ZICO law

ASEAN INSIDERS
by origin and passion

ASEAN'S RESPONSE TO COVID-19:
EMPLOYMENT ISSUES TO CONSIDER

COVID-19 OUTBREAK: EMPLOYMENT CONSIDERATIONS IN ASEAN

The World Health Organisation (WHO) has declared the COVID-19 outbreak a Public Health Emergency of International Concern. The epicentre of the epidemic is China, a global powerhouse and key driver of the world's economic growth. It is no surprise then that the ongoing community spread of the disease in China has had far and wide-reaching consequences, from travel bans and restrictions, to business slowdown and suspension due to interruptions in supply chains.

ASEAN and China are major trading partners. On 20 February 2020, a Special ASEAN-China Foreign Ministers' Meeting on COVID-19 was held in Laos to address the growing urgency and need to cohesively tackle the challenges posed by COVID-19. ASEAN and China agreed to step up cooperation by sharing information and best practices to enhance capacity in emergency preparedness and response. They also affirmed their commitment to reduce the impact of COVID-19 on the socio-economic development of all affected countries, while trying to maintain economic, trade, and investment activities in the region.

A vast majority of the population outside China has to grapple with immediate disruptions arising from actions taken by their governments and health authorities as a result of the outbreak. One main area of concern for businesses, which also has a significant impact on the ordinary worker on the street, is dealing with employment-related issues during this challenging period.

Employers are generally responsible to ensure a safe and healthy workplace for their employees, on top of business continuity concerns. It is advisable for businesses to continually monitor and assess developments, advice from WHO and directives from their government and local authorities in light of COVID-19. Workplace health and safety systems and protocols, and preventive measures to reduce the chances of infection, should be in place and effectively communicated to employees. Employers also need to consider how to manage affected employees fairly where stay at home or remote working arrangements become necessary.

With this in mind, we hope this special publication will be helpful to provide an ASEAN-wide overview of key employer obligations and considerations related to COVID-19.

If you have any questions related to this publication, please contact the following persons or the ZICO Law partner you usually deal with.

Yong Hon Cheong
Partner
Head of Human Capital Services
Zaid Ibrahim & Co.
(a member of ZICO Law)

hon.cheong.yong@zicolaw.com

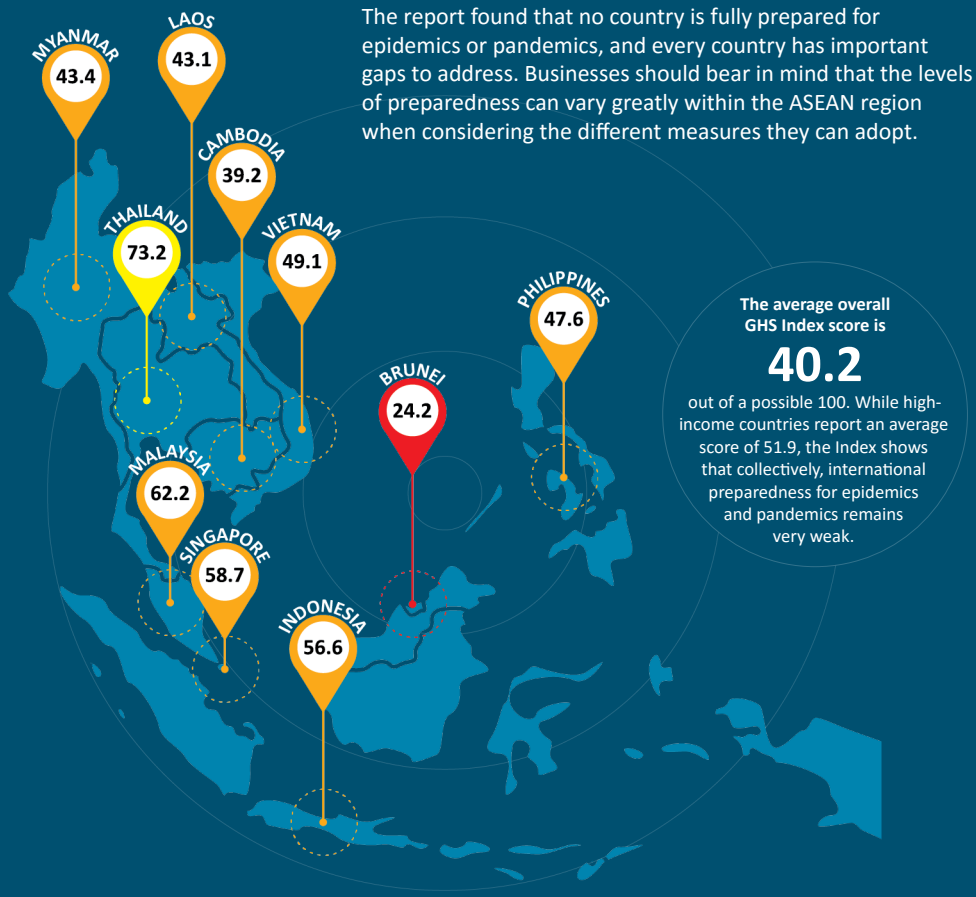
Sharon Wong
Regional Director
Knowledge Management
& Training

sharon.wong@zicoholdings.com

ASEAN'S RESPONSE TO COVID-19

This infographic summarises employment-related and other directives and guidelines made in relation to COVID-19, and the Economic Intelligence Unit's 2019 Global Health Security Index ("**GHS Index**") rankings in ASEAN. The GHS Index assessed 195 countries' overall health security and related capabilities to address and contain infectious disease outbreaks.

The report found that no country is fully prepared for epidemics or pandemics, and every country has important gaps to address. Businesses should bear in mind that the levels of preparedness can vary greatly within the ASEAN region when considering the different measures they can adopt.



The average overall GHS Index score is

40.2

out of a possible 100. While high-income countries report an average score of 51.9, the Index shows that collectively, international preparedness for epidemics and pandemics remains very weak.

SINGAPORE | more

Singapore has issued multiple advisories from the Ministry of Health, Ministry of Manpower, Monetary Authority of Singapore, Immigration and Checkpoint Authority, National Environment Agency and Ministry of Social and Family Development to help contain the spread of the infection.

THAILAND | more

The Thai Minister of Public Health has declared COVID-19 as a dangerous communicable disease and it is expected that business owners will be subject to reporting obligations.

MALAYSIA | more

The Minister of Human Resources and Malaysian Employers Federation have issued separate guidelines on the handling of the COVID-19 outbreak recommending best practices for employers which cover issues such as leave treatment, and work-from-home policies.

PHILIPPINES | more

The government has issued guidelines and circulars on the prevention and management of COVID-19 in the workplace, community and schools. The Department of Health has also issued guidelines for all private employers and employees.

CAMBODIA | more

The Ministry of Labour and Vocational Training has issued Instruction No. 004/20 on the Preventive Measures Against Novel Coronavirus at Factories, Enterprises and Establishments containing guidance on specific measures to be taken by employers and employees in preventing the spread of the virus.

MYANMAR | more

There is no specific employment-related directive issued by the government in dealing with COVID-19. The government has restricted travel and increased health checks along the border with China, including a suspension of visa on arrival for all travelers from China.

LAOS | more

The Lao PDR's Ministry of Health, Ministry of Public Works and Transport, and Prime Minister's Office have issued notifications to deal with the spread of the virus. Any potential cases should immediately be reported.

VIETNAM | more

Vietnam has suspended the issuance of work permits to foreigners from epidemic areas, and advised employers to comply with instructions on the prevention of COVID-19 infections, including temporarily stopping Chinese employees from returning to Vietnam, and reporting obligations.

INDONESIA | more

The Ministry of Manpower has issued a circular to encourage employers to implement occupational health and safety systems to prevent the spread of the virus, and to disseminate information on the virus and its symptoms to all employees.

BRUNEI | more

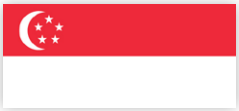
Brunei has issued guidelines on the preparation and prevention of COVID-19 in public services. Furthermore, to reduce the risk of contagion, Brunei has implemented declaration forms to be filled in at all ports of entry.

Note: The information is current as at 18 February 2020, unless stated otherwise. This summary is not intended to be exhaustive, and does not constitute legal advice. Developments on COVID-19 are rapidly changing and you are advised to regularly check for updates with your local authorities.

GHS Index Framework

PREVENTION 1	**DETECTION AND REPORTING** 2	**RAPID RESPONSE** 3	**HEALTH SYSTEM** 4	**COMPLIANCE WITH INTERNATIONAL NORMS** 5	**RISK ENVIRONMENT** 6
Prevention of the emergence or release of pathogens	Early detection and reporting for epidemics of potential international concern	Rapid response to and mitigation of the spread of an epidemic	Sufficient and robust health system to treat the sick and protect health workers	Commitments to improving national capacity, financing plans to address gaps, and adhering to global norms	Overall risk environment and country vulnerability to biological threats

The Economist Intelligence Unit, Global Health Security Index (2019) <https://www.ghsindex.org/wp-content/uploads/2019/10/2019-Global-Health-Security-Index.pdf> accessed on 25 February 2020.



SINGAPORE

What are an employer's general obligations to employees?

Employers have a general duty under the Workplace Safety and Health Act ("**WSH**") to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of its employees at work. Employers who employ foreign workers also have a duty to comply with the regulatory conditions imposed on them under the Employment of Foreign Manpower Act and relevant subsidiary legislation relating to the health and safety, upkeep, maintenance and well-being of foreign workers employed by them.

Measures taken to reduce the risk of contagion

1. General Advisory for Workplace Measures

The Ministry of Manpower ("**MOM**") has on 7 February 2020, in partnership with the National Trades Union Congress ("**NTUC**") and the Singapore National Employers Federation ("**SNEF**") issued a General Advisory for Workplace Measures in Response to DORSCON Orange situation in Singapore ("**General Advisory**").

Under the General Advisory, employers have been advised to, inter alia, consider implementing the following measures:

- split team arrangements for front-line staff to ensure continuity of services;
- allow back-end staff to work from home where feasible, and consider split-team arrangements to minimise interaction;
- temperature screening, logging access of visitors and customers to workplaces; and
- cancel or defer non-essential large scale-events.

2. Advisory measures for employers and employees travelling to and from Mainland China

In view of the Ministry of Health ("**MOH**") advising travelers to defer all travel to Hubei province and defer all non-essential travel to Mainland China, MOM has also advised employers to take the following general precautions:

- regularly check the MOH website for the latest update on the COVID-19 situation so that a considered decision can be made on whether to proceed with business travel plans; and
- obtain a health and travel declaration from their employees, on whether they have travelled to mainland China recently, or if they have any upcoming travel plans to mainland China.

3. Advisory measures for foreign domestic workers and employers

MOM has encouraged employers and foreign domestic workers ("**FDWs**") to practice good personal hygiene and has provided some guidance on measures that could be taken by employers of FDW to mitigate the spread of the virus in households.

Generally, it can be said that there should be no potential legal implication from such measures. This is as the above mentioned measures are in line with the mandatory measures and advisory measures implemented/recommended by Singapore's regulatory authorities.

Consequences of non-compliance

- Employers who employ foreigners and breach the obligations imposed on them in relation to their foreign employees' work passes (i.e., Leave of Absence ("**LOA**") requirements) may be liable to having their work pass privileges suspended, or to a fine and/or imprisonment.
- Generally, employers who do not comply with their obligations under the WSH may be liable to:
  - in the case of a natural person, a fine and/or imprisonment; and
  - in the case of a body corporate, to a fine.

What are an employer's obligations towards an employee who has contracted the coronavirus, or been placed under quarantine?

1. Employees subject to Stay-Home Notice

Stay Home Notice for Foreign employees returning to Singapore from Mainland China

On 17 February 2020, MOH announced that the Multi-Ministry Taskforce has decided to introduce a new "Stay-Home Notice") ("**SHN**") for Singapore Residents and long-term pass holders returning to Singapore from Mainland China (outside of Hubei).

Employers will be subjected to the following responsibilities before seeking MOM approval:

- Before foreign employees leave for Singapore, the employer must:
  - Ensure a place of residence has been secured for them to serve their 14-day SHN in Singapore. If they are serving their SHN at a private residence or Housing Development Board flat, the employer must obtain the landlord's written consent to house them throughout the 14-day SHN. This must be done by the employer directly, and not left to the foreign employee. Alternatively, the employer can arrange alternative housing such as hotels or dormitories.
  - Ensure they have a SIM card with a Singapore telephone number for MOM to contact them. This can also be arranged at the airport when they arrive.
- After foreign employees arrive in Singapore, the employer must:
  - Ensure they fully comply with the additional conditions imposed for the SHN period.
  - Explain and ensure they understand the additional conditions they need to comply with and the advisories they need to observe.
  - Arrange to send them from the airport directly to their place of residence to serve the 14-day SHN immediately upon arrival in Singapore.
  - Ensure they download WhatsApp on their mobile phones and respond to MOM's phone calls, WhatsApp, video calls or SMSes within the hour.
  - Arrange to provide them with food and other daily essentials during the SHN period as they are not allowed to leave their residences.
  - Arrange for non-emergency medical needs (such as follow-up visits for chronic conditions, refilling of prescription, etc.) so that they do not need to leave their residences during this period.

Breach of SHN would result in the following measures being taken, i.e. criminal proceedings, work pass revocations and withdrawal of work pass privileges.

Leave of Absence for Foreign employees returning to Singapore from Mainland China

MOM approval is required for all foreign employees who plan to enter/return to Singapore from Mainland China after 8 February 2020.

Until 18 February 2020 employers must inform the affected employees that they will be on a 14-day LOA upon arrival in Singapore, and get their written acknowledgement. If the entry is after 18 February 2020, employees would be on a 14-day SHN upon arrival in Singapore.

During the LOA period, employers must ensure that employees stay away from the workplace. However, employers may adopt flexible work arrangements, such as telecommuting and teleconferencing, to allow the employees to work from home.

Employers will also need to ensure that they have secured appropriate housing for the workers such that they will be able to serve the mandatory 14-day LOA.

If remote working is not possible for employees placed on LOA, employers are encouraged to provide additional paid leave on top of employees' annual leave entitlements for the LOA, especially if their travel to mainland China, for which they are required to be placed under LOA, was work-related. If that is not feasible, employers can consider the following options, or a combination of the options, for the employees on LOA:

- treat employees' LOA as paid hospitalisation leave or paid outpatient sick leave;
- allow employees to apply for annual leave;

- allow employees to use advanced paid leave or apply for unpaid leave, for employees who have used up their leave entitlements; or
- other mutually agreed arrangements between the employers and employees/unions.

Employers and employees have a joint duty to ensure that employees behave responsibly during the LOA period. MOM has reserved the right to take action against the employer or employee, if they fail to discharge their duty.

2. Quarantined Employees

A Home Quarantine Order ("**HQO**") will be served by the MOH and employees served with a HQO will be deemed to be on paid hospitalisation leave for the duration of the HQO. For employees who have used up their paid hospitalisation leave, MOM has urged employers to exercise compassion and flexibility by granting additional paid hospitalisation leave, as the employees concerned may face hardship during this time.

3. Quarantine Facilities for Foreign Workers

There is no need for employers to provide suitable quarantine facilities for foreign workers issued with Quarantine Orders ("**QO**") as they may be quarantined at home or within their dormitory.

If their housing is assessed to be unsuitable, foreign workers will then be sent to a suitable quarantine facility, which is centrally managed by the Government of Singapore.

4. Quarantine Order Allowance

MOH's Quarantine Order Allowance ("**QOA**") Scheme was set up on 29 January 2020 to mitigate the financial impact for those who have been served with QO under the Infectious Diseases Act.

Persons who are self-employed, and employers who have employees issued with QO can make claims for SGD100 a day subject to the following conditions:

Self-employed	• Singapore Citizen or Permanent Resident • Must show proof of employment • Must not breach QO
Employers	• Registered company in Singapore • Employees must be Singapore Citizen, Permanent Residents or Workpass holders • Show proof of payment to employees when they are under quarantine • Employees must not breach QO

5. Exhaustion of medical benefits

If an affected employee has used up his medical benefits provided for under the employment contract and/or collective agreement, MOM has urged employers to consider providing medical coverage as the employees concerned may face financial hardship during this time.

6. Permanent incapacity or death

The Work Injury Compensation Act ("**WICA**"), allows employees to make claims for permanent incapacity, if any, or death due to work-related injuries or diseases against employers without having to file a civil suit under common law.

MOM has clarified that WICA covers all employees (except independent contractors, domestic workers and uniformed personnel) who contract diseases from biological agents, including COVID-19, arising from and in the course of work. However, WICA will not cover diseases due to COVID-19 if it was contracted through non-work activities or exposure.

May an employer request specific employees to stay away from the office or to work from home?

Yes, pursuant to the Guide on Business Continuity Planning for 2019 novel coronavirus ("**BCP**") issued by Enterprise Singapore or work from home policies. In its absence, the employer may exercise its managerial prerogative.

May an employer request employees to volunteer to take unpaid leave?

Yes, subject to contract/agreement between employer and employee.

MOM has also suggested unpaid leave arrangements for employees affected by the COVID-19 situation (i.e., employees placed on LOA or under a Quarantine Order). However, the broad thrust of MOM's advisories urge employers to take a compassionate approach and consider using other options first, such as granting additional paid annual leave to employees placed on LOA, or additional paid hospitalisation leave for employees placed under a Quarantine Order.

Is an employer subject to any reporting obligations to the authorities?

Apart from the requirement to seek approval for its foreign workers who have travelled to mainland China within the last 14 days, there are no other obligations.

Based on the relevant advisories issued, neither MOM nor MOH have implemented any obligations for employers to report cases to the authorities.

What directives have been issued by your Government or Ministries to deal with COVID-19?

MOH Advisories

(a) Implementation of New Stay-Home Notice
(b) Advisory for Large-Scale Events Amidst the COVID-19 Situation (8 Feb 2020)
(c) Advisory for Healthcare Sector on the Wuhan Coronavirus (27 Jan 2020)
(d) Advisory for Individuals Sharing Residential Spaces with Persons on Leave of Absence (2 Feb 2020)
(e) Advisory for Persons Placed on Leave of Absence (1 Feb 2020)
(f) Advisory for Persons Placed on Leave of Absence (27 Jan 2020)

MOM Advisories

(a) Additional responsibilities to bring pass holders who have travelled to mainland China into Singapore from 18 Feb 2020, 2359 hours
(b) Advisory to foreign domestic workers and employers in view of the Coronavirus Disease 2019 situation
(c) General advisory for workplace measures in response to DORSCON Orange situation in Singapore
(d) Advisory for employers and employees travelling to and from Mainland China in response to increase in cases of Coronavirus Disease 2019 (COVID-19)
(e) General advisory for workplaces and frontline workers in response to confirmed cases of local transmission of Coronavirus Disease 2019 in Singapore
(f) Advisory to permit workers to enter their worksite

Monetary Authority of Singapore Advisories

(a) MAS Advises Financial Institutions to Adopt Recommended Measures for DORSCON Orange

Immigration and Checkpoints Authority Advisories

(a) Updates on Border Control Measures in Response to the COVID-19 (Coronavirus Disease 2019)

National Environment Agency Advisories

(a) Interim Guidelines for Environmental Cleaning and Disinfection of Premises With Transient Exposure to Confirmed Cases(s) of the COVID-19 (Coronavirus Disease 2019)
(b) Interim Guidelines for Environmental Cleaning and Disinfection of Areas Exposed to Confirmed Case(s) of COVID-19 (Coronavirus Disease 2019) in Non-Healthcare Commercial Premises
(c) Interim Guidelines for Environmental Cleaning and Disinfection in Residences That May Be Exposed to the COVID-19

(Coronavirus Disease 2019)

(d) Interim List of Household Products and Active Ingredients for Disinfection of COVID-19 (Coronavirus Disease 2019)

(e) General Sanitation and Hygiene Advisory for Premises Owners and Operators

Ministry of Social and Family Development

(a) Precautionary Measures for COVID-19

KEY CONTACTS

Heng Jun Meng
Director
ZICO Insights Law LLC

jun.meng.heng@zicolaw.com
t. +65 6443 4920

Assisted by
Troy Ang of
ZICO Insights Law LLC

THAILAND

What are an employer's general obligations to employees?

In general, the Occupational Safety, Health and Environment Act B.E. 2554 (2011) ("**OSHEA**") is the main legislation governing all employers in Thailand. It provides that employers must maintain the establishment and employee in a safe and hygienic environment and working condition. For instance, employers have to provide occupational safety, health, environment training to employees or employees have to post the statement on rights and duties of the employers and the employees.

Any violation of the act, the employers may be punished by a fine not exceeding THB200,000 and/or imprisonment not exceeding six months.

In addition, the Communicable Diseases Act B.E. 2558 (2015) ("**CDA**") is the legislation governing the control of any contagious diseases. The CDA prescribes that in the case where an epidemic or a communicable disease has occurred or is suspected of having occurred, owners of a house or a business facility or persons controlling such places have to notify the communicable disease control officer of such situations.

Any breach of the CDA is an offence punishable by a fine not exceeding THB20,000.

Currently (as of 25 February 2020), there is no specific regulation issued by virtue of the OSHEA or CDA regarding the obligations of employers on COVID-19.

What are an employer's obligations towards an employee who has contracted the coronavirus, or been placed under quarantine?

The Labor Protection Act B.E. 2541 (1998) ("**LPA**") provides that a sick employee can take sick leave without having to provide a medical certificate unless the sick leave last for more than three days.

Furthermore, a sick employee can take sick leave for as long as he/she is sick and is entitled for wages for 30 sick leave days.

May an employer request specific employees to stay away from the office or to work from home?

There is no specific designation in this matter under Thai laws. Generally, employers may request employees to stay away from the workplace provided that they continue to pay the employee full wages for the period. Employers may instruct employees to work from home where they have work-from-home policies in place, or other similar managerial rights conferred under their employment contracts. Where there is no such existing policies and rights, employers may exercise its managerial prerogatives to instruct employees to work from home, as there is no prohibition.

Do note that there may be consequential issues arising from requiring the employee to use their own devices or resources for work purposes without reimbursement. Employers should also consider the security risks posed by employees' use of their own unsecured devices for business purposes, and if this will affect other legal and contractual obligations owed by the employer.

May an employer request employees to volunteer to take unpaid leave?

Generally, employees are entitled in the wage for the day of leave as described in the LPA. Therefore, in the case where an employer instructs an employee to take a leave, an employee is obliged to pay a wage to the employee. If it is mutually agreed by the employer and the employees to take unpaid leave, the agreement will be enforceable.

However, in the case where an employee expressly volunteer to take unpaid leave, and weekly holidays or public holidays are included in the leave period, the employer is still obliged to pay the wage for such holidays during such unpaid leave period. (Labor Laws Consultation No. Ror Ngor. 0504/00279 dated 17 March 2014)

Is an employer subject to any reporting obligations to the authorities?

On 24 February 2020, the Minister of Public Health with the approval of National Communicable Disease Committee declared that COVID-19 would be included as a dangerous communicable disease. The ministerial notification is expected be published soon in the Royal Gazette and will take effect on the following day. Once it takes effect, any owner or controller of business premise or any other place must notify a communicable disease control officer **within three hours upon discovery** of the infected or suspected with COVID-19, or notify as immediately as practicable when under force majeure event or necessary circumstance preventing three hours' notification.

What directives have been issued by your Government or Ministries to deal with COVID-19?

Currently, there is no guideline or notification by the Thai government regarding the obligations of employers on COVID-19. The Thai government is asking for public cooperation to reduce the risk of infection e.g. always wearing a medical mask when travel through a public area, and encourage employers to increase health and hygienic measures in the workplace.

KEY CONTACTS

Threenuch Bunruangthaworn
Executive Partner
ZICOlaw (Thailand) Limited

threenuch@zicolaw.com
t. +66 2 6777 588

Panwadi Maniwat
Senior Associate
ZICOlaw (Thailand) Limited

panwadi.m@zicolaw.com
t. +66 2 6777 588

Assisted by Ratthachat Kumhom of ZICO Law Thailand

MALAYSIA

What are an employer's general obligations to employees?

It is established law in Malaysia that there it is an implied term in employment contracts for employers to provide its employees with a safe system of work. Aside from being a contractual obligation, it is also mandatory under the Occupational Safety and Health Act 1994 ("**OSHA**") and other laws. These general requirements could form an obligation on the employer's part to take reasonable measures to prevent contagion at the workplace during an outbreak.

Breach of an implied contract could result in a civil suit by the employee for damages, while breach of the OSHA is an offence punishable by a fine up to RM50,000 or to imprisonment not exceeding two years, or both.

An employer should be able to exercise its managerial prerogatives in a reasonable manner in line with their duty to provide a safe work environment for all employees. However, it should be borne in mind that managerial prerogatives are not absolute, and employers must exercise such prerogatives fairly and in good faith.

The Minister of Human Resources has issued a Guideline on Handling Issues Relating to Contagious Outbreaks Including Novel Coronavirus (2019-NCOV) (since named as COVID-19) ("**MOHR Guideline**") on 5 February 2020. Under the MOHR Guideline, the employer shall take the following actions:

- to instruct employees to be examined immediately, at the expense if the employer, by a registered medical practitioner or by a medical officer as stipulated by Section 60F of Employment Act 1955;
- to provide paid sick leave or hospitalisation entitlement during quarantine period to employees receiving quarantine orders from registered medical practitioner, regardless if the employee is quarantined at home or at the hospital. Employers are encouraged to provide extra remuneration to employees with quarantine order exceeding sick leave or hospitalisation;
- to provide full pay to employees receiving quarantine orders from registered medical practitioner upon returning from countries with 2019-nCoV cases due to official duty or instructions from employers;
- to not prevent any employees from attending work if no quarantine orders are issued by any registered medical practitioner. However, employers are allowed to instruct any unwell employee from coming to workplace by providing paid sick leave to the employee;
- to not instruct employees, in any way, to utilise annual leave entitlement or take unpaid leave during quarantine period.

The Malaysian Employers Federation issued Guidelines to Employers on Employment Issues Relating to the Outbreak of Novel Coronavirus (COVID-19) on 14 February 2020 ("**MEF Guidelines**"). The MEF Guidelines recommend, among other things, the following:

- employees required by the Government to be quarantined either in hospital or at home on matters related to COVID-19 will be considered to be on sick leave and such quarantine period should be treated as hospitalisation leave. Where an employee has exhausted his eligibility to be paid hospitalisation leave, employers are advised to exercise their discretion and compassion to grant additional hospitalisation leave with pay. Such hospitalisation leave is to be treated as part of the employees' eligibility under their respective terms of employment, collective agreement or the Employment Act 1955; and
- employers are advised not to require their employees to travel on non-essential work matters to the countries affected by COVID-19. Employees should also be advised not to travel to the countries affected by the COVID-19 outbreak for any personal reasons for the duration of the outbreak.

While the MOHR Guideline and MEF Guidelines do not have the force of law, it is advisable for employers to heed such recommendations to minimize potential disputes with employees.

Employers should be minded that some measures it wishes to impose may be regulated by laws outside of the employment law framework. For example, mandatory temperature checks are likely to constitute the collection and processing of sensitive personal data (regulated under the Personal Data Protection Act 2010), which requires explicit consent from the employee. Employers may wish to take legal advice to ascertain if employees have already given their consent to such measures under existing employment contracts.

What are an employer's obligations towards an employee who has contracted the coronavirus, or been placed under quarantine?

The Employment Act 1955 ("**EA**") provides for the minimum sick leave entitlement in each calendar year for applicable EA employees. The same for non-EA employees would be regulated by the terms of their employment contract. Employers may also have in place medical, hospitalization and insurance benefits for their employee's pecuniary benefits. These benefits should be dispensed as per the normal course during the COVID-19 outbreak. Also, consider the guidance given under the MOHR and MEFR Guidelines detailed above.

May an employer request specific employees to stay away from the office or to work from home?

Employers may request employees to stay away from the workplace provided they continue paying the employee full wages for the period. This is consistent with the MOHR Guideline that requires employers to instruct any unwell employee from coming to workplace by providing paid sick leave to the employee.

Where possible, employers may instruct employees to work from home where they have work-from-home policies in place, or other similar managerial rights conferred under their employment contracts. Where no such policies or rights exist, employers may exercise its managerial prerogatives to instruct employees to work from home, as there is no prohibition against specifying a place of employment other than those specified in a contract.

The MEF Guidelines further recommend the following measures in these scenarios:

- Where an employer requests an employee to stay away from work as a precautionary measure arising from COVID-19 (without a quarantine order by the Government), for example, where the employee has returned from a country affected by COVID-19 or has family members affected by COVID-19, employers may consider the following measures:
  - the employer may agree with the employee for the employee to take half day's annual leave while the employer make up the other half day's pay during the specific period;
  - the employer agrees with the affected employees to pay not less than half-day's pay during the specific period the employee is away from work; and
  - the employer and employees/union may by agreement make some other arrangements for the employees absence due to COVID-19.
- Where employees have returned from overseas or are at risk of contracting COVID-19 and where the employer has requested the employee to work from home for a specific period as a precautionary measure, such employee should be paid full salary during such period.
- For employees who choose not to work on their own accord for fear of contracting COVID-19, employers are advised to take a flexible and enlightened approach by allowing such employees to take their annual leave. Employers may consider granting unpaid leave in situations where employees have exhausted annual leave.

Do note that there may be consequential issues arising from requiring the employee to use their own devices or resources for work purposes without reimbursement. Employers should also consider the security risks posed by employees' use of their own unsecured devices for business purposes, and if this will affect other legal and contractual obligations owed by the employer.

May an employer request employees to volunteer to take unpaid leave?

As noted above, the exercise of managerial prerogatives are not absolute, and is unlikely to extend to allow employers to force employees to take unpaid leave.

There is no restriction on an employer requesting employees to volunteer to take unpaid leave if the employees are in a position to give their consent freely. Employers should also take care not to subsequently discriminate against or penalise employees who chose not to volunteer to take unpaid leave. It may amount to constructive dismissal in such event.

Is an employer subject to any reporting obligations to the authorities?

- The Prevention and Control of Infectious Diseases Act 1988 requires that every person in charge of a person suffering from, or has died of an infectious disease, to notify the authorities as soon as practicable. Employers may find it more practicable to instruct employees suspected of being infected, to seek medical advice for confirmation of infection (and according to the MOHR Guideline, the medical expense incurred should be borne by the employer). On confirmation of infection, the medical practitioner has a duty under the same law to notify the health authorities.

What directives have been issued by your Government or Ministries to deal with COVID-19?

- The Minister of Human Resources and The Malaysian Employers Federation have issued guidelines on dealing with COVID-19.

Are there any other issues employers should consider?

- Employers should continue to monitor any developments relating to COVID-19. It would be important to be updated on any governmental directives or guidelines issued in dealing with the situation.

  Ultimately, employers will need to consider prevailing circumstances and take appropriate measures to deal with those circumstances. Where there is uncertainty, proper legal advice should be sought.

KEY CONTACTS

Yong Hon Cheong
Partner
Head of Human Capital Services
Zaid Ibrahim & Co.
(a member of ZICO Law)

hon.cheong.yong@zicolaw.com
t. +603 2087 9999

PHILIPPINES

What are an employer's general obligations to employees?

The labor sector in the Philippines is imbued with public interest, thus there are several laws and rules that provide for measures to promote the protection of employees and employers alike. The Labor Code that provides for the conditions of employment and the Occupational Safety and Health Standards Act impose upon employers several obligations to ensure the wellness and safety of employees in the workplace. In fact, the right to safety and health at work is guaranteed under these laws.

Generally, employment benefits and the terms and conditions of employment may be subject to the conditions set out in the employment contract or collective bargaining agreement, if any, and company policies and rules. Thus, the employment being contractual in nature provides a discretion to employers with respect to managing their business operations and employees. However, the reasonableness and validity of such stipulations remain to be subject to the minimum standards provided in the Labor Code, the Occupational Safety and Health Standards Act, and the regulations issued by the Department of Labor and Employment ("**DOLE**"), among others.

Under the recently issued advisory of the DOLE, as a precautionary measure at the workplace, all employers are directed to:

- provide information about illness outbreaks, i.e., COVID-19 including its transmission, disease outcome, and treatment options to their workers;
- clean the work areas with disinfectant and make sure that water, soap and sanitiser are available in all washrooms and toilets;
- emphasise to all workers the everyday actions to stay healthy and keep a clean workplace, such as proper etiquette in coughing and sneezing, washing of hands frequently with soap and water or sanitisers; avoiding close contact with sick people, increase the body's resistance by having adequate rest and sleep, drinking plenty of fluids, and eating nutritious food;
- monitor the health of workers particularly those with fever and other flu symptoms and those who have traveled to or worked in countries affected with the virus;
- in the event that a worker is suspected as having COVID-19, the employer shall:
  - provide the worker with a face mask to prevent risk of spreading the infection;
  - isolate the worker immediately in a separate well-ventilated room in the work away from the other workers;
  - observe respiratory precautions when taking care of patients with flu or flu-like illness;
  - decontaminate the work area with appropriate disinfectant
- In the event that the worker is sick or has fever but is not suspected to have COVID-19, the employer must advise the worker to take prudent measures such as staying at home and keep away from work or crowds to limit the spread of communicable diseases.

Consequences of non-compliance

It appears that companies that do not comply with the guidelines issued by the DOLE will not be penalised for such act, as the guidelines do not provide for any penal provision. Thus, it also seems that the issuance by the DOLE remains to be advisory and not mandatory in nature.

Potential legal implications

MEASURE	LEGAL IMPLICATION
Conducting visual and temperature checks to detect fever and flu-like symptoms.	No express guideline issued by the Government.
Suspending all non-essential travel to high-risk countries (e.g. China), especially where the government has issued travel alerts or bans.	None, as Filipino citizens are temporarily banned from travelling to China and its Special Administrative Regions (no similar restriction has been imposed on foreign employees working in the Philippines who plan to travel to the abovementioned regions).

Requesting employees who may have recently travelled to China or other high-risk countries, or may have come into prolonged contact with such other persons (e.g. immediate family) to self-quarantine for 14 days, even when they do not exhibit any symptoms.	Any person, except Filipino citizens and holders of Permanent Resident Visa issued by the Philippine government, directly coming from China and its Special Administrative Regions, is temporarily banned from entering the Philippines, including those who, within 14 days immediately preceding arrival in the Philippines, have been to any of the above mentioned regions. Filipinos repatriated from China shall undergo mandatory quarantine period. No guidelines on employers requesting their employees to practice self-quarantine. However, if the employee is willing to undergo self-quarantine, the leave may be charged to the employees' sick/vacation leaves, if any, or governed by any arrangement between such employee and employer.
Request employees who are more vulnerable to contagion (e.g. pregnant employees or employees with pre-existing conditions) to stay away from the office.	Cannot be made mandatory as it remains to be a precautionary measure only (i.e., only in the event that an employee is sick or has fever but is not suspected to have COVID-19).

What are an employer's obligations towards an employee who has contracted the coronavirus, or been placed under quarantine?

The DOLE has issued guidelines to assist workplaces in their preparedness and response to COVID-19. In cases where an employee has contracted COVID-19 or has been placed under quarantine, the employer has the following obligations towards such employee to:

- provide the worker with face mask to prevent risk of spreading the infection;
- isolate the worker immediately in a separate well-ventilated room in the workplace, away from other workers;
- refer the worker to the company healthcare provider or to the nearest local health center or hospital for laboratory confirmation if the history, signs and symptoms are consistent with a suspected case of COVID-19;
- report the worker to the Department of Health ("**DOH**");
- ensure the implementation of recommendations provided by the DOH on the management and transport of suspected case of COVID-19;
- observe respiratory precautions when taking care of patients with flu or flu-like illness;
- decontaminate the work area with appropriate disinfectant;
- inform employees that they may avail of their hospital benefits under the policies of the Philippine Health Insurance Corporation ("**Philhealth**");
- inform employees of their entitlement to sick benefits under the compensation benefits of the Social Security System ("**SSS**") and Employees' Compensation Fund.

However, in case the employee is not qualified to avail of the benefits under SSS or PhilHealth due to the fault of the employer, the employer shall shoulder all the medical expenses of the employee until full recovery.

May an employer request specific employees to stay away from the office or to work from home?

As a preventive measure, in the event that a worker is sick or has fever but is not suspected to have COVID-19, the employer must advise the employee to stay at home and keep away from work or crowds.

The employers are encouraged to adopt a flexible and enlightened approach in granting time-off which may include use of leave credits, if there is any. Further, employers are encouraged to exercise flexibility and compassion in granting

additional leave with pay.

Notwithstanding the COVID-19 outbreak, the Philippines recognises the concept of telecommuting which refers to a work arrangement that allows an employee in the private sector to work from an alternative workplace (for e.g. home) with the use of telecommunication and/or computer technologies pursuant to an agreement entered into by the employee and employer based on the telecommuting program of the company, collective bargaining agreement, if any, and other company rules and regulations.

May an employer request employees to volunteer to take unpaid leave?

An employer may request an employee who is suspected to be infected with COVID-19 or who is serving a quarantine order for reasons related to COVID-19 to take leave. During the period of absence, the following arrangements may be considered:

- the leave may be charged to the employee's annual sick/vacation leave credits under the employment contract, company policy, company practice or as stipulated in the collective bargaining agreement, if there is one.
- if the employee's credits have been used up, employers could consider granting leave of absence without pay. However, employers are encouraged to be compassionate and grant additional leave with pay.
- by mutual agreement, the employer and employee could also agree on other arrangements for the employee's leave of absence.

The same arrangements may be used by employees who need to take a leave to take care of their children or parents afflicted or suspected of having COVID-19, or those who choose to stay away from work voluntarily due to contact with a person confirmed or suspected to be infected with COVID-19 in order to avoid transmission.

Is an employer subject to any reporting obligations to the authorities?

On managing the symptoms: In the event that an employee is suspected of having COVID-19, the employer shall refer the employee to the company's healthcare provider, if there is any, or to the nearest hospital for evaluation and proper management if the history, signs and symptoms are consistent with COVID-19.

On notification and reporting to authorities: The Occupational Safety and Health Officer of the company shall report to the Municipal Health Officer ("**MHO**") or City Health Officer ("**CHO**") for verification and initial investigation the following:

- symptomatics;
- asymptomatics with history or travel to China; and
- asymptomatic with history of exposure.

The MHO or CHO will then relay the report to the Regional Epidemiology and Surveillance Unit (RESU) using the system of the Epidemiology Bureau of the DOH.

Under the Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act, punishable acts include the non-cooperation of persons and entities, including workplaces that should report and/or respond to notifiable disease or health events of public concern. Penalties include payment of fine, imprisonment of the responsible officer and/or cancellation of business permit.

What directives have been issued by your Government or Ministries to deal with COVID-19?

The Philippine government has issued guidelines and circulars on the prevention and management of the COVID-19 in the workplace, community and schools. Guidelines for all private employers and employees in the Philippines have been issued by DOH (Department Memorandum No. 2020-0056) and DOLE (Labor Advisory No. 04, series of 2020). The travel restrictions are under Memorandum dated 1 February 2020 issued by the President's Executive Secretary.

Are there any other issues employers should consider?

- It is **not** recommended for employers to close their business establishments and workplaces to contain or manage COVID-19. Such option would only be considered after the joint assessment of the DOH, DOLE (for the private sector) and the Civil Service Commission (for the public sector).
- Contingent or continuity plans should be resorted to in order to ensure non-disruption of work operations, for e.g. skeletal force.
- Employers should also consider offering telecommuting, and replace in-person meetings in the workplace with video or telephone conferences.

KEY CONTACTS

Felix T Sy
Managing Partner
Insights Philippines Legal Advisors
(a member of ZICO Law)

felix.sy@insights-law.com
t. +63 2 9703 1290

Assisted by
Reeneth B. Santos and
Margarita Louise Masangkay
of Insights Philippinese Legal
Advisors (a member of ZICO
Law)

CAMBODIA

What are an employer's general obligations to employees?

The general duties of employers in relation to health and safety at the workplace are provided for in the 1997 Labour Law (as amended).

On 28 January 2020, the Ministry of Labour and Vocational Training issued Instruction No. 004/20 on the Preventive Measures Against Novel Coronavirus (2019-nCOV) (since named as COVID-19) at Factories, Enterprises and Establishments ("**Instruction 004/20**") which contains guidance of specific measures to be taken by employers and employees to prevent the spread of the virus.

Besides Instruction 004/20, there are no specific regulations regulating or prescribing the measures employers need to take relating to the protection of the general health and safety of other employees in the event of the COVID-19 virus epidemic.

As such, employers governed under the Labour Law and relevant regulations may exercise their judgment in implementing measures other than those prescribed by Instruction 004/20 such as requiring all employees to undergo regular temperature checks, additional sanitation and personal hygiene requirements (e.g.: wearing masks, regularly using surgical gloves for certain tasks etc.), and restricting the employee's access to the workplace for the purpose of protecting the general health of other employees at the enterprise.

However, such measures shall be undertaken within the boundaries of the Labour Law and any disciplinary action taken against the employee must be taken within 15 days of the employer noticing such misconduct (Art.26), may not be disproportionate (Art.27), and may not be in the form of fines or double sanctions leading to any reduction of the employee's remuneration (Art.28). Furthermore, in compliance with Art.249 Labour Law, the employer shall bear all costs relating to preventing and treating work-related illnesses.

Consequences of non-compliance

Penalties for offences under the Labour Law relating to the health and safety of employees include fines, personal liability for heads, directors, managers or officers in charge.

Additionally, the Ministry of Labour and Vocational Training is also empowered to levy additional fines according to the provisions of Joint Prakas 659 dated 6 June 2016 on the Fines for Offenders of the Labour Law.

What are an employer's obligations towards an employee who has contracted the coronavirus, or been placed under quarantine?

Where an employee has contracted the COVID-19 virus from the workplace or while on work duty, or placed under quarantine while the employee was at work, the employer shall arrange for such treatment necessary for employee to recover from the virus (c.f.: Art. 238, 249 and 254 Labour Law).

In addition to providing primary health care and an infirmary where the enterprise employs more than 50 employees, employers are also obliged under Joint Prakas No. 448 dated 10 November 2017 on Registration of Enterprises/Establishments and Workers at the National Social Security Fund ("**NSSF**") to register its employees for Occupational Risk Scheme and Healthcare Scheme.

The employer is also obliged under the 2019 Law on Social Security Schemes to make monthly contributions on behalf of the employee to the NSSF for the Occupational Risk Scheme and Healthcare Scheme.

May an employer request specific employees to stay away from the office or to work from home?

Within the general obligations of the employer under Arts. 228 to 230 Labour Law, employers have the right to regulate access to the workplace in the interest of the general health and wellbeing of other employees, including requiring employees they suspect of contracting the COVID-19 virus to stay away from the workplace and/or to work from home for a definite period of time.

Such instructions to stay away from the workplace and/or work from home shall be counted as work days or sick leave days of the employee and the employee's remuneration shall reflect the same with no reduction in remuneration for days they have been ordered to stay away from the workplace.

Based on MOSAVLY Prakas No. 143 dated 10 June 2002 on the Reallocation of Working Hours for 12 Working Weeks on Average, an employer may request permission from the Labour Inspector to utilise a consecutive 12 week working schedule besides the normal weekly schedule to replace lost hours due to the COVID-19 virus where it has affected usual operations of the enterprise. Where employers do so they will need to ensure that the work schedule fulfils the following conditions:

- the average duration of work for the 12 consecutive weeks shall be no longer than 48 hours per week;
- the duration of daily work shall be no longer than ten hours;
- the duration for daily overtime shall be no longer than one hour.

May an employer request employees to volunteer to take unpaid leave?

An employer may request an employee infected by the COVID-19 virus to volunteer in taking unpaid leave. This request, however, must adhere to the company policy and prior permission from the Labour Inspector must be obtained before requesting the employee to voluntarily take unpaid leave.

Although this is legally permissible, it is very unlikely in practice that the Labour Inspector will agree to this arrangement and the unpaid leave days which the employees agree to take according to the request of the employer for reasons of contracting the COVID-19 virus or preventing infections will be counted as days of sick leave and the administration of such sick leave shall be in accordance with the employer's policies.

Based on current industrial practice, employers would employ the following mode for paying remuneration for an employee who is on prolonged sick leave (i.e. up to six months as in Art.71 Labour Law):

- 100% for the first month;
- 60% for the second and third months; and
- NIL for the fourth month to the sixth month.

Employers must also ensure that the request to take unpaid leave does not amount to a suspension of the employment contract.

Is an employer subject to any reporting obligations to the authorities?

Generally, under Joint Prakas 110 dated 16 May 2008 on the Notification of Employment Injury, employers are obliged to report all incidents of occupational disease to the NSSF within 48 hours of the working day in which the employee suffered from the occupational illness. This would include incidents of employees contracting the COVID-19 virus during working hours or while carrying out his/her work duties and which requires immediate medical treatment.

What directives have been issued by your Government or Ministries to deal with COVID-19?

- Instruction No. 004/20 on the Preventive Measures Against Novel Coronavirus at Factories, Enterprises and Establishments.

Are there any other issues employers should consider?

- Other than Joint Prakas No. 110, based on recent press-releases and circulars from the Ministry of Health, the employer should also notify the Ministry of Health via toll-free telephone hotline No. 115 if any of their employees have contracted symptoms of COVID-19.

KEY CONTACTS

Ol Phirum
Senior Associate
SokSiphana&associates
(a member of ZICO Law)

ol.phirum@zicolaw.com
t. +855 23 999 878

Assisted by
Liew Shan Berg of
SokSiphana&associares
(a member of ZICO Law)

MYANMAR

What are an employer's general obligations to employees?

In Myanmar, the laws relating to employment health and safety are:

(1) Occupational Safety & Health Law 2019 ("**OSHLL 2019**") which was passed by the Pyidaungsu Hluttaw (Myanmar Parliament) but has yet to come into force. Nonetheless, we are setting out an employer's general duties under OSHL 2019 for reference purposes as it is currently the most applicable law.

(2) Prevention and Control of Communicable Diseases Law 1995 ("**PCCDL 1995**") being a law on communicable diseases which imposes general obligations.

(3) Factories Act 1951 ("**FA 1951**") which applies to factories. An employer/factory owner has obligations to keep the factory conditions safe. General duties includes:

- factory premises shall be kept clean and free from noxious fumes;
- effective arrangements for disposal of wastes and effluences arising from a manufacturing process;
- ensure effective ventilation and temperatures to secure reasonable conditions for comfort and health; and
- provide sufficient and accessible latrines and urinals.

General Duties of Employer under OSHL 2019

A summary of the key duties are as follows:

- where the number of workers are more than the prescribed number of workers by the Ministry, to set up a clinic and appoint a certified doctor and nursing staff and provide necessary medicines and facilities;
- to implement necessary arrangements for workers to be able to report to his/her employer on workplace safety matters;
- to implement systematic arrangements for ensuring safety and absence of health risks to persons at the workplace and surrounding area, in connection with the use of machines, building, tools, substances, or handling and transportation of wastes relating to any processes or workplaces;
- in case of imminent danger, to immediately stop the processes, evacuate and carry out the necessary rescue procedures and direct workers to safety;
- to arrange and display occupational safety and health instructions, warning signs, notices, poster and signboards;
- to supervise and enforce restricted access, ensure precautions are followed at restricted workplaces where possible dangers may present;
- to disseminate occupational safety and health information and provide safety and health manuals and guidelines published by the relevant Ministries not only to the workers but also to any persons at work; and
- to shoulder any expenditure regarding occupational safety and health measures.

General Duties of Employer under PCCDL 1995

PCCDL 1995 does not set out specific duties of an employer, however, it stipulates the general obligations of the public (including employer and workplace initiatives) that are relevant for the prevention of outbreak of communicable diseases, particularly in relation to environmental sanitation measures such as:

- in-door, out-door sanitation within and outside of the compound;
- well, ponds and drainage sanitation;
- proper disposal of refuse and destruction there of by fire:
- construction and use of sanitary latrines; and
- other necessary environmental sanitation measures.

Measures to reduce the risk of contagion

In order to create a safe and sanitary work environment, an employer is required to comply with the requirements stated above to the extent that is applicable to their circumstances. Further, employers would also be required to comply with any other notification, directive, instruction, announcement and declaration issued by relevant regulatory authorities from time to time.

Currently, there are no employer/workplace related directives issued by the authorities. However there are travel restrictions where the Ministry of Health and Sports, Myanmar ("**MOHS**") has issued heath declaration cards to be filled by all travelers coming from Wuhan (People's Republic of China) and other countries affected by COVID-19. MOHS has also issued standard operating procedures to be followed for pneumonia surveillance in international airport and seaport, ground crossing, hospitals and clinics.

Potential legal implications

a. Conducting visual and temperature checks to detect fever and flu-like symptoms

There is no specific regulations relating to the conduct of such checks. However, under the standard form of employment contact issued by the Ministry of Labour, Immigration and Population ("**Standard EC**"), it is stipulated that employers are required to ensure workplace safety and health. Therefore, the conduct of the checks in furtherance of ensuring a safe workplace would be permissible.

b. Suspending all non-essential travel to high-risk countries & implementing self-quarantine for 14 days

An employer has prerogative to set company policies and such policies are attached as annexures to the Standard EC, approved by the local labour office. Where such travel restrictions or self-quarantine are in furtherance of other workplace safe measures such as stated in Item (a) above, it would be permissible to have such policies.

c. Request employees to stay away from the office

Permissible under Section 29 of OSHL 2019, where an employer shall:

(a) prohibit and restrict the work of an employee according to a doctor's diagnosis with respect to a person not fit to work;

(b) without delay, allow him/her to resume his/ her previous work or to work any suitable kinds of job when a worker who has been prohibited or restricted from working under subsection (a), submits his/her health certificate; and

(c) to ensure that pregnant or breastfeeding women do not perform work which may be harmful to their health.

Therefore, the employer's obligations here is not only from the perspective of ensuring a safe workplace environment, but also to ensure that EACH employee has safe working conditions. In the case of vulnerable employees, the employer may implement such policies as "working from home".

Consequences of non-compliance

OSHL 2019	PCCDL 1995	FA 1951
Employer shall be liable on conviction to imprisonment for a term not exceeding three months or to a fine between MMK1 million to MMK5 million or both.	No penalties are stated for failure to comply with environmental sanitation measures.	Factory manager or employer shall be punishable with imprisonment for a term not more than three months or minimum fine of MMK2 million or both.

What are an employer's obligations towards an employee who has contracted the coronavirus, or been placed under quarantine?

Under the Leave and Holidays Act, employees are entitled to paid medical leave not exceeding 30 days in a year, provided that the said employee has been in service with the company for at least six months. An employee with less than six months service, without Social Security Board insurance, would only be granted unpaid medical leave without pay.

The main obligations of an employer would be contributions to the Social Security Board, under the Social Security Law 2012 ("**SSL 2012**").

Generally, an insured person who had paid contribution to health and social care fund has the right to obtain medical treatment for sickness and claim expenses and cash benefits relating to the sickness up to 60% of the average wage of the previous four months, up to 26 weeks. In the event that the employer has less than five employees, there is no obligation to contribute to the Social Security Board.

Therefore, if the affected employees does not have social security benefits, the employer would be responsible for medical treatment for any employee not covered by the SSL 2012 for any workplace injury, work-related disease, and

sickness at the workplace pursuant the Standard EC.

May an employer request specific employees to stay away from the office or to work from home?

The Standard EC does not provide for this situation. This is as a work place (at a specific address/location) is stipulated as a term and condition to the employment. Therefore, if there is a change to the work place, such as work from home arrangements, there is no specific restriction nor provision on this.

We are of the view that an employer may implement such flexible work arrangements as part of the company policy during this time as protective measures for employees and/or ensuring workplace safety.

May an employer request employees to volunteer to take unpaid leave?

There are no provisions in law that allows an employer to do this.

In the event of a prolonged outbreak of the virus which affects business continuity and/or closes certain parts of the business, an employer may terminate the employee for redundancy provided that severance payment is paid in accordance with the employee's length of service (generally it is one month severance pay for each year of service).

Termination may be the more extreme position. For employees who wish to volunteer to take unpaid leave, this would essentially be a contractual matter that would have to be mutually agreed upon between the parties.

Is an employer subject to any reporting obligations to the authorities?

PCCDL 1995 provides that any suspicion or occurrence of epidemic disease would need to be reported to the nearest health department or hospital, which includes any communicable diseases that has been prescribed as Principal Epidemic Disease by the Ministry of Health.

What directives have been issued by your Government or Ministries to deal with COVID-19?

There has not been any specific directive issued to guide the employer in dealing with COVID-19.

KEY CONTACTS

Geraldine Oh Kah Yan
Partner
ZICOlaw Myanmar Limited

geraldine.oh@zicolaw.com
t. +95 1 538 362

Thuzar Tin
Senior Associate
ZICOlaw Myanmar Limited

thuzar.tin@zicolaw.com
t. +95 1 538 362

LAOS

What are an employer's general obligations to employees?

Pursuant to the Labor Law No. 43/NA dated 24 December 2013 ("**Labor Law**"), the employer has the general obligation to provide appropriate measures to ensure the protection of the health and safety of employees in the workplace. Under Article 119 of the Labor Law, employer's obligations that are relevant to the current situation are as follows:

- instill appropriate measures to ensure workplace health and safety for the employee working under its administration;
- regularly inspect all safety measures and improve any that are inappropriate;
- maintain the workplace, safety systems, environment and atmosphere when working to ensure good conditions for the health of the employees;
- provide appropriate facilitation of welfare for employees in the workplace;
- supply information, recommendations, training and protection for employees so that they may undertake their work safely;
- supply individual safety gear to employees in full and in good condition according to international standards;
- appoint employees responsible for labor health and safety; and
- other obligations as determined by law.

The Law on Hygiene, Disease Prevention, and Health Promotion No. 08/NA dated 21 December 2011 ("**Hygiene Law**") meanwhile, generally requires employers to provide safety equipment to workers and to ensure the hygiene of the work places.

Based on these provisions, we consider that protective measures for workplace health and safety under the Labor Law can be adopted by employers for employees and third persons, to prevent the spread of COVID-19, under the current circumstances.

Consequences of non-compliance

The general measures imposed on any individual or legal entity that violates the Labor Law is re-education, warning, fine, temporary suspension of business, withdrawal of business license or court proceedings based on the nature of the offence, including compensation for civil damages.

What are an employer's obligations towards an employee who has contracted the coronavirus, or been placed under quarantine?

Under the Labor Law, employees remunerated on a monthly basis who presents a medical certificate is entitled to sick leave with full pay for a period of up to 30 days per year. Workers paid on daily or hourly basis or based on specific work contract, are entitled to payment if they have worked for more than 90 days.

There is currently no publicly available regulation in terms of employer's obligations for employees that are placed under quarantine and there is also no jurisprudence that can provide guidance for the matter in this jurisdiction. Considering the circumstances, this may come under sick leave if the employee is able to present a medical certificate.

If the disease is considered as an occupational disease (defined as any disease occurring as the result of the type of occupation, and may be applicable in certain circumstances for this outbreak such as when the employer is a hospital or business related to medical services that exposes health workers to infected patients), the Labor Law provides:

- If an employee is injured as a result of occupational disease, the employer or social insurance implementation agency must take responsibility for the cost of treatment as determined in the Law on Social Insurance. For the course of the treatment and rehabilitation, the employee has the right to receive their normal salary or wages from the employer, but for no longer than six months. If the limit is reached, the employer or social insurance implementation agency will cover the cost in accordance with the Law on Social Insurance.
- In cases where the employee dies from occupational disease, the employer or social insurance implementation

agency must take responsibility for the funeral and remuneration as determined in the Law on Social Insurance.

May an employer request specific employees to stay away from the office or to work from home?

There is no publicly available work-from-home regulation in Lao PDR. However, this may be based on the employer's work-from-home policies or on the employer's prerogative in managing its employees and the workplace. This will also be consistent with the employer's obligation to ensure the health and safety of the workplace under Article 119 of the Labor Law.

May an employer request employees to volunteer to take unpaid leave?

There is no publicly available regulation in the matter of employer's right to request employees to take unpaid leave.

Is an employer subject to any reporting obligations to the authorities?

An employer has an obligation to report to the Labor Administration Authority an occupational disease causing injury to an employee within three days from the date of the incident. There is also an annual reporting obligation in relation to risk assessment on employee health and safety under the Labor Code.

Other than this, there is no other obligation in relation to reporting an employee who has contacted the virus.

We note that the Hygiene Law imposes a general obligation for individuals, families, administrative authorities and all social organisations to comply with the principles of prevention and control of communicable diseases. When symptoms of epidemics occur in their location, immediate measures are to be urgently taken and the situation shall be reported to higher authorities for a timely solution.

What directives have been issued by your Government or Ministries to deal with COVID-19?

The Lao PDR government has issued the following notifications in relation to COVID-19:

(1) Notification No. 030/MOH dated 20 January 2020 issued by the Ministry of Health ("**MOH**") on Request for Readiness at the Border in Preparing for Quarantine and Control of Novel Corona Virus-nCOV, Wuhan, Hubei, China PRD

- notification addressed to the Director Generals of the Public Security Division at provincial and capital levels, Civil Aviation Department, and Public Health Division at provincial and capital levels to request for support in quarantining and controlling the Novel Corona Virus-nCOV;
- MOH requests for facilitation for public health workers assigned to border from the relevant authorities;
- MOH requests that any potential case be reported immediately to the public health workers at the borders or epidemic control divisions;
- there shall be announcement and distribution of information materials; and
- there shall be training for contagious disease control at the border.

(2) Notification No. 0211/LAP dated 23 January 2020 issued by the Ministry of Public Works and Transport ("**MPWT**") on the Control Measure for the Transmission of Novel Corona Virus COV at International Airport Entry Checkpoint in Lao PDR

- notification addressed to international airports in Vientiane, Luang Prabang, Savannakhet, and Pakse, and the Lao-Japan Airport Building Services Co., Ltd.;
- MPWT instructs that director of international airports coordinate with MOH in installation of equipment for monitoring the virus in front of the in-bound entry gate;
- if any passenger carry the virus, immigration officers shall be notified to take action in accordance with law and

may deport the passenger back with the aircraft;

- all international airports and Lao-Japan Airport Building Services shall prepare hygiene masks for employees providing services to passengers and provide sinks with soap and tissues at the in-bound entry gate for their employees; and
- any issues shall be report to the Lao Airport Division immediately.

(3) Notification No. 98/PMO dated 27 January 2020 issued by the Prime Minister's Office ("**PMO**") on Directions relating to the Prevention, Control and Mitigation of the Transmission of Novel Corona Virus: NCOV

- notification addressed to all ministers and directors of organisations at the ministry level, and capital and provincial governors;
- PMO assigns the operational and reporting roles in relation to the Novel Corona Virus: NCOV to the Minister of Health and the Director of the Quarantining and Controlling of Contagious Diseases;
- PMO authorises the establishment of a Special Committee to coordinate with all sectors and local administrations for assessment of impact of Novel Corona Virus: NCOV to Lao PDR and determine measures to respond to the epidemic;
- the tasks of the Special Committee include inspection of high-risk locations, preparation of healthcare unit for quarantining infected patient, distribute information for disease prevention, issuing warning for public, compile statistical data and conducting health check on travelers from China, controlling price of equipment for disease prevention, research on method to mitigate impacts on immigration of Chinese labor for major investment projects, and prepare budget for relevant works.
- PMO assigns Ministry of Foreign Affairs in coordinating with other countries and WHO in monitoring of the transmission of the diseases; and
- PMO assigns embassy and consulate offices in China to facilitate and assist Lao citizens living and studying in China and provide regular report on the situation.

There is no publicly available issuance by the Ministry of Labor in relation to COVID-19 in the workplace as of this date.

Are there any other issues employers should consider?

Under Article 8 of the Decree on Occupational Health and Safety No. 22/GOV dated 5 February 2019, it is important to note that an employee has the right to refuse work that have high risk which may be dangerous to their life or health. The assignment of employees to work in conditions that make them susceptible to the COVID-19, such as to travel to China may fall within this Decree, which would entitle the employee to legally refuse the assignment.

KEY CONTACTS

Cess Principe
Senior Associate
ZICOlaw (Laos) Sole Co., Ltd.

cess.principe@zicolaw.com
t. +856 21 410 033

Tuchakorn Kitcharoen
Senior Associate
ZICOlaw (Laos) Sole Co., Ltd.

tuchakorn.kitcharoen@zicolaw.com
t. +856 21 410 033

VIETNAM

What are an employer's general obligations to employees?

Vietnamese law does not provide in detail the measures needed to be taken to reduce the risk of contagion of COVID-19. An employer may decide and apply reasonable measures for reducing the risk of contagion provided that the opinion on such measures from the organisation representing the labour collective (i.e. trade union) is collected.

The measures that may be taken include:

- conducting visual and temperature checks to detect fever and flu-like symptoms.
- suspending all non-essential travel to high-risk countries (e.g. China), especially where the government has issued travel alerts or bans.
- requesting employees who may have recently travelled to China or other high-risk countries, or may have come into prolonged contact with such other persons (e.g. immediate family) to self-quarantine for 14 days, even when they do not exhibit any symptoms.
- requesting employees who are more vulnerable to contagion (e.g. pregnant employees or employees with pre-existing conditions) to stay away from the office.

In the event that an employer does not comply with Vietnamese law and legislation relating to employment health and safety, such employer may be imposed with the administrative penalty of VND2 million – VND10 million (approx. USD100 - 500).

What are an employer's obligations towards an employee who has contracted the coronavirus, or been placed under quarantine?

Vietnamese law does not provide in detail any medical benefits and entitlements that the employer has to pay an employee who has contracted COVID-19 or been placed under quarantine.

In the event the employee has to cease work due to dangerous epidemic/coronavirus, the employee's salary shall be agreed by the parties but it must not be less than the minimum salary provided by the government (i.e. subject to the employer's location, from VND3,070,000 to VND4,420,000 (approx. USD153 - 221)).

May an employer request specific employees to stay away from the office or to work from home?

The employer and its employees may agree on flexible work arrangements such as working from home as well as their respective rights and obligations.

May an employer request employees to volunteer to take unpaid leave?

No, the employer is not permitted to request its employees to take unpaid leave. Only the employee may negotiate with the employer on unpaid leave.

Is an employer subject to any reporting obligations to the authorities?

Yes, the employer must report to the authorities in the event that any of its employees have contracted COVID-19.

What directives have been issued by your Government or Ministries to deal with COVID-19?

No specific directives have been issued. However, employers are advised to comply with instructions on the prevention of acute respiratory infections caused by COVID-19, to temporarily stop accepting Chinese employees to return to work in Vietnam, to report to authorities cases of employees contracting COVID-19 and if they need to be quarantined as well as suspend the issuance of work permits to foreign employees from epidemic areas.

KEY CONTACTS

Nguyen Mai Phuong
Managing Partner
ZICOlaw (Vietnam) Limited

phuong.nguyen@zicolaw.com
t. +84 24 3826 1515

INDONESIA

What are an employer's general obligations to employees?

Generally, pursuant to Article 86 of Law No. 13 of 2003 on Manpower ("**Manpower Law**") every employee is entitled to receive protection on occupational safety and health. Further, Article 87 of the Manpower Law requires the company to apply an occupational safety and health management system that shall be integrated into the company's management system in order to create a safe, efficient and productive workplace.

This occupational safety and health management system for the company is further regulated in specific laws, the following:

- Law No. 1 of 1970 on Work Safety ("**Work Safety Law**"), which regulates work safety terms. The company is required to prevent and control the onset of illness due to work both physically and psychologically, poisoning, infection and transmission. This Work Safety Law will be further regulated with implementing regulations and if the employer violates this implementing regulations, the employer/management of the company will be imposed with a criminal sanction of imprisonment up to three months or a maximum fine of IDR 100,000.
- Government Regulation No. 50 of 2012 on Application of Work Safety and Health Management Systems ("**GR 50/2012**"), which requires a company, who has 100 employees or high level of potential danger, to implement occupational safety and health management system in accordance with the standard regulated in this GR 50/2012. No mention is made in GR 50/2012 on sanctions.
- Minister of Manpower Regulation No. 5 of 2018 on Safety and Health of Work Environment ("**MoM Regulation 5/2018**"), which requires the company to implement the occupational health and safety requirements as referred in this MoM 5/2018 to realise a safe, healthy and comfortable work environment in order to prevent work accidents and occupational diseases. Failure to comply with the MoM Regulation 5/2018 will result in the following sanctions:
  - administrative sanctions in the form of a rebuke, written warning, restriction/limit of the business activities of the affected enterprise, suspension of the business activities, cancellation of approval, cancellation of registration, temporary termination of partial or the whole production tools/instruments, and revocation of license; and/or
  - imprisonment with a maximum sentence of three months or a maximum fine of IDR 100,000.
- the Minister of Health Regulation No. 48 of 2016 on Occupational Health and Safety Standards for Office Space ("**MoH Regulation 48/2016**"), which requires the employer or building management to conduct:
  - disease prevention by conducting control of risk factors and early discovery of disease and health status assessment; and
  - management of disease by conducting first aid to those infected by the disease and referring them to the nearest health service facility in accordance with laws and regulations.

  The MoH Regulation 48/2016 does not mention any sanction for violations of this regulation.

Regarding the issue of COVID-19, on 24 January 2020 the Ministry of Manpower through Directorate General of Labor Inspection and Occupational Health and Safety Supervision issued a Circular Letter No. B.5/51/AS.02.02/I/2020 concerning Precaution for Unknown Cases of Severe Pneumonia in Employees ("**Circular Letter 5/2020**"). In this Circular Letter 5/2020, the Manpower Government Departments and employers are encouraged to:

- carry out guidance and supervision of the implementation of occupational health and safety system especially in efforts to prevent severe pneumonia of unknown causes by conducting health assessment to their employees;
- disseminate information regarding severe pneumonia whose cause is unknown to all employees; and
- socialise to employees on the symptoms, signs, and ways to prevent the spread of virus.

Specific procedures for health assessment checks in relation to COVID-19 are not mentioned in the Circular Letter 5/2020, thus employers have a discretion to conduct the health assessment checks in order to implement their respective occupational health and safety systems at the workplace.

What are an employer's obligations towards an employee who has contracted the coronavirus, or been placed under quarantine?

An employee will be entitled for the following benefits where they have contracted COVID-19 or been placed under quarantine:

- **Salary**

  Based on Article 93 paragraph (3) of the Manpower Law, the amount of salary payable to employees who are ill shall be determined as follows:

  - for the first four months, they shall be entitled to receive 100 % of their salary;
  - for the second four months, they shall be entitled to receive 75 % of their salary;
  - for the third four months, they shall be entitled to receive 50 % of their salary; and
  - for subsequent months, they shall be entitled to receive 25 % of their salary prior to the termination of employment by the employer.

- **Prohibition to be terminated**

  Based on Article 153 paragraph (1) of Manpower Law, the employer is prohibited from terminating an employee because he/she is absent from work because of illness as long as the period of illness does not reach 12 consecutive months. The employer can only terminate the employee if the illness persists for more than 12 consecutive months.

- **Request for termination benefit**

  Based on Article 172 of the Manpower Law, employees who are continuously ill and are unable to perform their work, after they have been in such a condition for more than 12 consecutive months, may request for termination to the employer by receiving severance payment, service payment and/or compensation.

- **Healthcare benefits under Indonesian Social Security system**

  The Healthcare Benefits may not cover the treatment of COVID-19 because it can be considered as extraordinary events/ epidemics under Article 52 paragraph (1) (o) of Law No. 82 of 2018 on Health Security. As of the date of this article, the Indonesian Government has not declared COVID-19 as extraordinary event or epidemic. However, the Indonesian Ministry of Health has confirmed that the COVID-19 will not be covered by the Healthcare Benefits1 and further stated that the Indonesian Government has specific funds allocated for the treatment of COVID-192, hence the infected patients will be covered by these specific funds.

May an employer request specific employees to stay away from the office or to work from home?

This will depend on the work agreement or company's regulation. If this is regulated in the company's regulation or part of the company's occupational safety and health management system, the employer can request specific employees to stay away from the office.

May an employer request employees to volunteer to take unpaid leave?

No, unpaid leave shall be initiated by the employees. Sick employees are still entitled to receive salary as explained above.

Is an employer subject to any reporting obligations to the authorities?

Yes, the Circular Letter 5/2020 states that the employers shall record and report for any cases or suspected cases of COVID-19 to the authorities, namely the relevant manpower department offices where the company is located.

What directives have been issued by your Government or Ministries to deal with COVID-19?

As explained above, the Ministry of Manpower has issued the Circular Letter 5/2020 to deal with COVID-19.

In addition, the Indonesian Government has temporarily suspended all direct flights to and from China since 5 February 2020 and banned all visitors, who have been in China in the last 14 days from entering or transiting in Indonesia.

The Indonesian Government through each regency/city-level health agencies such as Bali, Surabaya and Batam have issued circulars for every voyage to report its last voyage data or recent trips and crew data especially for a voyage that have just returned or arrived from China, Hong Kong, Singapore and Malaysia.

KEY CONTACTS

Agnesya M. Narang
Partner
Roosdiono & Partners
(a member of ZICO Law)

agnesya.narang@zicolaw.com
t. +6221 2978 3888

Sianti Candra
Senior Associate
Roosdiono & Partners
(a member of ZICO Law)

sianti.candra@zicolaw.com
t. +6221 2978 3888

BRUNEI

What are an employer's general obligations to employees?

In Brunei, employers owe a general duty to employees under the Employment Order 2009 and other circulars and directives issued by the Prime Minister's Office.

To reduce the risk of contagion of COVID-19, Brunei has recently implemented declaration forms to be filled in by passengers arriving in Brunei be it by land, sea & air. Screening of arriving passengers are also currently being conducted at ports of entry.

Among the measures that are currently being advised to be undertaken by those coming from abroad include:

- conducting visual and temperature checks to detect fever and flu-like symptoms;
- suspending all non-essential travel to high-risk countries (e.g. China), especially where the government has issued travel alerts or bans;
- requesting employees who may have recently travelled to China or other high-risk countries, or may have come into prolonged contact with such other persons (e.g. immediate family) to self-quarantine for 14 days, even when they do not exhibit any symptoms;
- request employees who are more vulnerable to contagion (e.g. pregnant employees or employees with pre-existing conditions) to stay away from the office.

Please note, these are not legal requirements but only guidelines given in an advisory capacity by the Government hence it is not mandatory for employers to fully adhere to them.

What are an employer's obligations towards an employee who has contracted the coronavirus, or been placed under quarantine?

Under the Employment Order 2009, employees are entitled to paid medical leave for 14 days where no hospitalitasion is necessary and may extend to a period of 60 days if hospitalisation is necessary. In the event that the paid leave is exhausted, the employer may request the employee to volunteer to take unpaid leave, subject to medical certification.

In order to reduce the risk of being sued for unfair dismissal when requesting an employee to voluntarily take unpaid leave, we advise the employer to adhere to the rules imposed under the Employment Order 2009.

Further, we would also advise for the employer to undertake a "medical release procedure" (if any) which should be carried out by an approved medical institution to determine whether:

- the employee is fit to return to the employee's assigned duties;
- transferred to other duties that may be more compatible with the employee's medical condition; or
- be released from the company's service on medical grounds.

May an employer request specific employees to stay away from the office or to work from home?

Yes, this is the discretion given to the employer. An employer may allow the employee to work from home by taking into account the following considerations for flexible work arrangements:

- working hours;
- the medical condition of the employee;
- Doctor's recommendation (for example, has the doctor instructed the said employee to "strict bed rest" etc.;

- the employees' facilities at home which would enable the employee to perform well; and
- resources available at home for the employee to use to perform their work obligations.

May an employer request employees to volunteer to take unpaid leave?

This is subject to the medical certification of paid leave being exhausted. Please refer to item 2 above.

Is an employer subject to any reporting obligations to the authorities?

There is no legal obligation but it will be advisable to report the matter to the authorities such as the Ministry of Health, Brunei Darussalam.

What directives have been issued by your Government or Ministries to deal with COVID-19?

The following Guidelines have been issued and are available on the Prime Minister's Office website:

- Garispanduan Langkah Persediaan dan Pencegahan Jangkitan Coronavirus Baru (2019-nCoV) bagi Perkhidmatan Awam Negara Brunei Darussalam (Guidelines on Preparation and Preventive Measures of Novel Coronavirus in Public Services in Brunei)
- Pengemaskinian Garispanduan Langkah Persediaan dan Pencegahan Jangkitan Coronavirus (COVID-19) bagi Perkhidmatan Awam Negara Brunei Darussalam (Updated Guidelines on Preparation and Preventive Measures of Novel Coronavirus in Public Services in Brunei)

Are there any other issues employers should consider?

Employers should also consider whether employees would be entitled for compensation under their insurance scheme in the event of death due to COVID-19.

KEY CONTACTS

Mohamad Rozaiman Abdul Rahman
Managing Partner
ZICO R.A.R
(a member of ZICO Law)

rozaiman.ar@zicolaw.com
t. +673 713 2929

ASEAN INSIDERS,
by origin and passion

This publication was edited by ZICO Knowledge Management & Training.

All rights reserved. No part of this document may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system, without our prior written permission.

The information in this publication is current as at 18 February 2020, unless stated otherwise. The information in this publication is for general information only and is not a substitute for legal advice. If you require any advice or further information, please contact us.

ASEAN 10/10

www.zicolaw.com

BRUNEI | CAMBODIA | INDONESIA | LAOS | MALAYSIA
MYANMAR | PHILIPPINES | SINGAPORE | THAILAND | VIETNAM