availability of the NOW subsidy for another three-month period. In the case of an extension, additional conditions may apply and may lead to restricted access to subsidies in this extended period of application.					

UNITED KINGDOM

Jurisdiction	General position	Lay-off	Short-time working	Redundancies	Agreements with employees	Other
UNITED KINGDOM *Slaughter and May* *Philip Linnard* *philip.linnard@slaughterandmay.com*	If the workplace is to be closed, the rights of employees will depend on their individual contracts. In most cases, the employer will have no contractual right to withdraw work or pay, and doing so would therefore be a breach of contract. The correct approach would be to pay employees their full normal pay for the duration of the closure, even if they are not able to undertake any work. On 20 March, the Government announced a Coronavirus Job Retention Scheme ("JR Scheme"), under which the Government will provide a grant to businesses covering 80% of the wages of those individuals who remain on payroll and who have been furloughed due to the COVID-19 outbreak (up to £2,500 per employee	A lay-off under the relevant statutory scheme means that employees are given no work or pay for a period, e.g. until the worst of the pandemic passes and the business recovers. Employees laid off in accordance with the statutory scheme will have a number of rights, including a statutory guarantee payment in respect of each 'workless day'. Given the introduction of the JR Scheme, for the majority of employers (and employees), a statutory lay-off will not be the most attractive option. Our comments below should be read with this in mind. Some employers may have a contractual right to lay-off employees; without this there is a risk that a lay-off resulting in a breach of contract. Such a breach may entitle employees to claim their lost wages, or treat themselves as constructively dismissed	Short-time working is a form of partial lay-off where the employer maintains its operation on a reduced scale, e.g. on two out of five days. This gives rise to the same issues discussed in relation to lay-off.	This is potentially a more onerous and expensive process, particularly where collective consultation is required (i.e. 20 or more redundancies are proposed at one establishment in a period of 90 days or less). There may be some scope to truncate the process in the "special circumstances" of the COVID-19 outbreak, but this is likely to be of limited use to most companies. This option has the added disadvantage that it will take longer for the business to return to normal, unless it is able to quickly re-engage the workforce it needs. Further, assistance under the JR Scheme would not be available in respect of an employee who is dismissed. Where an employer does undertake collective consultation, there is no requirement that consultation meetings take place face to face. Although this is the preferable	Employers may seek employees' agreement to a temporary period of unpaid leave, part-paid leave or part time working (particularly if employees are aware that the alternative is likely to be redundancy). Employees and employers can agree to a temporary period of unpaid leave, part-paid leave or part time working (and may well do so if the employee is aware that the alternative is likely to be redundancy), but this would amount to a variation of contract and would require clear consent in writing from the individual. The alternative may be to make redundancies and plan to re-employ at a later stage. It would be more aggressive to direct employees to take annual leave during any closure (and the employer would need to give prior notice at least twice as long as the period of absence, so this may not be practicable if the closure needs to happen at short notice).	The most attractive option may be the JR Scheme, designed to help employers keep employees on the payroll if as a result of COVID-19 they are unable to operate or have no work for the employee to do. This is known as being 'on furlough'. Under the JR Scheme, a furloughed worker must not do any work for the employer organisation (this includes any provision of services or revenue-generation). An employer can furlough any employees who were on the PAYE payroll on 28 February 2020 (whether full-time, part-time, on agency contracts or on zero hours or flexible contracts). The furlough period has to be a minimum of three weeks. The JR Scheme also covers employees who were made redundant after 28 February, provided that they are re-hired by the former employer. Although there is no obligation on an employer to re-hire, some may come under significant pressure to do so. The grant from HMRC will cover the lower of (i) 80% of an employee's regular wage or (ii) £2,500 per month. The grant

Jurisdiction	General position	Lay-off	Short-time working	Redundancies	Agreements with employees	Other
	per month). Employers will be able to top up salaries further if they choose. The JR Scheme will be administered by HMRC and all businesses are eligible, regardless of size, provided the employer had a UK bank account and PAYE payroll scheme in place on 28 February 2020. There will be no limit on the amount of funding available, any payments will be backdated to 1 March, and the first grants will be paid before the end of April. The JR Scheme will initially be open for at least three months, to be reviewed thereafter.	(although the latter option would be unattractive to most employees in the current climate). If the employee's remuneration does not depend upon their being provided with work (e.g. many office-based, salaried employees), the statutory lay-off provisions do not apply. In other words, the employer must have a contractual right to withhold remuneration if there is no work. An employee will not be treated as being laid off under the statutory scheme if the employee was not available for work anyway. This would have an impact on those who are self-isolating in line with government advice.		approach where circumstances allow, there is also an established practice of using phone or video conference for consultation meetings in certain circumstances. Whatever the approach, the employer would need to take steps to ensure that the collective nature of the consultation is not affected – e.g. all questions are collated and circulated to all representatives). There may need to be an extension of the statutory minimum periods prescribed for employee consultation (30 days for 20 or more redundancies, and 45 days for 100 or more), in order to deal with disruption associated with COVID-19.		will also cover the associated Employer National Insurance contributions (NICs) and minimum automatic enrolment employer pension contributions on that subsidised wage (i.e. 3% of income above the lower limit of qualifying earnings (£512 per month until 5 April, £520 per month from 6 April onwards)). HMRC will issue more guidance on how employers should calculate these sums, before the scheme becomes live (expected to be before the end of April). There is nothing in the guidance that states that consent is a condition for eligibility for the scheme; government guidance on consent focuses on changes to the employment contract. The guidance states that employers 'should discuss with their staff and make any changes to the employment contract by agreement'. The guidance for employees is more emphatic that 'both you and your employer must agree to put you on furlough', but again there is no statement that this is a condition for eligibility for the scheme.

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