

COVID-19

Kazakhstan Legal Handbook  
Key issues to consider

3 April 2020





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# Government's legal actions re COVID-19

## What are the key restrictions effective in Kazakhstan?

- The coronavirus infection (COVID-19) was included in the List of diseases that are dangerous to the public by the Order of the Minister of Healthcare and Social Development dated **31 January 2020**.
- On **15 March 2020**, the President signed the Decree on Imposition of the State of Emergency across the country for the period starting from 8 a.m. on 16 March 2020 until 7 a.m. on 15 April 2020 (**the Decree**).

The following measures and temporary restrictions are imposed for the period of the state of emergency:

- tighten security of public order, security of critically important state and strategic, critically regimed, regimed and critically secured objects, as well as objects that supply life sustenance of population and functioning of transport
  - restrict functioning of large trade objects
  - suspend shopping malls' activity, cinemas, theaters, exhibitions and other mass gathering objects
  - impose quarantine, implement massive sanitary-and anti-epidemiological measures, including with participation of structural subdivisions of the Ministry of Defence and internal affairs authorities that perform activities in the sphere of sanitary-and epidemiological wellness of population
  - prohibit entertaining, sport and other massive events, as well as family, memorial events
  - impose restrictions on entry and exit from its territory for all types of transport, except for personnel of diplomatic services and foreign states, and members of delegations of international organizations that are going to visit Kazakhstan based on the invitation of the Ministry of Foreign Affairs.
- The State committee (specifically constituted to handle the state of emergency regime) imposed additional restrictive, preventive, anti-epidemic measures by imposing a quarantine regime in Nur-Sultan and Almaty starting from **19 March 2020**, including:
    - imposition of quarantine and implementation of massive sanitary and anti-epidemiological measures
    - setting of perimeter of quarantine zone and determination of its entrance/exit points
    - restriction of people movement as well as entry/exit of transport vehicles
    - supplement of specific medical organizations' continual work on three categories: for infected, suspicious to infection, quarantined
    - determination of cities' territory sectors and their boundaries to restrict citizens' movement, optimal to organise food supply to population and life sustenance system' functioning
    - suspension or restriction of public transport during day and termination during night
    - suspension of work of non-food trade markets, large malls and trade houses except for pharmacies and grocery stores located there
    - principle "delivery to clients" for all public catering services, with reinforcement of sanitary- and anti-epidemiological measures
    - reorganization of working regime of Public Service Centers (TSONs).
  - The state committee adopted the resolution on suspension of activities of all enterprises and organizations regardless of ownership forms in Nur-Sultan and Almaty **starting from 30 March through 5 April 2020**, except for central state bodies, akimats, law enforcement authorities, healthcare organizations, mass media, food stores, pharmacies and life sustenance organizations. Suspension was further extended until **13 April 2020**.

- **On 30 March 2020**, the quarantine was imposed in Atyrau and Karaganda. The state authorities restrict entry/exit, as well as working hours of public transport.
- **Since 31 March 2020**, the quarantine was imposed in the West Kazakhstan Region, including Uralsk as well as in Shymkent.
- **Since 2 April 2020**, the quarantine was imposed in Ust-Kamenogorsk and Semey.
- **Since 3 April 2020**, the quarantine was imposed in Mangistau Region as well as in Kokshetau.

### Is there a specific plan for stimulating the economy?

- **On 16 March 2020** the President signed the Decree No.286 on Measures for Maintenance of Social-Economic Stability and the Decree No.287 on Further Measures for Stabilisation of the Economy.

The Decrees stipulate certain procedures that the Government and its authorized bodies shall implement due to the crisis. For example, tax rates for certain taxpayers shall be revised; special order of state budget formation, state procurement, shall be considered; maximum tariffs and prices for food and other products necessary for continued life and sustenance of the population shall be fixed; import/export of goods necessary for continued life and sustenance of population shall be determined etc.

### What is the liability for violating the state of emergency?

During the emergency regime, administrative and criminal liability is prescribed for various issues including violation of the regime, spread of false information, disobeying orders of the government.

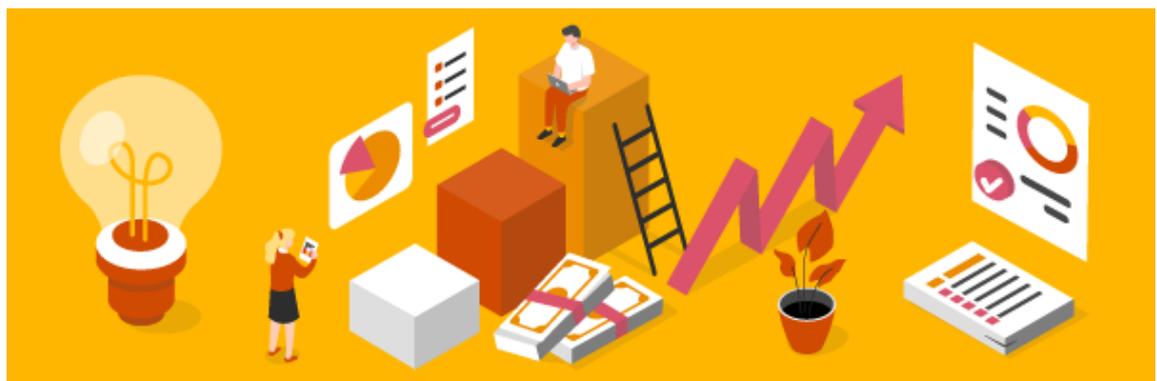
Individuals who avoid treatment of a disease that is dangerous to others, conceal information about danger or source of infection and who were in contact with an infected person are subject to administrative liability.

Virus contamination when working could be considered as a work accident. Failure to report a work accident by employer may lead to an administrative fine.

Violation of sanitary and epidemiological requirements by a legal entity may result in a fine up to KZT 5,3 mln and suspension of activity.

Violation by a legal entity of sanitary rules or hygienic standards resulting in infection or disregard (negligence) of a mass disease may lead to imprisonment of its executive body (e.g. a general director) for up to 2 years.

A violation resulting in death may lead to imprisonment for up to 5 years.





# Key Employment Matters

## What are employers' primary health & safety obligations?

Employers must ensure health and safety of employees. The Decree envisages taking sufficient wide-ranging anti-epidemiological measures.

Under the state of emergency, all health and safety measures adopted by employers should be in line with temporary measures and limitations as per the Decree and state sanitary-epidemiological requirements, including the following:

- at its own expense take sanitary and disinfection measures based on instructions of sanitary-epidemiological service;
- suspend business activities in case of threat to life or health of employees;
- inform employees and sanitary-epidemiological services on cases of infection within the organization;
- do not allow employees who travelled outside the country or have symptoms of the virus to be present at the workplace;
- Implement a "remote working" policy.

Employers at their own expense are allowed to send employees for medical examinations for identifying and preventing spread of the disease.

## Whom should an employer inform about the infection?

Employees must:

- take precautions to ensure protection of their own health and the health of others;
- inform their employer about symptoms of infection and undergo examination and treatment at the request of medical organizations;
- inform their employer about health conditions that prevent work and any situation that threatens life and health of others, i.e. the risk of infection.

## Whom should an employer inform about the infection?

An employer should immediately inform the State Sanitary and Epidemiological Service about cases of infectious diseases in the organization, as well as its employees.

Following notification, the State Sanitary and Epidemiological Service may (i) conduct a medical examination of infected persons and people who were in contact with them and (ii) hospitalize such persons, if needed.

## Must an employer pay a salary to a person (infected with COVID-19) in hospital or at home in quarantine?

The period in hospital or under home quarantine is deemed a temporary disability. Sick leave is paid in accordance with the terms and conditions of a labour agreement or internal policy.

On 18 and 20 March 2020, the Chief State Sanitary Doctor of Almaty addressed employers to ensure payment of sick leave for the period of isolation and preservation of jobs within the pandemic period.

## **Can an employee refuse to work due to concern about becoming infected?**

An employee can refuse to perform work duties, if it creates a threat to his/her health or life, by notifying an immediate supervisor or representative of the employer.

In relation to coronavirus, an employee may refuse to come to work or perform employment duties if the employer does not undertake appropriate preventive measures. Any such refusal of an employee shall be assessed on a case-by-case basis.

## **What are the implications of restrictions to entry/exit to/from zones under quarantine?**

Restrictions apply to entry to/exit from Kazakhstan. Business trips to cities that are under quarantine regime are prohibited due to restrictions on internal movement.

An employer may consider payment of the minimum wage (KZT 42,500 / month) for downtime, if a particular employee has not been able to cross the border or enter cities that are under quarantine regime.

## **How should a company implement its remote work regime?**

“Remote work” can be introduced based on an agreement between an employer and an employee.

An employer must provide employees with the means of communication and technology necessary for the job.

An employer must keep timesheets or other records of working time of employees.

Remote work due to epidemic or pandemic is not specifically regulated by the labour code. General rules apply. This requires a notification on change of labour conditions, which an employee has 5 working days to consider. This is followed by an addendum to the employment agreement.

Employers could consider adopting a remote working policy.

## **If remote work is not feasible, what are other options?**

A part-time working schedule could be introduced, implemented by:

- a part-time working day, reducing the duration of daily work (work shift);
- a part-time working week, reducing the number of working days in a working week;
- a simultaneous reduction of the duration of daily work (work shift) and working days in a work week.

If employees work at the employer’s premises, the employer should take protective and disinfecting measures.

Similar to remote work, a part-time regime is considered as a change of employment conditions requiring notification and an addendum to an employment contract.

Introducing part-time work usually leads to changes in monthly salary.

## What if the business is temporarily closed due to sanitary-epidemiological requirements?

Some of the preventive measures taken by the government require temporary closure of business. Examples include non-food trading markets, shopping and entertainment centers, malls, cinemas.

This could be considered as downtime for the employees concerned: they are entitled to the minimum wage unless a higher salary is agreed.

An employer should issue an order which defines conditions of payment for the period of downtime.

## May an employer reduce staff due to COVID-19?

An employer has discretion to reduce staff. However, an employer should comply with requirements stipulated by the Labour code (e.g. notifying the employee, a local employment center and payment of compensation, etc.).

It is important to consider restrictions on reduction of employees of pre-retirement age, pregnant women, women with children under the age of 3, single mothers raising children under the age of 14 or a disabled child under 18 etc.

Instructions of the Prime Minister (20 March 2020) on preservation of jobs within the pandemic period should be considered.





# Employees' Personal Data Protection

## What kind of personal data can be processed by an employer in the context of COVID-19?

Due to labour safety obligations, an employer must take all reasonable measures to prevent the spread of COVID-19 at the workplace. For this purpose and in certain other cases an employer may process personal data which in ordinary circumstances would not be permissible under data protection requirements.

Under the Code on Health of People and the Healthcare System (the "Healthcare Code"), information about medical care applied, the state of an individual's health, the diagnosis, and other information obtained during his examination and (or) treatment is considered a medical secret. With respect to such personal data, the Healthcare Code sets a higher standard of protection and provides for an exhaustive list of the grounds for its processing.

One of the grounds to process such data is for health protection purposes when there is a threat of disease spread that is dangerous to others. In such cases data processing is permitted without an employee's consent.

Therefore, an employer can process information about an employee's recent travel history and presence of symptoms, in case the employee has symptoms – with whom and when he/she had contact at the workplace, etc.

An employer shall not collect or process an employee's personal data that is not objectively related to prevention of the spread of COVID-19.

## What security measures must an Employer undertake to ensure the security of personal data?

Pursuant to Kazakhstan laws on personal data protection, an employer should have a list of persons authorized to collect and process personal data.

With respect to COVID-19, it is advisable that personal data from an employee should be obtained by such authorised person in the company. An employer should not disclose an employee's personal data to third parties, other than relevant state authorities.





# Performance of Contractual Obligations

## COVID-19: force majeure event?

COVID-19 or circumstances arising therefrom, may be regarded as force majeure and thus exempt a party from liability due to failure to perform a contractual obligation.

For an event to be the force majeure, certain preconditions must be met including:

### 1. The event must directly cause non-performance of contractual obligations

Notwithstanding that COVID-19 is a large-scale event, a party must prove that performing its obligations under a particular contract is impossible. A direct link between failure to perform the obligations and the force majeure event must be proved.

### 2. The event must be unusual and must occur beyond control of the party

By its very nature, COVID-19 is an unusual event and has occurred beyond the parties' control. However, in each case, it is necessary to assess whether the circumstances directly impeding the performance of the obligation have occurred beyond a party's control.

### 3. It should not be reasonably possible to foresee and avoid the event

It was not reasonably foreseeable that a global pandemic would be declared by the World Health Organization or a state of emergency regime declared in Kazakhstan.

## May a party indicate COVID-19 as an excuse for failure to perform obligations when a contract does not provide for a force majeure clause?

Force majeure clauses in the contract make it easier to regulate the relations between the parties during the force majeure event.

In this respect, specific clauses relating to the force majeure must be analysed, including:

- what is the timeline to notify the counterparty?
- what are the consequences of non-compliance with the notification procedure?
- what actions should a party take to mitigate potential damage caused?
- should a party seek alternative means to perform its obligation, etc.

If force majeure is not foreseen by the contract, a party may still rely on the provisions of the Civil Code and other relevant provisions. An exemption from liability might be requested by one of the parties. According to the general rule, a person shall only be liable for failure to perform an obligation if this is caused by his/her fault. Thus, if a party proves that the failure to perform the obligation is not caused by his/her fault but by an independent and unavoidable event, he should not be liable for damages, penalties or other liabilities.

However, the absence of goods, works or services does not constitute the force majeure.

## What are the legal consequences for the parties if COVID-19 or circumstances arising from it are regarded as force majeure?

Force majeure circumstances imply **impossibility of performance of obligations**, where:

(i) **parties agree in delaying the obligations.** In this case, the contract might be regarded as suspended on the agreement of the parties. During the force majeure period, a party is temporarily exempt from performance and is not liable for breach. However, once the force majeure ends, the party will be responsible for performing the obligation under the agreement.

(ii) **by the time the force majeure period is over it will not be relevant.** A failure to perform obligations on time may result in irrelevance of continuation of the agreement. Thus, a decision on termination of contractual relations may be reached.

If contract execution for one party becomes impossible due to a circumstance for which neither party is responsible, then no party is entitled to demand the execution of the contract. In this case each party is entitled to demand a return of everything that it performed without receiving the corresponding counter-performance.

### **How can a force majeure event be confirmed?**

The mere fact of an unforeseen circumstance is not a force majeure. In order to recognize it as such, it is necessary to certify the fact of force majeure with an authorized body.

For the period of the state of emergency in connection with the spread of Coronavirus, Kazakhstan Foreign Trade Chamber LLP (ТОО "Внешнеторговая палата Казахстана") (a subsidiary of Atameken (the national chamber of entrepreneurs)) issues certificates of evidence of force majeure (for no charge).

Crucial factors for stating and determining force majeure include:

1. Existence of violation of the obligation at the moment of referring to force majeure, i.e. the violation must exist. A certificate cannot be issued when an obligation has yet to be violated or is only anticipated.
2. A direct causal relationship between a person's non-fulfillment (violation) of an obligation and the circumstances to which it refers.

To obtain the mentioned certificate, a written application signed by the head or other authorized person together with the other documents (copies/notarized copies) must be submitted. The list of such documents includes foundation documents of the company, registration certificate, agreement, payment order, etc.

### **Recommended steps in-house counsel should take during Covid -19 in relation to contracts**

1. **Identify contracts that can be affected** by the COVID-19 pandemic and the obligations that cannot be performed.
2. **Analyze the clauses that reference force majeure**, and clauses referring to assuming the risk for such events.
3. **Gather required documents** to confirm force majeure events.
4. **Notify the counterparty** of the event. Keep in mind that there may be specific deadlines in the contracts to do so. Keep close track of these deadlines.
5. **Renegotiate** contractual clauses to avoid litigation.
6. **Keep records/evidence** of situations causing concern to prepare for potential disputes.
7. **Consider measures to mitigate** the potential damage resulting from COVID-19 and alternative ways to fulfill obligations.



## Time limits in administrative and legal proceedings

- The issue of statute of limitation or time limits arises when a party intends to file a claim to the court or when a party is involved in administrative or legal proceedings. Failure to meet the statutory time frames may extinguish a party's right to submit a claim or to take certain procedural actions.
- Given the state of emergency, the Chairman of the Supreme Court gave an order to postpone some court cases or to hold court hearings with the help of videoconferencing or mobile videoconferencing.
- At the discretion of the chairman of the respective court, acceptance of new claims could be rejected until the end of the quarantine in the respective city.

### **Is it possible to suspend a statute of limitation period?**

- Under the Civil Code, running of a limitation period must be suspended if filing a claim is prevented by an extraordinary and unavoidable event. If, subject to certain preconditions ((i) fact of violation; (ii) direct relationship between violation and the circumstances to which it refers), the event arising from COVID-19 is deemed to be the force majeure, running of the statute of limitation period will be suspended.
- The statute of limitation period is suspended if the circumstances arose and existed during the last 6 months of the period. If the statute of limitation period is less than 6 months, then it should be suspended for the duration of the limitation period.

### **Is it possible to extend a procedural statute of limitation?**

- Time limits set by the Civil Procedural Code may be extended by the court, if the original time limits are missed for reasons recognized by the court as valid.
- Under the general rule, an application on restoration of the statute of limitation together with a document explaining the grounds for missing the period, should be submitted to the court when filing a claim.
- The court considers missing the statute of limitation period (or the period for an appeal) during a preliminary court hearing based on an application by the defendant or plaintiff, and decides whether the reasons for restoration are valid.



## What legal actions can be undertaken remotely?

### Court Case Registration Service

An application/lawsuit/complaint can be filed to the court electronically via the following website - <http://office.sud.kz/>. An entity has to (i) be registered, (ii) provide its individual/business identification number and (iii) use an e-signature to submit the documents. In practice due to the state of emergency, there could be technical issues such that online services are suspended. Additionally, each court has the right to decide on the working regime depending on the situation (due to COVID-19).

### Online Services related to registration of a legal entity

Remote Public Registry services can be accessed through the website - <https://egov.kz/>. Remote services include:

- State registration of a legal entity – registration of legal entities, accounting registration of their branches and representative offices, including legal entities with foreign participation; state deregistration – termination of activity of a legal entity (a branch/ representative office); state re-registration – registration of amendments and additions to the charter documents of a legal entity, etc.
- Real Estate Registry – registration of rights (encumbrances) on real estate.

### Other online services

Entity may use:

- <https://egov.kz/> for:
  - obtaining various types of certificates, including registration, participation and changes to documents of legal entity;
  - including objects of copyright and related rights, trademarks, service marks and appellations of origin in the customs register of intellectual property.
- <https://kazpatent.kz/> in order to apply for registration of copyright and industrial property;
- <http://elicense.kz/> for obtaining a license in various areas, including construction, agriculture, subsoil use.

*\*In order to receive online services, entities have to (i) be registered, (ii) provide required documents together with application, (iii) use e-signature to submit requests online.*

### Use of facsimile and electronic digital signature

- Transactions can be reflected on paper or in electronic form. Written transactions should be signed by the parties. However, if the parties cannot sign the document, they can use facsimile (copy of signature) or electronic digital signature (“EDS”). EDS is a set of electronic digital symbols issued by the National Certification Center. EDS can be issued both to individuals and legal entities.

The service for obtaining EDS remotely/ online is available at the link:  
[https://egov.kz/cms/en/services/pass\\_onlineecp](https://egov.kz/cms/en/services/pass_onlineecp)

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