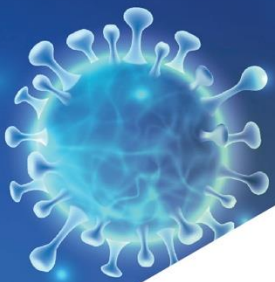
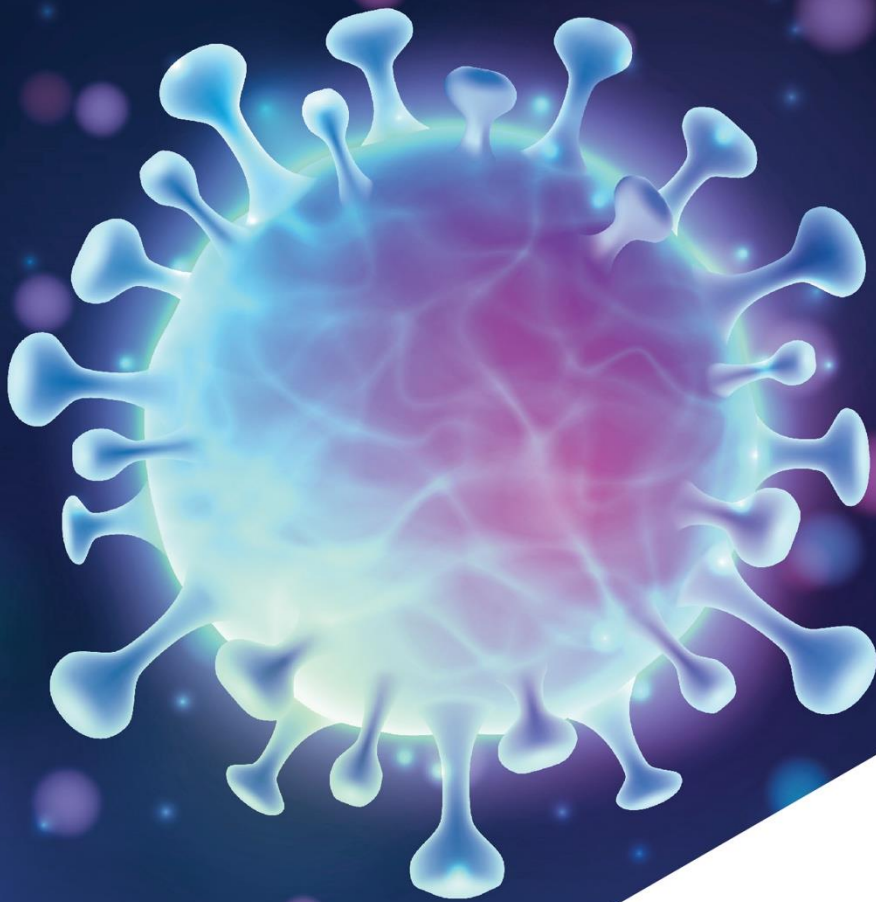




International
Labour
Organization



▶ **An employers' guide on
managing your workplace
during COVID-19**

► How to use this guide

This Employer's Guide is based on resources, guides and directives published by the World Health Organization (WHO), governments, and employers and business membership organizations (EBMOs), with special reference to the *Covid-19 Employers Guides: Managing your workplace in the face of the outbreak* published by the Australian Chamber of Commerce and Industry (ACCI). It was developed to benefit employers and EBMOs worldwide as they adapt to ongoing changes resulting from the COVID-19 pandemic.

This Guide has been developed by the International Labour Organization Bureau for Employers' Activities (ILO-ACT/EMP) as a general reference for EBMOs to share with the business community in their countries. EBMOs can customize the guide by adding relevant national laws and regulations, policies, directive and guidelines of the national and local authorities; by completing Chapter 7 on useful resources and contacts; by filling in the empty boxes where national information is required, and by making any other changes necessary to adapt it to the local context and to make it useful for member companies.

► Acknowledgements

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▶ Introduction

The recent outbreak of the coronavirus (COVID-19) pandemic is an unprecedented situation globally. The World Health Organization (WHO) and public health authorities around the world are taking action to slow the outbreak of COVID-19 and reduce infection rates. A range of policies and measures are being taken by national governments, including border closures, mandatory quarantines, restrictions of movement, prohibitions on large gatherings, and lockdowns of cities or entire countries, resulting in widespread changes to ordinary life and business activity.

While many enterprises are developing and implementing business continuity plans during the current pandemic, all employers need to adequately prepare, manage, and respond as the COVID-19 pandemic develops, including preparing for scaling down operations or possible mandatory business closures.

What should employers do? This Guide was developed by the International Labour Organization (ILO) to help employers manage their workplace during COVID-19: running your business, protecting your workers, and answering some of the workplace relations and occupational safety and health (OSH) questions that employers have.

The Guide is based on a series of questions and answers to address key employment and safety issues. As the situation is changing rapidly, it is critical that employers keep up-to-date with the latest information and developments, as published by the WHO and national and local health authorities in their respective country. Additionally, employers should always be conscious of their legal obligations under relevant laws and regulations, contracts, and collective agreements, and they should seek legal advice when necessary.

To address COVID-19, employers should:

- ▶ monitor advice provided by national and local authorities, including on work arrangements, and communicate critical information to the workforce;
- ▶ assess the potential risks of business disruption;
- ▶ review or draw up a business continuity plan that is consistent with guidelines offered by national and local authorities to enhance business resilience and support workers and their families;
- ▶ identify and mitigate risks to workers and other persons connected to the workplace arising from exposure to COVID-19;
- ▶ promote workplace hygiene and apply the principles of social distancing (also called physical distancing) in the workplace; assess business liability for workers' compensation, particularly in sectors with high work-related exposure to COVID-19;
- ▶ seek advice and support from EBMOs who can channel concerns to the government and shape policy measures that are conducive for business resilience and sustainability.

The advice and guidance given in this Guide is generic in nature and needs to be seen in the context of national laws and practise.

► 1. How can employers protect workers and the workplace?

Generally, employers have a duty to ensure the safety and health of their workers and others in the workplace. This includes providing and maintaining a work environment that is without risk to health and safety and adequate facilities for workers in carrying out their work, as is reasonably practicable.¹ Most national health and safety legislations have such provisions.

COVID-19 is the infectious disease caused by the most recently discovered coronavirus. What do employers need to do to protect the safety and health of their workers and the workplace in the face of the COVID-19 pandemic? This chapter lays out a series of questions and answers to assist employers in understanding, managing and mitigating the risks to protect their workers and the workplace.

1.1 How does COVID-19 spread?

According to the WHO, when someone who contracts COVID-19 coughs or exhales, they release droplets containing the virus. Most of these droplets fall on nearby surfaces and objects – such as desks, tables, or telephones. Workers could catch COVID-19 by touching contaminated surfaces or objects – and then touching their eyes, nose, or mouth. If they are standing within 1 metre of a person with COVID-19, they can catch it by breathing in droplets in the air. In other words, COVID-19 spreads in a similar way to flu.

1.2 What are the symptoms of COVID-19?

According to the WHO, the most common symptoms of COVID-19 are fever, tiredness, and dry cough. Some people may have aches and pains, nasal congestion, runny nose, sore throat or diarrhea. These symptoms are usually mild and begin gradually. Some people become infected but do not develop any symptoms and do not feel unwell. Most people infected with COVID-19 experience mild symptoms and recover. However, some experience more severe illness and may require hospital care. The risk of experiencing severe symptoms rises with age, in people with weakened immune systems and in people with pre-existing conditions such as diabetes, heart disease, and lung diseases.

1.3 Should employers provide information to their workers?

Workers are likely to be anxious about the COVID-19 pandemic, and they may have questions about the health risks and changes to their working arrangements or employment status. To ensure a smooth and steady flow of information throughout the workplace and prevent confusion, rumours or misinformation, employers should regularly communicate relevant information to their workers, designating a staff member or coordinator for that purpose, if possible.

Employers should:

- identify a point person or team to take the lead on communicating on COVID-19;
- keep up with the latest information from national and local authorities;
- regularly provide up-to-date and reliable information to workers;

¹ Art. 16 of the Occupational Safety and Health Convention, 1981 (No. 155): "Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health".

- ▶ clarify and communicate the company's procedures and policies, including for flexible work arrangements, remote working, absence, sick leave, annual leave, redundancy, etc.

As the situation on COVID-19 is constantly changing, providing regular updates to workers about the status of COVID-19 will help them to feel informed and well supported, and in return, stay motivated to assist and adapt through this challenging time. Employers should also provide up-to-date, reliable information to suppliers and customers.

Box 1: Updates and guidance from the WHO on COVID-19

- ▶ Guidance for employers on “Getting your workplace ready for COVID-19.”
- ▶ Dashboard on “Novel Coronavirus situation” and daily situation report: provides figures on confirmed cases, deaths by affected countries, areas or territories.
- ▶ Advice for public: Myth busters.

Source: WHO, 2020, Coronavirus disease (COVID-19) pandemic, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019> [23 March 2020].

1.4 What kind of health information should be provided to workers?

Employers should provide essential health information to everyone in the workplace about COVID-19 using guidance provided by the national and local health authorities and the WHO (box 1). For example, workers should be aware of individuals the WHO has identified as at risk of developing serious illness, including older persons and those with underlying health conditions, such as a compromised immune systems.

Different measures and guidance are being introduced by authorities to slow down the spread of COVID-19. Employers should take steps to provide the following health information to workers:

- ▶ the current situation of the virus in the country (to share new information and dispel myths);
- ▶ up-to-date health advice and guidance as published by recognized authorities;
- ▶ advice on workplace hygiene and practising social distancing or physical distancing.

1.5 What should employers do to safeguard workplace safety and hygiene?

Employers have an overall responsibility to ensure a safe and healthy work environment, as far as reasonably practicable, including specific measures to control the spread of viruses like COVID-19.² Safety and health measures are specific to each enterprise and should be developed in response to a risk assessment. Some sectors, such as health care and those where workers are in close contact with the public, require stricter control and prevention measures than other sectors. Critically, employers should identify risks and take necessary measures to control and mitigate those risks.

Every workplace can play an important role in containing the outbreak by taking measures such as:

- ▶ organizing work to reduce person-to-person contact, ensuring physical distance at the workplace or implementing remote work arrangements;

² Art. 16 of of C. 155 and Art. 3 of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

- ▶ disinfecting the workplace regularly;
- ▶ maintaining good environmental hygiene and good indoor ventilation;
- ▶ providing adequate facilities (e.g., soap, hand sanitizer, signage, and reminders) and encouraging workers to practice workplace hygiene (e.g. frequent hand hygiene, avoid touching eyes/nose/mouth);
- ▶ promoting respiratory hygiene (e.g. providing face-masks to workers especially those at risk to minimise potential infection);
- ▶ limiting or banning non-essential work travel;
- ▶ reducing interaction with people outside the workplace as much as possible;
- ▶ empowering workers to take action if they feel they are facing an unprotected work situation with imminent and serious risk to their health;
- ▶ developing infection control policies and procedures;
- ▶ directing workers to comply with quarantine measures, particularly following travel to the high-risk area or have contact with someone who has tested positive;
- ▶ directing workers to stay at home or work from home if they have flu-like symptoms (e.g. fever, cough, etc.) regardless of travel or contact history;
- ▶ complying with reporting obligations to health authorities and labour inspectorates according to national legislation and practice.

1.6 What is social distancing, also called physical distancing?

Social distancing or physical distancing refers to keeping at least a 2-metre space between people. The objective is to deliberately increase the physical space between people to prevent or minimize spreading the virus. At the workplace, this means:

- ▶ implementing flexible work arrangements (e.g. teleworking);
- ▶ increasing physical space between workers at the workplace;
- ▶ implementing flexible meetings and delivering services remotely (e.g. holding meetings via video conferencing or phone calls or considering if large gatherings can be rescheduled, staggered or cancelled);
- ▶ changing workplace culture (e.g. stop handshaking, workers taking lunch at own desk or outside rather than in the cafeteria or breakrooms, limit sharing of food in the workplace);
- ▶ reconsidering non-essential business travel;
- ▶ delivering products through curb-side pick-up or delivery.

1.7 How can employers manage and control the risk of COVID-19 in the workplace?

Identifying and controlling risks from COVID-19 to workers or other people connected to the workplace may involve:

- ▶ closely monitoring official guidance and advice, particularly updates from the national and local health authorities and the WHO;
- ▶ reviewing internal policies and measures for infection control, including educating workers on best practices on safety and hygiene;
- ▶ ensuring workers are aware of the isolation/quarantine periods and requirements in line with the directive/advice from the national and local authorities;

- ▶ providing clear advice to workers about actions they should take if they become unwell or think they may have the symptoms of COVID-19;
- ▶ monitoring the latest travel advice and restriction for anyone planning to travel for work;
- ▶ assessing whether work activities put other people at risk;
- ▶ contingency planning to manage staff absences and plans to manage increased workloads;
- ▶ providing workers with information and links to relevant services should they require support;
- ▶ contacting relevant national and local health information hotlines or helpdesks on COVID-19 for latest information and guidelines.

1.8 What are the obligations of workers concerning safety and health?

Workers have the responsibility to take reasonable care for their own and others' health and safety, and have a duty to cooperate with their employers in the implementation of preventive and control measures.³ This includes adopting safe work behaviours, using safety devices and protective equipment correctly, and ensuring good hygiene practices, such as frequent hand washing, to protect against infections.

Workers are also obliged to notify the employer if they become aware that they are suffering from any disease or physical or mental impairment, which affects the performance of their work activities or that could risk the safety, health, and welfare of other people at work.⁴ Workers have a duty to protect themselves and others, which is especially critical in the current situation.

1.9 Is COVID-19 covered under workers compensation?

Workers' compensation insurance provides support for workers with a work-related injury or illness.⁵ Whether the impact of COVID-19 is covered by workers' compensation or not is a legal question that will differ by jurisdiction and circumstance. Employers should determine the situation in their country since any workers' compensation claim will require fact finding inquiry, and certain group of workers are more vulnerable and may be protected under specific legislations.

Box 2: Persons particularly vulnerable to COVID-19 identified by the ILO

- ▶ Young persons already facing higher rates of unemployment and under employment;
- ▶ Women are over-represented in more affected sectors (such as services) or in occupations; that are at the front line of dealing with the pandemic (e.g. nurses);
- ▶ Unprotected workers, including the self-employed;
- ▶ Migrant workers.

Source: ILO, 2020a

The ILO has identified groups of people who are particularly vulnerable to

³ Art. 19(a) of C. 155: "workers, in the course of performing their work, co-operate in the fulfilment by their employer of the obligations placed upon him"

⁴ Art. 19(f) of C.155.

⁵ Employment Injury Benefits Convention, 1964 (No. 121). If workers contract occupational diseases, they should be entitled to compensation and medical care.

EBMOs to add in workers' compensation requirements based on national legislation

Whether it is covered by workers' compensation or not, employers need to minimise the risks of workers contracting COVID-19 at the workplace and should ensure that all necessary and practical measures in response to COVID-19 have been taken. If employers are concerned about this issue, it is recommended that they seek legal advice based on their specific circumstances.

► 2. What are the responsibilities of employers?

2.1 Maintaining a safe and healthy workplace and working environment

What are the responsibilities of employers concerning COVID-19 at the workplace?

While there may be no specific legislation imposing responsibilities on employers regarding COVID-19 at the workplace, most of the national employment and OSH legislation oblige employers to provide and maintain, as is reasonably practicable, a safe workplace to ensure the safety and health of their workers and others at the workplace. This includes providing and maintaining a work environment that is without risk to safety and health, which includes identifying risks associated with potential exposure to COVID-19, and taking necessary measures to control those risks (see sections 1.5–1.7 for details on steps to be taken by employers).

Employers are required to provide workers with adequate information about the health hazards involved in their work,⁶ consult workers on OSH aspects of their work,⁷ and where necessary and so far as is reasonably practicable, provide adequate personal protective clothing and equipment, at no cost to the worker.⁸

Employers should also be aware of the latest policies or directives adopted by national or local authorities that may require employers to observe certain work practices or arrangement such as teleworking, “take away only” for restaurants and cafes, or even orders to shut down non-essential business activities.

In short, even in the absence of any statutory obligation, employers should still develop a plan of action to protect the safety and health of workers and to minimize or eliminate risks of the spread of COVID-19.

2.2 Managing workers who are sick or who may have been exposed

(a) What should employers do if a worker is feeling unwell and suffering flu-like symptoms?

According to the WHO, the most common symptoms of COVID-19 are fever, tiredness, and dry cough. Some patients may have aches and pains, nasal congestion, runny nose, sore throat, or diarrhea. These symptoms are usually mild and gradual. If workers present these symptoms, they should be directed to follow advice from the national or local health authority and seek urgent medical attention if they suspect they have contracted the COVID-19 virus.

The health and safety of staff and those they come into contact with must be an employer’s top priority. This should dictate the approach an employer takes in responding to workers who may have been exposed to COVID-19.

The workers can avail themselves of their sick leave if they take time off work due to being ill with the COVID-19 virus. Workers may be entitled to paid sick leave (including hospitalization leave) as per the applicable employment legislation, terms and conditions in the contract or collective agreement.

⁶ Para. 22 of the Occupational Health Services Recommendation, 1985 (No. 171).

⁷ Art. 19(e) of C.155.

⁸ Articles 16(3) and 21 of C.155.

EBMOs to add in sick leave requirements based on national legislation

(b) What should employers do if a worker has recently returned from overseas?

Some governments have imposed a mandatory 14-day quarantine for anyone returning from overseas, while others have implemented precautionary measures of self-quarantine (box 3). While employers should keep up-to-date on the latest directives issued by the government, it is nevertheless recommended for employers to implement the precautionary 14-day self-quarantine even if it is not required by the government. This means that all people – whether they are citizens, residents, or visitors – should voluntarily self-quarantine for 14 days upon returning from overseas due to the possibility of exposure to the COVID-19 virus.

Box 3. What does self-quarantine mean?

If you are required to self-quarantine, you:

- ▶ must not attend work, school, child care or university;
- ▶ must not go to other public places such as restaurants, cinemas or shopping centres;
- ▶ must not use public transport or taxi;
- ▶ must not allow visitors into your home - only those who usually live in the household should be in the home;
- ▶ must stay in a different room to other people as much as possible.^{a/}

Employers are advised to refer to the quarantine or isolation guidance issued by the WHO⁹ or the national health authorities.

^{a/} See www.dhhs.vic.gov.au/victorian-public-coronavirus-disease-covid-19#u-self-quarantineu.

(c) What should employers do if a worker is required to be quarantined upon returning from overseas?

While technically a worker may not be entitled to sick leave or disqualified as “not fit for work” as he/she is not yet ill or diagnosed as ill, employers should consider practical solutions when workers are required to be quarantined so that they, where possible, do not suffer from a loss of pay during the isolation period, such as:

- ▶ allowing the worker to work from home (where feasible), during the quarantine or isolation period;

⁹ WHO, 2020b.

- ▶ allowing the worker to utilise other leave¹⁰ available (such as annual leave, long service leave, banked overtime or any other leave available under a collective agreement or contract of employment);
- ▶ using any other paid or unpaid leave by agreement between the worker and the employer (e.g. sick leave or discretionary leave, etc.).

If the worker is required to take unpaid leave with no salary for the period of quarantine or sickness, he/she may be able to receive (sickness) cash benefit from the State as recommended in the Medical Care and Sickness Benefits Recommendation, 1969 (No. 134)¹¹. For example, in Singapore the Government will pay the employers SG\$100 (US\$68.50) per day per worker in quarantine for the duration of the quarantine. The benefit will also be paid to self-employed workers.

EBMOs to add sickness benefit based on national legislation

Employers should be aware they may risk breaching employment legislation if they allow a worker to use sick leave when the worker is not actually ill, even where the worker agrees to this approach. Employers are always recommended to check any applicable laws and legislation, collective agreements, employment contract, terms and company policies as they may contain additional rules or entitlements that may apply to the workplace and the workers.

EBMOs to add in paid leave requirements based on national legislation

¹⁰ The Holidays with Pay Convention (Revised), 1970 (No. 132) provides that the timing of holidays is to be determined by employers after consultation with the worker.

¹¹ Para. 8 of the Recommendation.

(d) What should employers do if a worker has been in close contact with someone who has or may have COVID-19?

If a worker has been “in close contact with” someone who has or may have COVID-19, they may be required to self-quarantine because of their possible or actual exposure to the virus (box 4).

Similar to the guidance offered in section 2.2(c), workers in these circumstances who need to self-quarantine but are not yet sick or diagnosed as ill cannot avail themselves of sick leave, as they are not qualified as “not fit for work” but merely require isolation. Employers should discuss the matter with the affected workers and, where possible, integrate practical solutions set out in section 2.2(c) so that workers do not suffer from a loss of pay during the isolation period.

Box 4. What does “in close contact with” mean for the purpose of this guide?

- ▶ Greater than 15 minutes face-to-face contact in any setting with a person who has tested positive for COVID-19 in the period extending from 24 hours before onset of symptoms in that person.
- ▶ Sharing of a closed space with a person who has tested positive for COVID-19 for a prolonged period (e.g. more than 2 hours) in the period extending from 24 hours before onset of symptoms in the confirmed case.
- ▶ Living in the same house or shared accommodation as an infected person.

Source: Australia, Government of New South Wales, 2020

(e) What happens if a worker’s immediate family member contracts the COVID-19 virus or his or her children’s school is closed?

Employment legislation, collective agreements or employment contracts can provide for paid emergency or care leave for workers who need to take care of an immediate family member who is sick or injured or during a family emergency such as sudden closure of child care or schools without prior notice. In such cases, workers will likely be able to use accrued leave (annual leave, emergency leave, or care leave as applicable) for this purpose even if their child is not ill or injured, as recommended in the Workers with Family Responsibilities Recommendation, 1981 (No. 165).¹² Workers who have to care for sick family members should also receive support from the government as recommended in the Medical Care and Sickness Benefits Recommendation, 1969 (No. 134).¹³

If the worker’s immediate family member has contracted COVID-19, the worker should be quarantined, as suggested in 2.2(d).

In the case of a worker seeking leave due to the closure of his or her child’s school, and in the absence of the legislative or contractual provision for such care or emergency leave, employers should consider:

- ▶ permitting the worker to avail the accrued paid leave;
- ▶ permitting the worker to take unpaid leave;

¹² Para. 23(1) and (2) of the Recommendation.

¹³ Para. 10 of the Recommendation.

- ▶ developing a flexible plan for the worker to use telephones, the Internet, and other office methods to do moderate work at home while also fulfilling family responsibilities like spending time with his or her children and supporting their education without jeopardizing income security (employers may refer to guidance from the United Nations Children’s Fund (UNICEF) on family-friendly policies and good workplace practices in the context of COVID-19¹⁴);
- ▶ arranging payment of the worker's wages based on his or her performance of the job at home.

EBMOs to add in workers care benefits and responsibility requirements based on national legislation

(f) What if a worker has a high likelihood of having contracted COVID-19, but still wishes to attend work?

Employers have a duty to provide and maintain, so far as is reasonably and practicable, a working environment that is safe and without risks to the health of workers¹⁵. Similarly, workers have a duty to take reasonable care for their own and others’ health and safety. If a worker is suspected of having contracted COVID-19, it is highly recommended not to permit the worker to come to the workplace (use of self-quarantine and other work arrangements are recommended as in 2.2(c)) and, if necessary, direct the relevant worker to undergo testing, if available. Workers can be directed to obtain medical clearance, which may include being tested for COVID-19. If the worker is cleared, he/she can return to work, but if the worker tests positive, he/she would be allowed to take sick leave for the duration of the absence.

EBMOs to add in requirements on infected workers based on national legislation

(g) What if a worker refuses to come to work because he/she is concerned about the risk of exposure to COVID-19 at the workplace?

Employers have the duty to ensure a safe and healthy workplace. If the employer agrees to the concerns raised on COVID-19, they must do what is reasonably practicable to address the risk as indicated in section 2.2(a)–(f) (box 4).

Even where employers have taken reasonable and practicable steps to address and minimize the risk of exposure in the workplace, some workers may still have concerns about exposure, including exposure while commuting to the workplace via public transportation. In these situations, employers

¹⁴ UNICEF, 2020.

¹⁵ Art. 16 of C.155.

may agree for the worker to work from home, and if the nature of work is not suitable for remote working, employers should consider permitting the workers to take accrued paid leave or unpaid leave.

EBMOs to add in requirements on workers' right to remove herself/himself from a work situation which she/he has reasonable justification to believe presents an imminent or serious danger to her/his life or health based on national legislation

Box 5. What do international labour standards say on workers being able to remove themselves from a situation that poses work-related health and safety risks?

Article 19(f) of the Occupational Safety and Health Convention, 1981 (No. 155) states:

There shall be arrangements at the level of the undertaking under which--

(f) "a worker reports forthwith to his immediate supervisor any situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health; until the employer has taken remedial action, if necessary, the employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health".

(h) What about temporary, contract or casual workers¹⁶?

Temporary, contract or casual workers are entitled to miss work when they are unwell or injured. However, whether they are entitled to paid sick leave or other benefits for the days/shifts they do not work largely depends on the national laws and regulations, or the company's policy.

Similarly, where the shifts of temporary, contract or casual workers are reduced due to a business downturn or because the worker has been required to isolate (due to contact or recent travel), the issue of whether he/she is entitled to payment during this period will depend on national laws and regulations, or the company's policy.

Nevertheless, as a matter of good will and good practice, some organizations using temporary, contract or casual workers may decide to offer full or partial sick pay or severance payments even though they are not obliged to do so. For example, some digital platform companies have offered financial assistance to platform workers diagnosed with COVID-19 or required to self-isolate to help them cope financially.¹⁷ In addition, some governments are launching various income assistance scheme to support workers to overcome this difficult period.

¹⁶ Temporary, contract or casual workers refer to workers engaged in diverse forms of employment which also include part-time work, temporary agency work and subcontracting, dependent self-employment and other disguised employment relationships.

¹⁷ CIPD, 2020.

EBMOs to add in requirements temporary employment based on national legislation, as well as government income support scheme

2.3 Giving instructions to workers

(a) Can employers send a worker home if he/she has symptoms of COVID-19?

Employers have a legal responsibility to ensure the health and safety of those in the workplace, including visitors. Where an employer believes that a worker is posing a health risk – such as by showing symptoms of the COVID-19 virus – the employer can send the worker home on sick leave on the basis that they are unfit to work.

Employers should ask the worker to seek medical advice, testing and clearance before returning to work. If the worker maintains he/she can work, consider whether it is practical for the worker to work from home.

Once the test is undertaken, the worker may return to work if he or she is cleared. If the worker tests positive, see section 2.2(a) regarding pay and leave obligations and entitlements that may apply.

EBMOs to add in requirements on medical examination based on national legislation

During the COVID-19 outbreak, employers should remind workers of their obligation to take reasonable care not to affect the health and safety of other persons adversely, and workers should be required to notify their employer immediately if they are suffering flu-like symptoms.¹⁸

(b) Can employers ask workers to have their temperature taken?

Although employers may be permitted to ask the workers to have their temperature taken to prevent the spread of the COVID-19 and ensure the safety and health of everyone in the workplace, the worker must voluntarily agree to it, unless it is permitted under the government's policy or directive. In the absence of such provision or directive, if the worker refuses to have his or her temperature taken and the employer subjects them to disciplinary action, the employer may face legal risks. Employers, however, can reasonably deny access to the workplace to any worker who does not consent with such a requirement.

It is important for employers to refer to national legislations, policies or the latest directives issued by recognized authorities, including equal opportunity and privacy laws, to decide if a temperature check is permissible. For example, measuring a worker's body temperature has been considered as medical

¹⁸ Art. 19(f) of C.155

examination in the United States, but recently the United States Equal Employment Opportunity Commission, in its updated guidance on 19 March 2020, gave employers the green light to take workers' temperatures as a measure to control the spread of the virus.¹⁹

(c) Can employers direct workers not to come to work even if they are not showing signs of COVID-19 and are not required to isolate themselves?

If the employer directs a worker not to come to work despite being fit and able to do so (and not subject to any government quarantine requirements), best practice will suggest that the worker continues to get paid. In this situation, it is essential to check and consider whether the employers can simply issue this instruction (e.g. according to the worker's contract or as a reasonable and lawful direction based on factual information about health and safety risks) – or whether worker consent is needed. Again, employers should check any applicable laws and regulations, contract terms and company policies – and seek specific advice.

(d) What should employers do if a worker is required to travel overseas or within the country for work?

Travel should be avoided or minimized during an outbreak like COVID-19. Employers should check the latest travel advisory and restriction and make sure that the company's travel policies address where workers can travel, the reasons for travel and permission required. Employers should constantly assess the benefits and risks of requiring workers to travel, particularly overseas, even for critical meetings. Workers should be informed that travel policies are constantly under review and may be subject to regular change. Employers should also carefully check any insurance coverage for work-related travel.

If travel is unavoidable:

- ▶ make sure both the employers and workers have the latest information on areas where COVID-19 is spreading (the latest information can be accessed at from the WHO);
- ▶ avoid sending workers who may be at higher risk of serious illness (e.g. older workers and those with medical conditions such as diabetes, heart disease and lung disease) to areas where COVID-19 is spreading;
- ▶ make sure any workers travelling to locations reporting COVID-19 are briefed on the risks involved and precaution measures to be taken, and receive with necessary protection, such as face masks or an alcohol-based hand sanitizers to facilitate regular hand-washing;
- ▶ encourage workers to wash their hands regularly and stay at least 1 metre away from other people;
- ▶ ensure workers know what to do and who to contact if they become ill while traveling;
- ▶ ensure workers comply with instructions from local authorities where they are traveling, including complying with any local restrictions on travel, movement, or large gatherings.

(e) Can employers give directives to workers about non-work-related travel?

In principle, employers should not give directives to workers that might extend to or impact the personal or private activities of the worker and that would not otherwise affect his or her work. However, where there is a significant connection between the outside activity and the worker's employment, such as

¹⁹ US Equal Employment Opportunity Commission (EEOC), "What You Should Know About the ADA, the Rehabilitation Act, and COVID-19" https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

the possibility of mandatory quarantine, the employer may be in a position to direct staff to abide by the travel advisories of the government.

Nevertheless, employers should inform workers that, when making personal travel plans, they should understand the risks they are taking and refer them to government travel advisories and company directives (if any). Employers should also alert workers that they may be subject to government or company quarantine measures when they return, and that the employer will bear no responsibility of expenses incurred related to non-work-related travel.

2.4 Should visitors be allowed in the workplace?

Taking extra precautions by limiting visitors to the workplace is important in reducing exposure to COVID-19 in the workplace. While it may not be necessary to ban visitors from coming to the workplace entirely, employers have the right to ask visitors to provide information in advance as to whether they have flu-like symptoms, have been in contact with anyone infected with COVID-19, or travelled to a high-risk area. If a visitor answers affirmatively to any of these questions, employers should request the visitor not to come to the workplace until they have been isolated for 14 days or can provide a clearance letter from a doctor. Employers may also ask the visitors to provide contact information in the event COVID-19 later develops in the workplace, and the visitors may have been exposed to it.

▶ 3. Is working from home an option?

In line with the advice of the WHO, governments are imposing different measures to contain the spread of COVID-19, to the extent of shutting down non-essential activities, restricting the movement of people, or even locking down the entire city. In this uncertain situation, it is crucial that employers are making contingency plans to respond to different situations as it arises.

Reducing face-to-face contact is an important measure to mitigate the impact of COVID-19. Depending on the location and the spread of COVID-19, employers may need to ask workers to work from home, or the workers may request to work from home if that is an option. With this, however, comes several practical implications to consider. While not every position and every activity can be conducted remotely, this is an immediate consideration for many workplaces if the spread of the COVID-19 virus worsens.

It is also important to remember that regardless of where the workers work, employers are still responsible for their physical health and safety while they work, as well as their mental well-being.

Employers should develop a company's directive or guidance on working from home to provide clear advice to workers. The answers to the following frequently asked questions may be useful when considering this working arrangement and developing company directive.

3.1 What should employers consider before implementing a policy on working from home?

Before going ahead with a work-from-home arrangement, employers must decide if the work activity is suitable for remote working. If it is, then employers should discuss with their staff to make sure of the following:

- ▶ appropriate equipment, technology and training that are essential for staying connected to colleagues and the organization are provided;
- ▶ clear expectations are set for both managers and workers on what the work and conditions should be;
- ▶ time sovereignty to support productivity is given to workers to empower them to work in times and places that are convenient so they can be as productive as possible;
- ▶ safety and health risks are assessed and reasonable preventative action in relation to working from home is taken (i) if it involves manual tasks, (ii) hazards and risk, (iii) electrical safety, and (iv) the general environment like noise, security first aid or fire exit, etc.;
- ▶ potential risks that the worker has reported are assessed, including any specific risks regarding working from home (e.g. domestic violence);
- ▶ workers obligations are agreed around issues and policies such as working hours, confidentiality, and safe work practices while working at home;
- ▶ ensure workspaces are suitable;
- ▶ establish means of contact between the employer and worker and pre-arrange means of communication.

3.2 What equipment should be provided to workers to enable them to work from home (teleworking)?

Equipment already in use in the workplace, e.g. laptop, mouse, monitor, keyboard, and headsets, could be used for teleworking. If the employer provides any equipment, it must be in good condition and suitable for the work activity.

Suitable equipment already available in the worker's home can be considered for temporary teleworking.

3.3 What precautions should be taken if the workers are using computers and digital technology while working from home?

Employers should give information to workers on issues associated with the work to be undertaken at home. For teleworking the employer should consider the following:

- ▶ **Data security:** ensure that data security is maintained where staff are working from their own homes. Where remote working involves the transmission of confidential data outside of the workplace, the employer will need to ensure that systems enable the safe transmission of such data.
- ▶ **Skills:** have a robust information technology system in place with the necessary safeguards essential, and so too is the skills and awareness of the remote worker. Online training can be utilized to refresh skills in this area.
- ▶ **Well-being:** (i) offer varying work tasks to ensure that workers are not working in the same position for long periods; (ii) set up equipment to minimize twisting or over-reaching; (iii) have enough workspace for the equipment and any other materials needed to carry out the work; and (iv) encourage workers to take regular breaks and to stand and move from time to time.

3.4 What other general supports and means of communication should be put in place for workers working from home?

Working from home can result in workers feeling isolated, working longer hours, and blurring the lines between work and family life. It is important that workers know they have support at all times during working hours.

Employers should consider the following:

- ▶ ensuring all contact details for workers are on file and agreeing on the means of contact;
- ▶ arranging regular updates via phone, web or email with each worker;
- ▶ providing workers with emergency contact numbers;
- ▶ arranging information technology support in the event of technical problems where relevant;
- ▶ providing workers with information detailing when they need to contact their employer;
- ▶ making sure work is organized in such a way that the worker takes regular breaks and can separate his or her work life and daily life;
- ▶ providing workers with regular feedback on their work;
- ▶ encouraging workers to maintain contact with colleagues.

3.5 Are workers covered under workers' compensation while working from home?

Generally, if both parties agree to the work from home arrangement, the workers should be covered under the workers' compensation insurance. However, employers are advised to refer to the applicable national workers' compensation legislation to verify who is responsible for the workers' safety and health, in case the worker sustains an injury in the course of their work while at home.

EBMOs to add-in requirements on teleworking based on national legislation

3.6 Are workers obliged to observe the company's directive to work from home?

Workers are under a legal obligation to co-operate with the employer to secure a safe and healthy working environment in support of relevant statutory provisions, collective agreements or company policies.²⁰ It is important to reiterate that this applies despite the informal surroundings, such as a person's home. Workers need to take reasonable care to protect their own safety and follow the advice of their general practitioner, health-care providers and employers.

²⁰ Art. 19(a) of C.155.

► 4. Can employers change or scale down operations?

Various measures are being taken by governments in response to COVID-19, including border closures, restriction of movement, shut down of non-essential activities, etc., which impacts the operation and sustainability of businesses. Employers must be prepared and implement a business contingency plan should the situation require.

The following section addresses the worst-case scenarios and suggests some contingency measures that businesses may consider to mitigate the impact of COVID-19.

4.1 What are the alternatives if teleworking is not feasible due to the nature of occupation and job functions?

There are occupations or job functions where it is not feasible for the worker to work from home, such as frontline operations, manufacturing assemble lines or fieldwork at construction sites, shipyards, or plants. In such scenarios, employers should take the following precautions.²¹

(a) Reduce the duration and proximity of physical interactions

Employers should minimize the need for physical meetings, e.g. by using teleconferencing facilities. If there is a critical need for physical meetings to proceed, the number of attendees should be limited, and the duration shortened. They should also be dispersed to more than one meeting venue and linked up through videoconferencing or teleconferencing. Employers should also provide for wider physical spacing (of at least 1 metre apart) for workstations. Seats in meeting rooms should also be spaced at least 1 metre apart.

(b) Stagger working hours

Employers should implement staggered working hours to reduce possible congregation of workers at common spaces. Timings of lunch and other breaks should also be staggered. Where possible, reporting and end times should not coincide with peak-hour travel, especially if workers require the use of public transport.

(c) Defer non-critical work events and scale down critical work events

Employers should defer events or activities which are not critical to business operations, such as welfare activities or celebratory functions, until the situation stabilizes. For events that are critical to the business operations and cannot be deferred, employers should:

- limit the number of participants (or as per the directive or guidance from national or local authorities) at any point in time;
- put in place precautionary measures such as online registration;
- reduce the crowding of participants e.g., ensure that participants are seated at least 1 metre apart;
- remind participants to practice social or physical distancing;
- encourage workplace hygiene (e.g. frequent hand hygiene, avoid touching eyes/nose/mouth);

²¹ Singapore, Ministry of Manpower, 2020.

- ▶ provide adequate facilities and preventive gear, e.g. alcohol-based hand sanitizers or face masks;
- ▶ reduce the mingling of participants such as during mealtimes; and
- ▶ improve ventilation where possible e.g. open windows weather permitting.

(d) Implement or enhance shift arrangements

For suitable workplace settings such as in manufacturing, employers can consider scheduling workers in shifts, if such arrangements are not yet in place while extending operational hours to maintain production output.

Employers should consider clear separation of workers on different shifts, such as implementing measures to ensure workers are not enter and exit at the same time, and stepping up cleaning of common areas during shift changeovers.

Before implementing these measures, employers should communicate and explain to workers, engage the union (if applicable) or inform the relevant authority (if required) on such arrangements. Employers should check the relevant legislation, collective agreements, or contracts to ensure the necessary procedures are adhered to.

4.2 Can employers change operating hours or rosters of workers?

As a result of the spread of COVID-19, some employers may be considering varying operations, for example, to reduce the risk of exposure for workers by changing the start and the finishing times or to address changes in demand patterns of consumers, or to comply with government directives. Except for complying with government directives, an employer's ability to vary hours or rosters may depend upon relevant collective agreements or contracts that apply to their workers. For example, some employers whose workforces are covered by a collective agreement may be restricted from altering work arrangements without first consulting with workers (and potentially also unions). Therefore employers are strongly recommended to engage the union (if applicable) when considering making certain variations to the operation and seek advice on the specific options and obligations before making any changes. This should be an underlying requirement whenever an employer wishes to change any work arrangement practise that would impact the worker.

4.3 Can employers scale down operations in light of falling demand?

As a result of measures taken by governments to reduce the potential spread of COVID-19, businesses in some sectors have suffered sharp declines in volume and revenue. As a response, some employers will need to implement cost-saving measures by scaling down operations. For example, businesses may need to:

- ▶ place a freeze on new hires;
- ▶ reduce any supplementary labour such as contractors;
- ▶ reduce worker working hours;
- ▶ provide annual leave or long service leave in advance or at reduced pay;
- ▶ encourage workers to take leave without pay etc.

An employer's ability to make such changes will largely depend upon the applicable legislation, collective agreement or contract that applies to their workers. Employers should be aware of government measures, social protection and support for workers, including income support, cash transfer, social assistance, unemployment insurance benefits, job protected leave etc. and

communicate this information to the workers. For example, the Government of Ireland is providing COVID-19 pandemic unemployment payment of €203 per week for six weeks for affected workers (including self-employed workers) who have been impacted but who are not ill or self-isolating.

Employers are also recommended to seek advice on the specific options and obligations including engaging the union (if applicable) and consulting EBMOs before making any changes to scale down operations.

4.4 What are the steps and procedures to be taken before making a worker redundant?

Due to measures taken by some governments to restrict or temporarily shut down business activities, or falling consumer demand, some employers may eventually be forced to reduce the size of their workforce and make some staff redundant. The following are the questions and answers with regards to redundancies:

Before making any worker redundant, it is important first to consider:

- ▶ whether there are any options for redeployment within the business or associated entities;
- ▶ the applicable national laws, regulations and government policies, directive or advice in the context of the current situation;
- ▶ the consultation obligations²² under applicable laws and regulations,²³ collective agreements or company policy, including engaging the union if applicable;
- ▶ the support scheme, stimulus or bailout package offered by the respective government to business to overcome this difficult situation, e.g. tax relief, cash flow assistance, wage subsidies, emergency relief payment etc. For example, small business with fewer than 20 full-time workers in Australia will receive 50 per cent of an apprentice or trainee's wage subsidy up to 7,000 dollars (US\$4,200) per quarter. Eligible small businesses in the United Kingdom will receive a one-off grant of £3,000 (US\$3,650) to help meet ongoing business costs.

The employers should also consult the EBMOs for advice and support, including to put forward their concerns and submit them to the government.

If employers must reduce their workforce, most employment legislation have the provisions for redundancy payment or termination benefits for all or specific group of workers, subject to certain conditions. The amount of redundancy pay workers are entitled to is usually based upon their continuous service, as well as any terms in any applicable collective agreement or contract.

Some collective agreements, employment contracts, or company policies also provide for a redundancy payment, which usually above the statutory provision. Before taking steps to make a worker redundant, it is recommended for employers to get advice on the specific circumstances as any redundancies are likely to be highly scrutinized, can be disputed and should be considered as a last resort.

²² Art 13 of the Termination of Employment Convention, 1982, (No. 158): an employer contemplating terminations for economic reasons shall provide workers' representatives with relevant information (including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out) and give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

²³ Art. 14 of C.158: The Convention also provides for notifying the competent authority, as prescribed, when terminations are contemplated.

EBMOs to add in requirements based on national legislation

► 5. What if businesses have to shut down?

The course of the COVID-19 crisis remains uncertain. Among its many impacts, the adverse effects of a continued spread of the virus both within countries and globally will test the adaptability and resilience of businesses.

5.1 Under what circumstances will businesses be forced to close?

Legislation, such as emergency acts or security acts, prevention and control of infectious diseases acts, can give the government a range of powers that could affect business operations, including the directive to close workplaces or restrict the movement of people. Under such circumstances, breaching the directives set by the government is considered an offence punishable by fines or imprisonment.

As a result of the COVID-19 crisis, some businesses have been forced to close by a government directive. A business may also be forced to close as a result of lack of stocks or customers, unavailability of supplies or access to trading partners.

5.2 Can employers lay off workers temporarily without pay?

Some employment legislation or collective agreements may have provisions giving employers the right to temporarily lay off workers without pay during certain periods. This may be the case for when a business is so severely impacted by import/export restrictions resulting from COVID-19, that there is no work available to workers, or because of a stoppage of work for any cause beyond the control of the employers. In these circumstances, the provisions in the legislation or collective agreement would apply. For example, the Australia Fair Work Act gives employers the right to temporarily lay off workers without pay during a period in which the workers cannot be “usefully employed” because of industrial action, a breakdown of machinery or equipment, or a stoppage of work for any cause for which the employer cannot reasonably be held responsible.

In the absence of such provisions, the employers should consider the following options when a need to temporarily lay off workers arise:

- Redeploying workers to other parts of the business where available;
- reducing in hours or days of work;
- encouraging workers to take accrued paid leave (such as annual leave or long service leave);
- exploring alternative leave arrangements such as extended annual leave at half pay or no pay leave;
- allowing special provisions for workers with insufficient accrued leave to cover the period of shut down (for example, allowing staff to take annual leave in advance etc.).

Employers need to communicate clearly and transparently the impact of the COVID-19 virus and the public health and safety measures on the company’s operations, services and financial situation. This could help workers understand of the inevitability of the cuts and stoppages.

If not implemented strictly in accordance with legal obligations or collective agreements, lay offs are likely to be closely scrutinized and could be challenged by workers or unions. It is recommended that an employer, before taking any decision to temporarily lay off workers (unless as a result of a government directive), consults the workers or union (if applicable) to see if alternative arrangements can be made and inform the relevant authorities (if required).

It is important to think a few steps ahead. Employers need to bear in mind that operations will resume, and they will need to have their trained and qualified workers back. It is in the employers' interest to manage staff reductions and layoffs in a way in which workers' trust and confidence are preserved.

EBMOs to add in requirements based on national legislation

▶ 6. How to avoid discrimination claims and protect the privacy of workers?

6.1 What are the obligations of employers concerning discrimination, harassment, or bullying due to COVID-19?

With the increasing attention on COVID-19 developments, fear and anxiety spread easily and stigmas may develop against those who fall ill or have been exposed.

Employers should carefully revisit and take into consideration their health and safety obligations vis-à-vis workers. This should be done so as to avoid any possible risk that an employer's practices unlawfully discriminate against or harass workers, or their family members, who have contracted COVID-19.

Employers will be liable for the conduct of workers who discriminate against or harass other workers, or members of their family, who have contracted COVID-19. To avoid this, employers will need to show they have taken reasonable measures to avoid such conduct.

Reasonable measures include:

- ▶ having a policy and implementing measures to prevent and deal with discrimination, violence and harassment in the workplace (in the context of COVID-19 and beyond);
- ▶ providing trainings to workers to reduce social stigma and prevent discrimination, violence and harassment against workers, or their family members associated with COVID-19;
- ▶ encouraging workers to be proactive in reporting incidents of inappropriate, discriminatory, harassing or abusive behaviour to their supervisor, the human resources department, union or management;
- ▶ having a procedure in handling complaints and reporting of unlawful discrimination and harassment and taking steps to ensure that complain and reporting mechanisms are confidential, gender-sensitive and safe;
- ▶ encouraging the wide and non-discriminative use of the complaint and reporting mechanisms and ensuring they are easily accessible by all workers, including migrant workers, persons with disabilities and minority groups; and
- ▶ identifying cases of discrimination and promptly responding to them in accordance with the policies and procedures and taking actions to prevent such conduct from occurring again.

EBMOs to add requirements based on national legislation

6.2 How can employers minimize the risk of unlawful discrimination claims?

Employers can minimize the risk of unlawful discrimination claims by implementing the measures outlined in paragraph 6.1 above. Employers can also ensure that any decisions made regarding workers' attendance or medical clearance are consistent with the guidance or directives of the national or local health authorities. Finally, employers can minimize risks by properly communicating with workers on the above.

6.3 Do employers have the right to collect personal information from workers or visitors?

Employers may have to collect, use, and disclose personal information, including travel history and health status, to prevent or manage the spread and risk of COVID-19 in the workplace. Employers should make sure the procedures and practices are in line with national legislation on disclosure of health information (if any).

The Occupational Health Services Recommendation, 1985 (No. 171) indicates that the privacy of workers should be protected and that health surveillance is not used for discriminatory purposes or in any other manner prejudicial to their interests.²⁴

Generally, employers should not disclose the reasons for a worker's leave or remote working arrangements, except for those workers who require that information to carry out their employment duties. Where possible, employers should notify workers who have been subject to a high risk of COVID-19 in the workplace. What constitutes a high risk will vary depending on the type of work and the person they associate with and should be determined in consultation with qualified medical personnel.

In carrying out such notifications, employers should make reasonable efforts not to disclose information that might (alone or together with publicly available information) identify the individual. The objective, instead, is to provide potentially exposed workers with sufficient information to obtain medical advice and, if necessary, treatment.

²⁴ Para. 11(2) of the Occupational Health Services Recommendation, 1985 (No. 171), contains further provisions on protection of personal data relating to health assessments done by occupational health services, and Para 14 states "Personal data relating to health assessments may be communicated to others only with the informed consent of the worker concerned". The ILO code of practice on the protection of workers' personal data, 1997, contains further useful guidance.

▶ 7. Useful resources and contacts

EBMOs to add in “Key Contacts” and local numbers/websites

7.1 Key resources

- (a) World Health Organization – Coronavirus disease (COVID-19) outbreak
- (b) Government websites that have reliable, up-to-date information about the status of the COVID-19 in the country and globally.

7.2 Key contacts

- (a) The Ministry of Health
- (b) EBMOs to add their name

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► Contact

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