

Hogan
Lovells

COVID-19 webinar series

19 March 2020

Employment and data privacy



Agenda

1. Global observations on employment
2. U.S. view
3. Italian view
4. German view
5. Data privacy considerations
6. Cybersecurity risks

Global observations on employment



Kerstin Neighbour

Partner – Global Head of Employment
Frankfurt

+49 69 962 36 358

kerstin.neighbour@hoganlovells.com

Global employment challenges

- The COVID-19 emergency directly impacts on employment relationships both from a health & safety perspective, and regarding general management of relationships (i.e. salary obligations, effects of Government orders, co-determination rights for measures adopted)
- As teleworking / working from home becomes commonplace for multiple jurisdictions, it exposes challenges regarding regulation (or lack thereof), and the need for provision for alternative working patterns
- Childcare and associated allowances will become an increasingly hot topic as more countries implement school closures
- To view all of our collated insights, visit our dedicated Hogan Lovells COVID-19 topic centre

Key challenges and observations for individual jurisdictions

- China

- The shift from widespread WFH to more drastic measures;
- WFH policies changing demands from white-collar workers and exposing WFH challenges;
- Temporary shutdown;
- Social insurances exemption, reduction and exemption.

- France

- Implementation of exceptional partial activity measures;
- Compulsory implementation of teleworking;
- Mechanisms put in place around school closures.

Key challenges and observations for individual jurisdictions

- Hungary

- WFH: a lack of regulation and health & safety concerns;
- Lack of clarity regarding provisions for parents now dealing with school closures.

- Mexico

- Potential Official Declaration of Sanitary Contingency;
- Individual company WFH policies and procedures;
- Healthcare and social security of employees.

Key challenges and observations for individual jurisdictions

- Russia

- Temporary suspension of current working conditions: possibilities and consequences;
- WFH: lack of regulation and questions regarding risk and liability;
- School closures: access to childcare allowance payments;
- Stabilization measures, protection for entrepreneurs and against long-term redundancies.

- Spain

- Temporary suspension of employment contracts;
- Sector-specific (i.e. hospitality) shutdowns;
- Compulsory teleworking.

Key challenges and observations for individual jurisdictions

- The Netherlands

- Withdrawal of short time working scheme due to unprecedented use;
- Social assistance for self employed workers;
- Deferral of payment for tax assessments due to coronavirus.

- UK

- The right to enforce WFH policies;
- Working Time regulations;
- Rights regarding pay freezes;
- The right to employees for leave in advance of suspected school closures.

U.S. view



Michael DeLarco

Partner – Head of Labor and Employment (U.S.)
New York

+1 212 918 3265

michael.delarco@hoganlovells.com

What may an employer ask regarding COVID-19?

- Symptoms / have been exposed
- Diagnosed with COVID-19
- “Family member” has been diagnosed
- Ask why an employee is out of work
- Preexisting condition
- Questions should be asked of all employees; no discrimination
 - But follow-up where appropriate (e.g., employee with symptoms)

Employer Screenings

- Questionnaires
- Temperature checks (100.4 degrees)
 - EEOC guidance
 - Consent
 - Practical problems:
 - Accuracy
 - False positives/negatives
 - What to do upon positive test?
 - Necessity
- COVID-19 Tests
- Employee privacy concerns
- What if an employee (or group of employees) refuses to be tested?

What if someone in the office tests positive?

- Send them home
- Investigate
- Inform employees and third parties
- Confidentiality
- Full or partial closing
- Local health official
- Workers' compensation carrier
- OSHA disclosure
- Does this change if employee is merely exposed? Exposed + symptoms?

Pay for Absences

- Federal law
 - FLSA (salary basis test)
 - Federal contractor paid sick leave
 - Pending legislation
- State and local law
 - Paid sick leave
 - Reporting time pay
 - Pending/enacted legislation
- Employer policies
- Collective bargaining agreements / employment contracts
- Best practices – incentivize employees to report symptoms

Italian view



Vittorio Moresco

Partner - Employment

Milan, Rome

+39 02 720 2521 (Milan)

+39 06 6758231 (Rome)

vittorio.moresco@hoganlovells.com

Preliminary remarks

- The Government announced “Emergency Status” on January 31, 2020
- In this context:
 - the Government has been progressively issuing specific provisions aimed at balancing the efforts to stem the contagion (mainly, “stay at home” save essential/urgent needs to exit), with the needs to limit as much as possible the impact of the Covid-19 emergency on business
 - In parallel, additional provisions have been issued by many other Public Authorities/Employers Associations and Unions that, directly or indirectly, impact on the management of employment relationships pending the Covid-19 emergency
 - The legal framework changes on daily/weekly basis and, as such, it is essential to be updated daily in order to properly manage business in Italy (as well as to evaluate any measures available when faced with any suspension/temporary stop of business that may occur)

Business continuation

- **Retail** (only pharmacies, food stores, healthcare shops, newsstands, tobacco shops, hardware stores, petrol stations, laundries, funeral services, banks, public transports), **productive** and **professional business** can in principle continue, but **with the following limitations:**
 - Only core-activities are carried out and;
 - (i) to the extent possible, they must be carried out remotely («smart working») while
 - (ii) if working remotely is not objectively possible (i.e. as for typical goods production), the employer must:
 - implement specific anti-infection safety protocols;
 - sanitize the workplace on a daily basis (including electronic tools – PCs, cell phones, etc.; food/drinking vendor machines; locker rooms; etc.)
 - provide employees with a statement certifying that they need to go to work since they are assigned to core-business activities
 - Non-core activities can only continue remotely; if this is not feasible, the activities must be suspended and employees put on holiday/paid leave (or other measures established under collective bargaining agreements)

Business suspension

If the business is suspended:

- individual/collective dismissals are forbidden until May 17, 2020
- employees must benefit from all accrued holiday/paid leave
- employers can apply for subsidising programs:
 - ❖ For a duration varying from a few weeks up to 24 months
 - ❖ employer reduces working time (even up to zero) without bearing the cost of salary (and relevant social security charge) for the hours not worked
 - ❖ INPS (Italian Authority in charge for social security and unemployment schemes) compensates the employees for the salary lost with an allowance covering up to 80% of the salary within a cap (EUR 1,129.66)

German view



Kerstin Neighbour

Partner – Global Head of Employment
Frankfurt

+49 69 962 36 358

kerstin.neighbour@hoganlovells.com

Current Status

- Partial shutdown of German businesses announced on 16 March 2020
 - Certain businesses (such as food retailers, pharmacies, drugstores, petrol stations, banks, post offices) remain open
 - Others (such theatres, fairs, sports facilities and retailers other than the above) have to close
 - Tough restrictions on hotels, restaurants etc.
 - Visiting regulations for hospitals, nursing homes and similar facilities to be enacted
- Most schools and kindergartens have in the meantime been closed everywhere in Germany
- Industrial enterprises have started to temporarily close production (mostly for H&S reasons and lack of works, e.g. due to supply chain disruption)

“This is the biggest challenge since WWII.”

*Chancellor Angela Merkel
Televised speech, 18 March 2020*

Challenges for employers

Health and safety, business continuity and payment obligations

- How can the employer ensure the employees' health and safety in the workplace?
- Under which circumstances can the employer deny employees access to the company's premises?
- What about mandatory health checks and/or the employee's duty to report an infection?
- Under which circumstances can employees refuse to come to work (e.g. school closure, issues with public transport, fear of infection)?
- Is there a right / an obligation on the employee's part to work from home?
- Under which circumstances does the employer have to continue paying the employee's remuneration?
- Under which circumstances can the employer close the business temporarily?
- How to deal with the works council?

Measures to support companies

Current status and outlook

- Main examples of existing measures
 - Short-time work allowance
 - State aid paid by the Employment Agency in the event of a reduction in operational working hours
 - Reimbursement for remuneration paid to infected employees
- Examples of recently implemented measures
 - Enhancement of options for deferring tax payments and reducing prepayments
 - Expansion of existing liquidity assistance programmes
- Contemplated further measures
 - Further steps to implement “a protective shield with unlimited volume to protect businesses”
 - Financial support for freelancers
 - Suspension of the duty to file for insolvency for a certain period of time (30 September 2020 ?)

Data privacy considerations



Eduardo Ustaran

Partner – Privacy and Cybersecurity
London

+44 20 7296 5249

eduardo.ustaran@hoganlovells.com

The bigger picture

- Data protection is not in conflict with common sense or saving lives
- The right to privacy is not an absolute right
- But data protection law still applies
- The answer lies in finding the right balance
- That means meeting the test of **necessity** and **proportionality**

**Data protection law
cannot be ignored –
even at times of crisis**

Practical steps

Essential data protection obligations to bear in mind:

- Legal justification
- Transparency
- Purpose limitation
- Data minimisation
- Cybersecurity
- Data protection impact assessment
 - What data, why and how used
 - How essential obligations are being addressed

Cybersecurity risks



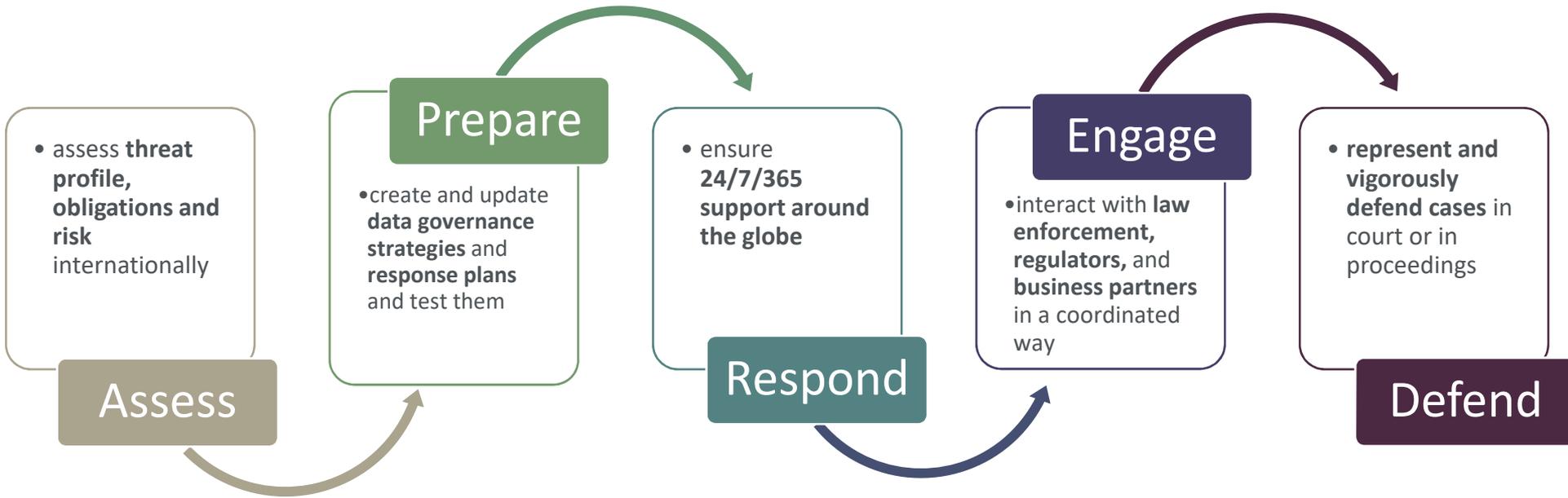
Joke Bodewits

Partner - Privacy and Cybersecurity
Amsterdam

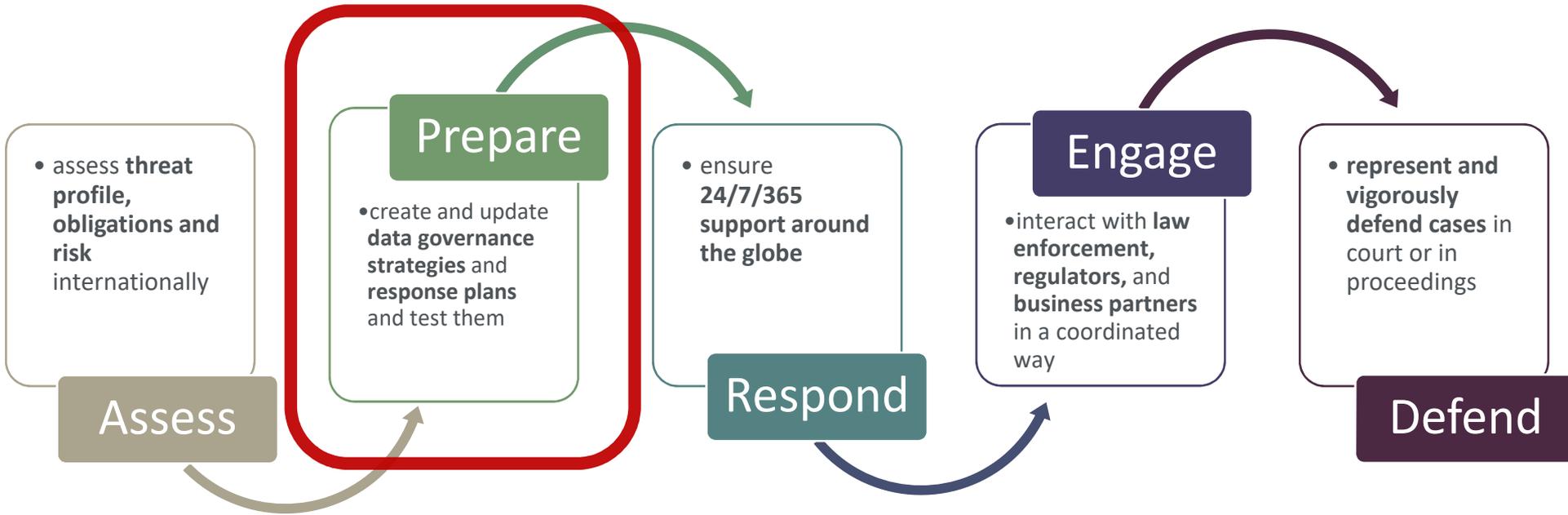
+31 20 55 33 645

joke.bodewits@hoganlovells.com

Our coordinated approach to Cyber challenges



Our coordinated approach to Cyber challenges



Examples of remote working Cyber threats



Unsecure personal devices

Personal computer may lack critical security updates, may not have screen save timeout, insufficient password protection, etc.



Unsecure networks

Attempts to connect to company systems in an insecure way, e.g. using remote desktop software, or using unsecure conference call lines



Data transfers to personal accounts

Confidential data, personal data, trade secrets should not be transferred to personal accounts or downloaded to personal computer at home



Physical Document Management Destruction

Confidential data, personal data and trade secrets should preferably not be taken off site and not be printed or disposed at home



Phishing Schemes or Other Fraud

Data security may not be top priority for employees during the Corona outbreak, which may make them more vulnerable to sophisticated attacks



Syncing with personal cloud storage accounts

Employees may use personal cloud services to transfer documents or data to and from that may be less secure

Practical tips to prepare for Cyber threats

- Remind your employees of phishing dangers and the need to notify incidents
- Instruct Employees on best practices of remote working
 - Secure devices and networks
 - Proper handling of company data, including personal data, trade secrets and confidential business information
 - Consider designating which software tools are the preferred and approved tools
- Consider approach towards personal devices
- Ensure that IT team can conduct incident response remotely
- Review and update Incident Response Policy

Q&A

COVID-19 resources

1. Access all our materials on our topic center:

[COVID-19 Topic Center](#)

2. Register your interest in our other webinar topics related to coronavirus [here](#)
3. Get in touch with one of us or via COVID19@hoganlovells.com