

Movement Control Order & Employment: Workplace Safety and Health

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Based on the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020ⁱ (“Regulations”), premises offering essential services may operate, provided that the number of personnel and patron at the premise are kept to the minimal. While businesses have to go on at this critical time, workplace safety has become a major concern for employees who are performing their duties during the enforcement of Movement Control Order (“MCO”) in Malaysia.

In an updated Frequently Asked Questions (“FAQs”) by the Ministry of Human Resourcesⁱⁱ (“MOHR”) on 19th March 2020, MOHR has detailed the precautionary measures to be introduced at workplace. In this update, we brief our readers on the salient precautionary measures to be deployed by employers to ensure the wellbeing of their workers.

What are the measures to be introduced at workplace by employers during the MCO period?

Generally, employers bear a statutory duty to ensure “the safety, health and welfare at work” of its employees pursuant to section 15 of the Occupational Safety and Health Act 1994 (OSHA 1994). In addition, employers also owe a duty of care not to expose the employees to danger during and in the course of discharging the employment contracts. Therefore, the employers should do all that is practicable to protect and prevent the employees from being exposed to COVID-19 while the employees are carrying out their duties.

The FAQs, amongst others, provide some actions to be observed by the employers who are permitted to operate their business during the MCO period, as follows:

- (a) to reduce the number of employees to the minimal level or at least halve the current number of employees;
- (b) to ensure limited or restricted movement of the employees involved in the business operation;
- (c) to prepare a thermometer, and take the employee’s body temperature on a daily basis;
- (d) to ensure the employees comply with the procedures of prevention of COVID-19 set by the Ministry of Health from time to time;
- (e) to prepare hand sanitizer;
- (f) to carry out sanitization and necessary cleaning;
- (g) to prepare and implement guidelines for social distancing best practices.

Prior to the announcement of MCO, MOHR also provided Guidelines on Handling Issues Relating to Contagious Outbreaks Including Novel Corononavirus (2019-NCOV) (“Guidelines”)ⁱⁱⁱ. Pursuant to the Guidelines, employers are to take the following actions:

- (a) to instruct employees returning from COVID-19 affected countries, such as China, Thailand, Japan, Hong Kong and Singapore to be examined immediately at the expense of the employers;
- (b) to provide paid sick leave or hospitalization entitlement during quarantine period to employees that received quarantine orders, and are encouraged to provide extra remuneration to employees with quarantines order if they are exceeding their sick leave or hospitalization entitlement;
- (c) to provide full salary to employees that received quarantine orders;
- (d) to allow any employees to attend work, if no quarantine orders are issued;
- (e) to not instruct employees, in any way, to utilize annual leave entitlement or take unpaid leave during the quarantine period.

Notwithstanding that the Guidelines are in respect of the actions by the employers during COVID-19 quarantine period, they shall likewise apply during the MCO period, wherever applicable. Employers who fail to fulfil their statutory duty to provide a safe working environment under OSHA 1994, commits an offence. Pursuant to section 19 of OSHA 1994, an offender may be punished by a fine of not more than RM50,000.00; imprisonment for a term not exceeding 2 years; both.

Employees are also reminded of their duty to co-operate with their employers in the discharge of any requirement imposed on the employers pursuant to section 24 of OSHA 1994. For example, where the employees are instructed to work from home during the MCO period, they shall refrain themselves from going in the office. Otherwise, they would expose themselves as well as the employers to possible commission of an offence under the Regulations. Furthermore, the employees may commit an offence under the OSHA 1994. The punishment under OSHA1994 are as follows:

- (a) fine not exceeding RM1,000.00;
- (b) imprisonment for a term not exceeding 3 months; or
- (c) both

Employees have the rights to disobey their employers' instruction to turn up for work, if their employers are not permitted to operate during the MCO period. The disobedience of an employee certainly cannot amount to an insubordination in light of the MCO and the Regulations. Any aggrieved employee may report to the police, should such request to work is made by their employers.

In this regard, employers should bear in mind their duty of care not to involve the employees in unlawful activities. For those employers who request their employees to work in a manner which is in defiance of the MCO, the employees have the rights to claim against them for any loss and damage.

*Note: This article is for general information only and should not be relied upon as legal advice. For any inquiries on this article, please contact **Gan Khong Aik** (khongaik@ganlaw.my) or **Lee Sze Ching (Ashley)** (szeching@ganlaw.my).*

ⁱ P.U(A) 91/2020 Prevention and Control of Infectious Disease (Measures within the Infected Local Areas) Regulations 2020 http://www.federalgazette.agc.gov.my/output/pua_20200318_PUA91_2020.pdf

ⁱⁱ Soalan Lazim (FAQ's) Mengenai Perintah Kawalan Pengerakan Kementerian Sumber Manusia bertarikh 19 Mac 2020 <https://www.pmo.gov.my/2020/03/soalan-lazim-faqs-mengenai-perintah-kawalan-pergerakan-kementerian-sumber-manusia/>

ⁱⁱⁱ Panduan Mengendalikan Isu-isu berhubung Wabak berjangkit termasuk Novel Coronavirus di Tempat Kerja bertarikh 7 Februari 2020 <http://itksm.mohr.gov.my/images/pdf/Panduan%20Wabak%20Tempat%20Kerja%207%20Feb%202020.pdf>