

FAQs - IN THE TIME OF THE MOVEMENT CONTROL ORDER

1. What are the restrictions imposed by the Government and what are the exceptions?

In order to combat the spread of the COVID-19 virus in Malaysia, the Malaysian government issued a Restriction of Movement Control Order ("MCO"), pursuant to the Prevention and Control of Infectious Diseases Act 1988 and the Police Act 1967, on 16 March 2020. The MCO took effect on 18 March 2020. At the time of writing, the government has announced that the MCO will be extended until 28 April 2020.

Under the MCO, government and private sector business premises which are not considered "essential services" are required to close during the MCO period. Currently, the list of essential services can be found at: <http://www.federalgazette.agc.gov.my/outputp/PUA116-1182020.pdf>. There is a limited exception for employees performing critical work, which covers those performing work which if not continued will cause danger to people or the environment.

Certain sectors are allowed to operate subject to MITI granting an approval to operate. These sectors are listed at:

https://www.mkn.gov.my/web/wp-content/uploads/sites/3/2020/04/FAQ-MITI-BIL-3-ENGLISH-Ver-7_13-APRIL-2020_FINAL.docx.pdf.

Companies that are allowed to operate must comply with the Standard Operating Procedures (SOPs) that have been set by the authorities which differs depending on the sector. The approval by the authorities to operate is also subject to compliance with the rules and guidelines set from time to time by the Ministry of Health and other related authorities. Failure could lead to approval being withdrawn and this has happened to at least 2 companies so far.

The SOPs set by the authorities differ depending on the sector but some examples include:

- a) The Company must reduce the number of workers to the minimum level or at least by a certain percentage determined by the authorities in comparison to current numbers.
- b) Only employees whose names are provided to the authorities are allowed to work during the MCO period;
- c) Certain companies must provide transportation for workers and practise social/safe distancing and the vehicles used have to be sanitised before and after use;
- d) The Company must provide body temperature screening tools, and take daily readings of workers' temperatures upon entry to the factory/premises. Readings for each employee should be recorded and kept for reference.
- e) If an employee's temperature is above the normal body temperature, the Company should contact the nearest Health Office or Government Hospital.
- f) In the event a worker is found to be infected with Covid-19, the Company is responsible for all medical expenses, on-site decontamination and other related costs.
- g) Employees must comply with the COVID-19 precautionary measures as issued by the Ministry of Health from time to time. Additionally, employers should follow the steps set out in the Department of Safety and Health's ("DOSH") guideline – called Arahan Pematuhan Kepada Akta Keselamatan Dan Kesihatan Pekerjaan (AKKP) 1994 Berkaitan Langkah - Langkah Pencegahan Terhadap Wabak Jangkitan Coronavirus Diseases 2019 (Covid-19) Di Tempat Kerja, which requires employers to do the following:
 - i. Performing a risk assessment to ascertain what precautions need to be taken;
 - ii. Restricting travel;

- iii. Requiring employees to avoid crowded areas or close contact; and
- iv. Regularly checking DOSH's website for the latest information.

In relation to all companies which are operating during the MCO period (whether they provide essential services or were given approval by the authorities to operate) if an employee has tested positive for COVID-19, the Company must take the following precautions:

- a) Direct all other employees who came into close contact with the suspected Covid-19 employee to stay at home for 14 days to ensure the infection does not spread.
- b) Prior to that, these employees must be asked to identify all individuals who worked nearby (between 3 to 6 feet) to them in the last 14 days of when they were suspected of having COVID-19 so that the employer has a complete list of employees that may be infected. The list is to be kept confidential to avoid disclosing the employees' information.
- c) Carry out disinfection of the workplace and the infected employee's work space, and inform building management if the workplace is a shared building / office area.

2. What assistance has been offered by the Government to companies?

The Prime Minister has made several announcements on financial assistance to companies which have been affected by the MCO.

The first announcement benefiting companies was announced on 27 March 2020, referred to as the PRIHATIN Economic Stimulus Package (ESP), which among other things offers the following:

- a) Wage Subsidy Programme: Eligible companies will be entitled to a wage subsidy to help them pay their employees' salaries. The subsidies available under this programme were later amended (see below).
- b) Employee Retention Programme: Employees who have been asked to take no-pay leave are entitled to financial assistance in the form of RM600 per month for a period of 1 to 6 months, depending on the duration of the no-pay leave issued by the employer.
- c) Deferral of tax on instalment payments for affected business in the tourism sector.
- d) Small to medium enterprises ("SMEs") can apply for loans including under a Micro Credit scheme; and
- e) From 1 April 2020 onwards, SMEs will be allowed to defer income tax payments for a period of 3 months commencing on 1 April 2020.

The PRIHATIN ESP was further enhanced by the PRIHATIN PLUS initiative announced on 6 April 2020, which provided the following additional financial assistance measures:

- a) The Wage Subsidy Programme received additional funding and will now provide subsidies based on the total number of employees of the company, with smaller companies receiving larger subsidies.
- b) A Special PRIHATIN Grant amounting to RM2.1 billion was created for eligible micro SMEs;
- c) Improvements to the earlier introduced initiative by abolishing interest under the Micro Credit scheme and extending the soft loan scheme to TEKUN Nasional with a maximum loan limit of RM10,000 at 0% for each SME;
- d) Waiving or providing discounts for rentals to SMEs in the retail sector operating on Government-Linked Companies owned premises, and encouraging owners of private premises to do the same by promising tax deductions;

- e) The Employees Provident Fund (EPF) will introduce the Employer Advisory Services programme on 15 April 2020 to allow employers to negotiate with EPF to possibly defer payments or restructure or reschedule the employers' contributions to EPF.
- f) All employers are currently exempted from making contributions to the Human Resources Development Fund (HRDF) levy for 6 months.
- g) A 6-month moratorium will be automatically granted for loans/financing granted by financial institutions to SMEs (excluding credit card balances) from 1 April 2020. Banks are strongly encouraged to facilitate requests by corporate borrowers for a similar moratorium to preserve jobs and resumption of economic activities.

3. What are the employee related matters that I must do or comply with during the MCO?

Salary

The government-issued FAQs require employers to pay their employees salary in full. This includes allowances. However, employers are not required to pay travelling or attendance allowances. For employees whose wages are not fixed, their daily wages must not be less than the minimum wages rate as set out in the Minimum Wages Order 2020.

The government-issued FAQs do not provide for overtime payments to be made in relation to employees working at the business premises during the MCO. However, if the employee concerned ordinarily receives overtime payments (contractual entitlement / EA employee) and they work overtime, they should continue to receive overtime payments.

If an employee is in a business which is considered an essential service or is allowed to operate but he/she refuses to come to work, this would amount to absenteeism and employers can take disciplinary action and not pay them salary during their absence. However, an assessment should be done to see if the employees' absence was due to factors that may excuse their absence.

Annual Leave, Sick Leave & Unpaid Leave

The government-issued FAQs also provide that:

- (a) Employers are prohibited from unilaterally deducting time spent during the MCO from employees' annual leave entitlement or coercing employees to apply for annual leave during the MCO period, as such leave is the right of the employee and is granted on dates applied for by the employee.
- (b) An employer cannot force an employee to go on unpaid leave without the employees' consent.
- (c) Similarly, an employer cannot unilaterally deduct an employee's absence from work during the MCO period from the employee's sick leave entitlement. However, if an employee receives a Quarantine Order (so the employee is no longer able to work), an employer can deduct the employee's sick or hospitalisation leave for the period the employee is under quarantine.

However, employers can negotiate with the employees to agree for deduction of annual leave or sick leave entitlements or for unpaid leave to be taken. Otherwise, the employers risk being faced with a claim of constructive dismissal by the employees.

Cost-cutting Measures & Retrenchment

An employer may temporarily lay-off employees in the following circumstances:

- a) The employment contract or collective agreement has express term regarding temporary lay-off; and/or
- b) There is an implied term that the employee can be temporarily laid-off because of a custom or practice in the business, industry or trade that the employer is involved in.

In all other circumstances, the general position is that the consent of the employee is required before they can be temporarily laid-off.

The employer must comply with the following general requirements before they retrench employees:

- a) There must a genuine redundancy: The requirement for staff must reduce and their job functions must cease to exist.
- b) The retrenchment should be carried out in accordance with general industrial standards such as the Code of Conduct and Industrial Harmony which among other things require the following:
 - i. If the reason for the retrenchment is because the Company is suffering from financial difficulties, the Company must take other cost-cutting measures before retrenching employees, including reducing employees' working hours, not hiring or freezing the hiring of new employees, reducing overtime, reducing the number of days employees have to work, reduce salary and temporarily laying off staff; and
 - ii. If retrenchment is unavoidable, the company must terminate the services of foreign workers, those who have attained their retirement age and casual and fixed term employees first. Thereafter, the company ought to follow the "Last In, First Out" (LIFO) Principle unless the employer has an alternative objective selection criteria.
- c) The employer should meet and consult with selected employees and consider alternatives to dismissal, and implement possible cost-cutting or redeployment measures.
- d) If employees are covered by collective agreement with union with a clause requiring consultation, the employer must consult with the union.
- e) A proper notification of the retrenchment should be given to employees and Labour Department.
- f) The employer must pay retrenchment/severance benefits.

Additionally, instead of retrenchment, an employer should first other non-controversial cost-cutting measures during the MCO period such as:

- a) Reduction or non-payment of directors' fees;
- b) A freeze or non-payment of non-contractual on increments and/or bonuses to employees;
- c) Cut back on entertainment or travelling expenses;
- d) Not incurring non-essential expenses e.g. by undertaking renovation works, changing company cars, hosting events, etc.;
- e) Mutual Separation Scheme (MSS) or Voluntary Separation Scheme (VSS).

Working From Home

Employers may still ask their employees to continue working from home during the MCO period if the employees' job scope permits a home-based work system. Disciplinary action can

be taken in relation to employees who are able to work from home and refuse to comply with the order.

The Occupational Safety and Health Act 1994 (OSHA) imposes a statutory duty on employers to ensure, so far as is practicable, the safety, health and welfare at work of all the employees. This duty includes providing and maintaining plans, facilities and systems of work that are safe and without risks to health. OSHA further provides that an employee's work place is "premises where persons work". This would accordingly include the employee's home if the employer and employee agree that the employee may work at home.

Employers are encouraged to formulate policies and guidelines for working from home or remote work during the MCO if they do not have such policies already.