

LEARNING FROM THE CHALLENGES OF EMPLOYMENT FOR A POST-CORONA WORLD: A FRENCH, BRITISH AND ISRAELI PERSPECTIVE

KEY TAKEAWAYS FROM THE WEBINAR



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The Coronavirus pandemic has forced businesses around the world to continue their daily operations remotely. Our panel of experts will discuss key differences in the legal obligations of employers in different jurisdictions and what global corporations will need to consider in a post-COVID era.

Many countries have implemented measures where the government are subsidizing employees' salaries. What do these measures consist of?

UK

- The "Coronavirus Job Retention Scheme" is an emergency measure to support employers so that they can avoid making redundancies by putting employees on temporary leave instead ("Furlough").
- Furlough pay is the lesser of 80% of employees' wages or £2,500 p/m. This will be reduced next month.
- Since 1 July 2020 furloughed employees are allowed to return to work part time (and they receive the part time equivalent furlough pay).

France

- The equivalent Furlough concept existed before the corona crisis. The scheme is called "**Activité partielle**".
- It is available notably to businesses that had to close by government order, and to certain companies facing serious declines in activity.
- Employees receive a compensation corresponding to 70% of their gross salary per hour off.
- The government's minimum contribution corresponds to 60% of employees' gross wages (said wages are taken into consideration up to a limit of gross €6,927 p/m).

Israel

- The equivalent Furlough concept existed before the corona crisis. The scheme is called "**Chalat**".
- There are certain criteria that affect an employee's entitlement to chalat payments, including duration of employment, age and whether the employee has children or not. Compensation ranges from 30-80% of your monthly salary (and is capped at the average Israeli salary, as in the UK). The average compensation to employees on chalat is 50%.
- Since there are 800,000 unemployed in Israel, the government is offering certain business grants to help them return employees from chalat.

What issues have arisen as a result of these policies?

- **Redundancies:** employers may have to consider, as a matter of fairness, putting employees on furlough rather than dismissing them. The UK guidance is not comprehensive and it is unclear whether a person who is made redundant while on furlough can remain in the scheme. The risk is that, if an employer keeps such a person on furlough, HMRC may ask for money back. Redundancy payments cannot be made from furlough payments.
- In France, in view of the huge number of companies which have benefitted from the *Activité partielle* scheme, the government has launched a fraud investigation to verify that no employee benefitting from the scheme is actually working. Fraudster employers are exposed to reimbursement of the allocation and to sanctions/penalties. At this stage, it is still unclear whether dismissing an employee after a long period of *Activité partielle* in this context will expose the employer to a claim of unlawful dismissal. In any case, the dismissal will need to be grounded with strong supporting evidence.
- Costs: Whilst employers aren't bearing the costs of furlough, they would still need to bear certain other costs, such as paid holiday days.
- In Israel some issues arise surrounding **protected groups**, such as pregnant women and people on army reserve duty. If an employer wants to send an employee from a protected group on chalat they will first require ministry approval. Dismissal of an employee after a long Chalat may expose the employer to claim of unlawful dismissal, even if the employer conducted a hearing process under the applicable law.

In light of the mass-adoption of software such as Zoom, do you think there is a future for international business travel post-Corona?

- Whilst Zoom is not a perfect substitute, it is an adequate substitute.
- On the one hand, there will be a pent up demand for business travel. Airlines and hotels will need to reduce their costs to recover the losses their businesses have suffered, and the **travel market will likely be cheaper and more competitive**.
- It may also be that as a result of the pandemic people will need to move to different jurisdictions to pursue new opportunities.
- There are **limits to platforms such as Zoom and Docusign:** quality of communication, bumping ideas of one another, human contact and losing the symbolic hand shake post deal completion.
- On the other hand, removing the cost of business travel is an easy way for businesses to **save money**.
- **International conferences** will likely suffer as people will question the worth of socially distanced conferences.

Do you think employers and/or employees will want home working to continue after the pandemic subsidies?

- A survey in the UK found that 90% of employees want to maintain flexible working.
- In the UK there already exists a statutory right for employees to request flexible working, and an employer can agree to it or refuse it on certain limited business grounds.
- If working from home has been effective during the pandemic employers may find it more difficult to argue that it cannot be done. On the other hand, an employer could maintain that it wasn't very effective.
- If employers do not want to grant flexible working, this could lead to claims for sex discrimination, disability discrimination and constructive dismissal.
- In France flexible working is negotiated with employees, and employers usually pay for a proportion of the employee's rent corresponding with the square meters that are used for them to carry out their job.
- Many employees live in suburbs where rent is much less expensive than central city rent, and therefore this is still a more affordable option for employers than paying for expensive central city premises.

In Israel, until the pandemic perception regarding attendance at the workplace was very conservative. However, now we can actually see that some companies choose to keep working remotely, and others even consider adopting a combined model in which the employees work partially at home. Since it is clear that the Israeli legislator did not foresee "remote work" to be an option, the issue needs to be discussed and agreed between the parties.

In France, a survey was issued on June 19th, 2020 pertaining to human resources directors' perception of the future of telework:

- 85 % of them believed that maintaining teleworking would be a good idea;
- 82% of them are considering extending the list of positions eligible to telework;
- 60 % of the company's involved consider that more than 25% of their employees will be working remotely twice a week. Many employees are also asking for this.

What is the main issue you think could arise as a result of homeworking?

- **Effective management and control of employees:** employers may be concerned employees are less efficient and distracted by demands on their time at home. But equally employees may not switch off from work, and might feel like they're constantly in the office.
- In France there are strict limits on the **number of working hours** an employee can work in a week. Employers will need to find ways to monitor the working time of their employees and ensure overtime is paid, failing which they could be exposed notably to back payment of salary and criminal sanctions for concealed work. They will need to pay attention to maximum work durations, to the employees' right to disconnect, to resting times and to ensuring a **correct balance between employees' professional life and personal life**. This is deemed a matter of **health and safety**, which employers are responsible for under French law. All this will have to be done whilst respecting their employee's privacy.
Non-discrimination principles apply to telework as concerned employees must have access to similar promotions, collective rights, equal remuneration. Employers also have to ensure that homeworking is accessible to disabled employees.
- The blurring boundaries between working time and private time and expectation of constant availability, as well as the inability to track on a daily basis the employee's working and rest hours creates conflict with the mandatory obligation of employers in Israel to track and register the employees working hours and to pay overtime. According to the Israeli Hours of Work and Rest Law, an employer who fails to prove the maintaining of a record of working hours is exposed to a lawsuit in which the court may impose a payment for overtime hours for up to sixty overtime hours per month.
- Employers should implement a policy regarding the **protection of company and personal data out of the company**.