

Employment & Benefits

FAQs for Employers: Practical Tips on Dealing with the COVID-19 Outbreak

Introduction

The COVID-19 outbreak across the world has had a major impact on the economy in many countries, with the Ministry of Trade and Industry downgrading Singapore's 2020 GDP growth forecast to -0.5% to 1.5% on 17 February 2020. With the economy and businesses taking a beating, all quarters in Singapore are holding on to the hope that the situation in Singapore will stabilise soon. The Singapore Government has taken a practical approach to contain the spread of the virus while urging the public to continue business as usual where possible.

As businesses adapt to the evolving situation, we address some frequently asked questions on an employer's obligation to comply with the Singapore Government's defensive measures and to provide a safe workplace for their employees while maintaining business continuity.

Business Continuity – Precautionary Measures

1. How should employers deal with employees who refuse to perform their duties at a place perceived to have a high risk of infection for COVID-19?

As a starting point, employees are obliged to comply with lawful directions from their employers and to carry out their duties under their employment contract. The employee's obligation to comply with an employer's directions however is counterbalanced by an employer's statutory obligations under section 12 of the Workplace Safety and Health Act ("WSHA") to take necessary measures to ensure the safety and health of their employees at work, so far as is reasonably practicable. Accordingly, any directions that involve putting an employee at risk without reasonable safety precautions may be in breach of this duty. At this time, the Singapore Government's position is that the COVID-19 virus can only be spread by droplets and that the virus does not go into the air. Accordingly, it may not be legally reasonable for an employee to refuse to perform their duties at a place just because of a perceived fear of a risk of transmission when no such risk is recognised to be present.

From a practical perspective however, it would not be conducive to the mutual trust and confidence present in the employer-employee relationship if employers have to resort to legal arguments to compel their employees to perform their work. Employers should also consider the impact of their directions on the morale of their employees and their reputation as caring employers. Ultimately, how an employer deals with an employee who refuses to perform work is a highly fact-sensitive inquiry. The employer may also assure the employee by providing them with alternative options to carry out their duties and when the performance of their duties at such places is unavoidable, by providing them with the appropriate level of personal protective equipment and training on

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cleansing and hygiene best practices to avoid infection. The employer and employee should also both refer to updated Government advisories in deciding on how to handle the matter.

2. **When an employee's family member is served with a Stay-Home Notice ("SHN"), can an employer mandate the employee to stay away from work?**

A SHN only binds the person being served with the SHN and as such, an employer is not obliged to require an employee whose family member is served with the SHN to stay away from work. Nonetheless, as a matter of prudence, the employer may require the employee with the affected family member to stay away from the office and where relevant, to make available telecommuting arrangements for the employee so that he/she may work from home.

In such an event, the employer is still obliged to pay the salary of the affected employee and the employer may not dictate that the employee use his or her annual leave entitlements to cover the period of their absence from the office or from their work from home arrangements.

3. **Can an employer require an employee who is under a Leave of Absence ("LOA"), SHN, or Home Quarantine Order ("HQO") to work from home? What should an employer do if telecommuting is not possible?**

In general, an employee is contractually required to work during their mandated hours of work, and to follow their employer's lawful directions. If telecommuting arrangements are feasible, employers are entitled to request an employee on a LOA or SHN ("**LOA/SHN employee**") to work from home.

The Ministry of Manpower ("**MOM**") will provide support to help businesses and self-employed persons who are affected by LOA requirements. However, the support under the Leave of Absence Support Programme ("**LOASP**") will not apply to employers if telecommuting arrangements are available for work to be performed remotely by the LOA/SHN employee.

Employers will receive S\$100/day relief per LOA/SHN employee who is a Singapore citizen, permanent resident or work pass holder if the employee:

- has travelled to mainland China on or before 31 January 2020; and
- was placed on LOA or SHN upon return to Singapore on or after 31 January 2020.

If telecommuting arrangements are not available, in order to claim the relief under the LOASP, employers should grant additional paid leave to the affected employees for the entire duration of the LOA period. Alternatively, for employers who are not intending to apply for the LOASP relief, they may also consider allowing their employees to use their paid leave entitlements (annual or otherwise); go on unpaid leave; or make alternative work arrangements such as permitting LOA employees to make up the lost hours after the LOA ends.

In contrast, quarantined employees should be placed on paid hospitalisation leave and therefore should not be requested to work from their quarantine facilities. Where employees have already used up their hospitalisation leave, MOM has urged employers to grant additional paid

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hospitalisation leave. Affected employers can apply for relief through the Quarantine Order Allowance Scheme ("QOAS"). The eligibility conditions are less strict for the QOAS – the key requirements being that the employee does not break the HQO and that employers continue to make payment to the quarantined employee.

Business Continuity – Regional Travel

4. Can an employer compel an employee to travel to a destination where there are known COVID-19 cases?

In order to compel an employee to travel to a destination with known COVID-19 cases, that travel must first be within the employee's ordinary course of work. The employer's right to require such travel must then be balanced against the employer's duty under the WSHA to take necessary measures to ensure the safety and health of their employees at work, so far as is reasonably practicable.

Based on current medical views, it may be arguable that the mere presence of COVID-19 cases at a particular country would be an insufficient basis for an employee to refuse to travel there. However, if the destination country has a travel advisory issued against it, the employer should heed the MOM advisory against penalising employees who refuse to travel to countries with travel advisories issued against them.

5. An employer has signed an employment contract with a foreign employee to start work on a certain date. The employee is not able to report to work as he/she is subject to a travel ban. Can the employer terminate the employment contract with immediate effect?

The employer should first refer to the employment contract to see if there are any provisions that deal with the employee's inability to commence work at the prescribed time. Depending on how such a clause is drafted, the employer may choose to adopt a strict legal approach and terminate the agreement.

However, such a strict approach may be undesirable, especially given that the employee's inability to start work did not arise from defiant or wilful conduct.

Instead, the employer may wish to offer alternative work arrangements where feasible or to delay the start date of work.

Business Continuity – Confirmed Case

6. What actions are required if an employee is found to have contracted COVID-19 ("confirmed case")?

The employer should immediately vacate and cordon off the immediate section of the workplace premises where the confirmed case worked and identify the other employees who have had contact

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with the confirmed case for contact tracing purposes. The employer should also obviously extend its full cooperation to MOH or other relevant Government agencies as necessary.

The employer must also carry out a thorough cleaning and disinfecting of the section of the workplace premises where the confirmed case works in accordance with the guidelines on cleaning and disinfection published by the National Environment Agency ("NEA"). Please click [here](#) to view the guidelines.

An employee who contracts COVID-19 and is hospitalised is entitled to hospitalisation benefits provided under the Employment Act. For employees who are not covered by the Employment Act, employers should refer to the terms of the employment contract.

7. Can an employer disclose the identity of an employee who has contracted COVID-19 to the rest of their employees for contact tracing and community spread prevention purposes?

Information about an employee's medical condition is considered personal data for the purpose of the Personal Data Protection Act 2012 ("PDPA") and should not be disclosed without the consent of the individual. The most straightforward way would therefore be to obtain the employee's consent to disclose. However, if consent is refused, an employer may disclose such information pursuant to the exceptions provided in the Fourth Schedule to the PDPA on the ground that the disclosure is necessary to respond to an emergency that threatens the life, health or safety of the individual or another individual.

In a case where an employee has contracted the COVID-19 virus, it could be justifiably argued that the disclosure of the employee's name, especially to the authorities, would be essential for contact tracing and for preventing the community spread of the virus. However, it would be debatable whether it would be permissible for the employer to then, for instance, disclose the name of the employee to the press or the landlord of the office as the utility of such disclosure may be too remote to qualify for the disclosure exception under the PDPA.

8. What can an employer do if an employee acts in breach of a LOA, SHN or the employer's Business Continuity Plan?

Under section 14 of the Employment Act, an employer may after due inquiry dismiss an employee without notice for misconduct that is inconsistent with the fulfilment of the express or implied conditions of their service.

Such conditions of service would generally include the expectation that an employee will adhere to lawful instructions, including any reasonable instructions set out in the employer's Business Continuity Plan ("BCP"). Similarly, it would follow that movement and travel restrictions imposed by the authorities pursuant to a LOA or SHN should not be disregarded by the employee. Given the severity of consequences arising from the breach of these lawful directions, it could be well within an employer's rights to dismiss an employee for cause on such grounds, noting however the requirement that due inquiry must still be made.

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Complying with Government Advisories and Guidelines

9. What is the legal effect of advisories and guidelines issued by the Singapore Government?

Advisories and guidelines issued by the Singapore Government are technically not law but that should not lull employers into assuming that they can be safely ignored. At the minimum, ignoring Government advisories and guidelines issued during this period of heightened anxiety would cast the employer in a very unfavourable light and would open the employer to allegations of being negligent or reckless. At worst, given the wide-ranging and discretionary powers of the authorities, the employer may be taken to task, publicly, for their failure to comply.

In short, adhering to Government advisories and guidelines would be prudent both from a legal, practical and moral standpoint, in order to safeguard employee health and safety, avoid potential employer liability, and promote business continuity.

Queries

If you require any assistance or have any queries in respect of the issues discussed in this update, please do reach out to our partners below.

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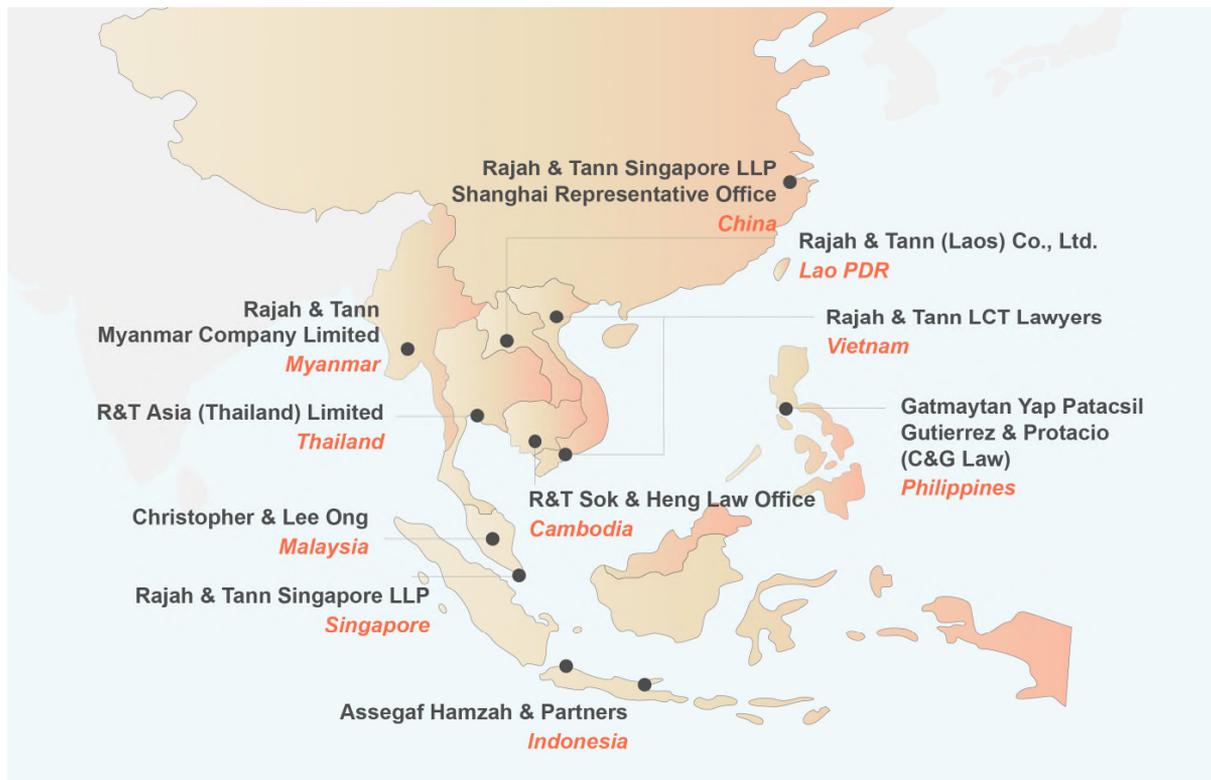
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