

Client Alert

17 March 2020

For further information, please contact:

Kherk Ying Chew
Partner
+603 2298 7933
kherkying.chew@wongpartners.com

Brian Chia
Partner
+603 2298 7999
brian.chia@wongpartners.com

Ee Von Teo
Partner
+603 2298 7810
eevon.teo@wongpartners.com

Eddie Chuah
Partner
+603 2298 7939
eddie.chuah@wongpartners.com

Sujintana Mongkolthanit
Senior Associate
+603 2298 7912
sujintana.mongkolthanit@wongpartners.com

Mynn Keng Loo
Associate
+603 2299 6512
mynnkeng.loo@wongpartners.com

Aileen Yeo
Associate
+603 2298 7978
aileen.yeo@wongpartners.com

Restriction of Movement Order

Following the global coronavirus (COVID-19) outbreak and the recent spike in COVID-19 cases in Malaysia, the Malaysian Prime Minister announced a Restriction of Movement Order ("**the Order**") on 16 March 2020 as a measure to curb the outbreak. This Order will last for two weeks, starting from 18 March 2020 to 31 March 2020 and is effective nationwide.

The Order

In summary, the Order will impose:

- (a) *No mass gatherings* - general prohibition on mass movements and gatherings, including religious, sports, social and cultural activities.
- (b) *Closure of premises* - houses of worship, business premises as well as all government and private premises must be closed, except for:
 - (i) supermarkets, public markets, convenience stores (including convenience stores selling everyday necessities) ("**Essential Stores**"); and
 - (ii) those involved in essential services for the country (water, electricity, energy, telecommunication, postal, transportation, irrigation, oil, gas, fuel, lubricants, broadcasting, finance, banking, health, pharmacy, fire, prison, port, airport, safety, defence, cleaning, retail and food supply) ("**Essential Services**").
- (c) *Closure for education sector* - closure of all:
 - (i) kindergartens, government and private schools including daily schools, boarding schools, international schools, *tahfiz* centers and other primary, secondary and pre-university institutions; and
 - (ii) public and private higher education institutions (IPTs) and skills training institutes.
- (d) *Travel ban and requirements*:
 - (i) Malaysian citizens are prohibited from travelling out of Malaysia;
 - (ii) Malaysian citizens returning from overseas travel must undergo a health check and be self-quarantined for 14 days; and
 - (iii) all tourists and foreign visitors are prohibited from entering Malaysia.

Liability for non-compliance

The Order is made under the Prevention and Control of Infectious Diseases Act 1988 ("**PCIDA**") and the Police Act 1967 ("**PA**"). The police is required to render assistance for the purpose of enabling any officer authorised under the PCIDA to execute the Order. The police can take lawful measures, including:



- (a) apprehending all persons whom he is by law authorised to apprehend;
- (b) conducting prosecutions; and
- (c) giving assistance in the carrying out of any law relating to revenue, excise, sanitation, quarantine, immigration and registration.

Non-compliance with the Order is an offence under the PCIDA, which upon conviction, will attract:

- (i) in respect of a first offence, a fine and/or imprisonment for a term not exceeding 2 years;
- (ii) in respect of a second offence, a fine and/or imprisonment for a term not exceeding 5 years; and
- (iii) an additional fine not exceeding MYR 200 for every day during which such offence continues.

The PCIDA does not prescribe a limit on the fine to be imposed for the first and second offence.

What does it mean for employers?

Businesses will face concerns of decreased revenue and the ability to maintain its overhead costs in respect of its operations, including payment of wages to its employees. Some businesses have also indicated the possibility of implementing retrenchment exercises in light of the virus outbreak.

The following is a general guidance to commonly asked questions.

Closure of business

Unless your business can be operated remotely/virtually (i.e., employees can work from home), or your business falls within the Essential Services sector or is one of the Essential Stores, your business will have to be closed.

Travel restrictions

The travel ban and requirements will affect physical business meetings. Non-Malaysian citizens, including those who have been issued with a pass to remain in Malaysia, are prohibited from entering Malaysia if they are outside the country upon the commencement of the Order period, unless they are involved in the Essential Services sector.

Alternative work arrangements

Businesses will have to consider alternative work arrangements, such as:

- (a) to the extent practicable, implement work-from-home arrangements; and
- (b) arrange for meetings to be conducted virtually (by video or audio conference).

Common concerns arising from such arrangements include decline in employee productivity and the inability to monitor employees' performance. Putting in place



appropriate policies on such work-from-home arrangements will help regulate the rights and limits of both the employer and the employee.

Are we required to pay employees during the implementation of the Order?

Yes. The government has not made any announcement which exempts employers from making salary payments.

There are guidelines stating that employers should continue making salary payments to its employees during any quarantine period, whether the employee is working or not. Whilst not law *per se*, the guidelines will most likely be considered by the Industrial Court when determining the issue of constructive dismissal.

Can employees work from home or are they required to be given paid time-off?

Employers can request employees to work from home, where it is practical. The employer should provide the employees with the necessary facilities to work from home, otherwise an employer may be exposed to potential liability arising from lack of appropriate facilities to properly conduct his/her work.

If the nature of the operations do not allow for work-from-home arrangements, then employees must be placed on paid-leave. Employees will need to be paid throughout the restriction period and the employees cannot be required to utilise their annual leave.

Can we force employees to take unpaid leave/pay-cut?

Forcing employees to take unpaid leave or a pay-cut is a unilateral variation of their employment terms and employers run the risk of facing a constructive dismissal claim. Employers should obtain prior consent of its employees where it is seeking to require its employees to take unpaid leave or a salary reduction. These requests are typically made before the employer decides on more drastic cost-cutting measures, such as workforce reduction or business closure.

Employers must be careful to ensure that the employee's salary does not fall below the minimum basic salary prescribed by the Minimum Wage Order 2020.

Can we implement a retrenchment exercise?

Businesses must demonstrate that it had taken steps to avert retrenchment if faced with an unfair dismissal claim. Specifically, businesses must ensure that:

- (a) it has a legitimate business case to implement a retrenchment exercise, and such business case is supported by substantive evidence; and
- (b) it has implemented the retrenchment exercise in a fair manner in line with Malaysian industrial practice standards, such as, among others, complying with termination notice obligations and providing severance payments.

Special considerations also apply to employees protected under the Malaysian Employment Act.



Conclusion

Businesses should take note of the Order and the consequential restrictions and/or bans. Businesses should make prompt arrangements to safeguard their interests and to ensure compliance and avoid attracting liability under the PCIDA and the PA. There is a possibility of the Order being extended and/or amplified, so we would advise watching developments closely.

www.wongpartners.com

Wong & Partners
Level 21
The Gardens South Tower
Mid Valley City
Lingkaran Syed Putra
59200 Kuala Lumpur

