



## Newsletter

From: EMPLOYMENT Law Department  
REAL ESTATE Law Department

Subject: Social distancing on a construction site: how to deal with the responsibilities on well-being at work?

Date: April 8<sup>th</sup>, 2020

### **Social distancing on a construction site: how to deal with the responsibilities on well-being at work?**

#### **Introduction**

The Belgian Act of August 4<sup>th</sup>, 1996 on the wellbeing of working workers and its implementation decrees impose strict obligations regarding safety & health at work.

Moreover, recently, the government took a number of measures in order to limit the spread of the COVID-19 (Ministerial Decree of March 23<sup>rd</sup>, 2020 on the urgent measures to limit the spread of the coronavirus pandemic<sup>1</sup>). Some of these measures specifically apply to employers and their implementation on the work floor should be considered as a part of the employer's obligations with regard to the well-being at work.

However, the question arises how to deal with those obligations & responsibilities on a construction site and who bears the responsibility for the implementation of these rules.

This article summarizes the responsibilities of each actor and provides some useful tips in this corona-crisis period.

Please note that the information provided in this article is based on the current regulations, but that those can be adapted depending on the evolution of the COVID-19.

We will keep you updated. Meanwhile do not hesitate to contact us should you have any question.

---

<sup>1</sup> Modified by the Ministerial Decree of April 3<sup>rd</sup>, 2020.

## **1. The employer's responsibilities with regard to the wellbeing of workers**

The project director<sup>2</sup> is primarily responsible for the wellbeing of workers on their workplace.

The project director is responsible for the appointment of a health and safety coordinator and must also ensure that everyone on the construction site complies with the health and safety measures.

Nevertheless, the (sub-)contractors also assume an important role to that extend.

The 1996 Act and its implementation decrees provide a pyramidal responsibility structure:

### *1<sup>st</sup> – the project director:*

The project director must comply with all the health and safety measures and ensure that the following persons also do:

- The contractors & sub-contractors on site, even if the project director has only an indirect (contractual) link with the contractor and/or sub-contractor;
- All workers on site.

### *2<sup>nd</sup> – the contractors:*

The contractor(s) must comply with all the health and safety measures and ensure that the following persons also do:

- Their direct sub-contractor(s);
- The sub-contractor of their own sub-contractor and, all the remote sub-contractors;
- All workers on site, including the self-employed contractors
- All persons supplying workers.

### *3<sup>rd</sup> – the sub-contractor(s)*

The sub-contractors must comply with all the health and safety measures and ensure that the following persons also do:

- Their direct sub-contractor;
- Their own workers and, the workers of their direct sub-contractor(s), including the self-employed contractors;
- The persons supplying workers.

Also note that each employer will have the obligation to have a health and safety plan and to adapt this plan depending on new circumstances

---

<sup>2</sup> I.e. the person (or company) appointed by the client and who is responsible for the supervision over execution of the construction.

and risks. As a consequence of the corona-epidemic, the employers (including the (sub)contractors) will have to adapt this plan and provide the appropriate measures to protect the well-being of the workers.

Also worth to note is that non-compliance with the rules on health and safety at work can lead to a civil and criminal liability of the construction director and/or the (sub)contractors.

## **2. Measures to restrict the spread of the coronavirus**

The measures taken by the Belgian government to limit the spread of the corona virus must be considered as a specification of the general obligations regarding the wellbeing of workers.

As a reminder, the Ministerial Decree of April 3<sup>rd</sup>, 2020<sup>3</sup> imposes the following obligations:

- For companies of a non-essential sector:

These companies, regardless of their size, must organize homework for all the functions where possible. For the functions where homework cannot be organized, the companies must ensure that the rules with regard to social distancing are respected (including a distance of 1,5m between the workers). These rules also apply to the transportation organized by the employer. If a company cannot implement these measures, it must close its business.

- For companies active in a crucial sector or performing an essential service:

These companies must only respect the rules with regard to homework and social distancing "as far as possible". In other words, these companies do not have an absolute obligation to implement these measures, but they have to do everything possible to implement the measures.

These rules apply to the companies active in the industries listed in the annex of the Ministerial Decree and to the producers, suppliers, contractors and sub-contractors of goods, works and services which are essential for the performance of the activities and services.

Consequently, in the framework of the 1996 Act and its implementation decrees, the project director has a double obligation. At one side, in his capacity of employer, he must implement these rules to his own

---

<sup>3</sup> Which replaces the former Ministerial Decrees of March 18<sup>th</sup>, 2020 and March 23<sup>rd</sup>, 2020.

workers. On the other side, he must ensure that all the actors present on the construction site also implement these measures.

Obviously, for workers active on a construction site, homework will not be possible to implement. This means that the measures of social distancing will have to be respected.

Based on the latest version of the Ministerial Decree, the extend of the obligations depend on whether the final client has an essential or a non-essential activity. If the client performs an essential activity, the contractors/subcontractors will not have an absolute obligation to implement the measure of social distancing. If, however the client does not perform an essential activity, these measures will have to be implemented and if this is not possible, the (sub)contractor will have to suspend the provision of the services.

### **3. Social distancing?**

“Social distancing” refers to a set of restrictive and controlling measures or actions meant to curb the spread of an infectious illness.

Those rules and actions are aimed at minimalizing (direct) contacts between persons and, consequently, to restrict the spread of an illness.

The Belgian government recommends a distance of 1,5m between each person.

The aim of this article is not to give a detailed overview of the measures which can/must be taken with regard to social distancing. However, a list a measures is published on the website of the Federal Ministry of Work (Dutch version: [link](#) – French version: [link](#)).

### **4. Practical aspects**

The project director assumes the main responsibility for the wellbeing of all workers present on a construction site.

In that regard he must take (in collaboration with the coordinator for health and safety) all the necessary measures in order to ensure that the rules with regard to the well-being at work (including the rules provided by the Ministerial Decree of March 23<sup>rd</sup>, 2020)<sup>4</sup> are respected by every actor on the construction site.

In any case, it is strongly recommended that the project director:

---

<sup>4</sup> Modified by the Ministerial Decree of April 3<sup>rd</sup>, 2020

- Informs, in writing, the contractors, subcontractors and self-employed service providers about their obligation to implement the measures provided by the Ministerial Decree of March 23<sup>rd</sup>, 2020 5.
- Invites them to adapt their health and safety plan based on the new circumstances and to implement the measures.
- Emphasizes their own responsibilities on this matter and reminds the role of the health & safety coordinator and the obligation to collaborate with him.

This communication is, of course, not sufficient to fulfil with the project-director's obligations regarding health and safety at work.

Indeed, the project director will also have to control the effective compliance with the measures and actions. The health & safety coordinator plays a crucial role herein.

In that regard the project director (and the health and safety coordinator) should hold regular visits to the construction site(s) in order to control whether the measures are implemented.

In addition, if it is established that these rules are not respected by (sub)contractors, the project director will have to impose them to stop immediately their activities.

### **Wish to contact our legal experts?**

Emmanuel Wauters : [emmanuel.wauters@mvv.be](mailto:emmanuel.wauters@mvv.be)

Anne Laure Brocorens : [annelaure.brocorens@mvvp.be](mailto:annelaure.brocorens@mvvp.be)

---

5 Modified by the Ministerial Decree of April 3<sup>rd</sup>, 2020