

Legal consequences of the coronavirus

The coronavirus outbreak and the subsequent measures adopted by various governments have had significant effects on most businesses. Many companies experience a sudden loss in revenues and have major liquidity challenges.

In dramatic times it may be tempting to cut corners to save time and money. It is essential, however, to remember that the crisis will not last forever. When the economic boom returns, it would be of great advantage if your company can avoid having to spend time and money on disputes with stakeholders because of bad decisions during the dramatic months of March and April 2020.

To act lawfully has significance beyond the purely legal. If properly treated during the crisis, stakeholders as employees, customers, and suppliers will return with increased loyalty and motivation.

In this blog post, Selmer law firm provides useful guidance and templates on a legal issue that has proven to be very useful during the coronavirus outbreak: temporary layoff ("Permittering"). Temporary layoff is an effective and widely used instrument to quickly reduce fixed costs, while at the same time safeguarding employees.

Temporary layoff

What is a temporary layoff?

Layoff is a temporary arrangement in which an employee has been subject to exemption from work, and the employer at the same time is exempted from its obligation to pay salary. The employment endures, and it is assumed that the stoppage of work is only temporary.

Some companies jump to the conclusion that they should effectuate temporary layoffs because "everyone else" is doing it. For most companies, however, temporary layoffs should be considered only after investigating other cost-effective measures.

There must be reasonable grounds to lay off employees. Circumstances must exist on the part of the company, or unforeseen events, which makes it necessary to lay off. Consequences of the coronavirus give a just reason for layoff if the need for manpower is reduced and there is no work for the employees. However, if the company still has enough assignments, the employer will not have a legal basis for using layoffs.

Usually, the employee is entitled to salary the first 15 working days of the layoff (employer period). The Government has, however, decided that the employer's salary obligation shall only apply the first 2 working days. After the expiry of the employer period, the employee must apply for unemployment benefits from NAV.

How is the process?

Step 1

A company considering layoffs should ensure that the decision is made by the correct corporate body. For most companies, it involves the board. Selmer has prepared draft minutes, which you can find in the other forms of our Legal Tool Kit.

Step 2

The next step is to carry out consultations with the company's employee representatives. In principle, the obligation to consult only applies to companies bound by collective agreements or companies with more than 50 employees. However, we recommend that all companies comply with this procedure to ensure proper handling. Selmer has prepared draft minutes from consultations with the employee representatives, which you can find among our templates.

Step 3

The selection of employees who are to be laid off must be based on just/fair criteria. The criterion should be discussed with the employee representatives (see step 2). If the company is not subject to any collective agreements, the employer may establish its own criteria for selection, where qualifications may be the main criterion. We also recommend considering seniority as an applicable criterion. The criterion must, in any case, be objective. The selection of the employees should be documented in writing.

Step 4

Layoffs shall normally be given with 14 calendar days' notice. The notice period, however, is 2 calendar days in case of "unforeseen events." The coronavirus eruption may be foreseen or unforeseen, depending on the specific circumstances. Whether a notification period of 2 or 14 days applies must be explicitly considered. For many companies where the need for manpower has disappeared "overnight" due to the measures from the authorities, the two-day notification period will apply. You should discuss the applicable notice period with the employee representatives (see step 2). Selmer has prepared a draft notice of temporary layoff, which you can find in the rest of our templates.

