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Sustainable Labor Cost Management in Context of COVID-19 Crisis

A legal / HR webinar discussing how European companies can address pressures to contain or reduce labor costs in the current environment

Europe – 2020

welcome to brighter

Your speakers today

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THOMAS BOUCHEZ
Europe M&A and Org transformation leader

Thomas leads Mercer European advisory team supporting the people and org. aspects of complex multi-country business transformation.

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HOLLY INSLEY
Senior Associate, Freshfields' People & Reward team

Holly advises on multi-jurisdictional employment issues on transactions, employee investigations and workforce change programmes.

Freshfields Bruckhaus Deringer

RENÉ DÖRING
Partner, Freshfields' People & Reward team

René is an expert in occupational pension schemes and corporate reorganisations with a background in employment and tax law, as well as economics.

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DAVID WREFORD
Partner in Mercer's Career business

David advises clients on the impact of evolving employment regulation, and helps develop innovative and practical solutions to this ever-changing minefield.

Agenda

01 What we hear from our corporate clients

02 Global trends in government support policies

03 Labor cost management measures and alternatives to redundancies

04 A legal and HR approach to handle these measures

05 Key legal considerations in implementing those measures

06 Key HR considerations and opportunities in connecting today's actions with the mid/long term view

The full impact of the COVID-19 crisis is still hard to comprehend

Key challenge for companies will be to balance the need to take measures to reduce labor costs while protecting long term commitments to talents & stakeholders

ECONOMICS

GOVERNMENT & LAW

Reacting to COVID Short term (H1 2020)

Government and companies take short-term measures to mitigate health risks and keep business afloat

Return to New Normal Mid Term (H2 2020)

Despite relaxing restrictions, vulnerable industries face demand drops / recessions. Companies to readjust measures

Rebound for Growth Long term (2021-)

Short and mid-term measures should be balanced with long term commitments towards talents and stakeholders

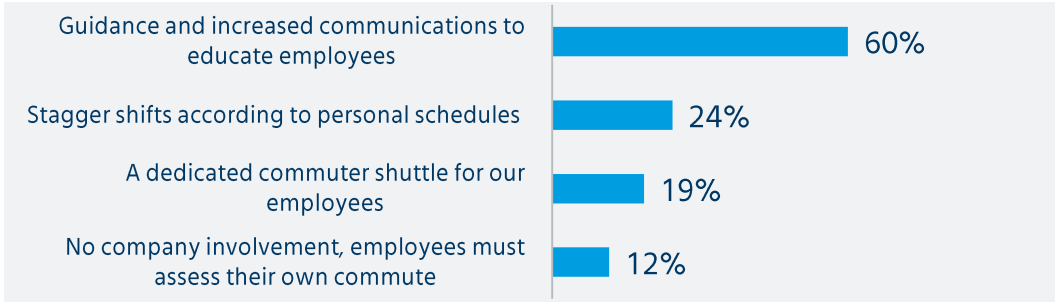
EMPATHY

Many employers have shown commitment to protect their employees...

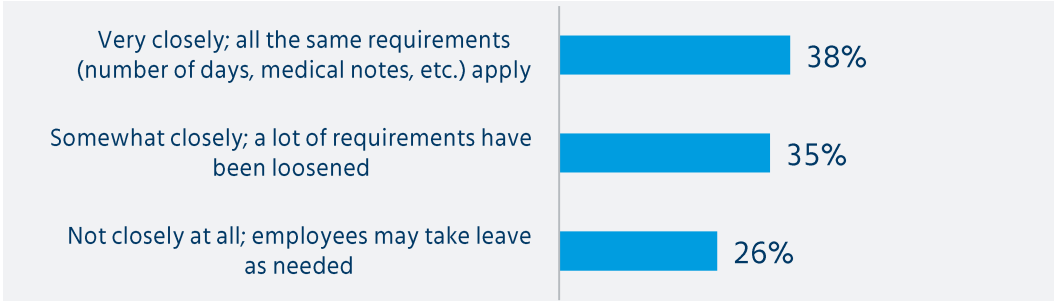
Employer's reaction to the crisis will greatly impact its reputation and is an opportunity for employer to reaffirm its commitment to talents and culture

Which of the following arrangements have companies taken, or are taking, in response to the COVID-19 outbreak?

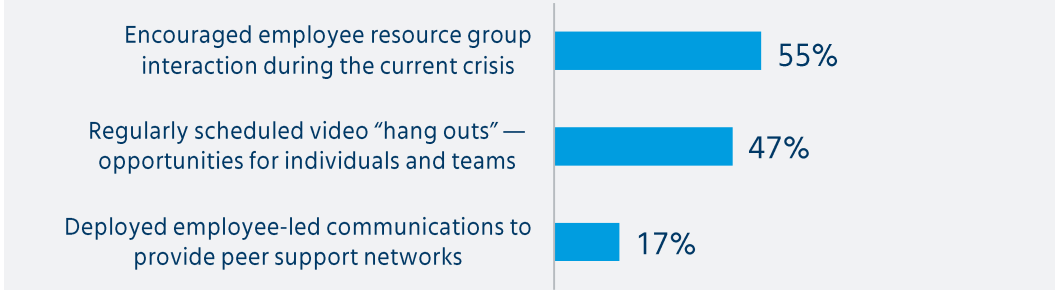
For employees who must be present at the worksite, what steps are companies taking to ensure the safety of their commutes?



How closely are companies implementing existing sick leave policies to handle employees infected with COVID-19?



Which of the following have companies implemented to keep employees connected to each other?

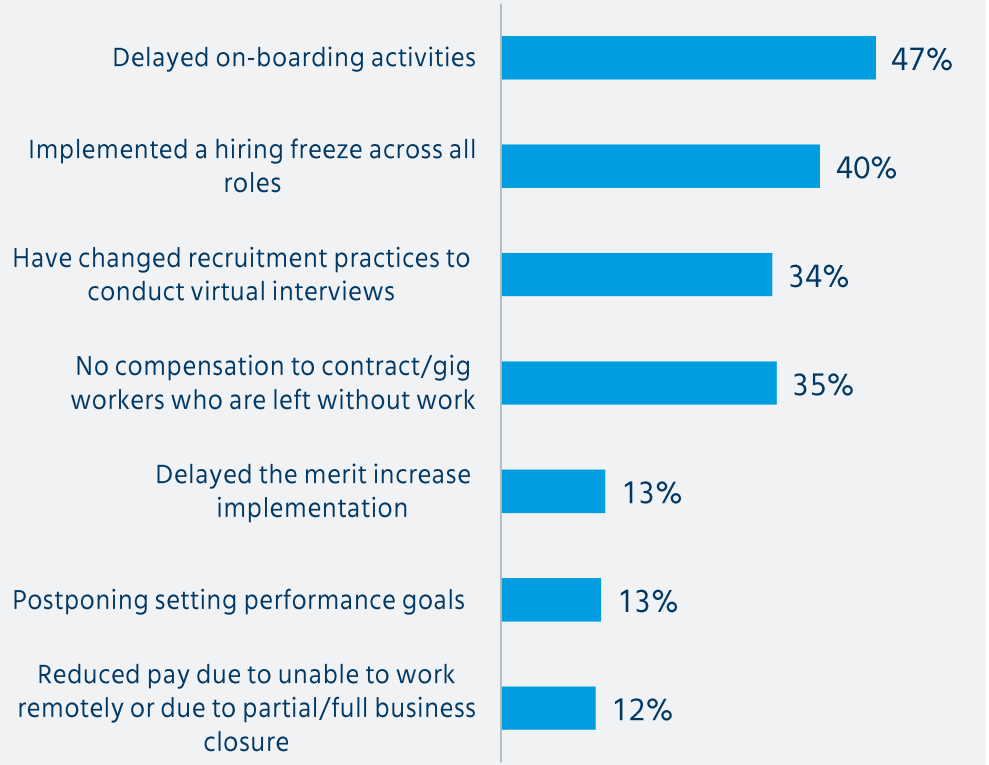


Source: Mercer (2020) – Live Survey results as of 16 April, 2020: In Europe, how are companies supporting their employees during this outbreak?

… but many will be forced to take measures to face its financial impact

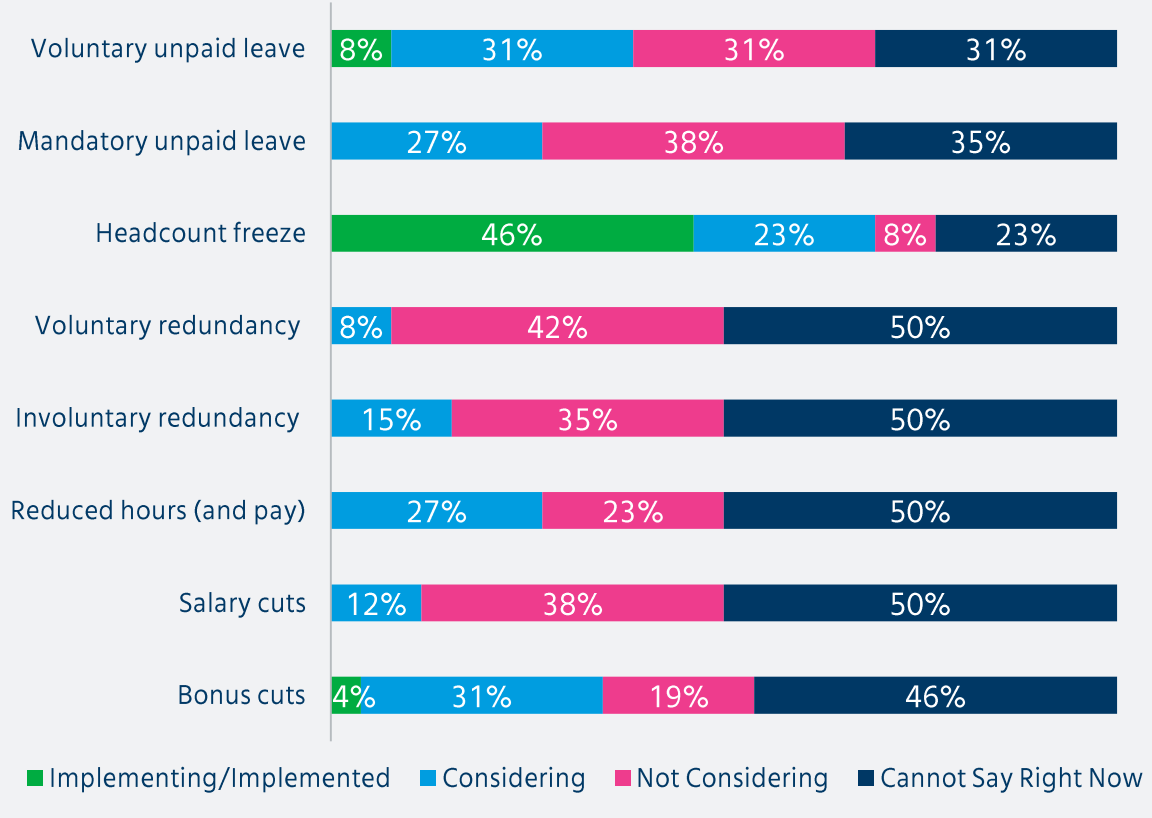
Employer will also need to balance short and mid-to long-term measures to contain or reduce labor costs in order to ensure its financial health

How COVID-19 affected employees in Europe?



Source: Mercer (2020) – Live Survey results as of 16 April, 2020: In Europe, how are companies supporting their employees during this outbreak?

How COVID-19 affected employees in UK?



Source: Mercer (2020) –Survey results, March 2020: The workforce impact of Covid-19, UK

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Global trends in government support policies

Building on the 2008 financial crisis experience, European governments were very quick in expanding the scope of their existing wage subsidy schemes (short time working in Germany, chômage partiel in France, etc.), accompanied by Covid-19 specific measures (e.g. payment of wages for employees prevented from work due to childcare, etc.);

More countries are following suit with the UK and most recently HK introducing job retention schemes;

The US has introduced employment-related loans, to support employers under certain conditions;

The EU is proposing to launch a 100bn fund in support of local wage subsidy schemes

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Global trends in government support policies

Make sure you stay up-to-speed with the government response in your jurisdiction

Wage Subsidy Schemes	Tax /social contribution (partial) relief	Deferral on tax/social security contribution
Belgium, Italy, France, Germany, United Kingdom, Singapore, United States, Hong Kong, Netherlands, Spain	Spain, France, Singapore, China	Belgium, Spain, France, Germany, China, United States, Netherlands

See appendix 1 for more information on local programs across Europe, Asia and the US

Global trends in government support policies

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When calling on any government support measures, beware of:

1. Reputational backlash for companies using such public schemes while still being in good financial health

2. Direct and indirect restrictions on redundancies, offshoring and even pay that come with these programmes

3. Flight risk management (as in some jurisdictions employees on these schemes are losing money and/or allowed to resign without notice).

Alternatives to redundancies

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A long list of possible methods to manage down employment costs

Government Support Programs	Headcount changes	Wages and hours	Benefits
Job retention scheme	Recruitment Freeze	Cutting wages	Use of annual leave, rest days and/or unpaid leave
Wage subsidy scheme	Withdrawing offers of employment/delaying start dates	Freezing salaries	Cutting discretionary costs
Sick pay support	Reducing temporary workforce	Reducing working hours	Not paying bonuses
Training programmes	Voluntary redundancies	Changing working patterns/home working	Retraining and relocation
Tax/Social security reliefs and deferrals	Secondments/workforce sharing	Cancelling paid overtime	Changing pension benefits

Appropriateness of measures depend on local practice and legislation

But employers ought to keep some consistency across countries in order to strengthen their message to employees & stakeholders

Short term labor cost containment measures → *longer term labor cost reduction measures*

	Cut hiring / spend (e.g. events, training...)	Reduce merit increase / variable pay	Reduction of contingent workforce/ cancel or delay offers	Second-ments/ workforce sharing	Use annual or paid leave / (over)time account	Furlough/ Forced leave / short time work	Natural attrition / Voluntary leave prog.	Reduction of salary/ perks	Mass redundancy	Early retirement	Site closure
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COST SAVINGS

N = Neutral / limit cost increase	$ = Low	$$ = Medium	$$$ = High

IMPACT ON EMPLOYEE ENGAGEMENT

☺ Positive	😐 Neutral	☹ Negative

DIFFICULTY TO IMPLEMENT

Easy	Medium	Hard

A suggested approach for labor cost management

An approach at the centre between country regulatory frameworks and the need for companies to consider both economics and empathy in their approach

ECONOMICS

Strategic Alignment

- Understand existing company plan / scenarios / timeline
- Create clear starting point / base line
- Identify constraints (incl. legal, labor relations, etc.)

OPTIONAL DEPENDING ON CONTEXT

Workforce rightsizing*

- Define alternative work-force plans based on scenario analysis

AND/OR

Business restructuring*

- Identify requirements / opportunities to change current organization

Define & select options

- Long list of potential measures, highlighting most appropriate
- Detail options with regard to legal framework, timeline, financial / EE & labor relations impact, implementation effort
- Select option(s)

Change & Impl. Planning

- Detail out required process, timeline, risks, roadblocks, and legal implications
- Finalize the cost analysis for selected cost levers
- Design change manage-ment and communication plans
- Establish PMO, defining risk mitigation actions

Implementation

- Launch PMO / exe-cution, incl. change management and communication plan
- Track completion against plan, incl. data management, project tracking, cost modeling updates, impact employee engagement

GOVERNMENT & LAW

EMPATHY

** Note: Mercer has a separate Org design and workforce assessment and selection offerings available upon request*

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Key legal and other issues to consider

- Variation to contractual terms and conditions of employment?
- Employee consent?
- Information and Consultation requirements?
- Statutory or contractual process? Notice?
- Lawful changes? Discriminatory?

- Long or short term measure?
- Need to retain flexibility? Nimble to respond to new demands or market recovery?
- Employee morale and motivation
- Reputational impact
- The example comes from above

Redundancies

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Key issues to think about if redundancies are the only option

1 Prohibition

- Is there a ban in your country on employers making COVID-19 related redundancies?
- Are there any exceptions?

2 Information and Consultation obligations

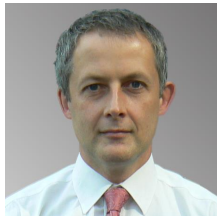
- Is there a requirement to inform and consult?
- Are there any time frames?/ timings?
- Are there any notification obligations?
- Will trade unions/ representative bodies be more challenging given context?

3 Payments

- What if any payments will need to be made?
- When and to who?/ Who and when will be paid?
- Does any reimbursement provision in case of re hiring exist?

4 Communications and PR

- Think carefully about internal and external communications around the redundancy exercise to discharge all legal obligations and manage potential legal risks.
- Consider careful communication to minimise reputational consequences.



COVID-19 scenario planning

What does the timeline look like?

Acute crisis over 2-3 months

Business back to usual, bump in the road

- Provide assurance
- Business continuity

6 months to regain control

No growth to brief recession

- Address business disruption
- Redefine work processes

12-18+ month pandemic

Deep global recession

- Redefine business portfolio
- Optimize work model

Source: Oliver Wyman

Is your organization pulling together or pulling apart?

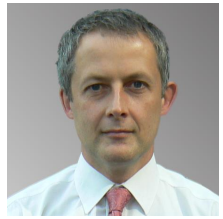
Dysfunctional Response

- Limited information sharing & increased power struggles
- Tightening of controls (e.g., micro-management)
- Resource hoarding (e.g., increased turf wars, silos)
- Isolated, insulated leaders

Adaptive Response

- Extensive information sharing & collaborative problem solving
- Loosening of controls (e.g., empowerment)
- Resource sharing (e.g., synergy & collaboration)
- Connected, integrated leaders

Based on Sutcliffe & Vogus's Resilient and Rigid Responses to Threat model (2003)



Top trends clients said they'll focus on this year

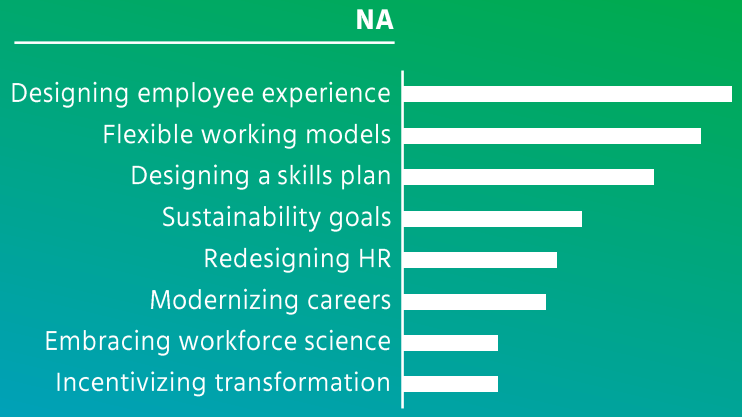
1 Employee Experience

2 Flexible Working

3 Designing a skills plan

4 Sustainability goals

5 Redesigning HR



Q&A

APPENDIX 1 –
Summary of the government support policies

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Wage subsidy / job retention schemes

Recent developments across Europe (1)

Country	Percentage of the remu-neration paid by the state	Cap?	Duration	Restriction on redundancies?	Other conditions?
Belgium	70% (as a rule 65% but increased in Covid-19 context), with an additional allowance of EUR 5.63 per day of temporary unemployment (both subject to 26.75% tax withholding)	70% of €2754.76 gross, the additional allowance is not subject to the cap.	Until 31 May 2020, possible extension to 30 June	No restrictions, only to sufficiently document that the employer has in fact suffered these consequences of the Covid-19 outbreak	Suffer the consequences of the Covid-19 outbreak, i.e.: • Force majeure • Decrease in clientele, orders, revenue or production
France	If partial activity: 70% of employee gross salary (84% of net salary) – previously lower fixed amount	70% of salary capped at 4,5 of the French minimum salary	Up to 12 months (instead of 6 months before)	If new request (within the last 36 months), commitments on employment to be made	Evidence that employees on partial activity cannot work remotely or differently
Germany	60% of net salary (67% if min. one child)	Social security contribution assessment ceiling i.e. 60/67% of the net salary from €6.900 (Western Germany)/€6.450 (Eastern Germany)	Up to 12 months (extension to 24 months subject to governmental directive)	Allowance is not granted for employees on notice, short-time work is seen as indication that no reason for redundancy is given	Min. 10% of employees must be affected by reduced working time of at least 10% Reduction of working time must be unavoidable

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Wage subsidy / job retention schemes

Recent developments across Europe (2)

Country	Percentage of the remu-neration paid by the state	Cap?	Duration	Restriction on redundancies?	Other conditions?
Italy	80%	• If an employee's salary is €2,159.48/month, or less, the cap is equal to gross €998,18/month • If an employee's salary is over €2,159.48/month, the cap is equal to gross €1.199,72	• General rule: 9 weeks within 31 August 2020 • At certain conditions and in certain high risk areas (e.g. Lombardy, Veneto): 13 weeks	All collective redundancies and individual redundancies for economic reasons are suspended until 17 May 2020	In certain specific cases a prior agreement with Unions is necessary
Netherlands	Up to 90% (percentage is linked to actual decrease of turnover)	The wage taken into account for calculation of the compensation is maximized at EUR 9,538 gross per employee per month	• 3 months. • The government will prior to 1 June, 2020, assess whether the NOW will be prolonged, and if so, whether additional conditions will be imposed.	No dismissals for economic reasons may be applied for during the period in which the employer benefits from this fund. If the employer does initiate redundancies, the final compensation will be decreased with 150% of the wage of the redundant employees.	• Loss in revenues of min 20% • Employer to as much as possible continue to pay the regular wages. • Compensation may only be used to pay the relevant wages. • Works council or employee representative body must be informed about the compensation
Spain	70%	70% of the social security base of contribution cap (i.e. 70% of € 4,070.10 = € 2849.07/month gross)	From 17 March 2020 until 26 April (possible extensions)	6 months' commitment to maintain the level of employment for companies who implement temporary lay-offs	• Preparation of documentation and prior consultation to employees' representatives • Social security contributions reductions (75% or 100% reduction depending on number of employees) only available for companies who are directly affected by COVID-19. (i.e. mandatory closure of business)
UK	80%	£2500	4 months from 1 March,	No	Employee agreement in writing

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Wage subsidy / job retention schemes

Recent developments at EU level

Initiative of EU Commission as approved by the Council on April 7
Proposal now following the legislative process

- "SURE – An instrument proposed to offer financial support to Member States that have in place a job retention scheme, aimed to be implemented by adoption of a regulation.
- Financial support (up to €100 bn) will be offered based on principles of subsidiarity and proportionality to the Member States that comply with the following conditions:
  - Have an increase of the actual or planned public expenditure as of 1 February 2020 suddenly and severely because of the COVID-19 measures (including short-time work);
  - Aim to use SURE to support existing national schemes of short-time work.
- The impact on global employers:
  - Wage subsidy schemes to be implemented in those states that have not established one yet;
  - Extended duration of the national wage subsidy schemes;
  - Diversity in terms of level of support, duration, restrictions and conditions applied to employers (as indicated in the slides above).

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Wage subsidy / job retention schemes

Recent developments in Asia

China	Hong Kong	Japan	Singapore
• No wage subsidy scheme • Reduced and deferred Payment of Social Insurance and Housing Fund • Subsidies for online training • Social insurance refund for no or less redundancies • Subsidies for internship positions	• HKD 30bn anti-epidemic fund • New wage subsidy scheme paying private sector employees 50% of their salary costs, capped at $9000 per employee, for a duration of 6 months. This applies to the employer on the condition that no redundancies will be implemented. • COVID-19 currently not an occupational disease	• Employment Adjustment Subsidies • Greater access to unemployment insurance subsidy • Special loans to small and medium sized enterprises	• Job Support Scheme • Wage Credit Scheme • Government has pledged to pay up to 75 per cent of employee wages • Corporate Income Tax Rebates • Property Tax rebates on qualifying commercial properties

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Wage subsidy / job retention schemes

Recent developments in the US

Federal initiatives

- Families First Coronavirus Response Act ("FFCRA"):
  - Covers employers with fewer than 500 employees
  - Provides unprecedented mandatory paid sick leave and paid family leave
  - Effective from April 2, until the end of the year
  - Provides employees with up to 14 weeks leave, with 12 weeks paid by the employer
- Coronavirus Aid, Relief and Economic Security Act ("CARES")
  - Provides inter alia employment-related loans under certain conditions in connection with obtaining loans, including restrictions on executive compensation, the use of funds and other labor matters
  - Enables employers to take advantage of refundable tax credits in connection with the retention of employees during the COVID-19 health crisis and to defer payroll taxes
  - Provides greater flexibility for distributions under certain qualified plans for COVID-19-related purposes and permits the deferral of contributions otherwise due this year for single-employer pension plans.
  - Enhances existing unemployment benefits and expands coverage to workers who were not traditionally eligible for such benefits.

Wage subsidy / job retention schemes

Overview of CARES Act

Employment-loan related conditions	Employee retention tax credit	Deferral of employer payroll taxes	Retirement and pension plan flexibility	Enhanced unemployment insurance benefit
• Limits on executive compensation • Employee retention (at least 90% of workforce) • No offshoring of employees (during the loan + 2 years after the repayment) • No abrogation of CBAs and neutrality towards unionizing efforts	• Refundable tax credit against the employer's portion of Social Security (but not Medicare) taxes equal to 50% of qualified wage and health benefits paid in 2020 after March 12, 2020 • Maximum qualified wage and health benefit amount of $10,000 per employee • Covers any employers that fulfil the conditions, except those that take a small business interruption loan	• Employers and self-employed individuals can delay deposit of the employer portion of Social Security taxes (or equivalents self-employment tax) • Not applicable to federal income tax withholding, Medicare tax or the employee's portion of Social Security tax • Not available to any taxpayer that has indebtedness forgiven under Section 1101 of the CARES Act with respect to a loan under paragraph (36) of Section 7(a) of the Small Business Act or indebtedness forgiven under Section 1109 of the CARES Act	• Employers can defer making contributions to tax-qualified single-employer pension plans that would normally be due this year until January 1, 2021 • Required minimum distribution rules for certain defined contribution plans and IRAs waived for 2020 • No withdrawal penalty for distributions up to $100,000 from qualified retirement accounts for COVID-19-related purposes • Increases limits from $50,000 to $100,000 for individual loans from qualified plans for 6 months • One-year extension of due date for outstanding loans from qualified plans	• Temporary Pandemic Unemployment Assistance program • Additional $600 per week payment on top of state UI benefits for up to 4 months • Additional 13 weeks of UI benefits through December 31, 2020 • Funds the cost of the first week of UI benefits and existing "short-term compensation" upon certain conditions • Provides grants and start-up costs for states to develop short-term compensation programs

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