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HR MANAGEMENT OF COVID-19 THREAT IN THE ENTERPRISE

Questions & Answers

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Please note that the following Q&A article is based on current Labour law and Social security law provisions and on current Government recommendations. This article is therefore subject to any binding measures taken by the Vietnamese authorities in respect of Human Resources policy or new provisions of law.

1- What Health and Safety rules apply in the enterprise?

Due to the worldwide spread of COVID-19, and especially in Vietnam, Vietnamese authorities have issued several decisions, guidance and recommendations in order to prevent the spread of COVID-19 in the workplace to ensure employees' health and hygiene. It is highly advisable to follow them.

According to Vietnamese law, the employer is responsible for ensuring general labour safety and hygiene at the workplace (Article 138 of the Labour Code and Article 7.2 of the Law on occupational safety and hygiene).

In addition, up to date, and in absence of any binding rules or compulsory measures issued by the Vietnamese public authorities:

- the Ministry of Health (“MOH”) has collaborated with the World Health Organization (“WHO”) and has published on its website recommendations for the prevention of Covid-19 diseases in the workplace: <https://ncov.moh.gov.vn/web/guest/-/bo-y-te-khuyen-cao-phong-chong-dich-benh-covid-19-tai-noi-lam-viec-va-huong-dan-rua-tay-ung-cach>
- the Ministry of Labour, War Invalids and Social Affairs (“MOLISA”) has also relayed similar recommendations on its website: <http://molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=222329>

It is, of course, highly advisable to follow all of these recommendations. These infographics can also be easily printed and displayed on workplace information boards.

Furthermore, the Ministry of Labour, War Invalids and Social Affairs (“MOLISA”) issued an Official Letter No. 01/CD-LDTBXH on 2 February 2020 (“Letter 01 of the MOLISA”), requesting the licensing authorities to temporarily suspend the issuance of new work permits to foreign employees coming from epidemic areas during the period when Vietnam announced the COVID-19 epidemic. Re-issuance or extension of work permits which are about to expire shall be decided on a case by case basis and may subject to additional request of local authorities.

To date, list of relevant epidemic countries includes China, South Korea, Italy and Iran but is likely to change as the situation evolves.

2- Can teleworking be imposed in the enterprise?

Teleworking may be useful to adjust work organization with current difficulties related to COVID-19 (child care while schools are closed, fear of infection, employees hindered to come to workplace because of quarantine measures) or potential ones in case of epidemic extension (closure of workplaces by order of public authorities). When possible, teleworking is encouraged by public authorities.

MOLISA and the MOH both issued recommendations to encourage teleworking to fight the COVID-19 outbreak.

However, as a preliminary remark, teleworking is not suitable for all business, nor adapted to all positions within the company. Special attention should be paid on that point.

Also, an employee cannot oblige his/her employer to accept a request to work at home. Pursuant to Article 185 of the Labour Code “a worker may [only] reach an agreement with an employer to accept regular home-based work”, which implies that the employee must have the prior consent of the employer and then the signature of an amendment to the employment contract.

By contrast, “in a case of unforeseeable difficulty due to (...) epidemic”, the employer might temporarily assign an employee to teleworking for a maximum accumulated period of sixty (60) working days in one year (Article 31 of the Labour Code).

As of now, it appears that the principle of voluntary agreement on a case-by-case basis should be followed.

3- Can an employee refuse to come to work?

Some employees, particularly those exposed to the public (salesperson, waiters/waitresses, etc.) may fear to be infected by COVID-19 and may be tempted not to come to work. However, employees have the burden of proof to establish the reality of the threat of being infected by COVID-19 at the workplace.

It is reminded that an employee's primary obligation is to perform his/her work, in accordance with the provisions of his/her employment contract (Article 30). By refusing to come to the workplace, he/she would be in breach of his/her contractual commitments.

However, pursuant to Article 140.2 of the Labour Code, *“an employee has the right to refuse to work or to leave the workplace and shall still be entitled to full payment of wages and shall not be deemed to have breached labour discipline when there is an obvious risk of occurrence of a work-related accident or occupational disease, which would constitute a serious threat to the employee's health or life (...)”*.

The exercise of the right of withdrawal would nevertheless require the employee to establish the reality of the threat of being infected by COVID-19 at workplace or to prove that the infection by COVID-19 (if any) is in connection with the performance of his/her assigned job, which may be very difficult to prove for the moment in Vietnam. Furthermore, COVID-19 is not on the official list of occupational diseases promulgated by MOH.

For now, employees do not seem to have any well-grounded reason to refuse to perform their jobs at the workplace; subject to specific assessment on a case by case basis.

4- Are there any restrictions on sending employees on business travel to a COVID-19 infected country?

The signature of contracts, the attendance at meetings or the participation in a trade fair may require business travel abroad in a COVID-19 infected area. For now, it seems preferable not to maintain them.

To date, there is no formal restriction on sending employees on business travel.

However, in Letter 01 issued by MOLISA, MOLISA has strongly recommended that enterprises temporarily postpone business travels of employees to countries with COVID-19 epidemic cases. In case of necessity, employees need to be thoroughly aware of proactive measures to prevent the spread of COVID-19, and to strictly comply with the health requirements of Vietnamese authorities and receiving countries.

In addition, it must be noted that from 6 am on 7 March 2020, all passengers entering Vietnam (including Vietnamese and foreigners) have to make a mandatory electronic medical declaration (Official Letter No.1115/CV-BCD dated 6 March 2020 of the National Steering Committee for the Prevention and Control of COVID-19). Besides, people arriving in Vietnam from China, South Korea, Italy and Iran are subject to centralized quarantine or self-quarantine at home or at another place of residence (Official Letter No. 991/BYT-DP of the MOH dated 29 February 2020).

For now, in the context of the current high risks of COVID-19 infection, it is advisable to postpone or cancel meetings in infected areas or alternatively to change their location.

5- Is it possible to unilaterally require employees to take paid holidays?

Paid holidays may be a tool in response to the decrease in business for the employer (or temporary business closure) or an option for payment for employees who are prevented from coming to the workplace (e.g. due to quarantine measures).

Pursuant to Article 111.2 of the Labour Code, “employers have the right to fix the timetable for annual leave after consulting the opinion of employees, and must notify the timetable in advance to employees”.

In other words, employers may unilaterally impose paid holidays after a simple consultation with the employee. However, on his/her side, the employee cannot decide unilaterally to take paid holidays and must, in any event, obtain his/her employer’s approval before doing so.

6- Does an employer have to pay an employee who is prevented from working because of COVID-19?

Depending on the level of exposure and the risk of infection, local authorities can issue quarantine decisions to each person or group of people and/or businesses can also be temporarily closed. An employee can also be on sick leave due to COVID-19 infection. In all these cases, employees may be prevented from working.

- The employee is sick

An employee who is COVID-19 positive should be on sick leave. Classically, the employee shall be entitled to enjoy sickness regime from the social insurance agencies with a monthly allowance of 75% of the employee's salary on which social insurance premiums are based for the preceding month, for a maximum period of 70 days (Article 26, Article 28 of the Law on Social Insurance).

- The employee is not sick

The current labour law does not provide any leave and support regime for quarantined employees (without a medical certificate) who are suspected of being infected with an epidemic. There is also no specific regime of indemnity if the workplace was closed by public order.

Therefore, the payment of salary during this period would depend on the agreement between the employee and the employer.

Pursuant to Article 98.2 of the Labour Code, in case of a work suspension due, *inter alia*, to a “dangerous epidemic” the employer and the employee (who is prevented from working) may reduce the salary by mutual agreement, provided that it is not lower than the regional minimum wage.

7- What is the employer supposed to do if one of its employees is suspected of COVID-19 infection?

During working time, an employee may start to develop the COVID-19 specific symptoms or indicate he/she has been in contact with a person positive for COVID 19.

It is prohibited to conceal, or provide inaccurate information about the suspected disease (Directive No. 06/CT-TTg dated 31 Jan 2020 of the Prime Minister).

As a requirement of law, any person who detects cases of infection or suspects cases of infection shall report them to the nearest health agencies within 24 hours after detection (Article 47.1 of the Law on prevention and control of infectious diseases).

If there are any grounds to suspect that an employee is infected with COVID-19 (fever, cough, difficulty in breathing) at the workplace or has been in contact with an infected person, the MOH recommends to immediately isolate the employee and to urgently contact the health services.

If there is evidence that the employee is infected or at high risk of being infected with COVID-19, the authorities in practice shall apply various measures such as disinfecting the workplace and quarantining the rest of the company's staff.

The requirement to close the entire company due to COVID-19 epidemic (if any) shall be subject to request by the competent authorities.

8- Is the employer finally allowed to terminate the employment contract?

A long-lasting epidemic affects the economy in general and the business activities of some companies in particular. Reducing manpower is an option that some employers may consider to maintain the company's operation.

Termination should not be the preferred option since alternatives exist:

- As a first alternative, it is allowed by the Labour Code that, in case of work suspension due to a “dangerous epidemic” the employer and the employee (who is prevented from working) may by mutual agreement reduce the salary, provided that it is not lower than the regional minimum wage (Article 98.2 of the Labour Code).

The Prime Minister of Vietnam has classified COVID-19 as a group A infectious disease with the risk of a global emergency (Decision No. 173/QĐ-TTg of 1 February 2020 of the Prime Minister). Therefore, the suspension of a labour contract, subject to mutual agreement on the salary reduction may be an option to be considered by the employer.

- As a second alternative to termination, it is still possible to simply amend the employment contract by mutual agreement between the employer and the employee and temporarily reduce the working time and the salary accordingly (Article 35 of the Labour Code).

As a last resort an employer may be permitted to unilaterally terminate labour contracts in limited circumstances:

- Due to force majeure event, including epidemic, provided that an appropriate prior notice must be sent to the employee. However, please note that unilateral termination of the labour contract in such case should be decided with the greatest caution, subject to the condition that the employer has applied all possible remedial measures but still has to scale down production and cut jobs (Article 38(c) of the Labour Code).
- For economic reasons, if the provisions of Article 44 of the Labour Code are met. In this case if more than one employee will be made redundant the employer must strictly follow the applicable procedure including the preparation of an employment plan in cooperation with the relevant trade union, prior notice to the relevant DOLISA and payment of severance allowance (if applicable).



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