

26 MARCH 2020

COVID-19

FAQS FOR NGOS

pila 
public interest law alliance
a project of FLAC

COVID-19 RESOURCES FOR NGOS

The COVID-19 pandemic has created a rapidly evolving situation for everyone. All NGOs and community organisations are being called on to react quickly to what is an unprecedented event.

We understand that managing the impact of COVID-19 on your organisation raises a number of legal issues and may feel complex and daunting. We have compiled some resources to help you navigate some of the key legal issues that may arise in the coming days, weeks and months, and to signpost to where legal help and support will be available.

The six identified areas are:

1. Employment Law
2. Corporate Governance
3. Funding Agreement, Contracts, and Service-Level Agreements
4. Data Protection
5. Insurance
6. Additional Client Concerns

PLEASE NOTE

The information contained in this guide does not constitute legal advice, but is a list of key issues for consideration. Organisations must conduct their own risk assessment and get advice on their specific circumstances, operational needs, responsibilities and legal obligations.

PILA will keep this document under review and update it as the situation develops. Last updated on 26 March 2020.

EMPLOYMENT LAW

What are my obligations to my staff as an NGO employer? Some are now remote working, some on sick leave, some continue to work with our clients on the frontline. We want to ensure we are equipped to deal with any legal issues arising.

COVID-19 presents a significant number of both standard and novel employment law issues for NGO employers. Organisations have a duty of care toward their employees and must ensure their health and safety as far as reasonably practicable. What is 'reasonably practicable' at any particular time will depend on the worker, the job, the environment and the risks. It can change over time. Your organisation will need to ensure it is taking appropriate steps to manage all staff in a manner consistent with that duty of care in the face of this pandemic. It will be vital to monitor up-to-date information provided from the [World Health Organisation](#) and the [HSE](#), to act on any guidance provided, as well as comply with the usual employment law legislation, regulations and case law.

USEFUL RESOURCES FOR NGOS

- The law firm **A&L Goodbody** has put together a list of [Top 10 Employer COVID-19 FAQs](#) and [top 5 issues arising from the first week of shutdown](#).
- **The Wheel** has a useful resource [Guidance for NGO employers](#).
- The **Department of Employment Affairs and Social Protection** has produced [Guidance for Employers](#).
- **The Health and Safety Authority** has [Guidance on Working from Home](#).
- **The Health Protection Surveillance Centre** has provided [COVID-19 Guidance for Settings for Vulnerable Groups](#), such as Travellers, asylum seekers, the homeless and others, particularly those in congregated settings or facilities such as direct provision centres, hostels, hubs or residential settings including those without clinic or in-house nursing, medical or healthcare support.

If the above resources do not answer your legal query, PILA can find you a pro bono lawyer to advise on general matters related to employment and COVID-19. Unfortunately, we cannot intervene in internal employment law disputes.

CORPORATE GOVERNANCE

We are concerned about our ability to meet some of our corporate governance obligations at this time. In particular, the publication of our annual report may be delayed. Where can I get reliable information about how to handle this?

The board of your organisation is responsible for, among other things, anticipating and managing the risks which you may face. The recent spread of COVID-19 is likely to create risks for your NGO, which your board should consider and address.

The Charities Regulator has already put together [comprehensive FAQs](#) on how charities can manage their corporate governance in the current circumstances. In particular, in respect of annual reports the Charities Regulator has acknowledged that the impact of this crisis may result in delays in the filing of annual reports and is conscious that all organisations are facing challenges at this time. It has asked that charities endeavour to file annual reports on time using the Charities Regulator's online portal, but has stated that it "will be considerate and proportionate in how we deal with such issues where they arise. While we do not propose to formally extend filing deadlines at this time, we will keep this under review."

There is no specific requirement to notify the Charities Regulator that your charity has closed due to illness. However, in line with good governance, procedures should be put in place to deal with the possibility of your charity not being in a position to provide essential services to service users for a period of time.

USEFUL RESOURCES FOR NGOS

- **The Charities Regulator** has provided [FAQs on COVID-19 and Charities](#), and can be contacted [here](#).
- **Arthur Cox** has issued specific guidance on [AGMs and COVID-19](#).
- **The Carmichael Centre** is contactable by email for advice on governance related issues at info@carmichaelireland.ie.

If the above resources do not answer your legal query, PILA can find you a pro bono lawyer to advise on matters related to corporate governance and COVID-19.

FUNDING AGREEMENTS, CONTRACTS AND SERVICE-LEVEL AGREEMENTS

The impact of COVID-19 means we might be prevented or delayed from performing or complying with our contractual obligations to funders and others – what should we do?

NGOs should consider the potential staffing, operational and financial impacts of COVID-19 on the organisation and how these may have consequences for delivery of existing contract commitments. All funders, both State and philanthropic will be acutely aware that this crisis will place many organisations in great difficulty, and many will be willing to discuss and renegotiate the terms of existing contracts in light of the evolving situation. It is advisable to speak with funders at an early opportunity to explore possible options.

Every contract is different. Some contracts will contain in-built provisions which allow the parties to vary or change the terms where some unexpected event (like a pandemic or “force majeure”) happens. Others contain “termination” or “hardship” clauses. The particular contract should be examined carefully and evaluated on a case-by-case basis.

However, specialist legal advice should always be sought before suspending performance of contractual obligations, terminating the contract or seeking to vary the terms of the contract.

USEFUL RESOURCES FOR NGOS

- **Arthur Cox** has published a guide to [COVID-19 Practical Considerations: Force Majeure clauses in contracts](#).
- **Eversheds Sutherland** has provided information on [what organisations need to know about force majeure and frustration](#).

If you have concerns about contractual commitments, PILA can find you a pro bono lawyer to advise on your individual situation.

DATA PROTECTION

COVID-19 has raised a range of new data protections issues, such as the disclosure of health information, protection of data while working from home, and timelines for responding to data subject requests. How can we be sure we are operating within the law?

The Office of the Data Protection Commissioner has noted that many of the steps which voluntary organisations may be taking to contain the spread and mitigate the effects of COVID-19 will involve the processing of personal data (such as name, address, workplace, travel details) of individuals, including in many cases sensitive, 'special category' personal data (such as data relating to health). The increased numbers of employees who are now working remotely will also raise data protection issues.

The Data Protection Commissioner has said that 'measures taken in response to COVID-19 involving the use of personal data, including health data, should be necessary and proportionate. Decisions in this regard should be informed by the guidance and/or directions of public health authorities, or other relevant authorities'.

For data subject requests, the timelines are set in law, however the Data Protection Commissioner suggests taking a number of steps, including communicating delays with the individual concerned and availing of the two month extension to the period.

USEFUL RESOURCES FOR NGOS

- The **Data Protection Commissioner** has issued two guidance notes specifically: [COVID-19 and Data Protection](#) mostly covering employment and [Protecting Personal Data When Working Remotely](#).
- **McCann Fitzgerald** have issued some general guidance on [Coronavirus and Data Protection – Four Points for Employers](#).

If you have concerns about specific data protection issues, PILA can find you a pro bono lawyer to advise on your individual situation.

INSURANCE

Will our insurance cover financial loss due to COVID-19, such as cancellation of events or travel? What about impact on the operations of our organisation?

It is advisable to try to carefully identify the impact of COVID-19 on your organisation, especially what loss has been and may be suffered by the organisation as a result. Some typical examples may be cancelled events or fundraisers, cancelled travel plans, or COVID-related harm to employees or volunteers. It is always useful to record a chronology of key details and events, and retain any relevant documentation.

Insurers will expect you to take reasonable steps to reduce (mitigate) any loss, so think about how you can minimise the damage to the organisation and keep this under review. This can be a complicated and lengthy process so do not be rushed by insurers to finalise your claim. You will also need to consider whether the organisation is at risk from claims by others against the organisation.

The next step is to review your insurance policies to understand whether insurance might cover those impacts. Your organisation should then confirm the scope of insurance cover and the policy conditions with your broker.

USEFUL RESOURCES FOR NGOS

- **Arthur Cox** has provided [Practical Considerations on Insurance Coverage](#).

If you have legal queries regarding insurance cover, PILA can find you a pro bono lawyer to advise on your individual situation.

CLIENT CONCERNS: ADDITIONAL LEGAL ISSUES ARISING FOR CLIENTS AND SERVICE USERS

Many of our service users and clients are now facing additional challenges that have been caused or amplified by the current crisis in the areas of housing and homelessness, job loss, worries about financial commitments and increased threats of domestic violence. Where can they access legal advice themselves?

The consequences of COVID-19 will be felt across a number of sectors in which NGOs are already working. It may particularly impact on the work of NGOs whose clients are already disadvantaged and marginalised: those with insecure immigration status; those suffering domestic abuse; those who are homeless or in insecure housing; older persons; those with a disability; prisoners and so on. It is likely that many of these issues will have a legal aspect and it is important that NGOs have access to reliable advice that may lie outside their areas of usual expertise.

USEFUL RESOURCES FOR NGOS

- Citizens Information have produced guidance on a number of issues:
 - [Employment rights of individuals during COVID-19 restrictions.](#)
 - [Social welfare payments and COVID-19.](#)
 - [Your finances and COVID-19.](#)
 - [Older people and COVID-19.](#)
- **Department of Social Protection Income Support Helpline** for COVID-19 is at 01 248 1398 and 1890 800 024. This helpline provides information on available income supports for people impacted by COVID-19 and on how to make an application.
- **FLAC** produced guides on [Social Welfare Supports](#) and [Borrower's Rights](#) during the Covid-19 outbreak. FLAC's free telephone information and referral line is available on 1890 350 250 or 01 874 5690. The phone line will be open Monday to Friday 9.30am-1pm and 2-5pm.

USEFUL RESOURCES FOR NGOS

- **Community Law & Mediation** is running free legal advice clinics by phone in social welfare, housing, debt and employment. Call 01 847 7804 or 061 536 100 to book an appointment.
- **Mercy Law Resource Centre** is running free legal advice consultations over the phone on housing and homelessness issues. Call 01 453 7459 between 10am-1pm or email info@mercylaw.ie.
- **Threshold** has produced [Advice for Renters whose Tenancies are affected by COVID-19](#). Call Threshold on 1800 454 454 or [by email here](#).
- **Alone** has a COVID-19 support line for older people which can be reached from 8am-8pm on 0818 222 024.
- **Inclusion Ireland** has [easy-read guides to COVID-19](#) for people with an intellectual disability and **Independent Living Movement Ireland** is holding [weekly online discussion](#) spaces for people with disabilities.
- The **Women's Aid** 24hr National Freephone Helpline 1800 341 900 continues to offer confidential information, support and understanding to women being abused. The National 24-Hour Freephone **Rape Crisis Helpline** 1800 778 888 is also available to those who need to access crisis counselling and support.
- The **Irish Naturalisation & Immigration Service** has prepared [FAQs on its temporary measures](#). The **Immigrant Council of Ireland's** Information and Support Service is available between 10am-1pm on 01 674 0200. The **Irish Refugee Council Law Centre** also provides information and support on 01 764 5854 and info@irishrefugeecouncil.ie. Migrant workers can also contact **MRCI** Monday to Friday from 10am-1pm and 2pm-4pm on 01 5313 239 for immigration queries and 01 531 3239 for employment queries or at info@mrci.ie.
- The **Children's Rights Alliance** Access to Justice Initiative Helpline is open for children, young people and their families or people who work with them to access legal information. Call 01 902 0494 Monday 10am – 2pm and Wednesday 2pm – 7pm, or email at help@childrensrights.ie.
- The **Irish Human Rights and Equality Commission's** Your Rights Service is open Monday to Friday from 9.30 am-1 pm on 1890 245 545 or 01 583 000, or at YourRights@ihrec.ie.
- **Care After Prison** has opened a free phone line for those released from prison or on a return programme. Call 1800 839 970 from 10am-5pm Monday to Friday.
- The **Legal Aid Board** [law centres nationwide](#) continue to provide mediation in family disputes, and [limited legal advice and representation in civil cases](#).

ACCESS PILA'S SERVICES

PILA (the Public Interest Law Alliance, a project of FLAC) runs a **Pro Bono Referral Scheme** that connects social justice organisations with free legal expertise provided by a pro bono barrister or solicitor.

NGO partners can obtain free legal assistance where they do not have the resources or in-house expertise.

The PILA team is working remotely and continue to have email and phone access at the usual numbers.

You can contact us at;

Deirdre Malone: deirdre.malone@flac.ie or 01 887 3624.

Rachel Power: rachel.power@flac.ie or 01 887 3630.

For more information on our service, see <https://www.pila.ie/help/>.

