

# COVID-19 FAQs: are you up to date with your obligations?

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## Introduction FAQs

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With the COVID-19 pandemic continuing to affect every aspect of life, employers must ensure that they are up to date with their obligations towards employees. This article answers employers' FAQs, including with regard to:

- the financial support available to employees;
- the measures introduced to facilitate remote working;
- the processes for implementing dismissals during the pandemic; and
- employers' obligations in terms of health and safety during the return to work.

### FAQs

#### ***What financial support has been made available to employees (including the self-employed) during the pandemic? Is there a furlough scheme or equivalent to support employees who cannot work remotely or enter the workplace?***

Pursuant to the Federal Labour Law and the series of decrees issued throughout the pandemic by the federal government, individuals hired under an employment contract are entitled to full payment of salary and benefits, irrespective of whether they can work remotely or enter the workplace due to COVID-19-related restrictions.

In addition, the federal government and some state governments have introduced different initiatives to grant loans or temporary economic support to groups such as the self-employed or people who have lost their jobs during the pandemic. For example, the Mexico City government has sponsored a programme which provides a monthly allowance of approximately \$130 for a maximum of six months for employees who have been dismissed during the pandemic.

#### ***What measures have been introduced to facilitate remote working? Must employers provide financial assistance for office equipment?***

Mexican labour law and binding criterions issued by the labour courts provide no specific measures to facilitate remote working or clarify whether employers must provide financial assistance to employees working remotely. Further, the authorities have issued no binding guidelines in this regard since the beginning of the pandemic and have merely recommended that employers implement flexible or staggered schedules to limit the number of people in the workplace. Notwithstanding this, one of the general obligations imposed by the Federal Labour Law on employers is to provide employees with the working tools, instruments and materials required for the execution of their work.

In practice, many employers are providing administrative employees with the essential technological equipment (eg, laptops or mobile phones) required to work remotely. Moreover, a few companies have voluntarily chosen to provide some type of additional financial support to help employees equip their working space; however, practice varies from case to case.

The current situation will likely lead to labour law being amended in the short to medium term in order to address these issues.

#### ***What are the processes for implementing dismissals during the pandemic?***

From a legal standpoint, the regulatory framework issued during the pandemic has not affected how dismissals must be carried out under Mexican regulation. On the contrary, the Ministry of Labour emphasised on several occasions that the sanitary emergency caused by the pandemic did not constitute grounds for terminating

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employees.

From a more practical perspective, companies that have reduced their workforce during the pandemic have explored formalising terminations of employment remotely through electronic means or more commonly through private termination documents which are not ratified before the labour authorities (which was the preferred mechanism prior to the pandemic). While the Mexican labour courts have suspended their activities for certain periods in accordance with the health authorities' recommendations, most of them have kept reduced operations which include the ratification of employment termination agreements under a schedule system.

### ***How should employers plan for and handle the new normal and the return to the workplace?***

The federal government has issued several decrees and guidelines concerning the safe return to work amid the COVID-19 pandemic. Notably, the official recommendation is that all employees who can work remotely should do so until the level of epidemiological risk is deemed to be low for the specific region in which that person (and the workplace) is located.

For those that must render their services physically in the workplace, the authorities have implemented a system which allows for a progressive return to work which is largely restrictive depending on the level of epidemiological risk of each region – namely:

- under maximum risk, only industries deemed 'essential' (as defined in the extensive lists issued by governmental decrees) are allowed to operate physically in the workplace;
- under high risk, non-essential industries can operate with limited personnel; and
- under medium and low risk, non-essential industries can operate with all personnel.

Return-to-work guidelines also set out extensive health and safety obligations specific to the COVID-19 pandemic, which vary depending on:

- the size of the company;
- the particularities of the workplace; and
- whether the workforce includes 'vulnerable' individuals (governmental decrees have clarified specific characteristics such as age or health conditions which make individuals particularly vulnerable to COVID-19).

Certain guidelines were issued for specific industries in accordance with the particularities thereof (eg, restaurants and hotels).

Mexican companies should carefully analyse their obligations under the guidelines prior to returning to work in order to ensure their employees' health and safety and avoid penalties from the authorities that are inspecting employer compliance.

### ***What health and safety measures must employers implement in the workplace? For example, must they provide masks and personal protective equipment?***

Federal government guidelines issued in connection with the return to work impose numerous health and safety obligations on employers, including:

- training and instructing employees with regard to COVID-19, such as highlighting the actions to be followed to minimise the associated risks and the protocols in place if there is a suspected or positive case in the workplace;
- implementing health measures in the workplace, such as social distancing, staggering access to the workplace, increasing hygiene measures and using personal protection equipment; and
- implementing physical barriers in the workplace whenever possible in order to reduce risks of contagion.

The specific measures to be followed vary depending on:

- the size of the company;
- the particularities of the workplace; and
- whether the workforce includes vulnerable individuals.

Further, there are additional measures that vary depending on the specific industry or location of the workplace. For example, the Mexico City government requires employers to perform COVID-19 tests on employees attending the workplace on a 5% weekly basis (as a general rule) to prevent the spread of the virus.

### ***How should employers handle employees who refuse to return to the workplace?***

Companies can require employees to return to work if:

- the company has been permitted to resume operations in compliance with the health and safety guidelines and follows all applicable measures to reduce risks of contagion; and
- the employee is not classified as vulnerable.

Failure by employees to attend work under these circumstances may result in a justified termination of their employment relationship.

***If employees travel abroad, must they self-isolate on their return? What if they cannot re-enter the country – are their jobs protected?***

Guidelines issued by the federal government in connection with a return to work recommend restricting local and international travel and creating protocols to be observed when such travel is essential. Pursuant to this, if employees travel abroad, any applicable health and safety measures will depend on the protocols that companies have in place, as well as official government indications with regard to international travel.

The guidelines do not specifically address the case of employees who travel and cannot re-enter the country; therefore, such cases should be analysed individually. Notwithstanding this, if the purpose of the trip was work related, it is safe to assume that employees will be protected pursuant to Mexican labour law's job stability principle.

***How should employers prepare for future local lockdowns?***

Since the level of restrictions for non-essential industries and vulnerable personnel vary depending on the level of epidemiological risk of the corresponding region – which is updated on a weekly basis – employers should closely follow such changes as announced by the health authorities in order to respond in time. Pursuant to this, companies should have protocols that ensure the continuation of operations if employees are restricted from physically entering the workplace.

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