

Legal FAQs

in partnership with Luke Golding and Ami Naru
from TravLaw



BTA

BUSINESS TRAVEL
ASSOCIATION

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Dear Members & Partners,

Following on from our Q&As on Mental Health with Matt Holman last week, we wanted to provide you with some guidance on some of the pressing Legal matters across the sector.

In such a fast moving and fluid situation, any expert assistance can help us avoid minefields and provide necessary reassurance. This week, we are lucky to have two experts: Luke Golding and Ami Naru, both Partners at Travlaw.

I extend huge thanks to them both for lending us both their time and expertise in the last few weeks.

Travlaw is a full-service travel specialist law firm providing advice on regulatory work, litigation, commercial, employment law and intellectual property, all specifically tailored to meet the needs of the travel industry. Travlaw's team has its finger on the travel pulse, meaning they don't just know the law relating to travel, they know and understand the commercial factors that mould the decisions travel industry professionals have to take. At Travlaw, Luke heads up the Commercial Department and Ami leads the Employment Team.

In the following pages, together, we have tried to best anticipate issues you may need legal guidance with, facing legal questions can be overwhelming, exhausting and can end up being very costly – whether as employers, employees or individuals.

We want you to feel more in control and at ease, and overall protected, thanks to the advice and tips our Legal experts have provided.

We have more to come in our series of FAQs. Please do let me know if there is a particular issue or topic you would like us to tackle or if you would like to lend your expertise to the series. With this initiative, alongside our campaigning work, we are looking to lead the way in reaching out and supporting each other as well as effecting real change for our industry.

More than ever, the BTA is here to support you all.

Thank you for your continued support with our activities and be safe!

Best wishes,



Clive Wratten
CEO, The BTA



Legal Responsibilities to our Customers

Can we legally continue to provide our services to people who still wish to travel for work/ have to travel for work?

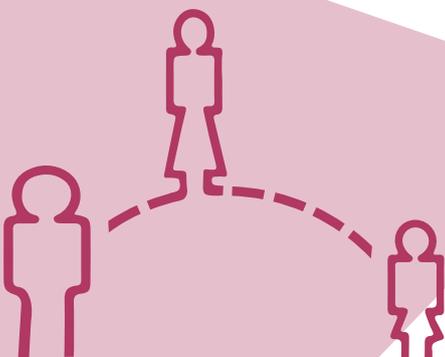
Legally, yes, if you have clients that require you to arrange travel, in the UK, for work purposes, then you are permitted to continue to arrange that travel on your client's behalf. While the government has implemented stringent restrictions those restrictions do not, as of yet, extend so as to prevent people from going to work (with the exception of those non-essential shops and public venues that have been ordered to close) where it is necessary to do so and where the work cannot be performed remotely.

It therefore stands to reason that should one of your clients have a continued need to travel, to perform their work, you are permitted to assist the client to do so. This is provided of course that any individual request to travel is made in accordance with any travel policies that you are contractually bound to follow.

Should, for example, an employee seek to make a booking where their organisation as a whole has put a stop on travel – and you are bound to follow that travel policy – then it would be necessary to decline to process that booking.

This is the position for national travel. For international travel, I would be minded to take a stricter approach. In light of the fact that:

- (a) The FCO has advised against all but essential travel overseas.
- (b) Airlines are increasingly cancelling routes.
- (c) Foreign governments are closing borders, sometimes without any notice at all.
- (d) The UK government is taking significant endeavours to repatriate customers that are stuck overseas, it would seem sensible not to facilitate further travel overseas.



Legal Responsibilities to our Customers

In the event that you have a client that simply insists you arrange travel on an international basis, I would recommend that you consider the following before doing so:

- (a)** Clearly advise the client of your reservations about arranging travel and that you do not recommend that they travel overseas, at this time.
- (b)** Ask your client to confirm in writing that they wish to travel, notwithstanding your recommendation.
- (c)** Advise your insurer of the fact you intend to arrange travel overseas for a client, before doing so, to ensure that this does not prejudice any insurance cover that you have in place .

Note, I would continue to recommend that you follow the above steps even where you act as only an agent on behalf of your corporate client and so arrange for your client to contract with the relevant third party supplier, directly.

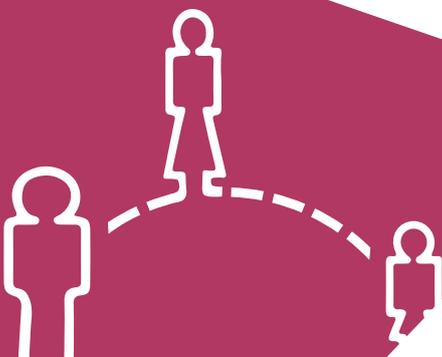
What is my liability for those who still travel against government's recommendation not to (National or International)?

If you are acting in an agency capacity – and you have taken the steps I've outlined at points **(a)** and **(b)** above – I would say that you have very limited liability should the customer still wish to travel.

Although I would urge you to review your contract with the relevant client, to ensure that there are no unexpected restrictions or liabilities should you arrange travel in such circumstances.

Assuming that there are no such contractual provisions then, ultimately, you will have informed the client that you advise against the travel in question. Thereafter, should they insist, you will have entered the client into a contract with the relevant third party supplier.

Should anything 'go wrong' during the provision of the travel services, the contractual responsibility would sit with the third party supplier, as opposed to the TMC.



Legal Responsibilities to our Customers

What liability do I have if someone claims they caught the virus on my aircraft/trains or on my premises?

I would consider the prospect of incurring liability for a claim of this nature to be very low indeed. While you should take reasonable and sensible steps to avoid the transmission of the disease (regular cleaning, etc.)

I consider that it would be extraordinarily difficult for someone to successfully prove that they had contracted coronavirus in your specific aircraft / train / premises, when the virus is so prevalent in society generally.

How legally bound am I to repatriate passengers? Or allow them to fly from wherever using existing ticket or not?

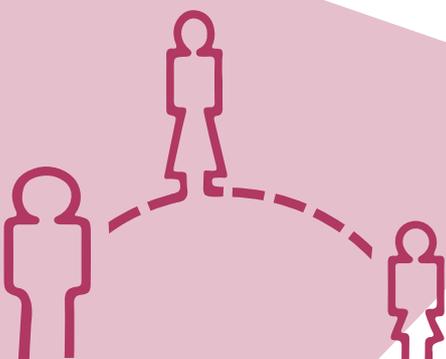
This largely depends on how you have sold the flight:

(a) If you acted as an agent in the sale of the flight (e.g. placed a booking on behalf of a corporate customer and entered the customer in a contract with the relevant airline / flight provider) – you are not legally bound to repatriate passengers.

(b) If you acted as a principal in the sale of a flight only (i.e. if the customer entered into a contract with you for the provision of that flight) then while you would have a contractual obligation to provide the customer with the flight that they have booked, you would not be obliged to repatriate a customer if you could not deliver that flight.

(c) If you included the flight as part of a Package for which you acted as the Package Organiser (for the purposes of the Package Travel and Linked Travel Arrangements Regulations 2018), then you would be legally obligated to repatriate the customer.

- Luke Golding



FAQs

Employers' Questions

We are hiring employees during the outbreak; what steps can we take to protect our workforce?

During the outbreak and particularly during the period of lockdown it is only key workers who are effectively leaving home to go to work. Assuming that the staff you hire are working from home, then it would be ensuring they have the right tools to do the job and keeping an eye on their wellbeing.

Are there additional legal considerations or policies needed for a remote workforce?

You should consider your Data Protection policy in relation to confidential and sensitive information being used outside the normal workplace. Consider the retention and destruction of confidential information at home along with issuing guidelines to your employees with regards to appropriate storage and disposal of confidential information.

Is COVID-19 testing likely to be covered by a corporate health plan?

You would check with your scheme provider here.

What are our legal responsibilities towards expats working abroad and our global workforce?

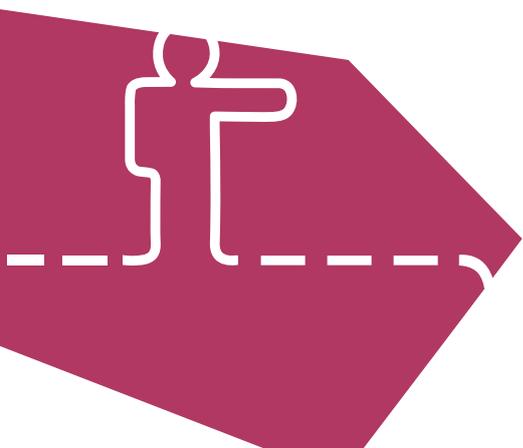
You would need to follow the local guidance and rules in each country regarding health and safety.

If we learn or suspect that one of our employees has COVID-19, do we have a legal responsibility to report this information to the CDC?

You need to seek guidance from Public Health England. I am not aware of an obligation to report, but you would have an obligation and duty of care to your other staff if they are still working or have been in recent contact with the employee.

Any provision in the contract of employment should maintain that the principle place of work is the office and that homeworking is a temporary measure and not a permanent variation to the contract.

- Ami Naru



Employees' Questions

How long can I keep my annual leave if I can't take it all this year?

You will need to look at your contract of employment or your holiday leave policy as the normal rules on carry over would apply. This is unless it was not reasonably practical for you to take your leave, such as if you were a key worker in which case the government has announced that it is allowing workers to carry over holiday for up to 2 years. The Working Time (Amendment) Regulations 2020.

Can I ask to be furloughed, or take unpaid leave rather than lose my job? Would my employer have to agree?

It is up to your employer to decide which employees (if any) it selects for furlough. Considerations in respect of alternatives to redundancy such as unpaid leave, furlough and reduced hours or salary should be considered as part of a fair process which must be adopted in respect of employees with more than 2 years' service.

What are my rights if I need to take Parental Leave to look after children whilst they are not going to school?

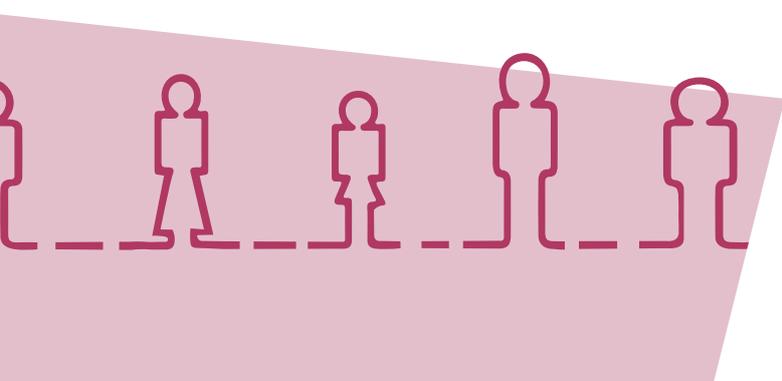
Parental leave is available to birth and adoptive parents and also to anyone who has, or expects to have, parental responsibility for a child. The right applies in respect of each child: therefore an employee with one qualifying child may normally take 18 weeks' leave, an employee with two children would be entitled to 36 weeks' leave in total.

The leave must be taken before the child's 18th birthday and must be taken in blocks of weeks. The leave is unpaid. You have the right to return to the same job (or in certain cases a suitable alternative job) after the expiry of the leave.

Are both employer and employee legal rights of employment different during this outbreak and different working conditions?

With regards to sick pay, the usual rules under your sickness policy would apply. For working conditions, The Equality Act 2010 continues to apply as normal.

- Ami Naru



Post Covid-19 Questions

Is it up to a company or an individual when to return to work after the Covid-19 lockdown and guidance is changed?

At the moment we can only follow government/ Public health guidance as to who is allowed to work and from where. Once the restrictions have been lifted, then unless there is any health reason preventing the member of staff returning or the employer says to the contrary the employee would have to return to work.

Can a company insist that all employees' temperatures are checked on arrival each day?

No, you cannot insist this be the case, this practice would present a number of potential issues, such as: the individual doing the tests is unlikely to be medically qualified and there may be issues with the equipment and its accuracy. There is a fine line between breaching someone's right to privacy under the Human Rights Act and that of Health and Safety, you would have to address what the underlying reason is for requesting the testing daily.

Can a company demand that an employee with any ill symptoms leave the workplace immediately?

Yes, in short, you have a duty of care to other staff.

Can an employee refuse to return to work or to come in for a period of time due to fear of infection? Do they continue to be paid their salary?

You would have to listen to their concerns and if they are valid try to make reasonable adjustments. If the concerns are not valid and you have dealt with concerns and they refuse to come into work this may be a disciplinary offence, which will need to be investigated in the usual way.

- Ami Naru



Post Covid-19 Questions

Can employees refuse to travel as part of their job even once the Foreign Office guidance says it is safe to do so?

You would have to listen to concerns and if they are valid try to make reasonable adjustments. You would also need to look at the contract of employment to see if travel is part of the duties. Do not forget you have a duty of care to staff when they are performing duties, so you should do a proper risk assessment to see if the travel is safe and necessary.

Can I re-employ someone that I laid off during Covid-19 on a new contract rather than with an extension of their previous contract?

This depends on whether there has been a break of a week or more, if not then it would be continuous service. If you wish to bring someone back to furlough (they must have been employed on 28.02.2020), then the employment will be continuous as the point of the scheme is to preserve employment and service.

Will there be new laws coming to better protect businesses or employees post Covid-19?

I have not heard of anything as yet, things are moving at a fast pace.

- Ami Naru



Summary

From Luke Golding

It is no exaggeration to say that the current Covid-19 pandemic presents a unique and extraordinary challenge to the travel industry (whether that is business or leisure).

Along with the significant commercial challenges that businesses face, the pandemic is presenting a number of legal difficulties too; legal obligations have suddenly become extremely burdensome to meet, while a lack of certainty is also arising due to the pandemic testing the boundaries of legal regulation within the industry.

From a legal perspective, businesses can protect themselves (as far as is possible, in this ever-changing situation) by ensuring that they are fully aware of their legal obligations to clients, while also having a clear understanding of their contractual position with their own suppliers. Naturally, this is not an easy thing to achieve but a level of clarity here will afford businesses the opportunity to make informed decisions as to how they wish to react to the aforementioned challenges, having had the opportunity to weigh up both the legal and commercial risks associated with the same. I hope that the answers set out above assist

with this but I am always on hand should anyone require further assistance.

More importantly, however, I hope everyone is safe and well.

Take care of yourselves and each other.

Best wishes,



Luke Golding

Partner, Travlaw LLP



External Resources

General Coronavirus links

Public Health England www.gov.uk/government/organisations/public-health-england

NHS UK: www.gov.uk/government/collections/coronavirus-covid-19-list-of-guidance

Places that need volunteers or online help

NHS Volunteer Responder: www.goodsamapp.org/NHS

Samaritans Online Chat portal: www.samaritans.org/chatdonate/



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