

29/03/2020

COVID-19 Quarantine Leave & Vulnerable Persons | FAQs for Employers

IS “QUARANTINE LEAVE” DEFINED?

After the COVID-19 outbreak, the Superintendent of Public Health published the Minimum Special Leave Entitlements (Amendment) Regulations 2020 (L.N. 62 of 2020) effectively amending the Minimum Special Leave Entitlement Regulations (S.L. 452.101) and introducing a **new paid quarantine leave** for all employees, payable by the employer.

Quarantine leave is now defined as *“leave to be granted to the employee without loss of wages in such cases where an employee is legally obliged to abide by a quarantine order confining the employee to a certain area or to certain premises as determined by the Superintendent of Public Health under the Public Health Act or by any public authority under any other law.”*

HOW LONG WILL AN EMPLOYEE BE ENTITLED TO QUARANTINE LEAVE?

For any period of quarantine as may be determined by the Superintendent of Public Health.

HAS THE SUPERINTENDENT OF PUBLIC HEALTH DECLARED ANY MANDATORY QUARANTINE LEAVE?

Yes.

- > First, on the 12th March 2020, L.N. 40 of 2020 ordered persons travelling from certain High-Risk area (and persons who live in the same residence) to quarantine immediately upon arrival in Malta.
- > Then, on the 13th March 2020 L.N. 63 of 2020 ordered any person arriving in Malta from any country (as well as persons in the same residence) had to submit to a 14-day quarantine period immediately upon arrival.
- > Finally, on the 17th March 2020, L.N. 78 of 2020 ordered any person “who comes in contact” with a person diagnosed as suffering from COVID-19 had to submit to a 14-day period of quarantine immediately upon receiving an oral or written order. With regards to persons living in the same household as such individuals, the law is silent in this regard. Official [guidance](#) however, seems to indicate that persons living in the same household are also to undergo quarantine. It is unclear, however, whether persons living in the same household would also be entitled to paid quarantine leave by their employer. Further clarifications need to be provided from the authorities in this regard.

By virtue of L.N. 72 of 2020, any person who fails to abide by the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to the payment of a penalty €3000 (previously the fine was of €1000 as per L.N. 30 of 2020).

The Superintendent of Public Health is however, empowered to allow exceptions to the obligation of mandatory quarantine, including for persons providing an essential service.

WHICH EMPLOYEES DOES PAID QUARANTINE LEAVE APPLY TO?

Although S.L. 452.101 does not typically apply to employees whose conditions of work are governed by a Wage Regulation Order (WRO), this paid quarantine leave applies to all employees in the private sector, including those who are governed by a WRO.

DOES QUARANTINE LEAVE ALSO APPLY TO PERSONS WHO TEST POSITIVE FOR COVID-19?

By means of Legal Notice 99 of 2020, any person who tests positive for COVID-19 must “**submit himself to self-isolation**”. This is enforceable by law and also applies to persons who live in the same residence. Failure to observe this obligation will result in fines of €10,000 each time a person is found to be in breach.

A person who tests positive for COVID-19 is likely to be certified as sick, and hence entitled to paid sick leave by the employer (and may be entitled to sickness benefit from the government). Therefore, it would appear that special quarantine leave would not apply in this case. Furthermore, the law does not provide that a person in the same residence as a person testing positive with COVID-19 is entitled to special quarantine leave.

DOES AN EMPLOYER HAVE A RIGHT TO QUERY THE LEAVE REQUEST?

Yes. On an employee's return to work, evidence that an order of the Superintendent of Public Health did in fact mandate quarantine may be requested by the employer.

CAN AN EMPLOYER CHOOSE NOT PAY QUARANTINE LEAVE?

No. Employers failing to abide by the Minimum Special Leave Entitlement Regulations shall be guilty of an offence and shall, on conviction, be found liable to a minimum fine (*multa*) of €465.87.

CAN AN EMPLOYEE BE ENTITLED TO MORE THAN THE MINIMUM?

Possibly. These regulations apply without prejudice to the introduction or implementation of provisions in other legislation under Chapter 452 of the Laws of Malta, collective agreements or any other agreement entered into between employers and employees which are more favourable to the employees.

IS ANY FINANCIAL SUPPORT BEING PROVIDED BY THE GOVERNMENT TO PERSONS IN QUARANTINE?

Yes. The Government of Malta has, as part of its financial aid package, announced that it shall be providing a grant of €350 per employee to employers (including self-employed) that have or have had full-time employees on mandatory quarantine leave. The grant is also available to full time self-employed persons who had to undergo mandatory quarantine.

The grant is also applicable for members of staff who had to quarantine themselves in view of possible contact with individuals who were directly at risk of infection, such as living in the same dwelling or in the same workplace.

This measure only covers grants for full-time employees.

In order to benefit from such grant, one is required to complete and submit an online application form available on the Malta Enterprise [website](#). This application requires information as to the reason for mandatory quarantine to be submitted. Applicants are also to declare and confirm that the employees for which the quarantine benefit is being claimed, have been remunerated within the parameters of their employment contracts and the applicable employment laws.

Note : This aid is not currently regulated by any legal notice. This information is sourced from the COVID-19 portal of the Malta Enterprise.

[NEW – 28.03.2020]

WHAT ABOUT “VULNERABLE PERSONS”?

Legal Notice 111 of 2020 (The Protection of Vulnerable Persons Order, 2020,) published on the 28.03.2020 is the first law to define “vulnerable persons” as follows:

- a) Persons of sixty-five (65) years of age or over;
- b) Pregnant women;
- c) Persons suffering from the following illnesses and, or medical conditions:
 - i. Insulin dependent diabetics;
 - ii. Patients who are immunosuppressed;
 - iii. Patients undergoing any immunosuppressive treatment including but not limited to the use of biological agents and immunomodulators;
 - iv. Patients suffering from cancer who are undergoing chemotherapy;
 - v. Patients suffering, or who have suffered, from cancer having undergone chemotherapy at any time within the last six (6) months preceding the entry into force of this order (ie Saturday 28th March 2020);
 - vi. Patients on dialysis;
 - vii. Patients who are to be admitted to hospital with respiratory problem exacerbations;
 - viii. Patients who, at any time within the last year preceding the entry into force of this order, have been admitted to hospital with respiratory problem exacerbations;

- ix. Patients suffering from cardiac disease who are to undergo a cardiac intervention or a cardiac surgical procedure;
- x. Patients suffering, or who have suffered, from cardiac disease having undergone a cardiac intervention or a cardiac surgical procedure at any time during the last six (6) months preceding the entry into force of this order;
- xi. Patients attending a heart failure clinic and
- xii. Patients on oral steroids.

Any vulnerable person who occupies a public office, is a Member of Parliament, employed in the health services sector or is a health care professional, and, or, who occupies an essential headship position, shall be exempt from this measure unless that person chooses otherwise.

ARE VULNERABLE PERSONS OBLIGED TO 'QUARANTINE'?

Legal Notice 111 of 2020 makes no reference to the term “quarantine” as such.

Rather, the Superintendent of Public Health has ordered individuals who specifically fall under the list of ‘vulnerable persons’ **“to remain segregated in their residence”**.

ARE THERE EXCEPTIONS TO VULNERABLE PERSONS?

The order does not apply in the event that the vulnerable persons need to leave their residence to attend medical appointments, obtain medical care or treatment, acquire food, medicine, other daily necessities, or to attend to any other essential or urgent personal matter.

This exemption is unique to this legal notice and does not apply to persons who are subjected to mandatory quarantine.

IF ANY EMPLOYEE IS A 'VULNERABLE PERSON', MUST HIS EMPLOYER PAY SPECIAL QUARANTINE LEAVE IF THE EMPLOYEE CANNOT WORK FROM HOME?

Legal Notice 111 of 2020 makes no reference to quarantine, and therefore it is being assumed that the employer need not pay special quarantine leave.

IF AN EMPLOYEE IS A 'VULNERABLE PERSON' AND CANNOT WORK FROM HOME, IS HE ENTITLED TO ANY GOVERNMENT FINANCIAL AID?

Although in a previous Government press conference reference was made to a special quarantine leave entitlement for vulnerable persons, as at 28th March 2020 there is no Legal Notice which makes reference to any special entitlement or benefits for vulnerable persons.

WHAT ABOUT PERSONS LIVING IN THE SAME HOUSEHOLD AS 'VULNERABLE PERSONS'?

With regards to persons living in the same household as any vulnerable person, Legal Notice 111 of 2020 is silent in this regard.

Official [guidance](#) issued by the Government of Malta however seems to indicate that such persons **may go to work**, attend to essential shopping needs and attend to medical appointments. Therefore logically, such individuals would therefore not be eligible to paid quarantine leave if they do not go to work.

HOW CAN WE HELP?

Should you require any assistance relative to this Article, please do not hesitate to reach out to us personally.

Should you require any further information or assistance on the matter, please do not hesitate to reach out to us personally on paul.gonzi@fenlex.com and mattea.pullicino@fenlex.com.

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