

The image shows the silhouettes of four people—three men and one woman—standing in a row, looking out of a large window. They are in a modern office setting. The window provides a view of a dense urban landscape with various high-rise buildings. The scene is backlit by the bright light from the window, creating a strong silhouette effect. The reflections of the people are visible on the polished floor in the foreground. A semi-transparent grey banner is overlaid across the middle of the image, containing the title and date.

WORKPLACE ISSUES AND COVID-19 IN ASIA-PACIFIC

March 2020

As this is a fast moving topic, please note that this article is current as at 31/03/2020. For further information, please feel free to contact us.

Introduction

The World Organisation (WHO) has now upgraded the status of the COVID-19 outbreak from epidemic to pandemic. It is a global health threat and is causing unprecedented disruption.

Although many companies have business continuity plans in place, very few of these address the specific employment issues arising out of an outbreak of a virus like COVID-19 which appears to be highly contagious but generally symptomless early in the infection stage. This raises numerous workplace issues including:

- refusal to attend work
- enforced working from home
- sickness benefits during self-isolation
- workplace health and safety
- data privacy and confidentiality
- business travel restrictions
- discrimination

Most countries now have mandatory quarantine requirements in place for anyone testing positive for the virus. Many governments are going further and imposing self-isolation or quarantine requirements for incoming travellers (irrespective of where they have travelled from) and restricting non-citizens / residents from entering their country. The public has have been advised not to travel unless it is essential. Many offices and business, particularly those in high risk jurisdictions, including Mainland China, Hong Kong and Singapore, have already introduced voluntary infection control measures such as requiring any employee who may have been exposed to anyone confirmed as having the virus, to work from home. However, even for those already making plans it appears that the spread of the virus is likely to outpace those preparations and employers need to be flexible and be prepared to react to the situation which is developing at an alarming pace.

So what can employers do to address the specific challenges they face?

Kennedys is issuing a series of e-bulletins providing employers in several key APAC jurisdictions with guidance on how to deal with the impact the spread of COVID-19 is likely to have on their workforce. This provides answers to the key questions we anticipate employers will have.

AUSTRALIA



AUSTRALIA

Introduction

COVID-19 is rapidly encroaching on all facets of Australian life and business. Regrettably, known cases of COVID-19 in Australia are presently increasing. Businesses are naturally concerned about the health and safety of their workforce and ensuring 'BAU' as far as possible. This bulletin is intended to provide some clarity amongst the confusion for employers asking the question: what are my obligations under Australian employment law?

Questions

1 Are employers subject to any specific legislation in respect of COVID-19?

- 1.1 Each State and Territory in Australia has enacted revised health legislation or invoked powers under existing health legislation in response to COVID-19. While most of the measures imposed by these instruments operate at the individual level, such as requiring individuals to undertake a period of 14 days isolation in designated hotels under the supervision of the Australian Defence Force following return from overseas, these measures will impact an employer's ability to issue certain directions to their employees. In addition, all States and Territories have banned gatherings of more than 2 people, subject to exceptions which vary from State to State. Employers must be vigilant to ensure that they do not organise or require employees to attend any gatherings in the course of their duties. There are stringent penalties for breaching self-isolation requirements, ranging between around \$6,600 and \$50,000 (depending on the State or Territory) and potential for imprisonment in some States.
- 1.2 In addition to these health directives, employers remain subject to their ordinary statutory and contractual obligations in relation to employment, work health and safety, and anti-discrimination.

Work health and safety (WHS) legislation

- 1.3 Every State and Territory in Australia has strict WHS legislation (with all States and Territories implementing the model WHS laws, save for Victoria and Western Australia). While there are variations between the States and Territories, in essence every 'person conducting a business or undertaking' must ensure, so far as is reasonably practicable, the health and safety of workers engaged or caused to be engaged by that employer. To meet this duty, employers must identify risks at the workplace, and take all reasonably practicable steps to eliminate those risks or, if not reasonably practicable, minimise those risks.
- 1.4 There are severe penalties that apply for breaching the WHS legislation, ranging into the millions of AUD and, in some instances, could result in the imprisonment of directors/officers.

The WHS regulators have been enforcing these obligations in relation to COVID-19, with an improvement notice issued to Qantas concerning inadequate systems of work in place to clean aeroplanes that may have transported infected passengers.

- 1.5 Workers also owe obligations in respect of their own health and safety, and that of their colleagues.
- 1.6 This is significant in the context of COVID-19: employers must take *all* reasonably practicable steps to eliminate or manage the risks arising from COVID-19. This includes implementing appropriate control measures such as:
 - (a) not requiring an employee to attend the workplace if work can be performed from home. In New South Wales by Government order issued on 30 March 2020, it is unlawful for a person without 'reasonable excuse' to leave their residence. If work can be performed from home, the employee will not have a reasonable excuse and will potentially face fines of up to \$11,000 and/or 6 months imprisonment;
 - (b) enforcing social-distancing rules such as two individuals should not stand closer than 1.5 meters apart and one person to occupy 4 square meters of indoor space;
 - (c) limiting the number of workers who travel together. Current advice is that no more than 1 person should travel in an elevator at a time;
 - (d) requiring workers to practice good hygiene, including frequent hand washing, limiting contact with others, and covering mouths while coughing or sneezing with a tissue or crook of their elbow;
 - (e) providing workers with appropriate personal protective equipment and facilities, and information and training on how and why they are required to use them;
 - (f) limiting unnecessary access to the workplace by other people; and
 - (g) cancelling or postponing work-related travel (domestic or international) and alternative methods of communication, noting that many States have 'closed their borders' to domestic travellers.
- 1.7 Employers must be mindful that the model WHS laws apply wherever a worker performs work. This means that an employer's WHS obligations apply even when an employee works from home.

- 1.8 Although employers may not have time to conduct a comprehensive risk assessment of the home workplace due to the rapidly evolving situation, employers are required to take proactive measures to ensure their employees' WHS while working from home including:
- (a) providing information to staff about how best to set up their home workplace to be safe (e.g. ergonomics);
 - (b) ensuring that staff have the necessary equipment to work from home (e.g. a laptop, office chair or extra screen);
 - (c) ensuring that IT systems enable the ability to work from home;
 - (d) establishing alternative communication methods such as Skype or Zoom; and
 - (e) ensuring regular communication with employees, including providing access to an employee assistance program where possible and appointing a contact person in the business for workers to speak to about concerns.

Contractual and other entitlements

- 1.9 Employers must also ensure to comply with any obligations under their employees' contract of employment and any applicable modern award or enterprise agreement.
- 1.10 Employers owe an implied contractual duty to take reasonable care for the safety of their employees, including their psychological health.
- 1.11 Employers should take care to comply with any consultation requirements contained in applicable modern awards or enterprise agreements, which could place an obligation to consult with employees about workplace changes implemented as a result of COVID-19.

Anti-discrimination legislation

- 1.12 Employees are protected from discrimination or victimisation as a result of the exercise of workplace rights, such as the right to make complaints or inquiries in relation to their employment (such as about COVID-19 measures in place) or the right to take personal/carer's leave.
- 1.13 Employees are also protected from discriminatory treatment in the workplace due to their race (such as if they are of Iranian, Chinese, South Korean or Italian descent).

2 Can an employee refuse to attend work because they are concerned about contracting the virus?

- 2.1 Employees who wish to stay at home as a precaution, but are not subject to a direction from their employer or the government, need to come to an agreement with their employer. This may be in the form of a request to work from home, if that works practically for the workplace, or an application for annual or sick leave (provided preconditions are met).

3 What should an employer do if an employee is suspected/confirmed as having the virus?

- 3.1 Given employers' and employees' respective WHS duties, employees who are suspected or confirmed as having COVID-19 should be directed not to attend the workplace while they are unwell. The employer must take active steps to ensure that the employee does not attend the workplace until sufficient time after their illness as required by the current medical advice. If an employee attends work whilst unwell, in breach of an employer's direction not to do so, given the present unique circumstances, disciplinary action may be warranted.
- 3.2 An employer can direct employees who are confirmed as having COVID-19 not to come to work, and to obtain a medical clearance before returning to work. Any such direction must be reasonable and lawful, and based on actual information about WHS risks arising from COVID-19.
- 3.3 If an employee is suspected or confirmed as having COVID-19 and required to remain at home, they may:
- (a) work from home, receiving their ordinary pay, provided they are well enough and their workplace and position support working from home arrangements; or
 - (b) use accrued paid personal leave if they are too unwell to work. If the employee runs out of accrued personal leave, they may take unpaid personal leave or utilise accrued annual leave.

4 What information is an employer entitled to require from its employees about their exposure to the virus?

- 4.1 An employer can (and are advised to) require employees to notify their employer about their potential exposure to COVID-19. This is necessary in order for the employer to determine whether the employee's presence at work amounts to an unacceptable risk to other workers' health and whether deep cleaning of a work space ought to occur following an ill employee's attendance at work.

4.2 In the following circumstances employers are encouraged to direct an employee to not attend the workplace:

- (a) if there is a particular reason to suspect that the employee may have been exposed to COVID-19 (such as attendance at an event where persons with diagnosed cases were present);
- (b) if a relative or household member of the employee has tested positive to COVID-19 (and the employee has been in contact with/proximity to that person); or
- (c) if the employee appears unwell or is exhibiting symptoms of concern.

5 What steps should an employer take to ensure it maintains a safe workplace? Are there any statutory requirements or best practice guidelines?

5.1 There are currently no prescriptive statutory requirements for employees beyond the obligation to take all reasonably practicable steps to ensure the health and safety of workers. However, a number of steps are available to employers including:

- (a) requiring employees to report relevant matters of concern about their own health and safety;
- (b) encouraging and requiring good hygiene;
- (c) reducing face to face contact, whether that be by requiring employees to work from home, exercise social distancing or utilising audiovisual conferencing facilities;
- (d) where possible, implementing flexible hours of work to stagger the time spent in close proximity with other employees and/or to avoid peak public transport times;
- (e) providing personal protective equipment, where applicable; and
- (f) reducing or eliminating work-related travel, including internal, domestic and international travel.

6 Can an employer require an employee not to attend work as part of its infection control measures?

6.1 An employer may direct employees not to attend work as part of its infection control measures if this is a reasonably practicable measure to minimise any WHS risk.

- 6.2 If an employee's role and the employer's business is such that the employee can work from home, the employer should ensure that arrangements are in place to enable the employee to work from home.
- 6.3 If the employee's role is not able to be performed from home, the employer should consider whether there are any suitable alternative roles or duties that can be given to the employee while at home.
- 6.4 If the employer requires a full-time or part-time employee to work from home but there is no role that the employee can reasonably perform, the employer will ordinarily need to pay the employee for the period they are required not to attend work (subject to any requirements in the contract of employment and any applicable modern award or enterprise agreement). This does not apply to casual employees.

7 Does an employer have to pay sick pay to an employee who is self-isolating?

- 7.1 If a full-time or part-time employee is in isolation pursuant to an employer or government directive, where possible work from home options should be utilised. Where this is not possible, one of the following scenarios arise:
 - (g) Employee is unwell (diagnosed with COVID-19 or other illness): the employee will, subject to provision of medical evidence, be entitled to take paid personal leave;
 - (h) Employee is not unwell and, in the absence of a Government isolation directive, the employee would be required to attend work: the employee is not entitled to personal leave and may request to take annual leave or unpaid leave;
 - (i) Employee is not unwell and no Government isolation directive is in place but the employer, as a precautionary measure, directs the employee not to attend the workplace: in the ordinary course full time and part time employees (only) will be entitled to payment at their ordinary pay.
- 7.2 If the employee is voluntarily isolating as a precaution but in the absence of an employer or government directive requiring them to do so (and the employee refuses to return to work), the employer does not have to pay that employee.

8 When is an employer required to close its workplace? If it does, is it still required to pay its staff?

8.1 The primary position (absent any particular contractual, award or enterprise agreement specific provision to the contrary) is that full time and part-time employees who are directed not to perform work, are entitled to their contracted full time or part-time wages irrespective of whether work is performed. However, some employers may be able to rely on section 524 of the *Fair Work Act 2009* (Cth) to stand down employees without pay if they can establish that the stoppage of work arose from a 'cause for which the [employer](#) cannot reasonably be held responsible' (for example, a Government directive that the employer cease some or all of its business operations).

9 Is an employer entitled to require its employee to see a doctor? Can an employer require its employee to provide it with a copy of their medical report?

9.1 Where an employer has a reasonable basis to suspect that an employee may have COVID-19, the employer can direct its employee to see a doctor. Such circumstances can include:

- (a) attendance at an event where persons with diagnosed cases were present;
- (b) a relative or household member of the employee has tested positive to COVID-19 (and the employee has been in contact with/proximity to that person); or
- (c) the employee appears unwell or is exhibiting symptoms of concern.

10 Can an employee refuse to work with another employee who is suspected of having the virus?

10.1 If there is a reasonable basis to suspect an employee of having COVID-19, an employer should not require other employees to work with that employee: to do so would be a breach of the employer's WHS obligations, and likely a breach of the contract of employment (making a direction that is neither lawful nor reasonable).

10.2 If there is not a reasonable basis to suspect the employee of having COVID-19, then an employee cannot lawfully refuse to work with the other employee. In those circumstances, the employer could direct the other employee to work with the other employee, however care should be taken to ensure this is done in a reasonable manner.

Key contacts



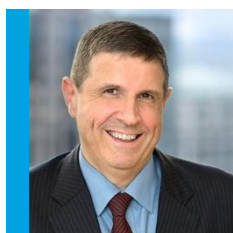
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HONG KONG



HONG KONG

Introduction

Hong Kong is fortunate to have a world class health system. Perhaps more importantly it has extensive experience and expertise in the management of epidemics of infectious diseases gained as a result of relatively recent outbreaks of SARS in 2003 and H1N1 (Swine flu) in 2009.

The immediate impact of COVID-19 in Hong Kong has been very similar to that of SARS back in 2003. Public places are disinfected several times a day, as are shops, office buildings etc. Despite these measures, many are avoiding going out to restaurants, shops, cinemas and other entertainment venues. Hospitals and other healthcare facilities are on high alert and under considerable pressure. Schools remain closed although most are providing students with online classes.

The memory Hong Kong people have of SARS has led to them adopting voluntary infection containment measures such as wearing face masks and regular hand washing/sanitising. Some may have considered these measures to amount to panic but they do appear, at least for the moment, to have been relatively effective in slowing down the spread of the virus in Hong Kong. But no one can afford to be complacent.

COVID-19 has already been severely disruptive for employers in Hong Kong, particularly those in the travel, hotel/hospitality, entertainment and retail sectors. This looks likely to continue to do so for some time. During these challenging times, employers need to be mindful of their obligations to their employees under health and safety legislation, employment and anti-discrimination laws and the potentially more serious business interruption issues which may arise if they do not take steps to address these issues.

Questions

1 Are employers subject to any specific legislation in respect of COVID-19?

No. Hong Kong has not yet enacted any employment specific laws with respect to COVID-19. The Hong Kong Government is generally reluctant to interfere in private sector employers' employment policies. Whilst it directed civil servants to work from home from Chinese New Year until early March 2020 (and these measures have now been reintroduced), it only appealed to private employers to allow their employees to do the same. However, the Labour Department has issued a guidance note for employers and employees. This is headed 'Obligations and rights of employers and employees under the Employment Ordinance (EO) relating to the Coronavirus Disease 2019 (COVID-19)' (the **Guidance Note**) and is set out on the Labour Department website (www.labour.gov.hk).

Employers should familiarise themselves with the provisions of the Guidance Note.

They should also:

- be mindful of their obligations to employees under the Occupational Safety and Health Ordinance (**OSHO**) and their common law duty of care-to provide a safe workplace;
- ensure that any steps they take as a result of the COVID-19 outbreak, and in particular in dealing with an employee who is diagnosed with or is suspected of having, or being exposed to someone with, COVID-19, do not breach their:
 - obligations under the Employment Ordinance (**EO**); or
 - their contract with that employee (**Employment Contract**); and
 - comply with the Disability Discrimination Ordinance (**DDO**) if an employee is diagnosed or suspected of being diagnosed with COVID-19 or is associated with a person with COVID-19.

2 Can an employee refuse to attend work because they are concerned about contracting the virus?

Generally speaking an employee cannot refuse to attend work just because they are fearful of contracting the virus. They would, however, be lawfully entitled to do so if they feel their workplace is dangerous or hazardous to their health. The following circumstances would probably warrant a refusal to attend work:

- the government directing private businesses to make all employees to work from home because of an outbreak (and the employer is refusing to do so);
- another employee is confirmed as having COVID-19 or is clearly showing symptoms, has not been tested and continues to attend work; or
- an employee has been confirmed as having COVID-19 and the workplace has not been evacuated and professionally cleaned.

If an employee expresses genuine concerns about attending the office, the employer should consider whether it is possible for it to make alternative work arrangements. Employers should also ensure that they have taken reasonable measures to provide for the health and safety of their employees (see above). The Guidance Note also encourages *‘employers to be considerate and show understanding to such employees’ situation and make flexible arrangements.* Employers may have to think creatively and seek solutions to ensure their employees feel safe coming to work.

3 What should an employer do if their employee is suspected/confirmed as having the virus?

That employee should not be allowed to attend work.

The employer should grant and pay that employee sickness allowance in accordance with the EO.

In terms of practical measures and employer should then take there is no law or guidance the employer is required to follow. However, bearing in mind the employer's obligation to provide a safe workplace, we recommend that all employees who have been in contact with that person (certainly all those who have been in close contact) be sent home immediately and the office / workplace be professionally cleaned/disinfected. Employees should not return to the office until after that cleaning / disinfection has taken place (and it is deemed reasonably safe from them to do so). Employees who had close contact with the employee in question should be directed to work from home for at least 14 days.

4 What information is an employer entitled to require from an employee about their exposure to the virus?

We consider that it would be a lawful and reasonable instruction for an employer to demand that employees inform their supervisor immediately if:

- a) they have travelled out of Hong Kong in the past 14 days;
- b) they have travelled into Hong Kong on any flights that have had a case of COVID-19 confirmed on the same flight;
- c) they have had close contact with a person being tested for, or having tested positive for COVID-19;
- d) they are residing with anyone that is subject to government mandated quarantine which has been imposed on persons arriving in Hong Kong after midnight on 18 March 2020; or
- e) they are suffering from any of the symptoms associated with COVID-19.

5 What steps should an employer take to ensure it maintains a safe workplace?

An employer should have a clear plan to ensure all their workplaces remain safe. This should be communicated clearly to staff so that all employees fully understand their personal obligations with respect to self-reporting and taking care of their own health and environment hygiene.

Employers should ensure that the bathrooms / pantry are well stocked with disinfectant and soap and the office premises (particularly in the common areas) cleaned and disinfected regularly. Most employers are also asking their employees to take their own temperature each morning before attending work and ensure they remain out of the office if they are feeling unwell. Ideally, employers should also provide free face masks to employees where necessary (and if these are available).

Many employers are arranging for half of their workforce to work on different floors, if they have them and this is possible, and to take turns working remotely. This is to ensure that if an employee is diagnosed with COVID-19, half of the office can still attend work without having to go into 14 day isolation and in order to limit the risk of cross-infection.

6 Are there any statutory requirements or best practice guidelines?

In addition to the Guidance Note, the Hong Kong Department of Health has published *Guidelines on Prevention of Coronavirus Disease 2019 (COVID-19) for the General Public* (the CV-19 Prevention Guidelines). These provide useful guidance for individuals and employers should ensure any measures they put in place are consistent with that guidance. The CV-19 Prevention Guidelines encourage:

- reducing social activities such as meal gatherings and to maintain social distancing.
- good hygiene measures such as:
 - maintaining good indoor ventilation and ensure the office is cleaned thoroughly; and
 - encouraging good personal hygiene.

Employers should not host seminars or social functions pending a reduction in infections.

7 Can an employer require an employee not to attend work as part of its infection control measures?

This will depend on the basis of the employer's request.

The legal position is that employees have an implied right to work. Strictly speaking therefore asking them not to come to work is probably a breach of the Employment Contract *unless* there is an express term in the Employment Contract providing for this or where an employer *suspects* an employee may have contracted an infectious disease.

We consider it would be reasonable for an employer to require their employee not to attend work as a precautionary measure if the employee:

- a) travelled into Hong Kong on any flights that have had a case of COVID-19 confirmed on the same flight;
- b) has had close contact with a person being tested for, or having tested positive for COVID-19;
- c) is residing with anyone that is subject to the government mandated quarantine which has been imposed on any person arriving in Hong Kong after midnight on 18 March 2020; or
- d) is suffering from any of the symptoms associated with COVID-19.

If, however, the employee is not showing any symptoms associated with COVID-19, has had no recent travel history to an infected area nor had any close contact with a person tested for or having tested positive for COVID-19, the employer should be prepared to justify why it requires that employee not to attend work. The employer must be careful not to discriminate against any particular employee.

It is imperative that the employer continues to pay their employees all wages and other payments owed to them during any period in which they are not required to attend work. This is to avoid a claim for constructive dismissal or breach of contract.

8 Does an employer have to pay sick pay to an employee who is self-isolating?

Statutory sick pay is only payable in Hong Kong if the employee can produce a medical certificate confirming that they are medically unfit to attend work. Strictly speaking therefore the employer has no legal obligation to pay statutory sick pay to an employee who is choosing to self-isolate. However given that most employers will direct any employee who has had close contact with a person who has COVID-19 to self-isolate, we would recommend that they pay the employee sick pay if they are not working during the self-isolation, or normal pay if they are working remotely during the isolation period.

9 When is an employer required to close its workplace?

At this time, there is no requirement in Hong Kong for an employer to close its workplace. However, an employer should have regard to its obligations under OSHO and its duty to provide a safe workplace in deciding whether to shut the workplace due to a community outbreak or a confirmed case of one of its employees.

10 If it does, is it still required to pay its staff?

If there is a forced closure mandated by government, then unless the business is shutting down and the employees are given notice of termination, then the employer must continue to pay its employees.

11 Is an employer entitled to require its employee to see a doctor and to provide the employer with a copy of the medical report?

Only if the Contract contains an express power to direct an employee to consult a medical practitioner. If not, an employer can request this but if the employee declines to do so, the employer does not have any legal right to insist on it.

Having said this, if an employee is clearly unwell then in the current circumstances we consider it would be a lawful instruction for an employer to direct an employee to remain out of the office until the employer is satisfied that the employee is not showing symptoms, or they produce a medical certificate indicating they are fit to work. If the employer decides to take this step they must ensure that they continue to pay the employee during that period (either their normal salary or statutory sick pay if they produce a doctor's certificate).

12 Can an employee refuse to work with another employee who is suspected of having the virus?

This would depend on the basis for the employee's refusal and in particular the basis for the suspicion.

If the employee's refusal to work with the other employee is because the other employee is clearly showing symptoms, has not been tested and continues to attend work, we consider this would be a reasonable request. The employer should ask the employee suspected of having the virus not to attend work and the employer should grant and pay that employee sickness allowance in accordance with the EO.

Where an employee expresses genuine concerns about working with another employee, the employer should consider whether alternative work arrangements are possible or appropriate. They should also ensure that they have taken reasonable measures to provide for the health and safety of their employees (see above). We consider this would be consistent with the Guidance Note which encourages '*employers to be considerate and show understanding to such employees' situation and make flexible arrangements.*'

Key contacts



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SINGAPORE



SINGAPORE

Introduction

On 7 February 2020, due to heightened risk caused by the outbreak of the COVID-19 virus, the Singapore government raised the country's outbreak alert level to Disease Outbreak Response System Condition ("DORSCON") orange. The Singapore government has since remained vigilant in setting up multiple lines of defences to contain the virus, and to prevent community spread amongst residents, having improved and strengthened its defensive measures based on insights gleaned from experience - most significantly during the outbreak of the Severe Acute Respiratory Syndrome ("SARS") in 2003. These include strict screening measures at airports, the imposition of travel restrictions, the suspension of Visas, and rigorous contact tracing to identify transmission clusters. These measures have proven relatively successful in limiting any unbridled spread of the virus in our island-state. As of 29 March 2020, there are 844 confirmed cases in Singapore, and 3 fatalities from the disease thus far.

The outbreak of COVID-19 is expected to affect Singapore's economy significantly. On 16 February 2020, the Ministry of Trade and Industry of Singapore ("MTI") has slashed Singapore's economic growth forecast for 2020 amid the COVID-19 outbreak, from a range of 0.5% - 2.5% to -0.5% - 1.5%. In particular, the MTI notes that the outbreak of COVID-19 has impacted Singapore's tourism, transport, retail and F&B sectors, due to the travel restrictions imposed by Singapore and by other countries, and has caused a reduction in domestic consumption in Singapore as locals reduce activities such as shopping and eating out. To mitigate the impact of the COVID-19 outbreak on their operations and to ensure business continuity, many employers have voluntarily taken precautionary measures to minimise any spread of the COVID-19 amongst its employees.

Questions

1 Are employers subject to any specific legislation in respect of COVID-19?

To date, there has been no legislation implemented in Singapore which specifically relate to the COVID-19 virus. Nonetheless, during this period, employers remain subject to other applicable legislation and guidelines in respect of workplace health and safety, employment, and infectious diseases.

As a starting point, employers should bear in mind that they should ensure compliance with the obligations owed to their employees under their respective employment contracts and the Employment Act 1968 (Chapter 91) of Singapore (the "**Employment Act**"). These include, among others, obligations relating to the timely payment of wages and sick leave entitlements.

In addition, under the Workplace Safety and Health Act 2006 (Chapter 354A) of Singapore (the "**WSHA**"), employers are also required to take all reasonably practicable measures as may be necessary to ensure the safety and health of their employees in the workplace.

As a general rule, employers should adopt the recommended practices set out in the general advisories and guidelines issued by the Ministry of Manpower (“**MOM**”) or Ministry of Health (“**MOH**”) in relation to COVID-19, from time to time. Such general advisories and guidelines are discussed further in subsequent questions below.

Quarantine Order/ Stay-Home Notice / Leave of Absence

Employers are advised by MOH to ensure that all employees under isolation orders abstain from visiting the workplace and comply with the relevant isolation order.

Such isolation orders include:

(i) Quarantine Orders (“**QO**”):

QOs are issued to an individual who is, or is suspected to be, a carrier of an infectious disease, or a contact of a person confirmed to have an infectious disease. Any persons serving a quarantine order cannot leave the quarantine facility or his or her home, and shall be deemed to be on paid sick leave.

Employers should remind employees to comply strictly with the QO, as it constitutes a legal order issued to individuals under the Infectious Diseases Act 1976 (Chapter 137) of Singapore and thus has legal force with severe penalties for non-compliance.

(ii) Stay-Home Notice (“**SHN**”)

The new SHN was introduced on 17 February 2020. The SHN applies to Singapore residents and long-term pass holders returning to Singapore from high-risk areas such as mainland China, Iran, Northern Italy, and Korea, and replaces the previous Leave of Absence (“**LOA**”) scheme. Under the requirements of the SHN, returnees are required to remain in their homes at all times for a period of 14 days after their return from the foregoing countries. To provide context, under the preceding LOA scheme, such returnees were to remain at home as much as possible for 14 days, but could leave to attend to important matters or to purchase daily necessities.

In the event an employer or a foreign employee fails to abide by the SHN/LOA as set out above, MOM may take action by revoking the relevant work passes of the employee or suspending the work pass privileges of certain employers. As at 21 March 2020, MOM has revoked the work passes of 89 work pass holders. MOM has also suspended the work pass privileges of employers for periods ranging from one to three years, for failing to discharge their duties to ensure that their employees comply with the SHN requirements.

2 Can an employee refuse to attend work because they are concerned about contracting the virus?

In respect of any employee who is (i) not subject to the SHN/LOA or a QO and (ii) refuses to attend work in fear of contracting the virus, such employee is contractually obliged to attend work pursuant to the terms of his or her employment contract, unless the employer has consented to or given prior authorisation for such leave of absence to such employee.

Employers can generally determine their responses to absence from work of such employees in line with the terms and conditions of the employment contracts, or company policies on absenteeism, medical and/or annual leave.

In any event, the employer should consider allowing flexibility in work arrangements so as to assure such employee that his/her health and safety is a priority to the employer, which might include allowing the employee to work from home, if practicable. In this regard, employers are advised to ensure their compliance with the MOM Advisory on Safe Distancing Measures at the Workplace issued on 13 March 2020, further details of which are set out in Question 5 below.

Further, employers should bear in mind their statutory obligations under the WSHA and ensure that they take, as far as is reasonably practicable, measures as are necessary to ensure the safety and health of their employees at work. As such, an employer who makes any decision which puts an employee at risk of contracting the COVID-19, without reasonable safety precautions, may be in breach of this duty. In this regard, in the event there are suspect or confirmed cases at the workplace, the Company should generally take such measures recommended by the MOM in its General Advisory for Confirmed or Suspect Cases, as set out in Questions 3 below.

3 What should an employer do if an employee is suspected/confirmed as having the virus?

An employer should act in accordance with the General Advisory for Confirmed or Suspect Cases issued by the MOM.

In the event there is a suspect case at the workplace, the employer should remind its employees to:

- (i) monitor their health, including doing temperature checks at least twice daily;
- (ii) adopt good personal hygiene; and
- (iii) see a doctor immediately if they are unwell, and inform their supervisors or the HR department immediately. Such employees should be reminded to stay at home on sick leave even if they feel that their symptoms are mild.

In the event there is a confirmed case at the workplace, the employer should:

- (i) co-operate with the contact tracing officer from MOH and provide them with the requisite assistance and support in identifying persons at the workplace, including business associates, who may have had close contacts with the confirmed case;
- (ii) upon being notified of the confirmed case, immediately vacate and cordon-off the immediate section of the workplace premises where the confirmed case worked, and carry out a thorough cleaning and disinfecting of that section of the workplace premises;
- (iii) in respect of employees who are made to vacate their work stations or are pending assessment by MOH's contract tracing officer, and whose job scope is such that working remotely is not feasible, exercise flexibility and treat such absences as paid hospitalisation leave or paid outpatient sick leave; and
- (iv) generally provide timely information to employees on latest developments and reassure employees and other relevant persons, e.g. customers, of the measures being taken to ensure their well-being at the workplace.

4 What information is an employer entitled to require from its employees about their exposure to the virus?

In view of the urgency of the COVID-19 outbreak, the Personal Data Protection Commission ("PDPC") has issued an advisory on personal data collection for contact tracing and other response measures ("PDPC Advisory").

The PDPC Advisory states that, in the present COVID-19 outbreak, organisations may collect, use or disclose personal data of visitors to premises, including visitors' NRIC, FIN or passport numbers, without consent during this period to carry out contact tracing and other response measures, as this is necessary to respond to an emergency that threatens the life, health or safety of other individuals, pursuant to sections 1(b) of the Second, Third and Fourth Schedules to the Personal Data Protection Act (No. 26 of 2012) Singapore ("PDPA"). Employers should note that any health and travel declarations collected from employees would also constitute personal data under the PDPA.

Employers are reminded to comply with the Data Protection Provisions of the PDPA in respect of any personal data obtained from visitors or their employees, such as making reasonable security arrangements to protect the personal data in their possession from unauthorised access or disclosure, and ensuring that the personal data is not used for other purposes without consent or authorisation under the law. Employers should also expunge such personal data after this period, when it is no longer required for contact tracing purposes.

5 What steps should an employer take to ensure it maintains a safe workplace?

Generally, an employer may take the following precautionary measures, as advised by MOM in its General Advisory for Workplace Measures in response to the DORSCON Orange Situation:

- (i) developing a business continuity plan, which should be communicated clearly to employees and might include split team arrangements for frontline staff, allowing backend staff to work from home where feasible, implementing temperature screening where necessary to control and log access of customers/ visitors to their workplace and ensuring visitors/customers are advised to abstain from visiting the premises if they have recent travel history to the aforementioned high-risk areas/ countries and are placed under LOA/SHN and requiring relevant travel declarations, if possible;
- (ii) reminding their employees to take care of their own health and observe good personal hygiene, and requiring their employees to take their temperature at least twice daily and to check for respiratory symptoms;
- (iii) paying special attention to vulnerable employees, such as older employees, pregnant employees and employees who have underlying medical conditions, in planning their operations or work schedules;
- (iv) supporting their employees' needs during this period by adopting flexible work arrangements if an employee needs to stay at home for non-work related reasons relating to the COVID-19 situation, for example, in respect of caregiving needs for family members or for children who are unable to report to school or childcare; and
- (v) ensuring that employees who are under LOA/SHN abstain from visiting the workplace and can work from home if possible, but if working from home is not possible, to provide additional paid leave for such period.

Further and in addition to the foregoing General Advisory for Workplace Measures, MOM had more recently issued an updated MOM Advisory on Safe Distancing Measures at the Workplace on 26 March 2020, pursuant to which an employer must put in place, among others, the following strict safe distancing measures:

- (i) where employees can perform their work by telecommuting from home, the employer must ensure that they do so. Measures could include reviewing the work processes and providing the necessary IT equipment to employees;

- (ii) for job roles or functions where employees cannot work from home, such as frontline operations and fieldwork at construction sites, shipyards or plants, employers must take the following precautions:
- (a) reducing the need for and duration of physical interactions, including minimising the need for physical meetings, e.g. by using tele-conferencing facilities. If there is a critical need for physical meetings to proceed, the number of attendees should be limited and the duration shortened;
 - (b) ensuring clear physical spacing of at least 1m apart for work stations by clearly demarcating such work stations that can be used to achieve the 1m spacing (such measures should also apply to meeting rooms and all other common spaces);
 - (c) staggering working hours to reduce possible congregation of employees at common spaces such as entrances/exits. The staggered working hours must be implemented over at least three 1-hourly blocks, with not more than half of the employees reporting to work within each 1-hour block;
 - (d) deferring or cancelling all events which involve close and prolonged contact amongst participants which could include conferences, seminars and exhibitions. Social gatherings at the workplace, such as the celebration of birthdays, should be kept to no more than 10 persons at any one time, with safe distancing measures in place;
 - (e) implementing or enhancing shift arrangements for suitable workplace settings such as those in manufacturing, while extending operational hours to maintain production output, or alternatively, looking into split team arrangements where employees are assigned to work under alternate teams (e.g. Team A & Team B) and are deployed according to different work schedules or at different work sites;
 - (f) employers who are service buyers should request their suppliers/contractors to implement similar safe distancing measures, so that operations and business interactions with these suppliers/contractors are kept safe, and where physical interactions are still necessary, e.g. for the delivery of goods, employers must adopt precautionary measures such as scheduling delivery times by different suppliers in a staggered manner and keep the durations of such transactions as short as possible; and
 - (g) for employers who have frontline or customer-facing operations, such employers should adopt queue management measures as recommended by the Enterprise Singapore (ESG) for safe distancing measures for businesses to reduce physical interactions between service staff and customers as well as amongst customers, which could include mobile or self-help ordering or payment options and cashless or contactless payment modes.

Employers should note that as of 23 March 2020, MOM has issued 13 stop-work orders (SWOs) and 8 remedial orders (ROs) to workplaces which disregarded the need for safe distancing. The SWOs and ROs will be in force until rectifications have been made. As such, employers should, where applicable, ensure their compliance with all the measures set out in the MOM Advisory on Safe Distancing Measures at the Workplace.

The list of measures set out above is non-exhaustive, and employers should monitor and comply with any further advisories and guidelines which MOH and MOM may issue from time to time. In light of the rapidly evolving nature of the COVID-19 situation, employers are strongly advised to keep abreast with any updates to such existing advisories and guidelines.

6 Are there any statutory requirements or best practice guidelines?

As mentioned in Question 1 above, there are no statutory requirements imposed in respect of the COVID-19 outbreak. Nonetheless, businesses should at all times comply with the Employment Act, WSHA and general advisories and guidelines issued by MOM/MOH (in particular, the MOM Advisory on Safe Distancing Measures at the Workplace) and other governmental authorities, as discussed above.

7 Can an employer require an employee not to attend work as part of its infection control measures?

An employer may, as part of their business continuity measures, direct their employees to work from home.

8 Does an employer have to pay sick pay to an employee who is self-isolating?

Please refer to Question 2 above. In respect of any employee who is not subject to a SHN/LOA or a QO but chooses to self-isolate, employers can generally determine their treatment towards such self-isolation, based on the agreement between them, as well as the company policy on absenteeism, (paid or unpaid) medical and/or annual leave. In cases where the employer has allowed such employee to self-isolate on the basis that he/she shall work from home, the employer would have to pay the employee as per normal.

On the other hand, in respect of employees who were placed under a LOA/SHN, employers are encouraged to allow such employees to work from home. If working from home is not possible, employers are encouraged to provide paid leave for the LOA/SHN period over and above employees' annual leave entitlements. Eligible employers who provide additional paid leave to their employees on LOA/SHN will also be able to apply for assistance under the LOA/SHN Support Programme by MOM, as well as the foreign worker levy waiver for the LOA/SHN period.

Alternatively, MOM advises employers to adopt any of the following options, or a combination of them:

- (i) to treat employees' LOA/SHN as paid hospitalisation leave or paid outpatient sick leave;
- (ii) to allow employees to apply for annual leave;
- (iii) to allow employees to use advanced paid leave or apply for no pay leave in the case of employees who have used up their leave entitlements; or
- (iv) other mutually agreed arrangements between the employers and employees / unions.

9 When is an employer required to close its workplace and if it does, is it still required to pay its staff?

Generally, unless ordered by MOH or any other government authorities to do so, in the event there is a confirmed case at a workplace, employers will only have to ensure the vacation of and cordoning off of the immediate section of the workplace where the confirmed case worked, as set out above in Question 3 above. MOH has stated in its General Advisory for Confirmed or Suspect Cases that there is no need to further vacate the building or close down other sections of the workplace (other than for purposes of carrying out a thorough cleaning and disinfection of that workplace), if there has been no sustained and close contact with the confirmed case.

After the employer has received notification of a confirmed case, should certain employees be asked to vacate their work stations or are pending assessment by MOH's contract tracing officers, employers should consider if it is feasible for such employees to work from home. If not, MOM advises that employers should exercise flexibility and treat such absences as paid hospitalisation leave or outpatient sick leave.

10 Is an employer entitled to require its employee to see a doctor?

Employers have no specific right to require employees to seek medical advice, unless the relevant employment contract expressly provides for such right. However, given the current circumstances surrounding the COVID-19 outbreak, if employers have reasonable concerns that an employee is visibly unwell or showing symptoms, and/or that the health of the other employees will be affected, it might be reasonable for employers to make such a demand on the basis that they have an obligation under the WSHA to take reasonably practicable measures to ensure the safety and health of all employees.

11 Can an employer require its employee to provide it with a copy of their medical report?

As mentioned above, employers have no specific right to require employees to visit a doctor. In respect of employees who have completed their mandated quarantine either pursuant to a LOA or

SHN, it is noted that MOM has, in its FAQs on COVID-19, stated that such employees can return to work if they remain well, and that it is not necessary for them to undergo any additional tests to detect the presence of the COVID-19 virus. In any event, as advised by MOM, doctors will not issue any letters or memo to certify such persons to be free from the COVID-19 infection.

12 Can an employee refuse to work with another employee who is suspected of having the virus?

As a starting point, employees are obliged to comply with lawful directions from employers to carry out their duties under their employment contracts, which might include working with such other employee in the course of their employment. While there is no specific right of refusal for employees to do so (save in accordance with or as might be provided in the respective employment contracts), employers should keep in mind their obligations under the WSHA to ensure the safety and health of all employees, and refrain from putting any employee at risk of the COVID-19 infection.

To prevent such situations from arising, employers may wish to implement an effective business continuity plan as soon as practicable.

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THAILAND



THAILAND

Introduction

Currently, the coronavirus disease 2019 (COVID-19) outbreak has spread across the world and the World Health Organization (WHO) stated that COVID-19 could be characterized as a pandemic (WHO declared COVID-19 a pandemic on 11 March 2020). People and outbound travellers are recommended to closely monitor the situation. Moreover, the public must fully cooperate and act as the Ministry of Public Health (MoPH) recommends for your safety and for the safety of others, and to decrease the negative social and economic impacts.

The Thai government has announced Emergency Decree effectively from 00.01 of 26 March 2020 and subsequently announced certain restrictions and shut down various places throughout the country. Those restrictions include:

1. Cancellation of Songkran Holiday 13-14-15 April;
2. Closure of all pubs, nightclubs, entertainment places and social community areas until 30 April 2020, (restaurants allowed to stay open only for take away);
3. Closure of all department stores and other stores except supermarkets and fresh markets;
4. Closure of all universities, schools and educational establishments, including tutorial centres (local and international);
5. Cancellation of all concerts and sport events, sport places and gyms all closed;
6. Working from home is recommended or, alternatively, use rotating work practices for both public and private sectors; and
7. AGM for all companies should be postponed or be convened via videoconference.

Right of employees

The Department of Labour Protection and Welfare (DoPPW) has clarified several issues involving the benefits and rights of employees affected by the outbreak of the COVID-19.

- Employees who are detained in quarantine for 14 days under the order of the MoPH as per the Communicable Disease Act BE 2558 are considered temporarily relieved of their obligation to work for the employer but the employer is also not obligated to pay the wage of absent employees, according to the principle of 'no work, no pay'.
- In case the employees have symptoms such as fever and suspect an infection, they can stop coming to work for the period of 14 days and may be up until they are fully recovered while continuing to get paid using sick leave as allowed by the labour law (30 days per year). However, if they have already used up their sick leave, they could also use their annual leave additional to those sick leave. The minimum number of annual leave as specified by the law is 6 days, but this can be a longer period as agreed between the employer and employees under the employment contracts or work rules.

- Those employees who are insured under Section 33 of the Social Security Act (those who are currently working under an employer), they will be entitled to 50 per cent of monthly pay, based on a maximum amount of Bt15,000 per month, when they take sick leave of more than 30 days, provided the 30 days of paid sick leave from the employer has already been used up, provided that:
 - a) the insured person must have contributed to the Social Security Fund for more than three months before taking the leave;
 - b) must produce a doctor's certificate of sickness and show evidence of using 30 days paid sick leave from the employer;
 - c) This compensation will be paid at a maximum of 180 days per year for any diseases except chronic one, which will be paid at a maximum of 365 days per year.
- As for employees who are insured under Section 39 of the Social Security Act (those who used to work under an employer but have now unemployed and wish to preserve their insurer status by continuing to contribute to the fund), will be entitled to 50 per cent of their current wages, based on the maximum contribution of the insured person under Section 39 at THB 4,800 per month, when they take sick leave from their current job or as a business owner. Other requirements are similar to those of the insured under Section 33 except the evidence of using 30 days paid sick leave from employer.
- The benefits of Social Security will still take effect six months after the insured's status ended, therefore if an employee takes sick leave within that period they will be entitled to the above-mentioned benefits

Those employees who just returned from countries announced as risk countries for COVID-19 or have symptoms similar to COVID-19 pneumonia, can get a free check-up at hospitals specified in their Social Security benefit list. However, if they don't have the symptoms but want to check up to make sure they do not have it, they will have to be responsible themselves for the costs.

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