Global Workplace Law & Policy

Carpe diem and the pandemic

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Positioning for a new economic start

A popular cultural reference point for the Latin phrase *carpe diem* has been the film *Dead Poets Society*, starring the late Robin Williams. In this movie, the English teacher, portrayed by Williams, uses this Latin phrase at the opening of his first class with his students. The scene from *Dead Poets Society* dramatizes *carpe diem* as a phrase full of potential for youth and young adults.

Mid-Atlantic © David Mangan

What does carpe diem mean during a pandemic?

For many in the midst of 2020, *carpe diem* may seem to be a hollow phrase, especially for those whose livelihoods have been affected by Covid-19. Unease, disquiet, fear, and concern: these sentiments speak to a range of thoughts about the future in the midst of the Covid-19 pandemic. Youth, those under 25, stand out as a cohort of particular concern for myriad reasons including disruption to education, declining opportunities to develop skills, and the further growth of socio-economic divergences.

Comparing the US and EU Responses

Governments have been called upon to immediately support residents' health needs as well as their financial well-being. These demands have been confronted in differing ways. The financial, in relation to income support for workers, is the focus here. The European Union and the United States serve as comparators; though much detail is spent on the US.

It is hardly controversial to note the recent strained relationships between these two jurisdictions. Still, the US economy has often been looked to as a benchmark. The responses to the coronavirus pandemic of 2020 suggest points for further attention as this crisis continues and its effects become better delineated.

The United States and Covid-19

The US efforts to address the work-related challenges of Covid-19 are a bit harder to follow at the outset. They consist of two phases signified by the respective legislation in each, the *Families First Coronavirus Response Act* and the *Coronavirus Aid, Relief and Economy Security (CARES) Act.* (The Act dealt with matters beyond work, including availability of loans for larger industries ($208 billion USD) and small business ($300 billion).) These have also been referred to as phases two and three, respectively, in reference to the overall rolling out of legislation; where phase one was the *Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020*. (This Act focused on health-related funding totaling $8.3 billion.) These legislative discussion is not exhaustive and there are a number of questions which remain as noted in Richard Bales, 'COVID-19 and Labour Law: U.S.' (2020) 13 *Italian Labour Law e-Journal*.

Emergency Sick Leave

The *Families First Coronavirus Response Act* provided emergency paid sick leave (s.5101) to employees of businesses with fewer than 500 workers. Eligible employees (s.7001 and following) were: those quarantined; those advised by a medical doctor to self-quarantine; those experiencing Covid-19 symptoms and were waiting for diagnosis; as well as employees taking care of individuals who fell into the above categories and employees caring for children whose schools/day-cares had been closed. Affected employees (as listed above) who were not caring for others were entitled to pay at their regular rate up to a maximum of $511 per day or $5,110 total. Employees who were caring for others affected by Covid-19 or children were entitled to $200 per day. Emergency paid sick leave has been available for a period of two weeks. The *Families First Coronavirus Response Act* also established paid emergency family medical leave. This measure appeared to fill-in for any gaps in emergency paid sick leave as they related to employees with children. Eligible employees were those who could not work or telework due to childcare responsibilities (schools/day-cares closed). This leave lasted for 12 weeks, where the first 10 days may be unpaid (accrued paid leave may be used during this time). After 10 days, employers must pay employees at least two-thirds of their usual rate of pay, with a maximum of $200 per day and a total of $10,000. Employees who had already taken 12 weeks of leave under the provisions of the *Family and Medical Leave Act* are not eligible for this leave, but may be eligible for the aforementioned emergency paid sick leave. Overall, these leave provisions expire on 31 December 2020. Provided the provisions are followed, employers will receive tax credits for the sums paid for this leave.

In the United States, sick pay is not required by the federal government (a few US states mandate sick pay: the District of Columbia, Arizona, California, Connecticut, Maine, Maryland, Massachusetts, Nevada, New Jersey, Oregon, Rhode Island, Vermont, and Washington). The absence of mandatory sick pay across the country means that approximately 33.6 million individuals work without sick pay. Furthermore, access to sick pay decreases in concert with income levels: essential workers (such as grocery store clerks) at low income levels are unlikely to have this benefit; even though they occupy a high risk position. A 2010 US Senate Report estimated that 27% of food preparation and food services workers had access to sick pay. Put in a larger context, just under one-third of workers (31%) in the lowest 10% of wages have access to sick pay; while 92% of those in the top 10% of wages have sick pay entitlement.

Unemployment payments

The pandemic increased the burden of unemployment insurance which the American stimulus act also enhanced. The *CARES Act* committed $2 trillion USD to economic stimulus (approximately 10% of US GDP). Furloughed workers (temporarily laid off) were eligible to collect unemployment benefits consisting of payment of $600/week for four months in addition to their state unemployment benefits. In line with many other countries, eligibility has been extended to include typically ineligible groups such as the self-employed. The American steps, though, have not been as aggressive in terms of job retention when compared to the temporary wage subsidy available in many Member States. (The American aviation industry has been provided with temporary wage assistance pursuant to s.4111 ff. of the Act.) Instead, the federal government has decided to send one-time checks (cheques) to many residents, regardless of their employment status (set out in s.2201 of the Act). This means that many workers who may have lost their positions will be dependent upon how far this sum can be stretched in addition to any unemployment benefits they have from the state, plus the aforementioned $600 from the *Families First Coronavirus Response Act*. (Those individuals whose 2019 income was high, but has dropped significantly in 2020 will have to wait for 2021 when they file their 2020 tax returns in order to be eligible for a payment.)

The Act also extended these benefits to self-employed individuals. The extension of social security benefits (even temporarily) to the self-employed constitutes a remarkable step and one worth of further attention; that is, does it foreshadow a new perspective on taxation of the self-employed.

$1200 for all

The headline figure has been $1200 USD for each resident. There is an overall structure to these payments divided between individuals who will have $1200 deposited directly into their bank account or $2400 for married couples who file tax jointly. Families will receive an additional $500 for each qualifying child under the age of 17. Only those qualifying will receive the payments: those individuals who have an adjusted gross income (AGI) of up to $75,000; married couples filing joint taxes whose AGI is up to $150,000; and heads of households whose AGI is to $112,500. The AGI is based upon the most recent filed tax returns. Those who exceed these thresholds will receive lower payments of approximately $5 less for every $100 made over the limits up to a maximum of $99,000 (for individuals), $198,000 (married couples jointly filing),

$136,500 for heads of households. *Forbes* has estimated stimulus payments for a variety of AGIs.

A quick look at the EU

EU Member States have also provided a range of income support including: a temporary wage subsidy, unemployment allowance, means to assist working parents, sick pay and assistance for the self-employed. The aim of these plans has been to provide some income for residents who support themselves through paid work. None of the schemes purported to provide 100% income replacement; nor did they assure continued employment after those measures ceased. The effective pay reduction is an important factor to keep in mind. One of many questions is how will this be dealt with moving forward: will 100% of pre-pandemic wages be achieved and if so by when? The question does not overlook the fact that wage levels will likely be tied to business income which itself will also be reduced. Focusing on the temporary wage subsidy (which was not adopted by all EU Member States), this scheme is carried out through employers that keep their workers on the payroll but who have been asked not to continue working or are working reduced hours.

Direct Payment or Wage Subsidy

Paying individuals directly as opposed to attempting to keep them on their employers' payroll may be debated. For the US, one possible consideration in electing to pay a lump sum may have been events in 2008 when major banks were given large sums of money to pass on to consumers. Instead of doing so, the banks largely retained the money. A meticulous itemizing of events can be found in Andrew Ross Sorkin's *Too Big to Fail*. A more cynical view regarding why the federal government chose to pay individuals a lump sum is that it may be an overtly political decision.

Ready to seize the moment?

This commentary does not overlook the massive loss of life attributable to this pandemic. The abiding sadness will remain. The focus here has been on the slow process of pulling things together. With the latter aim in mind, the differing approaches identified above are valuable examples to monitor. It may be said that the steps taken by the US create a remarkable number of unemployed (an estimated 39 million people), with dower prospects for later this year. And yet, in the EU, it may be asked whether the temporary wage subsidy only delays a full onset of unemployment. Which approach will be in a better position to seize the day as lockdown measures are relaxed (and when some form of widely accessible treatment is available for this coronavirus) remains to be seen.

The Regulating for Globalization Blog is closely following the impact of COVID-19 on the labour, trade and European law communities, both practically and substantively. We wish our global readers continued health and success during this difficult time. All relevant coverage can be found here.

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